Consideration and adoption of proposed regulatory language to amend Title 16, to renumber CCR Section 4122 to 4127, add new section 4128, Retired Status, and amend Section 4130, Fees.

The following are attached for review:

- Notice of Proposed Regulations
- Proposed Text
- Initial Statement of Reasons
- Notice of Availability of Modified Text and Modified Text

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on October 8, 2012.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the Board. The request must be received in the Board office not later than 5:00 pm, September 24, 2012.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Business and Professions Code Sections 122, 144, 163.5, and 2570.20, and to implement, interpret or make specific Section 144, 2570.5, 2570.9, 2570.10, 2570.11, and 2570.16, of said Code, the Board is considering changes to Division 39 of Title 16 as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulation makes formatting changes to existing language, amending the title of Article 3, by deleting references to "Certificate" and "Inactive Status," and placing "Inactive Status" into newly proposed Article 3.5 that will be titled "Inactive and Retired Status." The reference to "Certificate" is obsolete since recent legislation deleted all references to occupational therapy assistants as being "Certified" and replaced it with "Licensed" in SB 821(Chapter 307, Statutes 2009).

The Board proposes to add new language, section 4128, to establish and implement Business and Professions Code (BPC) Section 2570.17, which authorizes the Board to issue retired licenses. Existing laws and regulations prohibit anyone from representing that they are an occupational therapy practitioner unless they are licensed by the Board. The proposed regulations are intended to allow a retired practitioner to use references and titles that they are an occupational therapy practitioner as long as they clearly indicate they are retired. The proposed regulations establish requirements for a license being placed on Retired Status, establishes that a license on Retired Status can be disciplined, and sets forth requirements and procedures for reactivating a license.

Existing language in Section 4130 identifies fees the Board charges for initial licensing, renewals, and other functions. The Board is proposing to implement BPC Section 2570.16, by establishing a new fee to process Applications for Licensure ($50) and implement BPC Section 2570.17 by establishing a new fee to process applications when a license requests Retired Status ($25).

The Board also is proposing to increase the biennial license renewal fee and the (pro-rated) initial license fees from $150 to $170. The proposed regulation also removes obsolete and outdated language that was needed to implement a transition from annual to biennial renewals in 2007, and makes other minor formatting changes.

The proposed adoption and amendments to the regulations incorporating by reference the following forms:

- Application for Retired License Status, Form ARS (New 7/2012)
- Application to Restore License to Active Status, Form ARL (New 7/2012)
- Initial Application for Licensure, Form ILA (Rev 8/2012)

The specific benefit anticipated by the proposed adoption of the regulation is to establish and implement statutes authorizing the Board to issue licenses on retired status. The proposed regulatory action is designed to allow individuals who place their license on retired status to provide specific representations to the public, which would otherwise be prohibited without implementation of this proposed regulatory action. Adoption of the proposed regulatory action will benefit licensees who retire by charging only a $25 fee for retired status rather than an on-going biennial renewal fee and promotes transparency in rules that the Board establishes pertaining to occupational therapy practitioners making public representations of their license status; this serves to promote and protect public safety.

The specific benefit anticipated in establishing adopting and amending the regulations is to implement the statutes authorizing the Board to charge a variety of fees to generate revenue and ensure the Board is self-supporting. The specific benefits in establishing a fee for processing the application for licensure and for increasing the Board's biennial renewal and inactive fees is to increase revenue to align revenues with projected operating expenses. The proposed regulatory action is designed to ensure future fiscal solvency of the Board, whose mission is to regulate occupational therapy by serving and protecting California's consumers and licensees.

The proposed regulations are consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None.

Business Impact: This regulation will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

The Board has determined that this regulatory proposal benefits the health and welfare of California's consumers of occupational therapy services by ensuring transparency and appropriate representation by practitioners and ensuring sufficient revenue levels to support projected Board expenditures.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

Minor costs will be imposed on private occupational therapy practices that choose to pay or reimburse their employee's application and renewal fees. Occupational therapy practitioners who do not have an employer that pays for or reimburses a licensee for application and renewal fees will incur minor costs due to the regulation. The regulation proposes to increase existing initial licensing and renewal fees $20 biennially. The proposed regulations will establish the Board will charge a $50 fee for the processing of an application for licensure. The proposed regulations will establish that practitioners who wish to represent they are a Retired will be required to pay a one-time processing fee of $25.

EFFECT ON HOUSING COSTS: None

EFFECT ON SMALL BUSINESS:

There is no cost impact on general small business. Minor costs will incurred on small occupational therapy practices as outline above under Cost Impact on Representative Private Person or Business.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, or be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation, any documents incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from the Board's website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

All materials regarding this proposal can be found on-line at:

www.bot.ca.gov > Laws and Regulations > Proposed Regulations.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

PROPOSED AMENDED REGULATORY LANGUAGE
Title 16, Division 39, California Code of Regulations

Proposed amendments are shown by strikeout for deleted text and underline for new text.

1. The title of Article 3 is amended to read as follows:

Article 3. License~~, Certificate,~~ and Limited Permit~~, Inactive Status~~

2. Article 3.5 is added to Division 39 to read as follows:

Article 3.5. Inactive and Retired Status

3. Section 4122, Inactive Status, is renumbered to Section 4127.

4. Section 4128 is added to Division 39, Article 3.5, to read as follows:

§ 4128. Retired Status

(a) A holder of an occupational therapist or occupational therapy assistant license that is current and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline, may apply for retired status, upon application and payment of the fee prescribed in section 2570.17 of the Code.
(b) The application shall be on a form prescribed by the Board titled "Application for Retired Status" (Form ARS, New 7/2012), and shall disclose under penalty of perjury whether the licensee has been disciplined by another public agency or been convicted or pled nolo contendere to any violation of any statute in the United States or foreign country.
(c) A license in retired status is not subject to renewal.
(d) The holder of a license in retired status shall not engage in any activity for which an active license is required. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.
(e) An occupational therapist holding a license in retired status shall be permitted to use the title "occupational therapist, retired" or "retired occupational therapist." An occupational therapy assistant holding a license in retired status shall be permitted to use the title "occupational therapy assistant, retired" or "retired occupational therapy assistant." The designation of retired shall not be abbreviated in any way. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.
(f) In order to restore his or her license to active status the holder of a license in retired status shall:
(1) Complete a form prescribed by the board titled "Application to Restore License to Active Status," (Form ARL, New 7/2012), and pay the biennial renewal fee in effect at the time the request for activation is received; and.
(2) Satisfy continuing competency requirements as follows:
(A) Complete 24 PDUs, within two (2) years of the date the application for reactivation is received, if the license is in retired status for a period of five (5) years or less, or

(B) Meet one of the requirements set forth in section 2570.14 of the Code if the license is in retired status for a period of more than five (5) years. If qualifying under 2570.14(a), the holder of a license in retired status must complete 40 PDUs as specified in section 4161(g).
(h) A licensee may be granted a license in retired status on no more than two separate occasions.

Authority cited: Sections 2570.10, and 2570.11, Business and Professions Code; Reference: Sections 118, 2570.14, 2570.16 and 2570.17, Business and Professions Code.

5. Section 4130, Article 4, is amended to read as follows:

§ 4130. Fees

Fees are fixed by the board as follows:
(a) The fee for an Initial Application for Licensure (Form IAL, Revised 8/2012) shall be fifty dollars ($50).
~~(a)~~(b) The initial license ~~or certificate~~ fee shall be prorated pursuant to Section 4120(a)(1) and based on a biennial fee of ~~($150)~~ one hundred seventy dollars ($170).
~~(b)~~(c) The fee for a limited permit is seventy five dollars ($75).
~~(c) For a license that expires on or before December 31, 2006, the annual renewal fee for a license or certificate is $150.~~
~~(d) For a license that expires on or after January 1, 2007, the renewal fee shall be in accordance with the following schedule:~~
~~(1) For a license that expires between January 1, 2007, and December 31, 2007, a licensee with an even birth year shall renew for one year and the renewal fee shall be seventy-five dollars ($75).~~
~~(2) For a license that expires on or after January 1, 2007, and biennially thereafter, a licensee with an odd birth year shall renew for two years and the renewal fee shall be one hundred fifty dollars ($150).~~
(d) ~~(3)~~ For a license that expires ~~on or after~~ before January 1, ~~2008,~~ 2014, ~~and biennially thereafter, a licensee with an even birth year shall renew for two years and~~ the biennial renewal fee shall be one hundred fifty dollars ($150).
(e) For a license that expires on or after January 1, 2014, the biennial renewal fee shall be one hundred seventy dollars ($170).
~~(e)~~(f) The delinquency fee is one-half of the renewal fee.
~~(f)~~(g) The renewal fee for an inactive license ~~or certificate~~ is ~~$25~~ fifty dollars ($50).
(h) The fee for an Application for Retired Status (Form ARS, New 7/2012), shall be twenty-five dollars ($25).
~~(g)~~ (i)The fee for a duplicate license is $15.
~~(h)~~ (j) The fees for fingerprint services are those charged by the California Department of Justice and the Federal Bureau of Investigation.

Note: Authority cited: Sections 122, 144, 163.5, and 2570.20, Business and Professions Code. Reference: Sections 144, 2570.5, 2570.9, 2570.10, 2570.11, and 2570.16, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Regulations pertaining to establishing a new Retired Status and Fees charged by the Board.

Sections Affected: Title 16, Division 39, Sections 4122 (is renumbered to 4127), 4128 is established, and 4130 is amended.

Introduction:

The California Board of Occupational Therapy (Board) is the State agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of California's consumers. The Board administers, coordinates, and enforces the provisions of the laws and regulations pertaining to the practice of occupational therapy.

The proposed regulations intend to establish rules and procedures for placing a license on Retired Status and increase fees to ensure revenue collected is more closely aligned with the Board's expenditures. The proposed regulations also make a technical formatting change by creating a new Article Section, 3.5 for Inactive and Retired Status, and moves existing regulations pertaining to Inactive Status into the new article.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL:

1. Add Article 3.5. Inactive and Retired Status

The proposed change would amend Article 3 by striking reference to section 4122, Inactive Status, and moving it into newly proposed Article 3.5, Inactive and Retired Status.

Factual Basis/Rationale:
The purpose of the proposed change is to separate, differentiate, and group license statuses into two categories: those that authorize practice and those that do not authorize practice.

2. Renumber existing Section 4122 to 4127, and move it into newly proposed Article 3.5, Inactive and Retired Status.

The proposed change takes existing language in Section 4122 regarding Inactive Status and renumbers it to 4127, and moves it under Article 3.5.

Factual Basis/Rationale:
The purpose of the proposed change is to separate, differentiate, and group license statuses into two categories: those that authorize practice and those that do not authorize practice.

3. Add Section 4128, Retired Status

The proposed language establishes the procedures for the holder of license to apply for retired status, establishes certain qualifications for requesting retired status, establishes a retired license shall not be subject to renewal, clarifies the holder of a retired license shall not engage in any activity that would require an active license, sets forth titles and representations that a retired license holder may use, and establishes procedures for reactivating a license to active status.

Factual Basis/Rationale:
The purpose and design of the proposed regulations are to implement Business and Professions Code (BPC) Section 2570.17 which authorizes the Board to issue licenses on Retired Status. Current statutes and regulations prohibit an occupational therapy practitioner from representing to the public that they are an occupational therapy practitioner unless they are licensed to provide services. The regulations will establish that an occupational therapy practitioner who holds a retired license may identify himself or herself as an occupational therapist or occupational therapy assistant as long as they clearly specify they are retired.

The regulations will establish that in the event the holder of a retired license wants to reactivate the license to active status (presumably so they could practice) the licensee shall only pay a single biennial renewal fee and not be required to pay all back accrued renewal fees. The regulations will require a licensee to complete 24 professional development units (PDUs) prior to reactivation for a license that has been on retired status for five years or less, which mirrors the requirement for a licensee who has allowed their license to lapse. The regulations will require a licensee whose license has been on retired status for more than five years, must complete 40 PDUs prior to reactivation of a license, which is consistent with BPC 2570.14(a) and CCR Section 4161(g), regarding individuals applying for a license who have not practiced in five years .

The regulation will also establish that a licensee may only be granted retirement status on two occasions to reduce the possibility that a practitioner may misuse this authority to otherwise circumvent renewal fees for active and inactive licenses.

4. Add new language, amend, and delete language in Section 4130 regarding Fees

The proposed language establishes a $50 application fee, increases the (prorated) initial license fee from $150 to $170 and adds language spelling out the fee, adds language spelling out the fee for a limited permit, sets forth the current $150 biennial renewal fee shall remain in effect for licenses that expire before January 1, 2014, increases the biennial renewal fee from $150 to $170 for licenses that expires on or after January 1, 2014, increases the fee for an inactive license from $25 to $50, and adds new language establishing a $25 fee for an application for retired status.

Factual Basis/Rationale:
The Board is a Special Fund agency, which means that it doesn't rely on General Fund monies for its operation. As a Special Fund agency, revenue collected supports the Board's operations and, thus, the Board should be self-supporting. The purpose of the proposed

regulations is to establish new fees for the processing of applications for licensure and retired status and increase fees for the renewal of active and inactive licenses to increase revenue.

Current budget projections indicate that if the Board spends its entire budget in fiscal year 2012-13, there will be insufficient funds to support operations for the duration of fiscal year 2013-14. Without sufficient funding levels, the Board cannot perform its consumer-protection mandate or continue operations; it would be irresponsible to not increase fees when a *negative* fund reserve is projected. Thus, it is necessary and fiscally prudent to both reduce expenditures and increase fees. While the Board has consistently underspent its budget, an increase in fees is necessary for the Board to collect sufficient revenue to off-set the increased enforcement expenditures; the Board's fiscal goal is to be revenue "neutral" so it can continue its mandated regulatory and enforcement functions and support its administrative and licensing functions.

BUSINESS IMPACT

The proposed amendment to rename Article 3, establish a new Article 3.5, and renumber Section 4122 to Section 4127 will have no cost impact to businesses as the amendments are merely administrative in nature.

The proposed establishment of Section 4128 for placing a license on retired status would have no cost impact to businesses or employers due to the fact that the fee would be payable by a licensee who wished to place their license on retired status.

Amendment of Section 4130 specific to the establishment of charging a fee for the processing of an application for licensure and small increases to the initial license and renewal fees may have a cost impact to those businesses or employers that pay for or reimburse a practitioner's application and/or renewal fees. The Board does track nor monitor those employers that pay or reimburse employees their renewal fees. Thus, the Board does not have statistical data to estimate the cost impact.

ECONOMIC IMPACT ASSESSMENT – Government Code section 11346.3(b)

Creation or Elimination of Jobs in California

The proposed regulatory action seeks to implement statute and create a retired license status for occupational therapy practitioners, establish a $50 fee for processing the application for licensure, increase the initial licensing fee and biennial renewal fees by $20, and increase the inactive renewal fee. The Board does not anticipate the proposed regulatory action will either create or eliminate jobs within the State of California. Individuals who seek authorization to provide services within a regulated profession are accustomed to paying fees to fund a regulatory entity.

Creation or Elimination of Existing Businesses Within the State of California

The Board has determined the proposed regulatory action will not create new businesses or result in the elimination of existing businesses within the State of California. The proposed establishment of an application fee and small increases to biennial license and renewal fees directly impacts individuals applying for licensure or who hold a license issued by the Board. The Board is aware that in some cases businesses may pay for professional licensing fees of their employees, which is not required, but may be done at their discretion.

Expansion of Business of Existing Business Within the State of California
The Board has determined the proposed regulatory action will not result in expansion of any businesses currently doing business within the State of California.

Benefits of the Regulations
The proposed regulatory action will ensure the Board remains fiscally solvent to carry out its mission in regulating the practice of occupational therapy and protecting the health, safety, and welfare of California consumers.

UNDERLYING DATA

Table A: Review of application fees and renewal fees charged by other California healing arts Boards.

Table B: Data supporting the proposed fee for processing an Application for Licensure.

SPECIFIED TECHNOLOGIES OR EQUIPMENT
This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES
No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and businesses than the proposed regulation.

AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Occupational Therapy has proposed modifications to the proposed text of CCR Sections 4128 and 4130 in Division 39, Title 16. A copy of the modified text is enclosed.

Any person who wishes to comment on the proposed modifications may do so by submitting written comments on or before 5:00 PM on October 9, 2012, to the following:

Jeff Hanson
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
Telephone: (916) 263-2294
Fax: (916) 263-2701
E-mail: cbot@dca.ca.gov

DATED: September 24, 2012

HEATHER MARTIN
Executive Officer
Board of Occupational Therapy

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

PROPOSED AMENDED REGULATORY LANGUAGE
Title 16, Division 39, California Code of Regulations

Proposed amendments are shown by strikeout for deleted text and underline for new text. Modifications are shown by double strikeout for deleted text and double underline for new modified language.

1. The title of Article 3 is amended to read as follows:

Article 3. License~~, Certificate,~~ and Limited Permit~~, Inactive Status~~

2. Article 3.5 is added to Division 39 to read as follows:

Article 3.5. Inactive and Retired Status

3. Section 4122, Inactive Status, is renumbered to Section 4127.

4. Section 4128 is added to Division 39, Article 3.5, to read as follows:

§ 4128. Retired Status

(a) On or after July 1, 2013, a ~~A~~ holder of an occupational therapist or occupational therapy assistant license that is current and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline, may apply for retired status, upon application and payment of the fee prescribed in section 2570.17 of the Code.
(b) The application shall be on a form prescribed by the Board titled "Application for Retired Status" (Form ARS, New 7/2012), and shall disclose under penalty of perjury whether the licensee has been disciplined by another public agency or been convicted or pled nolo contendere to any violation of any statute in the United States or foreign country.
(c) A license in retired status is not subject to renewal.
(d) The holder of a license in retired status shall not engage in any activity for which an active license is required. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.
(e) An occupational therapist holding a license in retired status shall be permitted to use the title "occupational therapist, retired" or "retired occupational therapist." An occupational therapy assistant holding a license in retired status shall be permitted to use the title "occupational therapy assistant, retired" or "retired occupational therapy assistant." The designation of retired shall not be abbreviated in any way. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.
(f) In order to restore his or her license to active status the holder of a license in retired status shall:
(1) Complete a form prescribed by the board titled "Application to Restore License to Active Status," (Form ARL, New 7/2012), and pay the biennial renewal fee in effect at the time the request for activation is received; and.
(2) Satisfy continuing competency requirements as follows:

(A) Complete 24 PDUs, within two (2) years of the date the application for reactivation is received, if the license is in retired status for a period of five (5) years or less, or
(B) Meet one of the requirements set forth in section 2570.14 of the Code if the license is in retired status for a period of more than five (5) years. If qualifying under 2570.14(a), the holder of a license in retired status must complete 40 PDUs as specified in section 4161(g).
(h) A licensee may be granted a license in retired status on no more than two separate occasions.

Authority cited: Sections 2570.10, and 2570.11, Business and Professions Code; Reference: Sections 118, 2570.14, 2570.16 and 2570.17, Business and Professions Code.

5. Section 4130, Article 4, is amended to read as follows:

§ 4130. Fees

Fees are fixed by the board as follows:
(a) On or after July 1, 2014, t~~T~~he fee for processing an Initial Application for Licensure (Form IAL, Revised 8/2012) shall be fifty dollars ($50).
~~(a)~~(b) On or after July 1, 2014, t~~T~~he initial license ~~or certificate~~ fee shall be prorated pursuant to Section 4120(a)(1) and based on a biennial fee of ~~($150)~~ one hundred seventy dollars ($170).
~~(b)~~(c) The fee for a limited permit is seventy five dollars ($75).
~~(c) For a license that expires on or before December 31, 2006, the annual renewal fee for a license or certificate is $150.~~
~~(d) For a license that expires on or after January 1, 2007, the renewal fee shall be in accordance with the following schedule:~~
~~(1) For a license that expires between January 1, 2007, and December 31, 2007, a licensee with an even birth year shall renew for one year and the renewal fee shall be seventy five dollars ($75).~~
~~(2) For a license that expires on or after January 1, 2007, and biennially thereafter, a licensee with an odd birth year shall renew for two years and the renewal fee shall be one hundred fifty dollars ($150).~~
(d) ~~(3)~~ For a license that expires ~~on or after~~ before January 1, ~~2008,~~ 2014, ~~and biennially thereafter, a licensee with an even birth year shall renew for two years and~~ the biennial renewal fee shall be one hundred fifty dollars ($150).
(e) For a license that expires on or after ~~January~~ July 1, 2014, the biennial renewal fee shall be one hundred seventy dollars ($170).
~~(e)~~(f) On or after July 1, 2014, t~~T~~he delinquency fee is one-half of the renewal fee.
~~(f)~~(g) On or after July 1, 2014, t~~T~~he renewal fee for an inactive license ~~or certificate is~~ shall be ~~$25~~ fifty dollars ($50).
(h) On or after July 1, 2013, t~~T~~he fee for an Application for Retired Status (Form ARS, New 7/2012), shall be twenty-five dollars ($25).
~~(g)~~ (i) The fee for a duplicate license is $15.
~~(h)~~ (j) The fees for fingerprint services are those charged by the California Department of Justice and the Federal Bureau of Investigation.

Note: Authority cited: Sections 122, 144, 163.5, and 2570.20, Business and Professions Code. Reference: Sections 144, 2570.5, 2570.9, 2570.10, 2570.11, and 2570.16, Business and Professions Code.

Consideration and adoption of proposed regulatory language to amend Title 16, CCR Section 4154, Post-Professional Education and Training.

The following are attached for review:

- Notice of Proposed Regulations
- Proposed Text
- Initial Statement of Reasons

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on October 8, 2012.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 pm. on September 24, 2012.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by sections 2570.13 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.2, 2570.3, the Board is proposing changes to Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing regulations contained in section 4154 of Division 39, of Title 16, of the California Code of Regulations (CCR) set forth requirements to gain the Board's approval as a post professional education provider and course instructor in the advanced practice areas of hand therapy, physical agent modalities and swallowing. The qualification criteria for an advanced practice course instructor includes the instructor's education, training, experience, scope of practice, licenses held, and expertise relevant to the subject matter. This proposed regulatory action seeks to establish a new requirement for advanced practice instructors. The board seeks to require instructors who hold a health care license to possess an active, current, and unrestricted license.

The purpose and benefit of adopting this proposed regulatory action is to make transparent, establish, and eliminate any possibility that a licensed health care provider with a suspended, revoked, or restricted license be able to teach post-professional (advanced practice) coursework. The proposed regulatory action is consistent and compatible with the Board's mandate to promote and protect the public's health, safety, and welfare.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Requires Reimbursement: None

Business Impact:

The proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The amendment to proposed section 4154 may have a minimal cost impact to businesses that provide post-professional education for advance practice. Should a provider employ a course instructor who does not meet the current, active, or unrestricted license requirement, they may find it necessary to hire another licensee who does meet the requirement to teach the course content.

Results of Economic Impact Anaysis:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. The anticipated benefits of the proposed regulatory action is to protect the health, safety, and welfare of California consumers, including the occupational therapists and occupational therapy assistants that are regulated by the Board, by ensuring instructors who teach advanced practice education are competent, ethical, and knowledgeable practitioners, and whose license is not subject to disciplinary action.

Cost Impact on Representative Private Person or Business:

The Board has determined that a course instructor who does not meet the current, active, or unrestricted license requirements or violates this regulation potentially could be disciplined and lose their license and teaching position ultimately resulting in loss of income.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that there would be fiscal impact to a post professional education provider who owns and operates his/her own private practice, does not employ any additional licensees, and teaches the required courses. Please refer to the Business Impact statement above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in

carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Adoption of the proposed regulatory action is consistent with the Board's mandate to coordinate, administer, and regulate the practice of occupational therapy.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

OR

Heather Martin
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at **www.bot.ca.gov > Laws and Regulations > Proposed Regulations.**

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Specific Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 39. Board of Occupational Therapy
Article 6. Advanced Practices

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

§ 4154. Post Professional Education and Training

(a) Post professional education courses shall be obtained at any of the following:
(1) College or university degree programs accredited or approved by ACOTE;
(2) College or university degree programs accredited or approved by the Commission on Accreditation in Physical Therapy Education;
(3) Colleges or universities with Speech and Hearing Programs accredited or approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;
(4) Any approved provider. To be approved by the Board the provider shall submit the following:
(A) A clear statement as to the relevance of the course to the advanced practice area.
(B) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(C) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
(D) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area; or
(5) A provider that has not been approved by the Board, if the applicant occupational therapist demonstrates that the course content meets the subject matter requirements set forth in sections 2570.3(e) or 2570.3(f) of the Code, or section 4153 of these regulations, and submits the following:
(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(B) Information that shows the course instructor's qualifications to teach the content

being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise on the relevant subject matter), particularly as it relates to the advanced practice area.
(b) Post professional training shall be supervised which means, at a minimum:
(1) The supervisor and occupational therapist have a written agreement, signed and dated by both parties prior to accruing the supervised experience, outlining the plan of supervision and training in the advanced practice area. The level of supervision is determined by the supervisor whose responsibility it is to ensure that the amount, degree, and pattern of supervision is consistent with the knowledge, skill and ability of the occupational therapist, and appropriate for the complexity of client needs and number of clients for whom the occupational therapist is providing advanced practice services.
(2) The supervisor is readily available in person or by telecommunication to the occupational therapist while the therapist is providing advanced practice services.
(3) The supervisor does not have a co-habitative, familial, intimate, business, excluding employment relationships, or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or that violates the Ethical Standards of Practice, pursuant to section 4170.
(c) Any course instructor providing post-professional education under section 4154(a)(4) or (5) who is a health care practitioner as defined in section 680 of the Code shall possess an active, current, and unrestricted license.
~~(c)~~ (d) Post professional education and training must be completed within the five years immediately preceding the application for approval in each advanced practice area.

Note: Authority cited: Sections 2570.3 and 2570.20, Business and Professions Code.
Reference: Sections 2570.2 and 2570.3, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Advanced Practice

Section Affected: Title 16, Division 39, California Code of Regulations, Section 4154 - Post Professional Education and Training

SPECIFIC PURPOSE OF THE REGULATIONS:

The California Board of Occupational Therapy (Board) is the State agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the public's health, safety and welfare. The Board also administers, coordinates, and enforces the provisions of the laws and regulations pertaining to occupational therapy.

The specific purpose of the proposed regulation is to amend California Code of Regulations (CCR) section 4154 to establish, clarify, and implement a new requirement that post-professional course instructors must possess and maintain a current, active and unrestricted license.

FACTUAL BASIS/NECESSITY:

Existing law, Business and Professions Code Section 2570.3, requires an occupational therapist who wishes to provide services in the advanced practice areas of hand therapy, swallowing assessment, evaluation, or intervention, or use of physical agent modalities, must demonstrate to the Board that they have met post professional education and training requirements, as specified. CCR section 4154 establishes a post professional education instructor's qualifications which include their education, training, experience, scope of practice, licenses held, length of experience, and expertise relevant to the subject matter.

CCR section 4154 currently does not specify that post professional course instructors who possess a health care license, must hold and maintain a current, active, and unrestricted license. This proposed regulation seeks to add language to section 4154 that would require course instructors, who are "health care practitioners" as defined in Business and Professions Code section 680, to have a current, active an unrestricted license. Any course instructor who does not meet this requirement would not qualify to teach a post professional education course. The proposed regulation seeks to establish, clarify, and eliminate any possibility that a health care practitioner with a revoked, suspended, or restricted license, be deemed qualified to teach post professional education courses.

The proposal also renumbers and adds subsection (d) to section 4154 for numbering consistency.

UNDERLYING DATA:

No underlying data was used during the development of these regulations.

BUSINESS IMPACT:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of business in the State of California.

The proposed regulatory proposal would have minimal economic impact on businesses. A business who employed a course instructor who did not meet the added requirement may find it necessary to employ an additional course instructor who meets the requirements proposed.

The proposed regulatory proposal may also affect course instructors who do not possess a current, active or unrestricted license courses ultimately resulting in loss of income.

ECONOMIC IMPACT ANALYSIS

The proposed regulatory action seeks to clarify qualifications for instructors teaching advanced practice coursework. The proposed regulatory action would require advanced practice instructors must possess a current, active, and unrestricted license to teach post-professional (advanced practice) coursework.

Creation/Elimination of Jobs

The proposed regulatory action will not significantly result in the creation or elimination of jobs within California. Licensed occupational therapy practitioners choose voluntarily to renew their license and those renewing would be able to comply with the proposed regulatory action. Those licensees who choose not to renew their license do so willingly and would be prohibited from teaching/instructing post-professional (advanced practice) courses. Licensed occupational therapy practitioners who have been disciplined (e.g., or have had their license suspended or placed on probation) would be precluded from teaching advanced practice coursework which would require educational providers to find a qualified replacement; the overall effect would be a zero sum gain/loss.

Creation of New Business or Elimination of Business Within California

The proposed regulatory action would not create or curtail businesses providing post professional education in California. Post professional educational businesses may incur minor costs associated with the replacement of instructors who do not maintain current licensure or who have been disciplined by state agencies.

Expansion of Businesses/Business Within California

The proposed regulatory action would not expand or curtail the post professional education (advanced practice) providers from doing business in California as companies could replace the prohibited instructors with those licensees with a current or unrestricted

license. Also, the regulatory requirements would be applied equally to educational providers located in other states as well.

Intended Benefit

The intended benefit of the proposed regulatory action is to protect the health, safety, and welfare of California consumers. The proposed regulatory action is designed to ensure the quality of instruction provided and the safety of those occupational therapy practitioners enrolled in post professional courses; an instructor with a current and unrestricted license should help ensure that that the quality of the courses is not compromised or undermined and is representative and consistent with professional standards.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

Consideration and adoption of proposed regulatory language to amend Title 16, CCR Section 4170, Ethical Standards of Practice.

The following are attached for review:

- Notice of Proposed Regulations
- Proposed Text
- Initial Statement of Reasons

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (CBOT) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on October 8, 2012.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the Board. The request must be received in the CBOT office not later than 5:00 pm on September 24, 2012.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.28, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest

Existing regulations contained in section 4170 of Division 39 of Title 16 of the California Code Regulations identify Ethical Standards of Practice that have been adopted by the Board. Any violation of the adopted standards would constitute grounds for the CBOT to take an enforcement action against a licensee. The proposed action would incorporate the American Occupational Therapy Association's (AOTA)"Occupational Therapy Code of Ethics and Ethics Standards" (2010) into the CBOT's existing regulations, thereby requiring licensees to comply with the AOTA standards as well as those specified in current language.

Policy Statement/Anticipated Benefits of Proposal

Pursuant to BPC section 2570.25, protection of the public shall be the highest priority of the CBOT in exercising its licensing, regulatory, and disciplinary functions. The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

Consistency with Existing State Regulations

This regulatory proposal is consistent and compatible with existing state regulations.

Document Incorporated by Reference:

American Occupational Therapy Association's "Occupational Therapy Code of Ethics and Ethics Standards, published (2010).

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: This regulation will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with business in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Impact on Jobs/New Business:

The Board has determined that this regulatory proposal will not have a significant on the creation of jobs or new business or the elimination of jobs or existing business or the expansion of businesses in the State of California.

Cost Impact on Affected Private Persons:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business:

The Board has determined that compliance with proposed regulations would not significantly affect small business. Individual occupational therapy practitioners are required to comply with the proposed regulations. However, the CBOT acknowledges the potential exists that the owner or an employee of a small occupational therapy business might subject their license to an enforcement action for violating the proposed regulations. The Board does not anticipate a significant number of small businesses would be affected and any detrimental impact or hardship that might be incurred would be outweighed by the Board's mandate to protect the health, safety, and welfare of California consumers.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to the private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations within the timeframes identified in this Notice, or at a hearing in the event that such a request is made by the public.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > Laws and Regulations > Proposed Regulations.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Specific Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.

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

§ 4170. Ethical Standards of Practice

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, certificate or limited permit issued by the board shall comply with the following ethical standards of practice:
(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.
(b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.
(1) Occupational therapy practitioners shall not exploit clients in any manner.
(2) Occupational therapy practitioners shall avoid relationships or activities that interfere with professional judgment and objectivity.
(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.
(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.
(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.
(3) Occupational therapy practitioners shall respect the client's right to refuse professional services or involvement in research or educational activities.
(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.
(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so.
(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.
(2) Occupational therapy practitioners shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation should be done in collaboration with the client.
(e) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws.
(f) Occupational therapy practitioners shall provide accurate information about occupational therapy services.
(1) Occupational therapy practitioners shall accurately represent their credentials, qualifications, education, experience, training, and competence.
(2) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.

(3) Occupational therapy practitioners shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.
(g) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.
(h) Occupational Therapy practitioners shall abide by the standards set forth in the American Occupational Therapy Association's "Occupational Therapy Code of Ethics and Ethics Standards" (2010), incorporated herein by reference.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code section 2570.20.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Ethical Standards of Practice

Section Affected: Title 16, Division 39, California Code of Regulations, Section 4170

Introduction

The California Board of Occupational Therapy (Board) is the state agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of California consumers. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

Current regulations provide that an occupational therapist or occupational therapy assistant that violates any ethical standard of practice is grounds for disciplinary action against their license. Licensees are required to comply with certain enumerated ethical standards of practice. This regulatory proposal seeks to add to the existing ethical standards of practice set forth in Section 4170, the requirement that licensees must also comply with the American Occupational Therapy Association's (AOTA) *Occupational Therapy Code of Ethics and Ethics Standards (2010)*.

Factual Basis/Rationale

Incorporating AOTA's *Code of Ethics and Ethics Standards (2010)* to the Board's existing regulations will further enhance its efforts and mission of protecting and promoting the health, safety, and welfare of California consumers. The proposed regulatory change will serve to:

- Identify and describe the principles accepted and supported by the occupational therapy profession.
- Inform the public of established principles to which occupational therapy practitioners are held accountable.
- Make transparent and normalize national standards of conduct expected of occupational therapy practitioners.
- Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.

The Board's existing regulations relating to ethical standards of conduct do not contain the depth and breadth of the standards contained in the AOTA's *Code of Ethics and Ethics Standards (2010)*, which were developed to "address the most prevalent concerns of the profession in education, research, and practice."

In exercising the regulatory and discipline functions under the Board's authority, incorporation of AOTA's *Code of Ethics and Ethics Standards (2010),* nationally recognized ethical standards, will address the concerns of many stakeholders, including the public, consumers, students, colleagues, employers, research participants, researchers, educators and practitioners while making clear the ethical standards expected of licensees under the Board's authority.

UNDERLYING DOCUMENT:

AOTA's Code of Ethics and Ethics Standards (2010).

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business.

ECONOMIC IMPACT ANALYSIS

Background

The purpose of the proposed regulatory action is to establish and expand existing regulations relating to ethical standards of practice for occupational therapy practitioners. The proposed regulatory action accomplishes its purpose by incorporating the American Occupational Therapy Association's *Code of Ethics and Ethics Standards (2010),* into existing state regulations.

Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate jobs within California for reasonable compliance with the proposed action. The proposed regulatory action expands, defines, and clarifies standards and principles held by the profession in the delivery of occupational therapy services to the public and do not have a direct correlation on creation or elimination of jobs for reasonable compliance.

Creation of New Business or Elimination of Existing Business Within California

The Board has determined the proposed regulatory action will not create new business or eliminate existing business within California for reasonable compliance with the proposed action. The Board does not anticipate that any healthcare or rehabilitation businesses seeking to establish itself in California, or that currently does business in California, would decline opening a business or close an existing business based on implementation of professional standards that are widely held, and nationally recognized.

Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California. The proposed regulatory action merely expands, defines, and clarifies standards and principles for the delivery of occupational therapy services to California consumers and does not contain any inducement for expansion of business.

Benefits of Regulations

The proposed regulatory action will promote and protect the health, safety, and welfare of California consumers by expanding, establishing, and clarifying, professional standards relating to the delivery of occupational therapy services to the public.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

In order to enforce provisions contained in this proposed regulatory action the Board would need to call on an expert witness to establish that these are current ethical standards in the state. This proposal not only gives notice by clearly stating the standards that practitioners are expected to adhere to, but also makes any enforcement action easier and clearer.

Consideration and adoption of proposed regulatory language to add Title 16, CCR Section 4172, Standards of Practice for Telehealth.

The following are attached for review:

- Notice of Proposed Regulations
- Proposed Text
- Initial Statement of Reasons

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on October 8, 2012.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 pm. on September 24, 2012.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2290.5 and 2570.20, the Board is proposing changes to Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Codes (BPC) section 2290.5, defines and establishes "telehealth" as a mode of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health while the patient is at the originating site (where the patient is located at the time health care services are provided) and the health care provider is at a distant site (site where the health care provider who provides health care services is located while providing these services via telecommunication). This emerging method in delivering health care services is designed to expand access to underserved and rural communities and provide greater modern day flexibility to all consumers in scheduling appointments and reducing or eliminating the need for long trips or congested urban travel.

This proposed regulatory action is designed to implement and establish rules and protocols, and clarify occupational therapy practice standards relevant to occupational therapy practitioners who provide services via telehealth.

The proposed regulatory action seeks to clarify and establish that occupational therapy practitioners may provide occupational therapy services via telehealth to patients or clients in the State of California, when they possess a license issued by the Board. It proposes to establish the same standard of care must be exercised as compared to any other occupational therapy services. It proposes to require that an occupational therapist obtain a client's or patient's consent prior to delivering telehealth services, and the consent shall be documented in the client's or patient's medical record. It proposes to clarify and establish that an occupational therapist must make a determination whether an in-person evaluation and/or intervention(s) is/are

necessary based on the complexity of the patient's/client's condition and other factors. And it proposes to clarify that occupational therapy practitioners shall not deviate from their scope of practice in delivering telehealth services.

The purpose of the proposed regulatory action is to protect consumers and to establish and make clear standards and expectations associated with the delivery of occupational therapy services via information and communication technologies. The proposed regulatory action is consistent and compatible with the Board's mission in regulating the practice of occupational therapy and protecting the public's health, safety, and welfare.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Requires Reimbursement: None

Business Impact:

The Board has determined the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

It is anticipated the proposed regulations will promote new business opportunities and result in deployment of new advanced telecommunication technologies.

Results of the Economic Impact Analysis:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. It is anticipated the proposed regulations will promote new business, new jobs, and result in the increased use of advanced telecommunication technologies.

Cost Impact on Representative Private Person or Business:

There would be a cost impact to representative private persons or businesses who wish to provide the services (telehealth) described in this proposed regulatory action. Representative private persons or businesses would need to acquire telecommunication equipment and technologies that would protect and secure a consumers health care information and treatment.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that there would be fiscal impact to any private practice or small business that wished to provide the services described in this proposed regulatory action.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Adoption of the proposed regulatory action is consistent with the Board's mandate to regulate the practice of occupational therapy.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
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Website Access: All materials regarding this proposal can be found on-line at **www.bot.ca.gov > Laws and Regulations > Proposed Regulations.**

California Board of Occupational Therapy
Department of Consumer Affairs
Title 16. Division 39, California Code of Regulations

PROPOSED LANGUAGE

ARTICLE 8. Ethical Standards of Practice

Add section 4172 - Standards of Practice for Telehealth

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant in this State or providing services to a patient or client in this State must have a valid and current license issued by the Board.

(b) An occupational therapist or occupational therapy assistant must exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services.

(c) An occupational therapist shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth, and shall include documentation of that consent statement in the patient's or client's health record.

(d) Prior to providing occupational therapy services via telehealth, an occupational therapist shall determine:

(1) whether an in-person evaluation is necessary; and

(2) whether in-person interventions are necessary.

The obligations of an occupational therapist continue during the course of treatment to determine whether an in-person evaluation or intervention is necessary. In making these determinations, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

(e) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Provide services consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code; and

(2) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2290.5 and 2570.20.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Standards of Practice for Telehealth

Section Affected: Title 16, Division 39, California Code of Regulations, Section 4172

Introduction

The California Board of Occupational Therapy (Board) is the state agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of the public. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

The purpose of the proposed regulatory language is to implement and clarify existing law, Business and Professions Code (BPC) section 2290.5, pertaining to services provided via "telehealth." Telehealth is not a separate from of practice; it's a mode of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health while the patient is at a different site and location from where the treating health care professional is located. This emerging method in delivering health care services is designed to expand access to underserved and rural communities and provide greater modern day flexibility to all consumers in scheduling appointments and reducing or eliminating the need for long trips or congested urban travel.

This proposed regulatory action is designed to establish standards for occupational therapy practitioners providing services via telehealth and identify and clarify the factors that occupational therapy practitioners must consider prior to providing services via telehealth. This language is intended to facilitate the administration, coordination, and enforcement of the laws and regulations that occupational therapy practitioners must abide by while promoting public health, safety, and awareness.

Factual Basis/Rationale

Section 4172(a) establishes that occupational therapy practitioners providing services via telehealth to patients or clients in California must possess a must possess a valid and current license issued by the Board to provide these services.

The reason and rational for the regulatory language proposed in section 4172(a) is to implement and clarify statutory language set forth in BPC section 2290.5(3) requiring that the occupational therapy practitioner providing telehealth services must be licensed by the Board.

Section 4172(b) proposes to establish that the same standard of care exists for services provided via telehealth as there would for any other mode in delivering occupational therapy services.

The reason and rational for the regulatory language proposed in section 4172(b) is to implement BPC section 2290.5(d) and clarify that, regardless of the mode of delivery of services, the occupational therapy practitioner must exercise an established standard of care.

Section 4127(c) proposes to require occupational therapists to obtain a client's or patient's consent, prior to delivering telehealth services. The section also would require the occupational therapist to document the client's or patient's consent in the medical record.

The reason and rationale for the regulatory language proposed in section 4127(c) is to implement BPC section 2290.5(b) requiring occupational therapy practitioners to obtain the client's or patient's consent prior to the delivering telehealth services, and maintain documentation of that consent.

Section 4127(d) would establish that prior to providing telehealth services an occupational therapist shall determine whether an in-person evaluation is necessary or if in-person intervention (treatment) is necessary based on the complexity of the patient's/client's condition; the practitioner's own skills and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

The reason and rational for the regulatory language proposed in section 4127(d) is to implement BPC section 2290.5(d) by establishing standards an occupational therapy practitioners must follow when prior to providing services via telehealth.

Section 4127(e)(1) and (2) would clarify and establish that when occupational therapy practitioners provide services via telehealth, they must provide services consistent with the scope of practice defined in BPC Section 2570.2(k) and comply with the ethical standards of practice and any other applicable laws.

The reason and rational for the regulatory language proposed in section 4127(e)(1) is to implement BPC section 2290.5(d) by requiring occupational therapy practitioners provide services within their scope of practice.

The reason and rational for the regulatory language proposed in section 4127(e)(2) is to implement BPC section 2290.5(d) by clarifying that occupational therapy practitioners must adhere to the same laws and regulations governing the practice of occupational therapy, even when services are provided via telehealth.

UNDERLYING DATA:

None

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business.

In all likelihood this proposed regulation will promote expanded opportunities for hospitals, health care and rehabilitation businesses, and information technology companies.

ECONOMIC IMPACT ANALYSIS

The proposed regulatory action will establish rules and practice standards for occupational therapists delivering services via telecommunication.

The Board anticipates the proposed regulatory action will increase job opportunities for occupational therapy practitioners and in technology/ telecommunications communities to meet confidentiality requirements inherent in health care records management. It is anticipated that the demand for occupational therapy practitioners will increase in order to meet the unmet need of remote, rural or underserved communities or to provide services to those with limited mobility or transportation issues, who will all benefit from increased access to occupational therapy services.

The Board anticipates the proposed regulatory action will promote new business and will not result in the elimination of existing business. Health care entities, private practices, hospitals, rehabilitation companies, etc., will be afforded new opportunities to expand their business by providing access to services to consumers in remote or rural areas.

Not all services will be appropriate for delivery via telehealth; services will be based on the nature and complexity of client's condition. Businesses that choose not to purchase telecommunication equipment will still be competitive and viable since the majority of services would still be provided traditionally, via face-to-face evaluation and intervention.

The proposed regulatory action will expand access to underserved and rural communities and provide greater modern day flexibility to all consumers in scheduling appointments and reducing or eliminating the need for long trips or congested urban travel. The proposed regulatory language set forth rules and requirements that are designed to protect the public in the delivery of this emerging and modern way of providing services.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation would mandate the use of specific technologies or equipment that would maintain the confidentiality of a patient's medical information.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.