CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4161, CONTINUING COMPETENCY.

The following are attached for review:

- Notice
- 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 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 February 3, 2014.

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 CBOT. The request must be received in the Board office not later than 5:00 pm on January 20, 2014.

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 2570.10, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

The Board is the regulatory entity that regulates the practice of occupational therapy in the State of California. Existing law, BPC section 2570.25, mandates protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions.

Policy Statement Overview

This proposed regulatory action updates, amends, and clarifies several aspects of the Board's continuing competence (continuing education) requirement. This proposed regulatory action is designed to clear up confusing and conflicting language regarding a practitioner's ability to apply college and/or university coursework toward the continuing competence requirement. This proposed action seeks to establish limits on activities that can be used in lieu of coursework toward the Board's continuing competence requirement. This proposed regulatory establishes and clarifies that a practitioner who renews a license delinquently must have completed the professional development coursework or activity within the two-year period preceding the date they file the delinquent renewal.

This proposed regulatory action makes other clarifying amendments due to the Board changing from annual renewals to biennial renewals in 2008 and simplifies the existing continuing competence requirement for practitioners that are applying for licensure after having not been engaged in practice for five years and or more.

Anticipated Benefits of Proposal

This proposed action expands a practitioner's ability to use coursework taken at a college or university toward the continuing competency requirement as long as the coursework contributes directly to professional knowledge, skill, and ability. This proposed action will establish that a least 50% of the continuing competence requirement shall be completed by taking coursework whereas existing regulations allow a practitioner to complete all or a majority of the requirement via other activities in lieu of coursework.

The proposed regulatory action defines, clarifies, and updates many aspects and principals of the Board's continuing competency requirement and promotes more efficient administration, coordination, and enforcement of the continuing competence requirements.

The proposed regulatory action ultimately is designed to enhance and promote public safety by ensuring practitioners stay current with trends and technological advances in the delivery of occupational therapy services to the public.

Consistency and Compatibility with Existing State Regulations

The Board has conducted a review of any related regulations and has determined that these are the only regulations dealing with Continuing Competency of Occupational Therapists. Therefore, this regulatory proposal is 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

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:

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

RESULTS OF ECONOMIC IMPACT ANALYSIS

Impact on Jobs/New Business:

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.

Existing regulations already require occupational therapy practitioners to complete continuing competence (continuing education) course work or activities. This proposed action makes technical modifications to align the continuing competency requirement with the existing biennial renewal requirement, allows applicable course work from a degree program to be applied toward the continuing education requirement, sets a limit on continuing competence activities that can used in lieu of coursework toward the requirement, and deletes a requirement for practitioners that have not practiced for a period of five (5) years or more to complete specific course work in "scope of practice" and "occupational therapy framework" due to infrequent availability. The lack of courses creates a barrier to reenter practice.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed regulatory action amends and updates existing regulations relevant to continuing competence of occupational therapy practitioners. Adoption of this proposed action will enhance and promote the administration, coordination, and enforcement of these provisions and ultimately translate to better services being rendered to the public.

Cost Impact on Affected Private Persons:

The Board has determined that this regulatory proposal will not adversely impact affected private persons (licensed occupational therapy practitioners and future applicants). Existing regulations require practitioners and applicants to complete professional developments units in order to renew their license or to apply for licensure when they have not been actively engaged in practice for five or more years. This proposed action does not increase or decrease the amount of professional development units that already have been established for license renewal or re-entry into the profession.

Effect on Housing Costs: None

Effect on Small Business:

The Board has made a determination that the proposed regulatory action would have no statewide adverse economic impact on small business. The proposed regulatory action impacts individuals licensed to provide or assist in the practice of occupational therapy. .

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
[Same contact information as above]

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

Specific Language

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

§ 4161. Continuing Competency

(a) Effective January 1, 2006, each licensee ~~occupational therapy practitioner~~ renewing a license ~~or certificate~~ under Section 2570.10 of the Code shall submit evidence of meeting continuing competency requirements by having completed twenty-four (24) professional development units (PDUs) during the preceding renewal period, or in the case of a license delinquently renewed, within the two years immediately preceding the renewal, ~~twelve (12) PDUs for each twelve month period,~~ acquired through participation in professional development activities.

(1) One (1) hour of participation in a professional development activity qualifies for one PDU;

(2) One (1) academic credit equals 10 PDUs;

(3) One (1) Continuing Education Unit (CEU) equals 10 PDUs.

(b) Topics and subject matter shall be pertinent to the practice of occupational therapy and course material must have a relevance or direct application to a consumer of occupational therapy services. Except as provided in subdivision (c), p~~P~~rofessional development activities acceptable to the board include ~~but are not limited to,~~ programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Occupational Therapy Association of California; post-professional coursework completed through any approved or accredited educational institution, ~~that is not part of a course of study leading to an academic degree~~; or otherwise meets all of the following criteria:

(1) The program or activity contributes directly to professional knowledge, skill, and ability;

~~(2) The program or activity relates directly to the practice of occupational therapy;~~ and

~~(3)~~ (2) The program or activity must be objectively measurable in terms of the hours involved.

(c) PDUs may also be obtained through any or a combination of the following:

(1) Involvement in structured special interest or study groups with a minimum of three (3) participants. Three (3) hours of participation equals one (1) PDU, with a maximum of six (6) PDUs credited per renewal period.

(2) Structured mentoring with an individual skilled in a particular area. For each 20 hours of being mentored, the practitioner will receive three (3) PDUs, with a maximum of six (6) PDUs credited per renewal period.

(3) Structured mentoring of a colleague to improve his/her skills. Twenty (20) hours of mentoring equals three (3) PDUs, with a maximum of six (6) PDUs credited per renewal period.

(4) Supervising the fieldwork of Level II occupational therapist and occupational therapy assistant students. For each 60 hours of supervision, the practitioner will receive .5 PDU, with a maximum of twelve (12) PDUs credited per renewal period.

(5) Publication of an article in a non-peer reviewed publication. Each article equals five (5) PDUs, with a maximum of ten (10) PDUs credited per renewal period.

(6) Publication of an article in a peer-reviewed professional publication. Each article equals10 PDUs, with a maximum of ten (10) PDUs credited per renewal period .

(7) Publication of chapter(s) in occupational therapy or related professional textbook. Each chapter equals 10 PDUs, with a maximum of ten (10) PDUs credited per renewal period.

(8) Making professional presentations at workshops, seminars and conferences. For each hour presenting, the practitioner will receive two (2) PDUs, with a maximum of six (6) PDUs credited per renewal period.

(9) Attending a meeting of the California Board of Occupational Therapy. Each meeting attended equals two (2) PDUs, with a maximum of six (6) PDUs ~~earned~~ credited per renewal period.

(10) Attending board outreach activities. Each presentation attended equals two (2) PDUs, with a maximum of four (4) PDUs ~~earned~~ credited per renewal period.

(d) Partial credit will not be given for the professional development activities listed in subsection (c) and a maximum of twelve (12) PDUs may be credited for the activities listed in subsection (c).

(e) This section shall not apply to the first license ~~or certificate~~ renewal following issuance of the initial license~~ or certificate~~.

(f) Of the total number of PDUs required for each renewal period, a minimum of one half of the units must be directly related to the delivery of occupational therapy services, which ~~(1) The delivery of occupational therapy services~~ may include: models, theories or frameworks that relate to client/patient care in preventing or minimizing impairment, enabling function within the person/environment or community context. Other activities may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to one's practice.

(g) Applicants who have not been actively engaged in the practice of occupational therapy within the past five years completing continuing competency pursuant to section 2570.14(a) of the Code to qualify for licensure~~/certification~~ shall submit evidence of meeting the continuing competency requirements by having completed, during the two year period immediately preceding the date the application was received, forty (40) PDUs that meet the requirements of subsection (b). The forty PDUs shall include:

(1) Thirty-seven (37) PDUs directly related to the delivery of occupational therapy services, which may include the scope of practice for occupational therapy practitioners or the occupational therapy practice framework;

~~(2) One (1) PDU related to occupational therapy scope of practice;~~

~~(3) One (1) PDU related to occupational therapy framework;~~

~~(4)~~ (2) ~~One (1)~~ Three (3) PDUs related to ethical standards of practice ~~for an occupational therapist~~ in occupational therapy.

Note: Authority cited: Sections 2570.10 and 2570.20, Business and Professions Code. Reference: Section 2570.10, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Continuing Competence

Sections Affected: Title 16, Division 39, California Code of Regulation (CCR) Sections 4161

Introduction:
The California Board of Occupational Therapy (Board) is the state governmental agency that licenses occupational therapy practitioners and regulates the practice of occupational therapy. The Board administers, coordinates, and enforces provisions of the Occupational Therapy Practice Act. 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.

This proposed action amends and establishes rules for the Board's continuing competence (continuing education) requirement for occupational therapy practitioners.

Specific Purpose of each adoption, amendment or repeal:

AMEND CCR SECTION 4161(a)

Existing regulatory language establishes that an occupational therapy practitioner shall submit evidence of meeting continuing competence requirements by having completed twelve (12) professional development units (PDUs) for each twelve (12) month period preceding the renewal of a license. This proposed action will delete reference to "certificate" and amend and update language to correspond with the Board's transition to biennial license renewals by clarifying that 24 PDUs are required for renewal of a biennial license. The proposed language also clarifies and establishes that when a licensee renews delinquently, the continuing competence coursework in that situation shall fall within the two-year period preceding the delinquent renewal.

The Board seeks these amendments because SB 821 (Chapter 307, Statutes 2009) eliminated reference that occupational therapy assistants are "certified" and replaced the reference with "licensed". Since the Board has transitioned to biennial renewals, it is no longer necessary to require occupational therapy practitioners to complete 12 PDUs annually. Existing regulations do not specifically address or provide parameters on PDUs when a practitioner renews delinquently.

A benefit of this proposed action is that it will allow occupational therapy practitioners more freedom and flexibility to complete the PDU requirement within their biennial renewal cycle. It also ensures that practitioners who renew delinquently will have completed PDU that are recent and current. It also makes technical amendments to

use current terminology related to occupational therapy assistants and the transition to biennial renews.

AMEND CCR SECTION 4161(b)

Existing regulatory language is confusing and could be interpreted to mean that course work taken as part of an academic degree, in occupational therapy or not, cannot be applied toward the continuing competence requirement. The Board is proposing an amendment to make it clear that coursework taken as part of an academic degree can be applied toward the continuing education requirement so long as the coursework is pertinent to the practice of occupational therapy. The Board also seeks to delete unnecessary and duplicative language in existing Section 4161(b) stating "The program or activity relates directly to the practice of occupational therapy" because this language has essentially been re-worded and incorporated into the amendment of Section 4161(a).

The Board seeks this amendment to make clear that formal course work taken in a college or university degree program can apply toward the continuing competence requirement as long as the course work pertains to occupational therapy practice. The intent of the Board's existing language was to establish that a practitioner could not use course work completed in his or her qualifying degree program (to take the licensure examination) toward the continuing competency requirement. It is not necessary and redundant for the Board to continue to draw a distinction that course work taken in the qualifying degree program (prior to licensure) cannot be applied toward the continuing competence requirement because Section 4161(b) establishes that continuing competency course work must be completed post-professional (after licensure) and licensees are exempt from the continuing competence requirement for their very first renewal.

The benefit of this proposed action establishes and makes clear course work taken at a college or university, whether or not part of a degree program, can be applied toward the continuing education requirement as long as the course work pertains to occupational therapy practice. This will allow practitioners who pursue a higher education to count it toward the continuing competence requirement. This proposed action expands access for occupational therapy practitioners to meet the continuing competence requirement.

AMEND CCR SECTION 4161(c)

Existing regulatory language provides that occupational therapy practitioners may attend or participate in a variety of activities in lieu of completing course work toward the continuing competency requirement. The activities are as follows: (1) Involvement in a structured interest or study group; (2) receive structured mentoring from an individual skilled in a particular are; (3) provide structured mentoring to a colleague to improve hi/her skills; (4) supervising the fieldwork of a Level II student; (5) publishing an article in a non-peer reviewed publication; (6) publishing an article in a peer-reviewed professional publication; (7) publication of chapter(s) in occupational therapy or related professional textbook; (8) making professional presentations at workshops, seminars,

and conferences; (9) attending California Board of Occupational Therapy meetings; and (10) attending board outreach activities.

This proposed action seeks to establish and set limits on the amount of hours that can be applied toward the continuing competence requirement for activities falling under Section 4161(c). Existing regulations do not set limits on these activities. Thus under existing regulations a practitioner can meet the continuing competence requirement solely on the basis of participating activities identified in Section 4161(c) without completing course work. The Board never considered practitioners would apply and utilize the activities in Section 4161(c) to an extent that they would not complete or attend any continuing education course work. The Board believed practitioners would augment or incorporate activities in Section 4161(c) with continuing education course work. Therefore, the Board feels it is necessary to place limits on the activities that can be applied toward the continuing competence requirement under Section 4161(c) to preserve the Board's intent that activities listed in Section 4161(c) augment traditional course work.

The benefit of this proposed action is that it provides a balanced approach to Board's continuing competence requirement while retaining the ability of practitioners to participate in specified activities in lieu of completing traditional course work.

AMEND CCR SECTION 4161(d)

Exiting language specifies that partial credit will not be given for professional development activities falling under Section 4161(c).

The Board is proposing to add language that will establish a rule that a maximum of twelve (12) professional development units listed under Section 4161(c) can be applied toward continuing competence requirement. This proposed new rule will allow practitioners to complete half of the twenty-four (24) professional development requirement renewal requirement via activities listed in Section 4161(c).

The benefit of this proposed action is that it clarifies the Board's intent that practitioners augment activities listed in Section 4161(c) with traditional coursework. This regulatory action provides a balanced approach to the Board's continuing competency requirement while still retaining a licensee's ability to apply activities toward the continuing competence requirement.

AMEND CCR SECTION 4161(f)

Existing language specifies that half of the professional development units that are completed for an active license must be related to the delivery of occupational therapy services.

This regulatory action proposes a technical modification to strike reference to subsection (1) from the section and delete language "The delivery of occupational therapy services" which is not necessary or change the meaning and intent of the Section.

The benefit of this proposed action promotes clarity and conciseness.

AMEND CCR SECTION 4161(g)

Existing language implements and clarifies Business and Professions Code Section 2570.14, pertaining to applicants for licensure that were previously a licensed occupational therapy practitioner but who have not been actively engaged in practice for a period of five (5) years or more. Existing language establishes and clarifies that an applicant in this situation may qualify for licensure by completing forty (40) professional development units (PDU) in addition to meeting all other requirements for licensure. Existing language also specifies that the applicant must incorporate at least one (1) PDU of course work related to the occupational therapy "scope of practice", one (1) PDU of course work relating to "occupational therapy framework", and three (3) PDU of course work related to ethical standards of practice into the forty (40) PDU requirement.

This regulatory action proposes to delete the requirements that an applicant in this situation incorporate at least one (1) PDU of coursework relating to occupational therapy "scope of practice" and one (1) PDU of course work relating to "occupational therapy framework" into the forty (40) PDU requirement. The Board is seeking this amendment because it is difficult for applicants to find course work relating to these areas. It was not the intent of the Board in establishing these requirements to create a barrier to practice. Thus this amendment will retain the overall requirement that applicants in this situation complete forty (40) PDU, but the applicant will only be required to incorporate at least three (3) PDU related to ethical standards of practice into the forty (40) PDU.

The benefit of this proposed action reduces a barrier to practice and promotes more expedient licensing for individuals that qualify under these provisions. Applicants for licensure will not need to search for course work that is infrequently provided and/or be delayed until such courses is available.

DOCUMENTS INCORPORATED BY REFERENCE:

None

UNDERLYING DATA:

None

FISCAL IMPACT IN GENERAL:

This proposed regulatory action will not have an adverse economic impact on business.

This proposed regulatory action will not have an adverse economic impact on affected individuals (licensees and applicants). Existing regulations have established

continuing competency requirements for licensees to renew their license with active status and in specified situations to qualify for licensure.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

Background

Continuing competence (continuing education) requirements for health related professionals is common and a standard practice in many jurisdictions throughout the United States. The principals behind these requirements are to ensure health care professionals increase and maintain their knowledge of practice models, interventions, and developing technologies. This translates to better and safer services being provided to the public, consistent with the California Board of Occupational Therapy's consumer protection mandate.

Creation or Elimination of Jobs Within California

The Board has determined this proposed regulatory action will not create or eliminate a significant number of jobs within California. This proposed action amends and updates existing continuing competence requirements for occupational therapy practitioners in order to promote the administrative and regulatory functions of the Board and ensure public safety.

Creation of New Business or Elimination of Existing Business Within California

The Board has determined this proposed regulatory action will not create new business or eliminate existing business within California. This proposed action amends and updates existing continuing competence requirements for occupational therapy practitioners in a way which neither, creates new business or eliminates existing business.

Expansion of Business Within California

The Board has determined this proposed regulatory action will not expand business within California. This proposed action amends existing continuing competence requirements for occupational therapy practitioners. Nothing in the proposed action is likely to result in an expansion of business within California.

Benefits of Regulations

This proposed regulatory action will provide more flexibility for licensees and applicants to apply course work completed in a subsequent degree program toward the continuing competency requirement. It provides a more balanced educational approach for licensees who apply specified activities toward the continuing competence requirement in lieu of course work. It makes minor and technical changes to promote clarity and conciseness. It eliminates an unintentional barrier to practice for applicants that previously held an occupational therapy license but who have not been engaged in practice for a period of five (5) years or more, by no longer requiring the applicant to

complete course work that is hard to find and infrequently provided. And the proposed action promotes the administrative, regulatory, and consumer protection functions of the Board.

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 being proposed or would be less burdensome to affected private persons and business than the proposed regulations.

Alternative:

The Board considered doing nothing; continuing to administer these provisions as they are written. This alternative was rejected because it does not encourage advancing one's education nor is responsive to the profession.

This document describes several benefits among which include an ability for practitioners to apply course work taken in subsequent degree or education program toward the continuing competency requirement, and provides a balanced approach for practitioners to complete the continuing competence requirement by establishing limitations on the activities that can be applied toward the requirement in lieu of course work.

The amendment also reduces the barrier to re-entry into the profession by practitioners that wish to reenter practice after five or more years of no practice, by eliminating references to coursework that are infrequently or not at all available.