REVIEW AND APPROVAL OF NOVEMBER 13, 2014, BOARD MEETING MINUTES.

The meeting minutes are attached for review.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.
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CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
MEETING MINUTES

Thursday, November 13, 2014

DRAFT

Board Member(s) Present
Richard Bookwalter
Jeff Ferro
Linda Florey
Kathay Lovell
Nancy Michel
Denise Miller
Sharon Pavlovich

Board Staff Present
Heather Martin, Executive Officer
Norine Marks, Legal Counsel
Jody Quesada, Office Technician

9:00 am - Board Meeting

1. Call to order, roll call, establishment of a quorum.

   The meeting was called to order at 9:06 am; all Board members were in attendance, and a quorum was established.

2. President's remarks.

   President Denise Miller offered thanks to the Governor's Office for the recent appointments that resulted in a full Board. Ms. Miller also expressed her thanks to Executive Officer Heather Martin and Board staff for their efforts.

3. Board member updates/activities.

   Kathay Lovell commented that her family's recent personal experiences with occupational therapists were remarkable and she gained an even greater level of appreciation for the profession.

   Richard Bookwalter attended the Occupational Therapy Association of California (OTAC) conference and attended a great session on fall prevention.

   Nancy Michel reported that she had been busy traveling.

   Linda Florey reported that she had recently traveled to Africa.

   Sharon Pavlovich attended the OTAC conference and attended a great session on telehealth offered by Tammy Richards. Ms. Pavlovich reported that she was also invited back to the Harvard Macy Institute to serve as a mentor.

   Jeff Ferro reported that he had been doing a lot of traveling for work.

President, Denise Miller reported that she attended the OTAC conference and attended sessions on fall prevention, chronic heart disease and other chronic diseases.

President Miller welcomed the members of the public to the Board meeting.

Joyce Fries, occupational therapist (OT) and representative of the California Council of Fieldwork Educators.

Mary Evert, OT and past Board President, reported that she is enjoying retirement and meeting fellow occupational therapists all over the world.

Alberto Stevans, OT.

4. Approval of the amended February 6, 2014, Board meeting minutes.

Heather Martin reported the minutes were amended to reflect an updated list of Board members in attendance at the meeting.

Linda Florey asked that Board staff amend page 4, Item 10, to reflect that Dr. Guy McCormack is the Vice President of the Occupational Therapy Association.

Supervising Legal Counsel Norine Marks asked that Board staff amend page 5, Item 13, to read "Legal Counsel Norine Marks offered that the Board of Psychology has a two year timeframe in place for prohibition of a personal relationship after treatment."

- Linda Florey moved to approve the February 6, 2014, Board meeting minutes as amended.
- Nancy Michel seconded the motion.

Jeff Ferro, Kathay Lovell and Richard Bookwalter abstained.

No Public Comment

The motion was adopted.

5. Approval of the June 24, 2014, Board meeting minutes.

- Kathay Lovell moved to approve the June 24, 2014, Board meeting minutes as presented.
- Richard Bookwalter seconded the motion.

Nancy Michel abstained.

No Public Comment

The motion was adopted.

6. Report on Pending Rulemaking files, California Code of Regulations, Title 16, Division 39:
   - Section 4151, Hand Therapy and Section 4152, Physical Agent Modalities;
   - Section 4161, Continuing Competency; and
   - Section 4170, Ethical Standards of Practice.

Public Comment

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Mary Evert suggested that "change of ownership" be added to "closure" or "sale" of a private practice as a possible scenarios affecting patient record retention in the pending regulatory amendments: process not yet started section.

President Miller suggested that "inherited" be added as well.

7. Discussion and consideration of adopting proposed regulatory language to amend Title 16, CCR Section 4170, Ethical Standards of Practice.

Legal Counsel, Norine Marks asked the Board members to clarify whether the factors outlined in the proposed modified text in California Code of Regulations (CCR) Section 4170 (a)(1) could and would affect the way an occupational therapist practices.

The Board members decided to add "residence" back in to CCR Section 4170(a)(1) because it is important to the delivery of continued care.

Public Comment
Mary Evert commented that she was in favor of the proposed language.

Ms. Marks asked that the proposed modified text in CCR Section 4170(b)(2)(A) be reviewed by the Board members for grammatical reasons.

Public Comment
Mary Evert commented that the section in question would read clearer with additional punctuation.

The Board came to the consensus that CCR Section 4170(a)(1) should read as follows:

(1)An occupational therapy practitioner shall consider how a client's or patient's economic status, age, ethnicity, race, disability, sexual orientation, gender, gender identity, religion, residence, or culture, impact health care practices and incorporate these considerations in the provision of his or her services.

The Board came to the consensus that CCR Section 4170(b)(2)(A) should be separated in to two sections effectively making 4170(b)(2)(A) and 4170(b)(2)(B) subsequently renumbering the section that begins with the word "Bartering" to section 4170(b)(2)(C). At the direction of the Board the sections should read as follows:

(2)Occupational therapy practitioners shall, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer and within six (6) months of termination of occupational therapy services, avoid relationships or associations that include, but are not limited to emotional, physical, psychological, financial, social, or activities that interfere with professional judgment and objectivity, including avoiding:
(A) Any sexual relationship or activity, even if consensual, with any recipient of service, including any family or significant other of the recipient of services, and
(B) Any sexual relationship or activity, even if consensual, with any student or research participant, under direct supervision, and
~~(B)~~ (C) Bartering for services or establishing any relationship 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.

- Kathay Lovell moved to issue a fifteen (15) day notice of the proposed modified text as amended.
- Richard Bookwalter seconded the motion.

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No Public Comment

The motion was adopted.

- Nancy Michel moved to grant authority to the Executive Officer to adopt the modified text in the absence of any negative comment and to make technical, non-substantive changes.
- Jeff Ferro seconded the motion.

No Public Comment

The motion was adopted.

8. Discussion and consideration of amending Title 16, CCR Section 4172, Standards of Practice for Telehealth.

Executive Officer Heather Martin asked the Board members to review the current language of CCR Section 4172 for clarity, keeping in mind the letter submitted by Mr. Allan D. Jergesen in which he asks for clarification on the term 'informed consent' as it relates to telehealth.

After a lengthy discussion, the Board members suggested amending CCR Section 4172(b) to read as follows:

(b) An occupational therapist shall inform the patient or client about the use of occupational therapy services via telehealth and obtain consent prior to delivering those services, consistent with Section 2290.5 of the Code.

- Richard Bookwalter moved to approve the amended language of CCR Section 4172(b).
- Linda Florey seconded the motion.

Public Comment
Mary Evert stated that simply removing the word 'informed' is clear enough.

Patricia Nagaishi stated the words 'use of' are not necessary.

The motion was adopted.

- Nancy Michel moved to not hold a hearing on the amended language unless a request from the public is made.
- Sharon Pavlovich seconded the motion.

No Public Comment

The motion was adopted.

9. Discussion and consideration of request to provide FAQs on the Board's website regarding providing occupational therapy services via telehealth.

The Board members reviewed the proposed telehealth FAQs provided by OTAC and suggested clarifying edits and removing some information altogether.

Public Comment

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Patricia Nagaishi acknowledged the redundancy in the draft copy and stated that the document was meant to be a springboard for the Board's final product.

President, Denise Miller thanked OTAC for the document and directed Board staff to make the requested changes and add the information to the Board's website.

10. Discussion and consideration of request from California Fieldwork Council to increase the number of PDUs earned for supervising Level II students completing their Level II Fieldwork.

Heather Martin reviewed the correspondence submitted to the Board by the California OT Fieldwork Council regarding increasing the amount of professional development units an occupational therapist can earn for supervising a Level II fieldwork student.

Linda Florey and Sharon Pavlovich are in favor of an increase.

Public Comment
Joyce Fries suggested that the Board should adopt the National Board for Certification in Occupational Therapy (NBCOT) rule.

- Nancy Michel moved to increase the PDUs and delegate the Executive Officer to work with the Adhoc committee and bring back proposed language to the next meeting.
- Sharon Pavlovich seconded the motion.

Richard Bookwalter, Sharon Pavlovich and Joyce Fries volunteered to work on the proposed language. The meeting will be noticed as required to allow the opportunity for public input.

The motion was adopted.

11. Discussion and consideration of the possibility of AOTA/ACOTE amending the academic requirements of an educational program required for licensure.

Denise Miller requested mindful dialog from the Board members and reminded them that no position is required at this time.

Discussion ensued and it was recommended that developments be monitored, an Adhoc committee established and the topic be added to future Board meeting agendas for further discussion.

12. Discussion and consideration of Legislative Proposals for 2015 legislative session

a) Amend Business and Professions Code section 2570.2

- Nancy Michel moved to approve the language as presented.
- Sharon Pavlovich seconded the motion.

The motion and the second were rescinded.

Public Comment
Patricia Nagaishi asked if the word evaluation should be included with assessment in Section (k) midway through the paragraph.

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President, Denise Miller asked that Executive Officer, Heather Martin bring back the topics of Business and Professions Code Section 2570.2(k) and 2570.3(d) to a future meeting.

Alberto Stevans stated that he was not allowed to participate in a wound care seminar because he was told by a physical therapist that occupational therapists are not allowed to perform wound care.

Executive Officer, Heather Martin responded that the laws and regulations do not specifically state that an OT/OTA can perform wound care but it is implied in the California Code of Regulations(CCR) Section 4152.1, which states that a Physical Agent Modalities (PAMs) approved OT/OTA can use topical medications etc…

Mr. Stevans requested that wound care be added to the scope of practice. Ms. Martin asked Mr. Stevans so submit his question(s) in an email to the Board and indicated that she would then respond to him by email.

b) Amend Business and Professions Code section 2570.32

Ms. Martin referenced the language in Business and Professions Code section 2570.32 and presented similar language from nine other healthcare boards, so the Board members can see how other boards address the issue of accepting a petition for reinstatement by a petitioner on court imposed probation. Discussion amongst legal counsel and the Board members ensued.

- Nancy Michel moved to direct staff to draft and bring back regulatory language for consideration that addresses the variables of when the petition would not be heard by the Board.
- Sharon Pavlovich seconded the motion.

No Public Comment

The motion was adopted.

c) Add Business and Professions Code sections 2570.33 and 2570.35

Ms. Martin discussed employers' reluctance to report employees due to liability issues. The Board members indicated that this could be an important public protection tool.

- Nancy Michel moved to authorize Executive Officer, Heather Martin to find an author for the legislative proposals.
- Kathay Lovell seconded the motion.

Public Comment

Mary Evert commented on the difficulty of tracking a suspension or termination when it occurs in a different state. Ms. Evert stated that the Boards need to make an effort to be transparent and forthcoming in order to protect the public.

The motion was adopted.

Member of the public, Susan Harris, OT, joined the meeting.

13. Addition of policies to Board Administrative Manual: Board to hear a contested case when an individual has been denied a license based upon allegations that he or she has practiced

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without a license for a period of more than one year; Board to hear a contested case when a licensee has been issued a citation for practicing on an expired license for more than one year; and mail-ballot policy to discuss decisions in upcoming closed session.

Heather Martin stated that she added this item to the agenda so that she could provide the policies in writing as a reference tool for the Board members as they were not included in the Board member administrative manuals that were recently sent to the new Board members.

14. Enforcement data and reports
    a) April 1 – June 30, 2014
    b) July 1, 2013 – June 30, 2014
    c) July 1 – September 30, 2014

    Ms. Martin reviewed the supplied reports; the Board members had no questions.

15. Executive Officer's Report.

    a) Operational Report
    Ms. Martin reported that the Board staff continues participation in the mandatory BreEZe design and development meetings, there has been a surge in initial license applications received due to graduations, and the loss of an enforcement analyst resulted in the promotion of an internal candidate, effective December 1, 2014.

    b) Budget Update
    Ms. Martin reported the Fiscal Year 2013/14 closed with annual revenue in the amount of $1.147m received and an annual expenditure in the amount of $1.456m. The outstanding $2m general fund loan was repaid along with an additional $82k in interest. Ms. Martin stated that Board staff will request a deficiency to augment budget line items for the Attorney General's office and the Office of Administrative Hearings if and when needed.

    c) BreEZe Update
    Ms. Martin reported that Board staff signed off on the approval of Part 1 deliverable and Part 2 deliverable will be submitted to the BreEZe vendor on November 14, 2014.

    Ms. Martin referred to the proposed survey for Health Licensing Entities and the Board members asked that changes be made to the 'work setting' section. The suggestions were that regional center, mental health, school systems, CCS and community based practice be added to the section.

    d) Strategic Planning Update
    Ms. Martin reviewed the Strategic Planning process. Ms. Martin informed the Board members that availability and timeframe would need to be decided during discussion of agenda item 16.

    e) Other Informational Items
    Ms. Martin provided performance measures for the last four fiscal years and she reported that the Board is on target.

16. Selection of 2015 meeting dates.

    The tentative selections of Board meeting dates are as follows:

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March 5-6, 2015
June 3-4, 2015
September 17-18, 2015
November 19-20, 2015

The Board members agreed to January 29-30, 2015, for the Strategic Planning session, to be held in Sacramento, subject to availability of DCA staff.

With the exception of the Strategic Planning meeting, the second day of each proposed Board meeting is firm and the first day will be on an as-needed basis for hearings.

17. Annual Election of Officers.

    - Kathay Lovell moved to nominate Denise Miller for President.
    - Nancy Michel seconded the motion.

    The motion and the second were rescinded.

    - Nancy Michel moved to nominate Denise Miller for President, Kathay Lovell for Vice President and Linda Florey for secretary.
    - Richard Bookwalter seconded the motion.

    There were no other nominations.

    No Public Comment

    The motion was adopted.

18. Discussion Regarding Proposed Agenda Items for a Future Meeting.

    - Discussion and consideration of the process and procedures of Board staff when issuing administrative citations.
    - Discussion and consideration of records retention requirement if a business is closed or sold or if the practitioner is no longer in private practice.
    - Entry level OTD issue
    - Discussion and consideration of amending Business and Professions Code Sections (BPC) 2570.2(k) and 2570.3(d).
    - Draft language to implement provisions of BPC 2570.32.

19. Public Comment session for items not on the agenda.

    Alberto Stevans, OT, asked if an aide working in a skilled nursing facility could treat HMO patients.

    Sharon Pavlovich stated that aides cannot bill for the delivery of skilled services.

    Richard Bookwalter stated that aides cannot progress or monitor progress of a patient.

20. The Board convened in CLOSED SESSION at 4:26 p.m., pursuant to Government Code Section 11126(c)(3) to deliberate on disciplinary matters.

21. The Board convened in CLOSED SESSION at 4:37 p.m., pursuant to Government Code Section 11126(a)(1) to discuss the annual evaluation of the Executive Officer.

    The meeting adjourned at 5:07 p.m.

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REPORT ON PENDING RULEMAKING FILES.

The Regulations Update report is attached for review.

REGULATIONS UPDATE REPORT

Pending Rulemaking files: In-Process

Rulemaking File Subject	Section(s)	Status	Close of public comment period	Date Pkg Sent to DCA	Date Pkg Rtn'd from DCA	Final Pkg Due to OAL	Actual Submit Date To OAL	Date language goes into effect
Application Review of Appl. License renewal License renewal Limited Permit Inactive Status	4110, 4112, 4120, 4121, 4123, 4127*	Language published May 31, 2013; adopted by Board at May 2014 meeting. *(renumbered from section 4122)*	07/29/2013 01/03/2014 06/03/2014	06/10/2014	09/05/2014	06/14/2014 **	09/09/2014	01/01/2015
Accept CHT for hands/PAMs approval	4151 4152	Language published December 20, 2013; adopted by Board at February 2014 meeting.	02/03/2014	10/22/2014	12/16/2014	12/20/2014		
Continuing Competency	4161	Language published December 20, 2013; adopted by Board at February 2014 meeting.	02/03/2014	10/31/2014	02/24/2015	12/20/2014 **	02/25/2015	
Ethical Standards of Practice	4170	Language published December 20, 2013. Language was considered by the Board at February 2014 meeting. Language to be reconsidered by Board at a future meeting.	02/03/2014 12/18/2014 03/05/2015	12/19/2014		12/20/2014 **		

** Director issued a 90-day extension

REGULATIONS UPDATE REPORT

Pending Regulatory Amendments: Process Not Yet Started

Rulemaking File Subject	Section	Priority	Status	Comments
Notification to Consumers	4171		New language previously approved by Board. Next step: Notice language.	
Standards of Practice for Telehealth	4172		Amendments to existing language approved at November 2014 meeting. Next step: Notice language.	
Continuing Competency	4161		Concept pending - Ad Hoc Committee to make recommendation to Board at March meeting.	
Definitions	4146		Concept pending – staff to draft language suggesting parameters for when a petition for reinstatement may be heard by the Board when petitioner is on court-ordered probation or parole. Draft language to be presented at a future meeting.	
Language for OT to request to supervise more than 2 OTAs	tbd		Implement BPC 2570.3(j)(2). Practice Committee to prepare/review language; draft language to be presented to the Board at Winter 2015 meeting.	
Patient record retention requirements when a business is closed/sold/inherited or has a change of ownership; or if practitioner is no longer in private practice	tbd		Implement BPC 2570.185. Practice Committee to prepare/review language; draft language to be presented to the Board at Winter 2015 meeting.	

REPORT DISCUSSION AND CONSIDERATION OF ADOPTING PROPOSED REGULATORY LANGUAGE TO AMENT TITLE 16 CCR SECTION 4170, ETHICAL STANDARDS OF PRACTICE.

The following are attached for review:

- Notice
- Initial Statement of Reasons
- Second 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 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 Board. The request must be received in the CBOT 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 2570.28, 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. This proposed action provides more detail and clarity regarding the Board's existing professional standards to better serve the profession and public on expected standards and otherwise assist in identifying potential ethical dilemmas.

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

The Board has conducted a review of any related regulations and has determined that these are the only regulations dealing with Ethical Standards of Practice for 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: 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.

Benefits of the Proposed Regulation

The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

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 affect small business. Individual occupational therapy practitioners are required to comply with regulations that have been adopted by the Board which are necessary for public protection. The Board 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 professional and ethical standards. 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 (CCR), 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

Existing regulations identify and provide practice standards that occupational therapy practitioners must abide by in providing services to the public. Any violation of these standards serves as grounds for disciplinary action against a licensee. This proposed action enhances and removes ambiguity regarding several aspects of existing ethical standards by providing more detail and clarity regarding the requirements.

Factual Basis/Rationale

Amend Title of Article 8

The existing title of Article 8 is 'Ethical Standards of Practice.' This proposed action will amend the title to read "Service Delivery Standards".

The Board is seeking this amendment because 16 CCR Section 4170 titled 'Ethical Standards of Practice,' and 16 CCR Section 4175 titled 'Minimum Standards for Infection Control' are incorporated under this Article. A pending regulatory action (2013-1119-04S) regarding 16 CCR Section 4172 pertaining to 'Standards of Practice for Telehealth,' if approved by the Office of Administrative Law, will also be incorporated into this Article.

Thus the existing title is too specific and not representative of all language that is, and potentially might be, incorporated into the Article. The proposed new title "Service Delivery Standards" is broader than the existing title and describes the various standards affecting practice that are incorporated under this Article. The proposed action promotes clarity.

First Paragraph of 16 CCR Section 4170

The first paragraph of existing Section 4170 establishes the section applies to licensees and limited permit holders. The paragraph has been amended, deleting reference to "certificate" and adds new language "or is practicing on a license issued in another state."

The Board is seeking this modification since occupational therapy assistants are now "licensed" as opposed to "certified" (SB 821, Committee on Business, Professions and Economic Development, Chapter 307, Statutes 2009); it is no longer necessary for "certificate" to be referenced in the regulation. Since existing statutes and regulations provide for license exemptions in certain circumstances and conditions, the Board feels it is necessary to adopt language that clarifies that these ethical standards also apply to out-of-state practitioners providing or rendering services under licensing exemptions established in Business and Professions Code Section 2570.4 and Title 16 CCR Section 4116.

16 CCR Section 4170(a)

Existing language establishes occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination. The Board is proposing to expand and clarify the meaning of existing 16 CCR Section 4170(a) by adding subsection (1) to clarify that practitioners must take into account various factors, when providing services and subsection (2) to establish that practitioners offering free or reduced-fee services shall exercise the same standard of care as full-fee services.

The Board is seeking these amendments to establish and clarify there are many factors that must be considered when rendering services to different populations. The Board also feels it is necessary to establish and clarify that in the event a practitioner decides to provide free or reduced fee services, the practitioner shall not construe that to mean, in any way, the services can be provided in a substandard manner.

16 CCR Section 4170(b)(1)

Existing language established occupational therapy practitioners must take reasonable precautions to avoid imposing or inflecting harm to a client or to his or her property. The Board is proposing to expand this ethical standard to establish that a practitioner shall not exploit or harm a recipient of occupational therapy services (client), but also shall not harm any students, research participants, or employees.

The Board is seeking this amendment because existing language is too limited in only specifying clients and wishes to clarify that the meaning of 'harm' in this section also applies to other relationships that a practitioner might be involved in, including relationships with students, research participants, or employees.

16 CCR Section 4170(b)(2)

Existing language establishes that it is an ethical violation to enter into a relationship or activity that interferes with professional judgment and objectivity. The Board is proposing to expand and clarify the meaning of this section by establishing that while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer, and within six (6) months of termination of occupational therapy services, practitioners must avoid relationships which may include emotional, physical, psychological, financial, or social relationships that interfere with professional judgment and objectivity.

The Board is seeking this amendment because existing language would benefit by clarifying the various roles and types of relationships or activities that would fall within the meaning and intent of this section. The Board believes it is necessary to establish a time period, in this case six (6) months, from when a professional relationship terminates to when it would be allowable by parties to explore or pursue a prohibited relationship without committing a violation this section.

The Board is proposing further modification to 16 CCR Section 4170(b)(2) by adding additional subsections (A) and (B) pertaining to sexual relationships and bartering for services. Proposed Section 16 CCR 4170(b)(2)(A) would establish and clarify that it is an ethical violation to enter into a sexual relationship (either consensual or nonconsensual) with any recipient of services, any family member or significant other of the recipient of services, any student, any research participant, or anny employee. Proposed 16 CCR Section 4170(b)(2)(B) would establish and clarify that it is an ethical violation for bartering for services or any relationship established as an occupational therapy practitioner to further one's own interests at the expense of, or exploitation of, or in a conflict of interest, with the recipient of services.

The Board is seeking these amendments because regulations make no specific reference to sexual relationships or sexual bartering for services. The Board feels it is beneficial and in the best interests of the public and profession to make specific reference to these issues and dispel any notion these standards would not apply if a sexual relationship or activity is consensual or that they only apply to the recipient of services.

16 CCR Section 4170(c)(3)

Existing language establishes it is an ethical violation if a practitioner does not respect a client's right to refuse professional services or involvement in research or educational activities. The Board is proposing to amend the language to delete "or involvement in research or educational activities.

The Board seeks this amendment for brevity and conciseness. Elimination of the language does not change the meaning or intent of this subsection. A client has the right to refuse <u>any and all</u> services in any and all situations. The Board feels it is not necessary to draw any distinction to research or educational activities in the meaning of this subsection.

16 CCR Section 4170(d)

Existing language establishes "Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so." The Board proposes to eliminate existing 16 CCR Section 4170(d)(1), "Occupational therapy practitioners shall hold appropriate credentials for the services they provide" and moves it to a new section, Section 4170(h)(1). This amendment will also deleting reference to 16 CCR Section 4170(d)(2) but maintains the language in Section 4170(d). The Board is amending language "Such referral or consultation should be done in collaboration with the client," by deleting "should" and replacing it with "shall."

The Board is seeking these amendments to make the language clearer and formatted in a manner that is better for the section. Modification to the language "Such referral or

consultation shall be done in collaboration with the client" was necessary for clarity because existing language appears to makes it an option, where replacing it with "shall" makes it a requirement which is the Board's intent. This correction is consistent with the standards and core values of the profession.

16 CCR Section 4170(e)

The Board is proposing to establish new language in 16 CCR Section 4170(e) requiring practitioners to maintain competence in their own practice area(s) through course work and activities that are specific to the practitioner's own area(s) of practice and/or use of practice-specific technology.

The Board is seeking this new language because it feels it is necessary to clarify the intent of its continuing competence requirement which is for practitioners stay current and aware of emerging trends and technologies in their practice areas. This will result in better and safer services provided to the public.

{Existing language in 16 CCR Section 4170(e) is being moved to Section 4170(h)}

16 CCR Section 4170(f)

The Board is proposing to establish new language in 16 CCR Section 4170(f) to define and clarify Business and Professions Code section 2570.36, which requires practitioners to report to the Board any acts committed by an applicant or another occupational therapy practitioner that they believe violates any law or regulation administered by the Board or is illegal. The reporting practitioner is also responsible for cooperating with the Board by providing information, documentation, declarations, or assistance as may be allowed law.

The Board is seeking this new language to define, clarify, administer, and implement the statute. Implementation of this proposed regulation will foster principles supported by the profession, establish and clarify expected standards of conduct for practitioners, and otherwise help resolve ethical dilemmas. The Board must be notified when a practitioner behaves unethically or performs in a negligent or incompetent manner in order for it to fulfill its mandate to protect the public.

{Existing language in 16 CCR Section 4170(f) is being moved to Section 4170(i)}

16 CCR Section 4170(g)

The Board is proposing to establish new language in 16 CCR Section 4170(g) establishing "Occupational therapy practitioners shall make all mandatory reporting to appropriate authorities as required by law." As an example, occupational therapy practitioners are mandated to report known or reasonably suspected incidents of child abuse or neglect pursuant to Penal Code Section 11166, and elder abuse pursuant to Welfare and Institutions Code section 15630.

The Board seeks this new language to define and clarify the expectations placed on occupational therapy practitioners to make mandated reports as required by law. Adoption

of this language will enhance the Board's ability to take administrative disciplinary action for these violations.

Existing language in 16 CCR Section 4170(e) is being moved to subsection (h)

Existing language establishes 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. The Board is proposing to add new language in subsection (1) that will establish and clarify occupational therapy practitioners may only practice when they hold a current and active license issued by the Board or other requisite credentials for the services they provide, and subsection (2) that will establish and clarify that occupational therapy practitioners provide services within his or her own competence level and scope of practice.

The Board is seeking the new language to provide clarification to practitioners that practicing on an expired license is a violation of law; just because they have been issued a license, does not mean they are authorized to provide services once the license expires. Practitioners should not provide services unless they possess the level of knowledge, skill, and ability (e.g., education and experience) consistent with best practices and regard for client safety. Implementation of this proposed language will clarify and establish principles and standards that practitioners should already be following, but will now be more easily held accountable should they fail to abide by these standards.

Existing language in 16 CCR Section 4170(f) is being moved to subsection (i).

Existing language establishes occupational therapy practitioners shall provide accurate information about occupational therapy services. The Board is proposing to delete reference to existing subsection (1) but maintains and integrates the language "and shall accurately represent their credentials, qualifications, education, experience, training, and competence" into 16 CCR Section 4170(i).

The Board is seeking this amendment because the language contained in subsection (1) can be easily integrated into the section. This change is technical and formatting in nature. It does not change the meaning and intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(2) is being moved to subsection (j)

Existing language establishes occupational therapy practitioners shall disclose conflicts of interest with those whom they may establish a professional, contractual, or working relationship. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(3) is being moved to subsection (k)

Existing language establishes an occupational therapy practitioner shall refrain from using or participating in the use of any communication that is false, fraudulent, deceptive

statements or claims. The Board is proposing to delete language "refrain from" and replace it with "not use".

The Board is seeking these amendments to make the language specific and more direct as opposed to a passive suggestion. This amendment also makes minor technical formatting changes to place this language in its own subsection.

Existing language in 16 CCR Section 4170(g) is being moved to Section 4170(l)

Existing language establishes occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Business and Professions Code section 2570.8. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Amend Authorities and Reference

The Board is proposing a technical edit by adding Business and Professions Code sections '2570.4' and '2570.36' in the reference section for the note of authorities and references.
BUSINESS IMPACT:

This regulation will not have an 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 will enhance and foster the Board's role in administering, regulating, and taking disciplinary action against occupational therapy practitioners who violate these principals.

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 delivering 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 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

This proposed regulatory change serves to:

- Identify and describe principles and standards accepted and supported by the occupational therapy profession.
- Inform the public of established principles and standards to which occupational therapy practitioners should adhere and will be held accountable.
- Make transparent and clear the standards of conduct expected of occupational therapy practitioners.
- Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.
- Enhance and facilitate the Board's regulatory role in enforcing and regulating the profession to ensure public protection.

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.

Alternative 1:

The Board considered doing nothing and leaving the provisions as they are written. This alternative was rejected because the Board's existing ethical standards do not contain the detail and definition that is contained in this proposed action. Without providing the level of detail contained in this action the Board's ability to take disciplinary action against a licensee may prove to be more difficult or hindered. The level of detail contained in this action will better help practitioners avoid ethical violations and assist the public in identifying and/or avoiding ethical dilemmas with their occupational therapy practitioner.

Alternative 2:

The Board considered incorporating the American Occupational Therapy Association's 'Occupational Therapy Code of Ethics and Ethical Standards' by reference into the Board's ethical standards regulatory language. This alternative was rejected because they standards were developed by a professional organization as opposed to a regulatory agency and the standards were written in a manner that would be difficult to enforce or regulate.

AVAILABILITY OF SECOND MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Occupational Therapy has proposed modifications to the text of CCR Section 4170 in Division 39, Title 16. A copy of the second 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 March 5, 2015, to the following:

Jeff Hanson
California 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: February 18, 2015

[Signature on file]
HEATHER MARTIN
Executive Officer
Board of Occupational Therapy

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
Title 16, Division 39, California Code of Regulations

Second Modified Text

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

Modifications to regulatory language are shown by ~~double strikeout~~ for deleted text and double underline for new text.

Second modifications to the regulatory language are shown by ***~~bold italic double underline strikeout~~*** for deleted text and bold ***bold italic double underline*** for new text.

Amend Title 16, Division 39, Article 8 California Code of Regulations to read as follows:

Article 8. ~~Ethical Standards of Practice~~ Service Delivery Standards

§ 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 pursuant to section 2570.4 of the Code, shall comply with the following ethical standards of practice:
(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.
(1) An occupational therapy practitioner ~~practitioner's services shall reflect an understanding of how those services can be affected by socio-economic factors such as~~ shall consider how a client's or patient's economic status, age, ethnicity, race, disability, ~~marital status,~~ sexual orientation, gender, gender identity, religion, residence, ***or*** culture~~,~~ ~~political affiliation, and~~ ~~***or insurance coverage.***~~ impact health care practices and incorporate these considerations in the provision of his or her services.
(2) An occupational therapist offering free or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services as for full fee 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, while a relationship exists as an occupational therapy practitioner, educator, researcher, ***or*** supervisor, ~~***or employer,***~~ and within six (6) months of termination of occupational therapy services, avoid relationships or associations that include, but are not limited to emotional, physical, psychological, financial, social, or activities that interfere with professional judgment and objectivity ,including avoiding:
(A) Any sexual relationship or activity, ~~whether~~ even if consensual ~~or nonconsensual~~, with any recipient of service, including any family ***member*** or significant other of the recipient of services, and
(B) Any sexual relationship or activity, even if consensual, with any student~~,~~ or research participant, ~~or employee,~~ under direct supervision, and

~~(B)~~ (C) Bartering for services or establishing any relationship 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 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~~ 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 completion of professional development activities required for license renewal or in other ways assure continued competence with respect to his or her own current practice and technology.
(f) Occupational therapy practitioners shall report to the Board any acts committed by another occupational therapy practitioner that they have reason to believe are unethical or illegal in practice, education, research, billing, or documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be allowed by law .
(g) Occupational therapy practitioners shall make all other mandatory reporting to the appropriate authorities as required by law.
~~(e)~~ (h) 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)~~ (i) 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)~~(j) 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)~~(k) Occupational therapy practitioners shall ~~refrain from using~~ not use or ~~participating~~ participate in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.
~~(g)~~(l) 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.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2570.4, 2570.20 and 2570.36.