

AGENDA ITEM 8

CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4170, ETHICAL STANDARDS OF PRACTICE.

The following documents are attached for review:

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

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

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.

AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Occupational Therapy has proposed modifications to the proposed text of CCR Section 4170 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 May 8, 2013, 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: April 23, 2013



HEATHER MARTIN
Executive Officer
Board of Occupational Therapy

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Specific Language

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

Modifications are shown by ~~double-strikeout~~ for deleted text and double underline for modified language.

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 a~~ limited permit issued by the board, or is practicing on a license issued by another state, shall comply with the following ethical standards of practice:

(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.

(1) Occupational therapy practitioner's services shall be provided ~~services that reflect an understanding of how services can be affected by~~ consistent with socio-economic factors such as economic status, age, ethnicity, race, disability, marital status, sexual orientation, gender, gender identity, religion, residence, culture and political affiliation and insurance coverage.

(2) An occupational therapy practitioner offering pro bono ("for the good") or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services.

(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~~ or harm recipients of occupational therapy services, students, research participants, or employees.

(2) Occupational therapy practitioners shall, within six (6) months of termination of occupational therapy services, avoid relationships which may include emotional, physical, psychological, financial, social or any other manner, or activities that interfere with professional judgment and objectivity including avoiding:

(A) Any sexual relationship, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer; and

(B) Bartering for services or any relationship established as an occupational therapist or occupational therapy assistant to further one's own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, or the potential for exploitation and conflict of interest.

(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, including to receive services delivered via telehealth,~~ 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 and~~ 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~~ shall be done in collaboration with the client.

(e) Occupational therapy practitioners shall, through professional development units required for license renewal or in other ways assure continued competence with respect to their own current practice and technology.

(f) Occupational therapy practitioners shall report to the appropriate authorities any acts committed by another occupational therapy practitioner that they have reason to believe are unethical or illegal in practice, education, research, billing, and documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be required.

~~(e)~~ (g) 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, and shall comply with the following:

(1) Practice occupational therapy only when holding a current and valid license issued by the Board, and appropriate national, state, or other requisite credentials for the services they provide; and

(2) Practice occupational therapy within his or her own level of competence and scope of practice.

~~(f)~~ (h) Occupational therapy practitioners shall provide accurate information about occupational therapy services:

~~(1) Occupational therapy practitioners and~~ shall accurately represent their credentials, qualifications, education, experience, training, and competence.

(2) (i) 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) (j) Occupational therapy practitioners shall refrain from using not use or participating in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.

~~(g)~~ (k) 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.