

Consideration and adoption of proposed regulatory language to amend Title 16, CCR Section 4101, Delegation of Certain Functions, and establish section 4146, Definitions.

The Modified Text is attached for review.

**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
PROPOSED MODIFIED REGULATORY LANGUAGE
Title 16, Division 39, California Code of Regulations
Sections 4101 and 4146**

Specific Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text. Modifications to the proposed text are shown by ~~double-strikeout~~ for deleted text and double underline for new text.

Amend Title 16, Division 39, California Code of Regulations to read as follows:

§ 4101. Delegation of Certain Functions.

Except for those powers reserved exclusively to the “agency itself” under the Administrative Procedure Act (section 11500 et seq. of the Government Code), ~~the power and discretion conferred by law upon the Board to order an examination pursuant to section 820 of the Code,~~ receive and file accusations and statements of issues; issue notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings, including the authority to approve a settlement agreement for revocation or surrender of a license, ~~adoption of default decisions,~~ or approve an interim license suspension; and the certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code are hereby delegated to and conferred upon the executive officer of the Board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 480, 2570.1, 2570.6, 2570.17, 2570.19, 2570.20, and 2570.23, Business and Professions Code and Sections 11500 et seq., and 11415.60, Government Code.

§ 4146. Definitions.

- (a) “Incompetence” is the lack of possession of or the failure to exercise that degree of knowledge, learning, skill, ability, care or experience ordinarily possessed and exercised by a competent licensed professional.
- (b) “Negligence” is a departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.
- (c) “Gross negligence” is an extreme departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.
- (d) For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be “substantially related to the qualifications, functions or duties of an occupational therapy practitioner,” if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include but are not limited to those involving the following:

(1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Occupational Therapy Practice Act.

(2) Fiscal dishonesty, theft or larceny.

(3) An incident involving controlled substances or alcohol to the extent that practice is impaired or a threat to the health or safety of themselves or others.

(4) Conviction of a crime involving harassment or stalking (as defined by the Penal Code).

(5) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code).

(6) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(7) Failure to comply with any mandatory reporting requirements.

(8) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570, 2570.2 and 2570.5, Business and Professions Code.