

AGENDA ITEM 13

CONSIDERATION AND POSSIBLE APPROVAL OF PROPOSED ADDITION TO TITLE 16, CCR DIVISION 39, REGARDING PETITIONS FOR REINSTATEMENT OF LICENSES OR MODIFICATION OF PENALTY.

The proposed amendments are attached for your review.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Title 16, Division 39, California Code of Regulations

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

~~OAL's suggested edits~~ is shown by **bold double underline** for new text and ~~bold double strikeout~~ for deleted text.

Amend the title of Article 5.5 as follows:

Article 5.5. Standards Related to Denial, Discipline, and Petitions for Reinstatement of Licenses or Modification of Penalty

Add new section: 4149.5 Petitions for Reinstatement or Modification of Penalty

- (a) A person whose license has been revoked may petition the Board for reinstatement upon submission of the following:
- (1) A completed form entitled Petition for Reinstatement of License, Form PTR, Rev. 7/2016, hereby incorporated by reference, and
 - (2) A ~~completed~~ Request for Live Scan Service, DOJ Form BCII 8016 (Rev ~~10/98~~ **1/2011**), ~~hereby incorporated by reference~~ **completed by both petitioner and Live Scan operator**, evidencing electronic submission of fingerprints, and
 - (3) Certified court and arrest records for any criminal offense which resulted in court-imposed probation or parole or a court order of registration pursuant to Section 290 of the Penal Code, **if applicable**.
- (b) A person whose license has been placed on probation may petition the Board for reduction or termination of probation upon submission of a completed form entitled Probationer Petition, Form PET, Rev. 7/2016), hereby incorporated by reference.
- (c) The Board shall first determine whether petitioner is on court-imposed probation or parole for conviction of a crime substantially related to the practice of occupational therapy or subject to an order of registration pursuant to Section 290 of the Penal Code when deciding whether to refuse to consider a petition for reinstatement of a license pursuant to BPC Section 2570.32.
- (d) ~~If~~ **When** 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 set forth in the Board's Disciplinary Guidelines (October 2013).

- (e) #When the petitioner is on court-imposed probation or parole, the Board shall refuse to consider the petition.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) If the Board refuses to consider a petition for reinstatement based on any of the criteria set forth in subsection (g) 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.

Authority: Section 2570.20, Business and Professions Code. Reference: Sections 2570.30 and 2570.32, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Title 16, Division 39, California Code of Regulations

Proposed amendments are shown by underlined for new text.

1. Amend the title of Article 5.5 as follows:

Article 5.5. Standards Related to Denial, Discipline, and Petitions for Reinstatement of Licenses or Modification of Penalty

2. Add new section: 4149.5

§ 4149.5 Petitions for Modification of Penalty

A licensee whose license has been placed on probation may petition the Board for reduction of penalty or termination of probation upon submission of the completed form Probationer Petition, Form PET, Rev. xx/xxxx, hereby incorporated by reference.

Authority: Section 2570.20, Business and Professions Code. Reference: Sections 2570.30 and 2570.32, Business and Professions Code; section 11522, Government Code.

3. Add new section: 4149.6

§ 4149.6 Petitions for Reinstatement

(a) A person whose license has been revoked by the Board may petition for reinstatement by submitting:

(1) the completed form Petition for Reinstatement of License, Form PTR, Rev. xx/xxxx, hereby incorporated by reference; and

(2) a request for Live Scan Service evidencing electronic submission of fingerprints to the Department of Justice for the purpose of undergoing a state and federal level criminal offender record information search conducted through the Department of Justice, for furnishing to the Board; and

(3) any certified court and arrest records for any criminal offense that resulted in petitioner's court-imposed probation or parole, or any court order of registration pursuant to Section 290 of the Penal Code, if applicable.

(b) A petitioner is presumed to not be sufficiently rehabilitated and his or her petition for reinstatement shall not be heard or considered by the Board if:

(1) the petitioner is on court-imposed probation or parole for a conviction substantially related to the practice of occupational therapy; or

(2) the petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code where:

(A) the order of registration is for a crime or offense committed with a patient or client; or

(B) the order of registration is 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

(C) the order of registration pursuant is for a crime or offense that was committed less than ten (10) years prior to the date of submission of the petition for reinstatement.

(c) Where the Board has not heard or considered a petition pursuant to subdivision (b), a petitioner may appeal to the Board to request the matter be set for hearing and considered. If petitioner presents evidence to overcome the presumption of insufficient rehabilitation and the appeal is granted, the board shall give notice to the Attorney General of the filing of the petition, and to the petitioner and the Attorney General regarding the time and place of the hearing on the merits of the petition.

Authority: Section 2570.20, Business and Professions Code. Reference: Sections 2570.30 and 2570.32, Business and Professions Code; section 11522, Government Code.

AGENDA ITEM 14

CONSIDERATION AND POSSIBLE APPROVAL OF PROPOSED AMENDMENTS TO TITLE 16, CCR DIVISION 39, SECTION 4101, DELEGATION OF CERTAIN FUNCTIONS.

The proposed amendments are attached for your review.

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

PROPOSED TEXT

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

Amend Title 16, Division 39, Article 7, California Code of Regulations to read as follows:

§ 4101. Delegation of Certain Functions.

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (section 11500 et seq. of the Government Code), the power and discretion conferred by law upon the Board to order an examination pursuant to section 820 of the Code; receive and file accusations and statements of issues; issue notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings, including the authority to ~~grant a motion to vacate a default decision upon motion or petition~~, approve a settlement agreement for revocation or surrender of a license, or approve an interim license suspension; and the certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code are hereby delegated to and conferred upon the executive officer of the Board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 480, 2570.1, 2570.6, 2570.17, 2570.19, 2570.20 and 2570.23, Business and Professions Code; and Sections 11415.60 and 11500 et seq., Government Code.

AGENDA ITEM 15

CONSIDERATION AND POSSIBLE APPROVAL OF PROPOSED AMENDMENTS TO TITLE 16, CCR DIVISION 39, SECTION 4146, DEFINITIONS.

The proposed amendments are attached for your review.

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

Proposed Text

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

Amend Title 16, Division 39, Article 5.5, California Code of Regulations to read as follows:

§ 4146. Definitions

(a) "Incompetence" is the lack of possession of or the failure to exercise that degree of knowledge, learning, skill, ability, care or experience ordinarily possessed and exercised by a competent licensed professional.

(b) "Negligence" is a departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.

(c) "Gross negligence" is an extreme departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.

(d) For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be "substantially related to the qualifications, functions or duties of an occupational therapy practitioner," if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include, but are not limited to, those involving the following:

(1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Occupational Therapy Practice Act.

(2) Fiscal dishonesty, theft or larceny.

(3) An incident involving controlled substances or alcohol to the extent that practice is impaired or a threat to the health or safety of themselves or others.

(4) Conviction of a crime involving harassment or stalking (as defined by the Penal Code) or violating a court order to prevent domestic violence.

(5) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code).

(6) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(7) Failure to comply with any mandatory reporting requirements.

(8) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.26, 2570.27, ~~2570.28~~, Business and Professions Code.