DISCUSSION AND POSSIBLE ACTION OF AMENDING TITLE 16, CCR SECTIONS 4151 AND 4152 TO ALLOW OCCUPATIONAL THERAPISTS TO MEET THE REQUIREMENTS FOR ADVANCED PRACTICE APPROVAL FOR HAND THERAPY AND PHYSICAL AGENT MODALITIES FOR THOSE CURRENTLY LICENSED AS PTS.

Draft regulatory language is attached for review.

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

Proposed Text

Proposed amendments are shown underlined for new text.

Amend Title 16, Division 39, Article 6, California Code of Regulations to read as follows:

§ 4151. Hand Therapy

(a) Hand therapy services may be performed only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that he or she has met the post professional education and training requirements established by this section as follows:
(1) Education: Completion of 45 contact hours in the subjects listed in Code section 2570.3(e), including 30 hours specifically relating to the hand, wrist, and forearm.
(2) Training: Completion of 480 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to hand therapy.
(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.
(c) An occupational therapist whose application pursuant to section 4155 provides proof of current licensure as a physical therapist shall be deemed to have met the education and training requirements established by this section.
~~(c)~~ (d) An occupational therapist providing hand therapy services using physical agent modalities must also comply with the requirements of section 4152. A maximum of 8 contact hours and 60 hours of supervised on-the-job training, clinical internship or affiliation, paid or voluntary, completed under section 4152 will be credited toward the requirements of this section.
~~(d)~~ (e) An occupational therapist may provide only those hand therapy services he or she is competent to perform.

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

§ 4152. Physical Agent Modalities

(a) Physical agent modalities may be used only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that he or she has met the post professional education and training requirements established by this section as follows:
(1) Education: Completion of 30 contact hours in the subjects listed in Code section 2570.3(f).

(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to physical agent modalities.
(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.
(c) An occupational therapist whose application pursuant to section 4155 provides proof of current licensure as a physical therapist shall be deemed to have met the education and training requirements established by this section.
~~(c)~~ (d) An occupational therapist may use only those physical agent modalities he or she is competent to use.

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

AGENDA ITEM 14

DISCUSSION AND POSSIBLE ACTION ON OCCUPATIONAL THERAPISTS PERFORMING FEES.

cbot, CBOT@DCA

From: Edwards, Bryant <bedwards@chla.usc.edu>
Sent: Tuesday, November 03, 2015 2:00 PM
To: cbot, CBOT@DCA
Subject: Attention: Heather Martin, Executive Officer

Hello Heather,

Per my public comment from the October 24th, 2015 California Board of Occupational Therapy meeting, I respectfully request the Board to consider amending the California regulation 4153(a) to allow occupational therapists, after sufficient training and demonstrated competence, the ability to perform the physically invasive aspect of instrumental assessments associated with swallowing/dysphagia evaluations.

Please feel free to contact me for any further questions.

Thank you in advance!
Bryant

Bryant Edwards, OTD, MA, OTR/L, BCP, MPH | Occupational Therapy Manager
Division of Pediatric Rehabilitation Medicine
Children's Hospital Los Angeles
4650 Sunset Blvd., MS #56 | Los Angeles, CA 90027
Ph: 323-361-8244 | Fax: 323-361-8032 | **bedwards@chla.usc.edu**

To Refer a Patient: 888-631-2452

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ARTICLE 6. ADVANCED PRACTICES

§ 4153. Swallowing Assessment, Evaluation, or Intervention

(a) The role of an occupational therapist in instrumental evaluations is to observe structure and function of the swallowing mechanism in order to assess swallowing capability and determine swallowing interventions. **The occupational therapist may not perform the physically invasive components of the instrumental evaluation.**

(b) Swallowing assessment, evaluation or intervention may be performed only when an occupational therapist has demonstrated to the Board that he or she has met the post professional education and training requirements established by this section as follows:

(1) Education: Completion of 45 contact hours in the following subjects:

(A) Anatomy, physiology and neurophysiology of the head and neck with focus on the structure and function of the aerodigestive tract;

(B) The effect of pathology on the structures and functions of the aerodigestive tract including medical interventions and nutritional intake methods used with patients with swallowing problems;

(C) Interventions used to improve pharyngeal swallowing function.

(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to swallowing assessment, evaluation or intervention. An occupational therapist in the process of completing the training requirements of this section may practice swallowing assessment, evaluation or intervention under the supervision of an occupational therapist who has been approved under this article, a speech language pathologist with expertise in this area, or a physician and surgeon.

(c) An occupational therapist may provide only those swallowing assessment, evaluation or intervention services he or she is competent to perform.

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

AGENDA ITEM 15

UPDATE AND TAKE ACTION, IF NECESSARY, 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
Accept CHT for Hands/PAMs approval	4151 4152	Language published April 3, 2015; adopted by Board at June 2015 meeting.	05/19/2015	06/09/2015 7/30 – to Agency	09/28/2015	04/01/2016	10/08/2015	
Ethical Standards of Practice	4170	Language published April 10, 2015; adopted by Board at June 2015 meeting. (modifications to language due to BPC 726)	05/26/2015	08/03/2015		04/08/2016		
Application	4110	Language published July 31, 2015; edits to application needed. Board to consider at Spring 2016 meeting.	09/15/2015					
Standards of Practice for Telehealth	4172	Language published September 25, 2015; Board to consider at November 2015meeting.	11/09/2015					

REGULATIONS UPDATE REPORT

Pending Regulatory Amendments: Process Not Yet Started

Rulemaking File Subject	Section	Priority	Status	Comments
Notification to Consumers	4176		Board approved language for noticing at September 2015 meeting.	Language implements BPC sections 138, 680 and 680.5
Continuing Competency	4161 4162 4163		Board approved language for noticing at June and September 2015 meetings.	
Criteria to consider when the board refuses to hear a petition while the individual is on court-ordered probation/parole or subject to PC 290 registration	4149.5		Ad-Hoc Committee to recommend criteria for the Board to consider when a petition for reinstatement is received by a petitioner who is on court-ordered probation or parole or subject to PC 290 registration. Draft language to be presented at November 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.	

AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Occupational Therapy has proposed modifications to the text of CCR Sections 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 December 9, 2015, to the following:

Heather Martin
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: November 24, 2015

HEATHER MARTIN
Executive Officer
Board of Occupational Therapy

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

MODIFIED TEXT

Amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.
Modifications are shown by underlined 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 sections 901 or 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 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.
(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, 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 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, under direct supervision, and
(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.
(3) This section shall not apply to consensual sexual contact between a licensee and his or her spouse, registered domestic partner, or person in an equivalent domestic relationship, when that licensee provides occupational therapy services to his or her spouse, registered domestic partner, or person in an equivalent domestic relationship.

(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.
(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.
(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.
(3) Occupational therapy practitioners shall respect the client's right to refuse professional services ~~or involvement in research or educational activities~~.
(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.
(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so~~.~~
~~(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.~~
~~(2) Occupational therapy practitioners~~ 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 726, 2570.4, 2570.20 and 2570.36.

Date to OAL	Publication Date	Minimum 45-day comment period
September 1, 2015	September 11, 2015	October 26, 2015
September 8, 2015	September 18, 2015	November 2, 2015
September 15, 2015	September 25, 2015	November 9, 2015
September 22, 2015	October 2, 2015	November 16, 2015
September 29, 2015	October 9, 2015	November 23, 2015
October 6, 2015	October 16, 2015	November 30, 2015
October 13, 2015	October 23, 2015	December 7, 2015
October 20, 2015	October 30, 2015	December 14, 2015
October 27, 2015	November 6, 2015	December 21, 2015
November 3, 2015	November 13, 2015	December 28, 2015
November 10, 2015	November 20, 2015	January 4, 2016
November 17, 2015	November 27, 2015	January 11, 2016
November 24, 2015	December 4, 2015	January 18, 2016
December 1, 2015	December 11, 2015	January 25, 2016
December 8, 2015	December 18, 2015	February 1, 2016
December 15, 2015	December 25, 2015	February 8, 2016
December 22, 2015	January 1, 2016	February 15, 2016
December 29, 2015	January 8, 2016	February 22, 2016
January 5, 2016	January 15, 2016	February 29, 2016
January 12, 2016	January 22, 2016	March 7, 2016
January 19, 2016	January 29, 2016	March 14, 2016
January 26, 2016	February 5, 2016	March 21, 2016
February 2, 2016	February 12, 2016	March 28, 2016
February 9, 2016	February 19, 2016	April 4, 2016
February 16, 2016	February 26, 2016	April 11, 2016
February 23, 2016	March 4, 2016	April 18, 2016
March 1, 2016	March 11, 2016	April 25, 2016
March 8, 2016	March 18, 2016	May 2, 2016
March 15, 2016	March 25, 2016	May 9, 2016
March 22, 2016	April 1, 2016	May 16, 2016
March 29, 2016	April 8, 2016	May 23, 2016

AGENDA ITEM 16

CONSIDERATION AND POSSIBLE ACTION OF ADOPTING PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4172, STANDARDS OF PRACTICE FOR TELEHEALTH.

The Notice, proposed text and Initial Statement of Reasons are attached for review.

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on November 9, 2015.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 pm. on October 26, 2012.

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Codes (BPC) section 2290.5, defines and establishes "telehealth" as a mode of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health. Telehealth expands access to services to underserved and rural communities and provides greater modern day flexibility and convenience to all consumers in scheduling appointments and reducing or eliminating the need for long trips or congested urban travel.

This proposed regulatory action is designed to amend and clarify California Code of Regulations section 4172(b) regarding a reference to "informed consent" in the language. It has come to the attention of the Board that some employers and health care providers may interpret "informed consent" as meaning a health care professional must obtain consent from a patient/client each time/instance in which occupational therapy services are being provided. The purpose of this action is to clarify that an occupational therapist does not need to obtain a patient's/client's consent for subsequent telehealth services once the patient/client initially consents to receive occupational therapy services via telehealth. Therefore, the Board is proposing to delete "informed" from the language and otherwise reconstruct the language in the subsection to make it read better and be consistent with BPC section 2290.5.

BENEFIT OF PROPOSED REGULATIONS

This regulatory action is designed to eliminate confusion or misinterpretation on the part of employers and practitioners regarding the frequency that an occupational therapist must obtain consent from a patient/client that receiving occupational therapy services via telehealth is acceptable. It will provide clarity on professional standards for obtaining consent from a client when occupational therapy services may be delivered via telehealth. It will eliminate the redundant and duplicative task of a practitioner seeking and a patient providing consent to receive services via telehealth each and every time treatment and/or services are sought. It will provide incremental time and cost savings to employers and practitioners that have construed "informed consent" to mean a therapist must obtain a patient's or client's consent before each and every treatment session subsequent to the consumer's initial consent to receive services vial telehealth.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board has conducted a review of any related regulations and has determined that this proposed action 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

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact:

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

This proposed action is designed to clarify an occupational therapy practitioner is not required to obtain consent from a patient or client each time services are provided via telehealth subsequent to the patient's/client's initial consent to receiving services by this method.

Results of the Economic Impact Analysis:

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

"The proposed regulation will have benefits to the health and welfare of California residents. As mentioned above (under the Informative Digest/Policy Statement

Overview), this regulatory action will improve the accessibility of telehealth services from occupational therapists to patients by reducing burdensome and redundant consent requirements."

Cost Impact on Representative Private Person or Business:

This proposed regulatory action would save time and money to representative private persons or businesses that deliver occupational therapy services via telehealth. This proposed regulatory action is intended to clarify the existing reference to "informed consent" was not meant to be construed as requiring an occupational therapy practitioner to obtain consent from a patient/client before each and every treatment session once the patient/client initially consents to receiving services via telehealth.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that this proposed regulation would have a very small time and cost savings element afforded to private practices or small business that that provide telehealth services as described in the "Cost Impact on Representative Private Person or Business" above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative 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 affected 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, any document incorporated by reference, and the initial statement of reasons, may be obtained from our website as listed below or upon written request from the contact person listed below.

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

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

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

CONTACT PERSON

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

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

OR

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

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

California Board of Occupational Therapy
Department of Consumer Affairs

Title 16, Division 39, California Code of Regulations

PROPOSED TEXT

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

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

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant providing services to a patient or client in this State must have a valid and current license issued by the Board.
(b) An occupational therapist shall ~~obtain informed consent from~~ inform the patient or client ~~prior to delivering~~ about occupational therapy services via telehealth and obtain consent prior to delivering those services, consistent with Section 2290.5 of the Code.
(c) Prior to providing occupational therapy services via telehealth:
(1) an occupational therapist shall determine whether an in-person evaluation is necessary and ensure that a therapist must be available if an onsite visit is required and;
(2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined that in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.
(d) In making the determination whether an in-person evaluation or in-person interventions are necessary, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.
(e) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:
(1) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;
(2) Provide services consistent with section 2570.2(k) of the Code; and
(3) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.
(f) Failure to comply with these regulations shall be considered unprofessional conduct as set forth in the Occupational Therapy Practice Act.

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

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Standards of Practice for Telehealth

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

Introduction

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

Purpose

The purpose of this proposed regulatory action is to amend and clarify California Code of Regulations section 4172(b) regarding its reference to "informed consent". It has come to the attention of the Board that some employers and health care providers may interpret "informed consent" as meaning a health care professional must obtain consent from a patient/client prior to each and every session that health care services are being delivered. This proposed action is intended to clarify that it is not the intent of the Board to require an occupational therapist to obtain consent from a patient/client for each and every occupational therapy session that is being delivered via telehealth after the patient/client initially consents to receive services via telehealth. In an effort to clarify this matter the Board is proposing to delete "informed" from the language and otherwise amend the language in the subsection to make it read better.

Factual Basis/Rationale

Section 4172(b) is intended to establish that an occupational therapist shall inform a patient or client about the nature of occupational therapy services that can be delivered via telehealth and obtain the patient's or client's consent to receive occupational therapy services via telehealth prior to the delivery of those services.

The Board is proposing to delete "informed" from existing language in Section 4172(b) in an effort to eliminate confusion surrounding the nature and frequency a therapist must obtain consent from a patient or client that the use of telehealth is an acceptable mode of delivering occupational therapy services. The amendment that is being proposed is designed to clarify that a therapist must obtain consent from a patient or client, in its simplest form, prior to the delivery of telehealth services. Thus a therapist would not be required to obtain consent from a patient or client continuously for each and every treatment session subsequent to the patient's or client's initial consent that telehealth is an acceptable mode of delivery of occupational therapy services.

BENEFIT OF THE PROPOSED REGULATION

- Employers, practitioners, and consumers will benefit from this proposed action as they will not be required to perform the redundant and duplicative task of obtaining and providing consent prior to each and every treatment session delivered via telehealth once consent to receive telehealth services is provided by the consumer.

- Practitioners and the industry benefit from the proposed action as it provides clarity on the professional standards for obtaining consent from the patient when delivery of occupational therapy services via telehealth is being considered.

- Amends language that can and has been misconstrued or misinterpreted by pratitioners and their employers regarding the nature and frequency that consent must be obtained from a patient or client.

This proposed action does not contain any benefit toward worker safety or the state's environment.

UNDERLYING DATA:

None

BUSINESS IMPACT:

The Board has determined this regulatory action will not have a significant adverse economic impact on business because the elimination of 'informed' from the consent process provides clarity to both practitioners and patients. Moreover, by not providing consent at each treatment, there could ultimately be a time-savings to both patients and practitioners; the time-savings could allow for more treatment time rather than using the treatment time to (1) repeatedly and redundantly advise the patient of the possible use of telehealth and (2) treat the patient.

ECONOMIC IMPACT ANALYSIS

The Board has determined that this proposed action will provide incremental time and cost savings to occupational therapy private practices and businesses that have interpreted the meaning of "informed consent" to require a therapist to obtain consent from a patient or client before each and every treatment session in which services are being provided via telehealth.

<u>The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California</u>
The regulations are designed to provide clarity to practitioners and patients by eliminating duplicative consent and advisement of the possible use of telehealth. Therefore, the Board has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California.

<u>The Expansion of Businesses Currently Doing Business Within the State of California</u>
The regulations are designed to provide clarity and maximize the practitioner's time with the patient(s), which is neither relevant to nor adverse to the expansion of businesses in California.

<u>Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment</u>

The anticipated benefits to this regulation are clarify and elimination of duplication without compromising consumer protections. This proposal benefits both consumers of occupational therapy services and practitioners; this proposal has no adverse impact to the state's environment.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This proposed regulatory action does not require 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 it does not address employer and practitioner concerns regarding the interpretation of the meaning of "informed consent" in existing language.

cbot, CBOT@DCA

From: Christine Calouro <Christinec@cchpca.org>
Sent: Friday, October 30, 2015 9:17 AM
To: cbot, CBOT@DCA
Cc: Mei Kwong
Subject: Comments on Occupational Therapy Telehealth Regs
Attachments: CA OT Board Letter 10-30.pdf

To Whom It May Concern,

Please find attached comments on the proposed changes to the CA Board of Occupational Therapy's rule regarding standards of practice for telehealth. Please let me know if you need any clarification or have any questions.

Sincerely,
Christine Calouro

Christine Calouro | *Project Coordinator*
Center for Connected Health Policy
1331 Garden Highway, Sacramento, CA 95833
Phone: (916) 285-1868 | **http://cchpca.org**
The National Telehealth Policy Resource Center: 877-707-7172

Center for Connected Health Policy
The National Telehealth Policy Resource Center

October 30, 2015

Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Ste. 2050
Sacramento, CA 95815

RE: Title 16, Division 39, Sec. 4172. Standards of practice for telehealth

Dear Mr. Hanson,

The Center for Connected Health Policy (CCHP) is a non-partisan, policy organization that works towards addressing barriers to the integration of telehealth into the health care system. CCHP is funded to operate the National Telehealth Policy Resource Center (NTRC-P) by the U.S. Department of Health and Human Services' Health Resources and Services Administration (HRSA) Office for the Advancement of Telehealth (OAT), which is part of the Office of Rural Health Policy (ORHP). We would like to offer our comments on the proposed changes to Title 16, Division 39 of the California Code of Regulations, Sec. 4172 relating to the standards of practice for telehealth for occupational therapy.

The stated purpose of the change is to "clarify that an occupational therapist does not need to obtain a patient's/client's consent for subsequent telehealth services once the patient/client initially consents to receive occupational therapy services via telehealth". The new language would read as follows:

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

This revision fails to clarify that obtaining consent once is sufficient to satisfy the provision. CCHP suggest adding the additional language to the proposed revision:

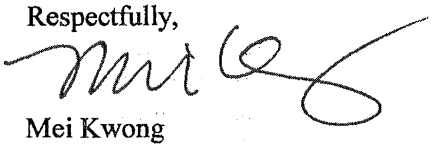
The occupational therapist need only obtain consent from the patient once unless the course of treatment changes or the occupational therapist is treating the patient for a new and separate condition.

Another issue to note is that the referenced section of California's Code in the original text, Section 2290.5 stipulates that the health care provider ***initiating*** the use of telehealth is responsible for obtaining verbal or written consent from the patient. Since the OT is the specialty provider and would most likely be at the distant site, they are not obligated by statute to obtain the patient's consent.

CCHP appreciates the efforts the Board has made on these regulations. We do ask that you consider modifying the language in this section to further clarify the point that a therapist need only obtain consent once upon an initial telehealth visit, as is the stated purpose of the regulation.

Thank you for the opportunity to offer comments on the proposed regulations.

Respectfully,



Mei Kwong
Senior Policy Associate

1331 Garden Highway • Sacramento, CA 95833 • 916.285.1856 • info@cchpca.org • cchpca.org

cbot, CBOT@DCA

From: Lindsay Gullahorn <lgullahorn@capitoladvocacy.com>
Sent: Monday, October 12, 2015 10:07 AM
To: cbot, CBOT@DCA
Subject: OTAC Letter re: CBOT Proposed Telehealth Regulations
Attachments: OTAC CBOT Letter - TeleHealth Proposed Regs.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

Please see the attached letter from our client, the Occupational Therapy Association of California (OTAC), regarding the CBOT's proposed regulations relating to the standards of practice for telehealth. Please let us know if you have any questions.

Thank you,
Lindsay

Lindsay Gullahorn
Legislative Analyst
Capitol Advocacy
1301 I Street
Sacramento, CA 95814
(916) 273-1208 Phone
(916) 444-0400 Main
lgullahorn@capitoladvocacy.com

October 9, 2015

Mr. Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

RE: CBOT Proposed Regulations, Title 16, Division 39, CCR Section 4172
Standards of Practice for Telehealth

Dear Mr. Hanson:

I am writing on behalf of the Occupational Therapy Association of California (OTAC) to express our support for the California Board of Occupational Therapy's (CBOT) proposed regulations to clarify that occupational therapists (OTs) only need to obtain consent from a client for initial telehealth visits, and do not need consent for subsequent visits. This will update and better define existing law to help OTs in California more efficiently and effectively deliver telehealth services to patients.

OTAC is a not-for-profit professional society designed to represent more than 14,000 occupational therapists (OTs) and occupational therapy assistants (OTAs) throughout California. OTs and OTAs work with people of all ages experiencing medical conditions or disabilities to develop, improve, or restore functional daily living skills, such as caring for oneself, managing a home, achieving independence in the community, driving, or returning to work.

Telehealth is becoming more prevalent in California's healthcare delivery system as a way to facilitate the diagnosis, consultation, treatment, education and self-management of patients' healthcare, and is a critical component in ensuring expanded access to care, especially with the continued implementation of the Affordable Care Act (ACA). The CBOT's proposed rulemaking will further streamline patient care in California by eliminating the cumbersome requirement to obtain consent prior to receiving telehealth services for every visit.

Many of OTAC's member OTs provide therapeutic interventions by utilizing telehealth. OTs and OTAs are an intrinsic part of a health care team that is essential to helping patients achieve the greatest recovery or gain the most independence. As licensed practitioners in California, OTs and OTAs are an indispensable component of successful treatment for many beneficiaries, which include children and adults would could benefit from occupational therapy through telehealth care.

For the reasons listed above, OTAC supports the CBOT's proposed rulemaking related to the standards of practice for telehealth. If we can provide you with any further information, please contact me at otacpres@earthlink.net or Karen Polastri at Karen@otaconline.org.

Sincerely,

Patricia S. Nagaishi

Patricia S. Nagaishi, PhD, OTR/L
OTAC President

cbot, CBOT@DCA

From: Corinne Boren <cboren@calnurses.org>
Sent: Thursday, October 29, 2015 1:31 PM
To: cbot, CBOT@DCA
Cc: Jane Schroeder
Subject: RE: Proposed Regulatory Changes to § 4172. Standards of Practice for Telehealth
Attachments: CNA Comments. Re ProposedRegulatoryChanges.StandardsofPracticeforTelehealth.10.29.15.pdf

Importance: High

Dear, Mr. Hanson,

Don Nielsen asked that I send the attached CNA Comments to you.

Please let me know they have been received.

Thank you, Corinne

Corinne Boren
California Nurses Association
Government Relations Department
770 L Street, Suite 1480
Sacramento, CA 95814
(916) 491-3230

CALIFORNIA NURSES ASSOCIATION
National Nurses United
A Voice for Nurses. A Vision for Healthcare.

OAKLAND
2000 Franklin Street
Oakland CA 94612
phone: 510-273-2200
fax: 510-663-1625

SACRAMENTO
Government Relations
770 L Street
Suite 1480
Sacramento CA 95814
phone: 916-446-5019
fax: 916-446-3880

October 29, 2015

Jeff Hanson
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
E-Mail: cbot@dca.ca.gov

RE: Proposed Regulatory Changes to § 4172. Standards of Practice for Telehealth

Dear Mr. Hanson,

Thank you for the opportunity to provide comments on the proposed regulatory changes to the standards of practice for occupational therapists (OTs) and occupational therapy assistants (OTAs) providing telehealth services. The California Nurses Association (CNA) represents over 90,000 Registered Nurses in California and routinely engages with state agencies on matters involving public health and patient safety. As patient advocates, CNA has a strong interest in ensuring that all patients have access to safe, quality health care. As such, we are deeply concerned that the Board of Occupational Therapy (the Board) is proposing regulations that weaken the informed consent requirements for practitioners providing telehealth services to occupational therapy patients.

Obtaining informed consent is crucial for healthcare providers working with patients in any field or specialty. It is incumbent upon health care providers to inform their patients about the advantages, disadvantages, and possible risks associated with a particular treatment option and to obtain their patient's informed consent before proceeding with the procedure. It is widely accepted that formal informed consent processes are particularly important for high-risk procedures. However, it is CNA's opinion that the same level of consideration should be given to the delivery of health-care services via telemedicine, where the reliance on imperfect technology, the physical distance between the patient and the provider, and other pertinent factors tend to shift otherwise routine treatment tasks into a much higher risk category.

The technology associated with telemedicine is still relatively new, and relies on devices such as smartphones, tablets, laptop computers, and webcams, whose effectiveness is highly questionable. The use of these technologies to asses a patient's condition creates potential for mistakes and inaccuracies in care, monitoring, and diagnosis. The faulty aspects of these technologies can range from the variations in light and color display between different screens, to camera quality, internet connection, and transmission errors. Errors associated with these factors can cause delays in patient care, as well as outright misdiagnosis. Furthermore, healthcare providers engaging in telehealth services are physically separated from their patients, and thus unable to provide physical, hands-on evaluations. Combined with the faulty and varied nature of the technologies in use, this can significantly hinder a provider's ability to give a full and accurate evaluation of the patient. Due to the high potential for error inherent in the provision of telemedicine services, patients need to be fully informed of the risks associated with telehealth monitoring, and only undertake those risks after careful consideration.

There are also patient privacy and security issues that are unique to telemedicine. For instance, because the patient is not physically present in the same space as the provider and is only able to see whatever is within the camera's frame of view, it can be nearly impossible to tell whether there are other people present in the room where the provider is located, which gives rise to significant privacy and HIPAA concerns. This is another reason why informed consent is particularly important in the provision of telehealth services.

Instead of acknowledging these risks, the proposed regulations would significantly weaken informed consent standards by removing the word "informed" from existing language in Section 4172(b) of the California Code of Regulations.

The justification the Board provides in its rationale is that deleting this language will "eliminate confusion surrounding the nature and frequency a therapist must obtain consent from a patient or client that the use of telehealth is an acceptable mode of delivering occupational therapy services" (sic). However, it is unclear how the deletion of the word "informed" achieves this end. While this might seem like a minor change without substantive impact, replacing "informed consent" with mere "consent" is actually a very significant change, because "informed consent" is a phrase with specific legal meaning. Nolo's Plain-English Law Dictionary defines "informed consent" as:

> "An agreement to do something or to allow something to happen, made with **complete knowledge of all relevant facts, such as the risks involved or any available alternatives.** For example, a patient may give informed consent to medical treatment only after the health care professional has disclosed all possible risks involved in accepting or rejecting the treatment. A health care provider or facility may be held responsible for an injury caused by an undisclosed risk. In another context, a person accused of committing a crime cannot give up his constitutional rights -- for example, to remain silent or to talk with an attorney -- unless and until he has been informed of those rights, usually via the well-known Miranda warnings." (Emphasis added).

By contrast, the word "consent" alone has a less stringent meaning. Nolo's Plain-English Law Dictionary defines "consent" as just:

> "Voluntary agreement by a competent person to another person's proposition."

The notion of "informed" consent encompasses the idea that the decision to provide consent was made with full knowledge of all the possible benefits and risks one is actually consenting to, as well as the alternative treatment that one is forgoing (in the case of telehealth services, this would be in-person care). "Consent" alone does not encompass this level of nuance. It is not entirely clear how the removal of the word "informed" will "eliminate the redundant and duplicative task of a practitioner seeking and a patient providing consent to receive services via telehealth each and every time treatment and/or services are sought," as claimed by the Board in its rationale. It is clear, however, that this change would erode the standards of *informed* consent.

In its Policy Statement Overview, the Board suggests that these proposed changes will cause the regulations to "read better and be consistent with BPC section 2290.5." However, contrary to what this implies, § 2290.5 of the Business and Professions Code is actually more stringent with regards to the requirement for consent. In subsection (b), it states that

> (b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or

> written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

Compare this to the new proposed language for § 4172, which would state only that:

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

Notwithstanding the reference to § 2290.5, it is clear that the proposed language is not consistent with that section of the Code, and indeed, is less stringent. Since the Board's stated goal is clarify the requirements and make them consistent with § 2290.5, CNA suggests that the regulations should require that the consent be verbal or written and that it be documented in the patient's record. Requiring the consent to be verbal or written ensures that it is not merely implied by conduct or by silence, which is overly amenable to misinterpretation. Furthermore, it should be made clear that the consent required is not just for the underlying services themselves, but for "the use of telehealth as an acceptable mode of delivering health care services." This provision better accounts for the unique risks associated with telehealth (as expressed above), and the necessity to explain that telehealth is being provided *instead of* an in-person evaluation.

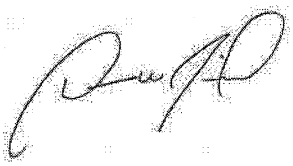
Given the above-mentioned concerns, CNA respectfully submits the following modifications to the proposed text:

> (b) Prior to delivering occupational therapy services via telehealth, ~~A~~an occupational therapist shall inform the patient or client about ~~occupational therapy services via telehealth~~ those services and obtain verbal or written informed consent from the patient for the use of telehealth as an acceptable mode of delivering health care services ~~prior to delivering those services~~, consistent with Section 2290.5 of the Code. The informed consent shall be documented.

Thank you for your time and consideration of CNA's comments. If you have any further questions, please contact me or Jane Schroeder at (916)491-3204.

Sincerely,

CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES UNITED



Donald W. Nielsen
Director, Government Relations

AD HOC COMMITTEE REPORT AND RECOMMENDATION REGARDING CRITERIA FOR THE BOARD TO CONSIDER WHEN REFUSING TO HEAR A PETITION FOR REINSTATEMENT.

The following are attached for review:

- October 24, 2015, ad hoc committee meeting minutes
- Recommended criteria for the Board to consider when refusing to hear a petition for reinstatement of a license due to a current order of probation/parole or PC 290 registration
- Other healthcare boards' BPC sections relating to petition for reinstatement

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
2005 Evergreen Street, Suite 2250, Sacramento, CA 95815-3831
T: (916) 263-2294 F: (916) 263-2701
E-mail: cbot@dca.ca.gov Web: www.bot.ca.gov

TELECONFERENCE AD HOC COMMITTEE MEETING NOTICE AND AGENDA

Saturday, October 24, 2015

Committee Members Present
Laura Hayth, Board Member, Chairperson
Jeff Ferro, Board Member
Elizabeth Gomes

Board Staff Present
Heather Martin, Executive Officer
Jeff Hanson, AGPA
Ileana Butu, Legal Counsel

4:30 pm – Ad hoc Committee Meeting

1. Call to order and roll call.

   The meeting was called to order at 4:38 p.m. Roll was called and a quorum was established.

2. Public Comment session for items not on the agenda

   A member of the public commented that by not hearing a petition for reinstatement when an individual is on probation, a time constraint is placed on when an individual is able to petition for reinstatement.

   Another comment was made that the Board should allow someone to provide testimony about the petition for reinstatement.

3. Discussion and consideration of criteria for the Board to use when considering whether it will refuse to consider a petition for reinstatement of license or modification/termination of penalty pursuant to Business and Professions Code Section 2570.32.

   Executive Officer Heather Martin briefed the attendees regarding the purpose of the committee which was to recommend to the Board criteria for them to consider when deciding whether to refuse to consider a petition for reinstatement of a license, while the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code.

   Jeff Ferro stated that at the previous committee meeting they looked at what other boards were doing.

   A member of the public commented that a pharmacist was reinstated with a number of felonies. The member of the public provided the committee with a copy of that decision.

   Another member of the public commented that the Board should make their decision on a case-by-case basis and the petitioner should be allowed to present their case.

A member of the public commented that not hearing some petitioners could leave out good practitioners.

Elizabeth Gomes stated that the committee considered this and are being sensitive to this possibility.

Legal Counsel, Ileana Butu, addressed some possible legal issues with the current draft language. There could be a due process issue regarding the Board using the 'rap' sheet as the basis for a refusal to hear a petition without providing the petitioner with an opportunity to be heard. Ms. Butu also indicated that when establishing criteria to consider, the Board may not have the authority to make a distinction in the regulation between an individual being on formal versus informal probation.

A member of the public commented that access to the Board and the ability to have a petition heard should be unfettered.

- Jeff Ferro moved to accept the language as presented and recommend it to the Board, with the understanding that Legal Counsel would work with the Board's Executive Officer regarding use of Board and Board staff in section (a), providing due process to petitioners, and consideration of whether the Board could distinguish between formal and informal probation.
- Laura Hayth seconded the motion.

Roll Call Vote

Jeff Ferro	Aye
Laura Hayth	Aye
Elizabeth Gomes	Aye

The motion passed.

4. Adjournment.

The meeting adjourned at 5:27 p.m.

PROPOSED CRITERIA FOR THE BOARD TO CONSIDER WHEN AN INDIVIDUAL SUBMITS A PETITION FOR REINSTATEMENT

Article 5.5. Standards Related to Denial, Discipline, and Reinstatement of Licenses

4146	Definitions
4146.5	Effective Dates of Decisions
4147	Disciplinary Guidelines
4147.5	Uniform Standards Related to Substance Abuse
4148	Mental or Physical Examination of Fitness for Licensure
4149	Other Actions Constituting Unprofessional Conduct
4149.1	Revocation for Sexual Contact

Proposed new regulatory language:

4149.5 Criteria to consider for refusing to consider a petition for reinstatement

The Board shall consider the following criteria when deciding whether to refuse to consider a petition for reinstatement of a license pursuant to BPC Section 2570.32, while petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code:

(a) The Board shall first determine whether petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code.

(b) If the petitioner is not on court-imposed probation or parole and is not subject to an order of registration pursuant to Section 290 of the Penal Code, the Board shall consider the petition and evaluate evidence of rehabilitation submitted by the petitioner, considering the criteria specified in the Board's Disciplinary Guidelines (October 2013).

(c) If the petitioner is on court-imposed probation or parole, the Board shall refuse to consider the petition.

(d) If the Board refuses to consider a petition for reinstatement while the petitioner is on court-imposed probation or parole, the petitioner may submit a Petition for Reinstatement at the conclusion of his or her court-imposed probation or parole.

(e) If the petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code, the Board shall refuse to consider the petition for reinstatement if any of the following apply:

(1) The petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code for a crime or offense committed with a patient or client; or
(2) The petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code for a crime or offense committed with a minor who was under the age of 14, and the petitioner was more than ten (10) years older than the minor at the time the act was committed; or

(3) The petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code for a crime or offense that was committed less than ten (10) years prior to the date of submission of the petition for reinstatement.

If the petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code, and none of the above criteria applies, the Board shall consider the petition for reinstatement.

(f) If the Board refuses to consider a petition for reinstatement based on any of the criteria set forth in subsection (e) above, the petitioner may submit a petition for reinstatement upon the court-ordered removal of the obligation to register pursuant to Section 290 of the Penal Code, or ten (10) years after the court issued the order to register pursuant to section 290 of the Penal code, whichever is sooner.

BPC Section 2570.32. (OT Board)

(a) A holder of a license that has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of a penalty, including reduction or termination of probation, after a period not less than the applicable following minimum period has elapsed from either the effective date of the decision ordering that disciplinary action, or, if the order of the board or any portion of it was stayed, from the date the disciplinary action was actually implemented in its entirety. The minimum periods that shall elapse prior to a petition are as follows:

(1) For a license that was revoked for any reason other than mental or physical illness, at least three years.

(2) For early termination of probation scheduled for three or more years, at least two years.

(3) For modification of a penalty, reinstatement of a license revoked for mental or physical illness, or termination of probation scheduled for less than three years, at least one year.

(4) The board may, in its discretion, specify in its disciplinary order a lesser period of time, provided that the period shall not be less than one year.

(b) The petition submitted shall contain any information required by the board, which may include a current set of fingerprints accompanied by the fingerprinting fee.

(c) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The board may refuse to consider a petition while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code.

(g) No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(Added by Stats. 2002, Ch. 1079, Sec. 11. Effective September 29, 2002.)

BPC Section 2661.7. (PT Board)

(a) A person whose license has been revoked or suspended, or who has been placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license or approval revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination or one year for modification of a condition of probation of three years or more.

(3) At least one year for reinstatement of a license revoked for mental or physical illness, or for modification of a condition, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physical therapists licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board that shall be acted upon in accordance with the Administrative Procedure Act.

(d) The board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued, as the board or the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(e) The administrative law judge designated in Section 11371 of the Government Code when hearing a petition for reinstating a license, or modifying a penalty, may recommend the imposition of any terms and conditions deemed necessary.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner. The board may deny, without a hearing or argument, any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

(Amended by Stats. 2013, Ch. 389, Sec. 61. Effective January 1, 2014.)

BPC Section 1686. (Dental Board)

A person whose license, certificate, or permit has been revoked or suspended, who has been placed on probation, or whose license, certificate, or permit was surrendered pursuant to a stipulated settlement as a condition to avoid a disciplinary administrative hearing, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(a) At least three years for reinstatement of a license revoked for unprofessional conduct or surrendered pursuant to a stipulated settlement as a condition to avoid an administrative disciplinary hearing.

(b) At least two years for early termination, or modification of a condition, of a probation of three years or more.

(c) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination, or modification of a condition, of a probation of less than three years.

The petition shall state any fact required by the board.

The petition may be heard by the board, or the board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code.

In considering reinstatement or modification or penalty, the board or the administrative law judge hearing the petition may consider (1) all activities of the petitioner since the disciplinary action was taken, (2) the offense for which the petitioner was disciplined, (3) the petitioner's activities during the time the license, certificate, or permit was in good standing, and (4) the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the board or the administrative law judge as designated in Section 11371 of the Government Code finds necessary.

The board or the administrative law judge may impose necessary terms and conditions on the licentiate in reinstating a license, certificate, or permit or modifying a penalty.

No petition under this section shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

Nothing in this section shall be deemed to alter Sections 822 and 823.

(Amended by Stats. 1999, Ch. 655, Sec. 13. Effective January 1, 2000.)

BPC Section 2760.1. (Registered Nurse)

(a) A registered nurse whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including reduction or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action, or if the order of the board or any portion of it is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety, or for a registered nurse whose initial license application is subject to a disciplinary decision, from the date the initial license was issued:

(1) Except as otherwise provided in this section, at least three years for reinstatement of a license that was revoked, except that the board may, in its sole discretion, specify in its order a lesser period of time provided that the period shall be not less than one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The hearing may be continued from time to time as the board deems appropriate.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The petitioner shall provide a current set of fingerprints accompanied by the necessary fingerprinting fee.

(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(h) Except in those cases where the petitioner has been disciplined pursuant to Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(Amended by Stats. 2009, Ch. 308, Sec. 33. Effective January 1, 2010.)

BPC Section 2878.7. (Vocational Nurse)
(a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:
(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year, to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

(Repealed and added by Stats. 2001, Ch. 728, Sec. 24. Effective January 1, 2002.)

BPC Section 4309. (Pharmacy)

(a) A person whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(1) At least three years for reinstatement of a revoked license.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts required by the board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board sitting with an administrative law judge, or a committee of the board sitting with an administrative law judge, or the board may assign the petition to an administrative law judge. Where the petition is heard by a committee of the board sitting with an administrative law judge or by an administrative law judge sitting alone, the decision shall be subject to review by the board pursuant to Section 11517 of the Government Code.

(d) In considering reinstatement or modification of penalty, the board, committee of the board, or the administrative law judge hearing the petition may consider factors including, but not limited to, all of the following:

(1) All the activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability.

(e) The hearing may be continued from time to time as the board, committee of the board, or the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The board, committee of the board, or administrative law judge may impose necessary terms and conditions on the licensee in reinstating the license.

(g) No petition under this section shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(h) Nothing in this section shall be deemed to amend or otherwise change the effect or application of Sections 822 and 823.

(i) The board may investigate any and all matters pertaining to the petition and documents submitted with or in connection with the application.

(Amended by Stats. 1997, Ch. 549, Sec. 120. Effective January 1, 1998.)

4990.30. (BBS)

(a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, professional clinical counselor intern, or licensed educational psychologist whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The petition shall be on a form provided by the board and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order. The petition shall be verified by the petitioner who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(b) The licensee or registrant may file the petition on or after the expiration of the following timeframes, each of which commences on the effective date of the decision ordering the disciplinary action or, if the order of the board, or any portion of it, is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Three years for reinstatement of a license or registration that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its revocation order that a petition for reinstatement may be filed after two years.

(2) Two years for early termination of any probation period of three years or more.

(3) One year for modification of a condition, reinstatement of a license or registration revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition may be heard by the board itself or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code.

(d) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(e) The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition and an opportunity to present both oral and documentary evidence and argument to the board or the administrative law judge.

(f) The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(g) The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license or registration was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(h) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate but in no case may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(i) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge, may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4990.40. If a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board. The board may take action with respect to the proposed decision and petition as it deems appropriate.

(j) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(k) The board may delegate to its executive officer authority to order investigation of the contents of the petition.

(l) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(m) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(Amended by Stats. 2010, Ch. 653, Sec. 49. Effective January 1, 2011.)