2018 LEGISLATIVE DEADLINES (partial list)

Mar 22	**Spring Recess** begins upon adjournment
Apr 2	Legislature reconvenes from Spring Recess
Apr 27	Last day for **policy committees** to hear and report to fiscal committees on **fiscal bills** introduced in their house
May 11	Last day for **policy committees** to hear and report to the Floor **non-fiscal** bills introduced in their house
May 18	Last day for **policy committees** to meet prior to June 4
May 25	Last day for **fiscal committees** to hear and report to the **Floor** bills introduced in their house
June 1	Last day for each house to pass bills introduced in that house
June 4	Committee meetings may resume
June 15	Budget Bill must be passed by midnight
June 29	Last day for **policy committees** to hear and report **fiscal bills** to fiscal committees

Please note:
Senate B&P meets every Monday at 1:00pm
Assembly B&P meets every Tuesday at 9:30am

The classification system to be used by the Committee in recommending Board positions on proposed legislation is:

Support:
The Board supports the current version of the bill. This designation commits the Board to full involvement in the legislative process including sending letters to key people, conferring with key people prior to committee hearings and testifying at hearings by Board members, legislative committee members or senior staff.

Support, if Amended:
The Board generally supports the concept or intent of the bill. Technical flaws need to be corrected before the Board will fully support the bill. The Board identifies the amendments or requirements that must be met in order for support to be obtained. If the requested amendments or requirements are accepted, the Board's position will change to support. This designation commits the Board to full involvement in the legislative process as noted above.

Oppose:
The Board is opposed to the current version of the bill. This designation commits the Board to involvement in the legislative process as noted above.

Oppose, Unless Amended:
The Board is opposed to the bill but is willing to work with the author and sponsor of the bill to resolve the Board's concerns. The Board identifies the amendments or requirements that must be met to remove the Board's opposition. If the requested amendments or requirements are accepted, the Board will adopt a support position.

Watch:
The Board has some interest in the bill because it potentially may affect the work of the Board. This designation requires careful tracking through the legislative process.

Neutral:
The Board takes no official position.

Agenda Item 3(a) – AB 2078

The following are attached for your review:

- AB 2078 Fact Sheet.
- Letter of Support.
- AB 2078 dated February 7, 2018.

Tom Daly
69th Assembly District

AB 2078
Sex Crimes: Professional Services
Fact Sheet

Summary: This ensures that perpetrators can be punished proportionally for sexual battery and other sexual offenses that they commit during the course of a professional service. The punishment will apply when the victim is conscious of the nature of the act, consent is not given or obtained fraudulently, and the conduct is not related to the professional service.

Background: There is a loophole in existing law which often allows providers of certain professional services (i.e., physical therapists, massage therapists, chiropractors) to escape appropriate punishment for rape and other serious sexual offenses. Under current law, providers of specified professional services who sexually assault their clients during the course of physical therapy, massages, chiropractic care or similar treatment sessions can generally be charged with a felony sex crime only if force was used, consent was obtained fraudulently, or if the victim was unconscious or restrained.

Unfortunately, if a provider commits a sexual act (including rape, sexual penetration and oral copulation) simply against the victim's will and without his or her consent, the offense is punishable only as a misdemeanor sexual battery.

Current laws that punish rape (and other sex crimes) by fraud are very limited. Fraud is generally considered obtaining the victim's consent by fraud. But in many cases, consent is never obtained (fraudulently or otherwise). The perpetrator just commits the sexual assault while the victim is in a vulnerable position – such as being undressed and alone in an exam room or atop a massage table – and during the course of treatment.

For example, if a woman was receiving a massage and a therapist began to touch other parts of her body (including her vagina) without asking for permission, that conduct can only be prosecuted as a misdemeanor sexual battery under current law. This legal limitation would apply equally to very serious sexual misconduct, including rape, sexual penetration and oral copulation.

Problem: As a result of the flaws in existing law, some individuals who have clearly crossed the line in committing sexual assaults – including rape -- can only be charged with less serious misdemeanor crimes.

Solution: AB 2078 will ensure that perpetrators are properly punished by:

- Increasing the penalty to an alternate felony-misdemeanor for the crime of sexual battery committed by a provider of professional services that entails having access to another person's body, who touches an intimate part of that person while performing those services, and the touching is against

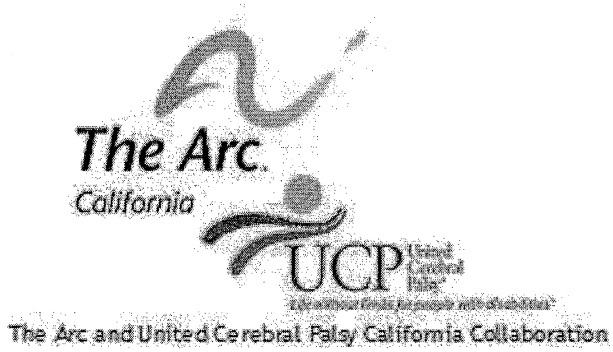
the will of the person touched and for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.

- Expanding the definitions of the crimes of rape, sodomy, oral copulation, and sexual penetration to include when any of those acts are performed against a victim's will by a person while that person is performing professional services that entail having access to the victim's body.

Support:
Orange County District Attorney (Pending)

Opposition:

For More Information:
David W. Miller – (916) 319-2069
david.miller@asm.ca.gov



February 15, 2018

Honorable Tom Daly
State Capitol

Subject: AB 2078 - Support

Dear Assemblymember Daly:

The Arc and United Cerebral Palsy California Collaboration, a coalition of people with intellectual and all developmental disabilities and the families, friends and service providers, is happy to support your bill.

People with developmental disabilities are victimized by very high rates of sexual offenses, often committed by caregivers. AB 2078 will help assure that professionals who commit these heinous offenses will be arrested and convicted.

Thank you for introducing this important bill.

Sincerely,

Greg deGiere
Civil Rights Advocate
The Arc California

The Arc & United Cerebral Palsy California Collaboration
1225 Eighth Street, Suite 350, Sacramento, CA 95814
916-223-7319 Greg@TheArcCA.org

AB-2078 Sex offenses: professional services. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 2078

Introduced by Assembly Member Daly

February 07, 2018

An act to amend Sections 243.4, 261, 286, 288a, and 289 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2078, as introduced, Daly. Sex offenses: professional services.

Under existing law, a person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years, and a fine not to exceed $10,000. Under existing law, the crimes of rape, sodomy, oral copulation, and sexual penetration, when the victim was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration or oral copulation served a professional purpose, are punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill would expand the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body and who touches an intimate part of that person's body while performing those services, and the touching was against the person's will and for the purpose of sexual arousal, sexual gratification, or sexual abuse. The bill would expand the definitions of each of the crimes of rape, sodomy, oral copulation, and sexual penetration to include any of those crimes performed against a victim's will by a professional whose services entail having access to the victim's body, if the conduct is performed by the professional while performing those services. By expanding the scope of these crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 243.4 of the Penal Code is amended to read:

243.4. (a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

~~(c)Any~~

(c) (1) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. ~~A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).~~

(2) Any person who performs professional services that entail having access to another person's body and who touches an intimate part of that person while performing those services, and the touching is against the will of the person touched and for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(3) A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year and by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the state prison for two, three, or four years and by a fine not exceeding ten thousand dollars ($10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

(e) (1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars ($3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars ($2,000) which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Department of Fair Employment and Housing for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount over two thousand dollars ($2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full.

(2) As used in this subdivision, "touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

(f) As used in subdivisions (a), (b), (c), and (d), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(g) As used in this section, the following terms have the following meanings:

(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) "Sexual battery" does not include the crimes defined in Section 261 or 289.

(3) "Seriously disabled" means a person with severe physical or sensory disabilities.

(4) "Medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) "Institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) "Minor" means a person under 18 years of age.

(h) This section ~~shall not be construed to~~ *does not* limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(i) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

(j) A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars ($10,000).

SEC. 2. Section 261 of the Penal Code is amended to read:

261. (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(8) Where the act is accomplished against the victim's will by a person while that person is performing professional services that entail having access to the victim's body.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

SEC. 3. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act

is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

~~(f)Any~~

(f) (1) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

~~(1)~~

(A) Was unconscious or asleep.

~~(2)~~

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

~~(3)~~

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

~~(4)~~

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(2) A person who performs professional services that entail having access to the victim's body and who commits an act of sodomy upon the victim while performing those services, and the act is against the victim's will, shall be punished by imprisonment in the state prison for three, six, or eight years.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be

punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) *(1)* Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

~~As~~

(2) As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of oral copulation upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (A) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (B) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (C) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

~~(f)Any~~

(f) (1) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

~~(1)~~

(A) Was unconscious or asleep.

~~(2)~~

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

~~(3)~~

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

~~(4)~~

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(2) A person who performs professional services that entail having access to the victim's body and who commits an act of oral copulation upon the victim while performing those services, and the act is against the victim's will, shall be punished by imprisonment in the state prison for three, six, or eight years.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) *(1)* Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

~~As~~

(2) As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily ~~injury~~ *injury,* or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 5. Section 289 of the Penal Code is amended to read:

289. (a) (1) (A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate

and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of sexual penetration upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

~~(d)Any~~

(d) (1) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

~~(1)~~

(A) Was unconscious or asleep.

~~(2)~~

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

~~(3)~~

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

~~(4)~~

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(2) A person who performs professional services that entail having access to the victim's body and who commits an act of sexual penetration upon the victim while performing those services, and the act is against the victim's

will, shall be punished by imprisonment in the state prison for three, six, or eight years.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in a county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over 21 years of age who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Agenda Item 3(b) – AB 2138

The following are attached for your review:

- AB 2138 Fact Sheet.
- AB 2138 dated April 2, 2018.

ASSEMBLY BILL 2138 (CHIU & LOW)

REDUCING BARRIERS TO OCCUPATIONAL LICENSING

SUMMARY

Reduces barriers to entry in occupational licensure for individuals with a prior conviction applying for licensure through the Department of Consumer Affairs (DCA).

BACKGROUND

In California, an estimated 7,955,500 people – approximately 1 in 3 adults – have arrest or conviction records. California has among the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of release. These factors play a significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address.

One of the root causes of high recidivism rates is the inability of prior offenders to secure gainful employment upon reentry. Like all Californians, access to a stable income is critical for these 8 million individuals with a prior conviction to support their families and communities.

California has already adopted strong policies that break down obstacles for previously incarcerated individuals to access jobs in the private sector, including "ban the box" laws. Nevertheless, there continue to be barriers to employment for Californians with prior convictions.

Nearly 30 percent of California jobs require licensure, certification, or clearance by an oversight board or agency for approximately 1,773 different occupations.

All too often, qualified people are denied occupational licenses or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed.

Even individuals who receive job-specific training while incarcerated are kept out of these occupations by licensing barriers.

It is in the interest of public safety to assist in the rehabilitation of criminal offenders by removing impediments and restrictions upon their ability to obtain employment.

THE SOLUTION

Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.

AB 2138 will increase access to licensure by applying reforms to the Department of Consumer Affairs (DCA).

Specifically, AB 2138:

- Prohibits denial or revocation/suspension of a license on the basis of a non-violent conviction older than 5 years, a conviction that has been dismissed, or a non-conviction "act" unless it is directly related to the qualifications, functions, or duties of the business or profession for which application is made.
- Prohibits boards from requiring an applicant to self-disclose criminal history information that can already be obtained through DOJ background checks.
- Requires boards to collect and publish demographic data regarding applicants who are denied licensure or who have licenses revoked/suspended.

California must continue to increase public safety and economic prosperity for all Californians by adopting policies that reduce barriers to economic opportunity for formerly incarcerated individuals.

SUPPORT

All of Us or None
Anchor of Hope Ministries
Anti-Recidivism Coalition
Because Black is Still Beautiful
Californians for Prop 57
Californians for Safety and Justice
Center for Employment Opportunities (CEO)
Center for Living and Learning
Checkr
East Bay Community Law Center
Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership (LARRP)
National Association of Social Workers - California Chapter
Prisoner Reentry Network

Project Rebound: Expanded
REDF (Roberts Enterprise Development Fund)
Rise Together Bay Area
Root & Rebound
San Jose State University Record Clearance Project
The Young Women's Freedom Center

OPPOSITION

None on file

FOR MORE INFORMATION

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AB-2138 Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction. (2017-2018)

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Date Published: 04/03/2018 04:00 AM

AMENDED IN ASSEMBLY APRIL 02, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 2138

Introduced by Assembly Members Chiu and Low

February 12, 2018

An act to amend ~~Sections 480 and~~ *Sections 7.5, 480, 481, 482, 488, 490, 492, 493, 1005, and* 11345.2 ~~of~~ *of, to add Section 481.5 to, and to repeal Section 490.5 of,* the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as amended, Chiu. Licensing boards: denial of application: *revocation or suspension of licensure:* criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer ~~Affairs and~~ *Affairs. Existing law* authorizes a board to ~~deny~~ *deny, suspend, or revoke* a license *or take disciplinary action against a licensee* on the grounds that the applicant *or licensee* has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. *Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.*

This bill would ~~instead prohibit a person from being denied a license solely on the basis that he or she has been convicted of a nonviolent crime and would make conforming changes.~~ *revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding 5 years, except for violent felonies, and would require the crime to be directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would prohibit a board from denying a person a license based on the conviction of a crime, or*

on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has made a showing of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law.

The bill would require the board to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would require a board to find that a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board to suspend a license if a licensee is not in compliance with a child support order or judgment.

This bill would repeal that authorization.

Existing law authorizes specified agencies to take disciplinary action against a licensee or deny a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs.

This bill would instead prohibit a board from taking disciplinary action against a licensee or denying a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs or deferred entry of judgment.

Existing law authorizes a board after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the license.

This bill would additionally authorize a board to grant the license and immediately issue a public reproval. The bill would limit probationary terms or restrictions placed on a license by a board to 2 years or less and would authorize additional conditions to be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence. The bill would require a board to develop criteria to aid it in considering the imposition of probationary conditions and to determine what conditions may be imposed. The bill would authorize a licensee or registrant whose license or registration has been placed on probation to petition the board for a change to that probation one year from the effective date of the board's decision, would require the board to issue a decision on the petition within 90 days, and would deem the petition granted if the board does not file a decision denying the petition within 90 days.

This bill would also make necessary conforming changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 7.5 of the Business and Professions Code is amended to read:*

7.5. *(a)* A conviction within the meaning of this code means a *judgment following a* plea or verdict of guilty or ~~a conviction following~~ a plea of nolo ~~contendere.~~ *contendere or finding of guilt.* Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of ~~sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.~~ *sentence.* However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) *or (c)* of Section 480.

~~Nothing~~

(b) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

~~SECTION 1.~~*SEC. 2.* Section 480 of the Business and Professions Code is amended to read:

480. (a) ~~A~~ *(1) Notwithstanding any other provision of this code, a* board may deny a license regulated by this code on the grounds that the applicant has ~~one of the following:~~ *been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:*

~~(1)Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.~~

~~(2)Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.~~

~~(3)(A)Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.~~

~~(B)The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.~~

(A) The applicant has been convicted of a crime for which the applicant is presently incarcerated or for which the conviction occurred within the preceding five years. However, the preceding five year limitation shall not apply to a conviction for a violent felony, as defined in Section 667.5 of the Penal Code.

The board may deny a license pursuant to this subparagraph only if the crime is directly and adversely related to the qualifications, functions, or duties of the business or profession for which application is made.

(B) The applicant has been subjected to formal discipline by a licensing board within the preceding five years based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is directly and adversely related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding five years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable dismissal or expungement.

(2) Denial of a license includes denial of an unrestricted license by issuance of a restricted or probationary license.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license ~~solely~~ on the basis that he or she has been convicted of a ~~nonviolent crime.~~ *crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.*

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

~~(c)~~

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. *A board shall not deny a*

license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.

(2) If a board decides to deny an application based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section supersedes any contradictory provision in a licensing act under this code or initiative act referred to in Division 2 (commencing with Section 500) that authorizes license denial based on a criminal conviction, arrest, or the acts underlying an arrest or conviction.

SEC. 3. *Section 481 of the Business and Professions Code is amended to read:*

481. *(a)* Each board under ~~the provisions of~~ this code shall develop criteria to aid it, when considering the denial, ~~suspension~~ *suspension,* or revocation of a license, to determine whether a crime ~~or act is substantially~~ *is directly and adversely* related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be directly and adversely related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

SEC. 4. *Section 481.5 is added to the Business and Professions Code, to read:*

481.5. *(a) Probationary terms or restrictions placed on a license by a board shall be limited to two years or less. Any additional conditions may be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence.*

(b) Each board under this code shall develop criteria to aid it when considering the imposition of probationary conditions or restrictions to determine what conditions may be imposed to address a risk shown by clear and convincing evidence.

(c) (1) A licensee or registrant whose license or registration has been placed on probation may petition the board for a change to the probation, including modification or termination of probation, one year from the effective date of the decision. The board shall issue its decision on the petition within 90 days of submission of the petition. The petition shall be deemed granted by operation of law if the board does not file a decision denying the petition within 90 days of submission of the petition.

(2) The one-year time period to petition for modification or termination of penalty shall control over longer time periods under a licensing act under this code or initiative act referred to in Division 2 (commencing with Section 500).

SEC. 5. *Section 482 of the Business and Professions Code is amended to read:*

482. *(a)* Each board under ~~the provisions of~~ this code shall develop criteria to evaluate the rehabilitation of a person ~~when:~~ *when doing either of the following:*

~~(a)~~

(1) Considering the denial of a license by the board under Section ~~480; or~~ *480.*

~~(b)~~

(2) Considering suspension or revocation of a license under Section 490.

~~Each~~

(b) Each board shall ~~take into account all competent evidence of rehabilitation furnished by the applicant or licensee.~~ *find that an applicant or licensee has made a showing of rehabilitation if any of the following are met:*

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) (A) The applicant or licensee documents that he or she has worked in a related field continuously for at least one year prior to licensure or successfully completed a course of training in a related field, unless the board finds a public record of an official finding that the applicant committed professional misconduct in the course of that work.

(B) Work in a related field may include, but is not limited to, work performed without compensation and work performed while incarcerated.

(C) "Related field," for purposes of this paragraph, means a field of employment whose duties are substantially similar to the field regulated by the board.

(3) The applicant or licensee has satisfied criteria for rehabilitation developed by the board.

SEC. 6. *Section 488 of the Business and Professions Code is amended to read:*

488. Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(a) Grant the license effective upon completion of all licensing requirements by the applicant.

(b) Grant the license effective upon completion of all licensing requirements by the applicant, *grant the license and immediately issue a public reproval pursuant to Section 495,* immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(c) Deny the license.

(d) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

SEC. 7. *Section 490 of the Business and Professions Code is amended to read:*

490. (a) *(1)* In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a ~~crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.~~ *crime for which the applicant is presently incarcerated or for which the conviction occurred within the preceding five years. However, the preceding five year limitation shall not apply to a conviction for a violent felony, as defined in Section 667.5 of the Penal Code.*

(2) The board may suspend or revoke a license pursuant to this subdivision only if the crime is directly and adversely related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if ~~the~~ *both of the following are met:*

(1) The crime is ~~substantially~~ *directly and adversely* related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(2) The licensee was convicted of the crime within the preceding five years or is presently incarcerated for the crime. However, the preceding five year limitation shall not apply to a conviction for a violent felony, as defined in Section 667.5 of the Penal Code.

~~(c)A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.~~

~~(d)The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.~~

(c) Notwithstanding any other provision of this code, a board shall not suspend or revoke a license on the basis of a conviction, or of the acts underlying a conviction, where that conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(d) Notwithstanding any other provision of this code, a board shall not suspend or revoke a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or juvenile adjudication.

(e) The board shall use the following procedures in requesting or acting on a licensee's criminal history information:

(1) A board shall not require a licensee to disclose any information or documentation regarding the licensee's criminal history.

(2) If a board chooses to file an accusation against a licensee based solely or in part on the licensee's conviction history, the board shall notify the licensee in writing of the processes for the licensee to request a copy of the

licensee's complete conviction history and question the accuracy or completeness of his or her criminal record pursuant to Sections 11122 to 11127, inclusive, of the Penal Code.

(f) (1) For a minimum of three years, each board under this code shall retain all documents submitted by a licensee, notices provided to a licensee, all other communications received from or provided to a licensee, and criminal history reports of a licensee.

(2) Each board under this code shall retain all of the following information:

(A) The number of licensees with a criminal record who received notice of potential revocation or suspension of their license or who had their license suspended or revoked.

(B) The number of licensees with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of licensees with a criminal record who appealed any suspension or revocation of a license.

(D) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure the confidentiality of the individual licensees.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(g) (1) This section supersedes any contradictory provision in a licensing act under this code or initiative act referred to in Division 2 (commencing with Section 500) that authorizes action based on a criminal conviction, arrest, or the acts underlying an arrest or conviction.

(2) This section shall not prohibit any agency from taking disciplinary action against a licensee for professional misconduct in the course and scope of the licensee's profession that is based on evidence that is independent of an arrest.

SEC. 8. *Section 490.5 of the Business and Professions Code is repealed.*

~~490.5.A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment.~~

SEC. 9. *Section 492 of the Business and Professions Code is amended to read:*.

492. *(a)* Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, *successful completion by a licensee or applicant of any nonstatutory diversion program, deferred entry of judgment,* or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall ~~not~~ prohibit any ~~agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division,~~ *board* from taking disciplinary action against a licensee or from denying a license for professional ~~misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.~~ *misconduct.*

~~This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.~~

(b) This section shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee for professional misconduct in the course and scope of the profession, which is based on evidence that is independent of an arrest.

SEC. 10. *Section 493 of the Business and Professions Code is amended to read:*

493. *(a)* Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime ~~substantially~~ *directly and adversely* related to the qualifications, functions, and duties

of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that ~~fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.~~ *fact.*

(b) (1) Criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

~~As~~

(c) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

SEC. 11. *Section 1005 of the Business and Professions Code is amended to read:*

1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141, 143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, ~~490.5,~~ 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716, 730.5, 731, and 851 are applicable to persons licensed by the State Board of Chiropractic Examiners under the Chiropractic Act.

~~**SEC. 2.**~~***SEC. 12.*** Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

Agenda Item 3(c) – AB 2221

The following are attached for your review:

- AB 2221 Fact Sheet.
- AB 2221 dated April 2, 2018.

AB 2221 (Bloom)
Occupational Therapy Practice Act
Fact Sheet

SUMMARY

AB 2221 will amend the Occupational Therapy Practice Act to reflect the modern-day needs of patients and the current services offered by occupational therapists and occupational therapy assistants.

EXISTING LAW

Occupational therapists' scope of practice is governed by The Occupational Therapy Practice Act in Business & Professions Code Sections 2570 – 2571, established by SB 1046 in 2000 by then-Governor Davis. The OT Practice Act regulates the approximately 16,000 licensed occupational therapy clinicians in California. The fundamental impetus for the Act was to establish licensure for OTs and occupational therapy assistants (OTAs) in order to ensure the highest level of consumer protection for OT patients.

THE ISSUE

The Occupational Therapy Practice Act was written 18 years ago. Since that time, the practice of occupational therapy has matured, patient needs have become more diverse, and healthcare reform has changed and broadened the services that are provided. This evolution in healthcare and occupational therapy services has resulted in the need to update the Occupational Therapy Practice Act.

SOLUTION - AB 2221

AB 2221 proposes to amend the Act to include the revision of outdated definitions, clarification of provisions related to advance practices, revision of continuing competence and coursework requirements, and language to clarify that occupational therapy supports functioning in people with or at risk of experiencing a range of mental health disorders.

OTs and OTAs work with people of all ages experiencing physical and mental health 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. They are among the range of qualified providers who provide therapy services to individuals with physical conditions and mental illnesses to help them carry out necessary tasks.

AB 2221 will ensure that OTs are able to practice to the full extent of their education and training, which is especially critical as the state works to increase access to mental health care for those in need.

SPONSORS

Occupational Therapy Association of California
American Occupational Therapy Association

SUPPORT

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Version: 3/19/2018

AB-2221 Occupational therapy. (2017-2018)

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Date Published: 03/23/2018 09:00 PM

AMENDED IN ASSEMBLY MARCH 23, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 2221

Introduced by Assembly Member Bloom

February 12, 2018

~~An act to amend Section 2570 of the Business and Professions Code, relating to occupational therapy.~~

An act to amend Sections 2570.1, 2570.2, 2570.3, 2570.6, 2570.7, 2570.10, 2570.14, 2570.18, 2570.185, 2570.20, 2570.28, 2570.29, and 2571 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2221, as amended, Bloom. ~~Occupational Therapy Practice Act.~~ *Occupational therapy.*

Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of the practice of occupational therapy by the California Board of Occupational Therapy. Existing law defines the "practice of occupational therapy" and specifies that occupational therapy services encompass occupation therapy, assessment, treatment, education, and consultation with individuals referred for those services after diagnosis of a disease or disorder. Existing law prohibits a person from practicing occupational therapy without being licensed under the act and makes a violation of that prohibition a crime.

This bill would instead define "occupational therapy" for purposes of the act, and would make conforming changes. The bill would also eliminate the reference to a referral after diagnosis in the description of occupational therapy services. By expanding the scope of a crime, the bill would impose a state-mandated local program.

Existing law defines the term "occupational therapist" and specifies that only the occupational therapist is responsible for the occupational therapy assessment of a client and the development of an occupational therapy plan of treatment.

This bill would eliminate that limitation and instead specify that the occupational therapist directs the evaluation process and develops the intervention plan.

Existing law requires the occupational therapy board to ensure proper supervision of occupational therapy assistants and aides and allows an occupational therapist to supervise no more than 2 occupational therapy

assistants at any one time. Existing law provides for aides to be supervised by occupational therapists or occupational therapy assistants and defines the term "aide" for purposes of the act to mean an individual who provides supportive services to an occupational therapist.

This bill would increase the number of occupational therapy assistants an occupational therapist may supervise to 3. This bill would also revise the definition of "aide" to conform to the authority for an aide to also be supervised by an occupational therapy assistant. The bill would specify that the occupational therapist is responsible for the overall use and actions of the aide.

Existing law authorizes an occupational therapist to provide advanced practices if the therapist, among other things, has demonstrated to the board that he or she has met educational training and competency requirements.

This bill would require the therapist to attest to the board under penalty of perjury, rather than demonstrate to the satisfaction of the board, that he or she has met educational training and competency requirements. By expanding the crime of perjury, the bill would impose a state-mandated local program.

Existing law requires an occupational therapist providing hand therapy services or using physical agent modalities to demonstrate to the satisfaction of the board that he or she has completed post professional education and training in specified areas.

This bill would eliminate the post professional limitation.

Existing law requires an applicant for an occupational therapist license to, among other things, complete a specified educational program and pass a specified examination. Existing law requires the board to approve the examinations for licensure and also authorizes the board to adopt rules relating to professional conduct to carry out the purposes of the act. Existing law requires the curriculum for an educational program for occupational therapists to contain the content required or approved by specified organizations, and specifies a list of subjects that must be included in the program.

This bill would delete that list of subjects. The bill would also delete the requirement that the board approve licensure examinations and would authorize the board to adopt rules necessary to effectuate the purpose of the act.

Existing law authorizes the board to establish and require the satisfactory completion of continuing competency requirements as a condition of renewal of a license.

The bill would instead require the board to do so, and would authorize only a portion of continuing competence requirements to be fulfilled through competency assessment activities performed in the context of a broader professional development plan. The bill would also provide a definition for the term "continuing competence."

Existing law prohibits a person from using specified professional abbreviations and terms intended to represent that the person is authorized to practice occupational therapy or assist in the practice of occupational therapy unless the person is licensed to practice as an occupational therapist or occupational therapy assistant.

This bill would revise the list of abbreviations and terms that may not be used without a license. The bill would also delete provisions authorizing terms and abbreviations that may be used by a licensee who has earned a doctoral degree in occupational therapy or in a related area of practice or study.

The bill would replace references to "patient" with "client" throughout the act and would enact other related provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Occupational Therapy Practice Act provides for the licensure and regulation of occupational therapists and occupational therapy assistants by the California Board of Occupational Therapy.~~

~~This bill would make a nonsubstantive change to this act.~~

Vote: majority Appropriation: no Fiscal Committee: ~~no~~*yes* Local Program: ~~no~~*yes*

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 2570.1 of the Business and Professions Code is amended to read:*

2570.1. The Legislature finds and declares that the ~~practice~~ *profession* of occupational therapy in California affects the public health, safety, and welfare and there is a necessity for that ~~practice~~ *profession* to be subject to regulation and control.

SEC. 2. *Section 2570.2 of the Business and Professions Code is amended to read:*

2570.2. As used in this chapter, unless the context requires otherwise:

(a) "Appropriate supervision of an aide" means that the responsible occupational therapist or occupational therapy assistant shall provide direct in-sight supervision when the aide is providing delegated client-related tasks and shall be readily available at all times to provide advice or instruction to the aide. The occupational therapist or occupational therapy assistant is responsible for documenting the client's record concerning the delegated client-related tasks performed by the aide.

(b) "Aide" means an individual who provides supportive services to an occupational therapist *or occupational therapy assistant* and who is trained by an occupational therapist *or occupational therapy assistant* to perform, under appropriate supervision, delegated, selected client and nonclient-related tasks for which the aide has demonstrated competency. An occupational therapist *or occupational therapy assistant* licensed pursuant to this chapter may utilize the services of one aide engaged in ~~patient-related~~ *client-related* tasks to assist the occupational therapist *or occupational therapy assistant* in ~~his or her practice of~~ occupational therapy. *The occupational therapist shall be responsible for the overall use and actions of the aide.*

(c) "Association" means the Occupational Therapy Association of California or a similarly constituted organization representing occupational therapists in this state.

(d) "Board" means the California Board of Occupational Therapy.

(e) "Continuing competence" means a dynamic and multidimensional process in which the occupational therapist or occupational therapy assistant develops and maintains the knowledge, performance skills, interpersonal abilities, critical reasoning, and ethical reasoning skills necessary to perform current and future roles and responsibilities within the profession.

~~(e)~~

(f) "Examination" means an entry level ~~certification~~ examination for occupational therapists and occupational therapy assistants administered by the National Board for Certification in Occupational Therapy or by another nationally recognized credentialing body.

~~(f)~~

(g) "Good standing" means that the person has a current, valid license to practice occupational therapy or assist in the practice of occupational therapy and has not been disciplined by the recognized professional ~~certifying~~ *licensing* or standard-setting body within five years prior to application or renewal of the person's license.

~~(g)~~

(h) "Occupational therapist" means an individual who meets the minimum education requirements specified in Section 2570.6 and is licensed pursuant to the provisions of this chapter and whose license is in good standing as determined by the board to practice occupational therapy under this chapter. ~~Only the~~ *The* occupational therapist ~~is responsible for~~ *directs* the ~~occupational therapy assessment of a client,~~ *evaluation process* and *develops* the ~~development of an occupational therapy plan of treatment.~~ *intervention plan.*

~~(h)~~

(i) "Occupational therapy assistant" means an individual who is licensed pursuant to the provisions of this chapter, who is in good standing as determined by the board, and based thereon, who is qualified to assist in the practice of occupational therapy under this chapter, and who works under the appropriate supervision of a licensed occupational therapist.

~~(i)~~

(j) "Occupational therapy services" means the services of an occupational therapist or the services of an occupational therapy assistant under the appropriate supervision of an occupational therapist.

~~(j)~~

(k) "Person" means an individual, partnership, unincorporated organization, or corporation.

~~(k)~~

(l) ~~"Practice of occupational~~ *"Occupational* therapy" means the therapeutic use of ~~purposeful~~ *occupations, including everyday life activities with individuals, groups, populations, or organizations, to support participation, performance,* and ~~meaningful goal-directed activities (occupations) which engage~~ *function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and* the ~~individual's body~~ *promotion of health* and ~~mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize~~ *wellness to those who have, or are at risk of developing, an illness, injury, disease, disorder, condition, impairment,* disability, ~~and maintain health.~~ *activity limitation, or participation restriction.* Occupational therapy services encompass occupational therapy assessment, treatment, ~~education of,~~ *education,* and ~~consultation with, individuals who have been referred for occupational~~ *consultation. Occupational* therapy ~~services subsequent to diagnosis~~ *addresses the physical, cognitive, psychosocial, sensory-perceptual, and other aspects* of ~~disease or disorder (or who are receiving occupational therapy services as part~~ *performance in a variety* of ~~an Individualized Education Plan (IEP) pursuant~~ *contexts and environments* to ~~the federal Individuals with Disabilities Education Act (IDEA)).~~ *support engagement in occupations that affect physical and mental health, well-being, and quality of life.* Occupational therapy assessment identifies performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities. Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability. *Through engagement in everyday activities, occupational therapy promotes mental health and supports functioning in people with, or at risk of experiencing, a range of mental health disorders, including, but not limited to, psychiatric, behavioral, and substance abuse disorders.* Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating ~~selective temporary~~ orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training). Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, in groups, or ~~through social groups.~~ *populations.*

~~(l)~~

(m) "Hand therapy" is the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity and specialized skills in assessment and treatment to prevent dysfunction, restore function, or reverse the advancement of pathology. This definition is not intended to prevent an occupational therapist practicing hand therapy from providing other occupational therapy services authorized under this act in conjunction with hand therapy.

~~(m)~~

(n) "Physical agent modalities" means techniques that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. These techniques are used as adjunctive methods in conjunction with, or in immediate preparation for, occupational therapy services.

SEC. 3. *Section 2570.3 of the Business and Professions Code is amended to read:*

2570.3. (a) No person shall ~~practice~~ *provide* occupational therapy or hold himself or herself out as an occupational therapist or as being able to ~~practice~~ *provide* occupational therapy, or to render occupational therapy services in this state unless he or she is licensed as an occupational therapist under the provisions of this chapter. No person shall hold himself or herself out as an occupational therapy assistant or work as an occupational therapy assistant under the supervision of an occupational therapist unless he or she is licensed as an occupational therapy assistant under the provisions of this chapter.

(b) Only an individual may be licensed under this chapter.

(c) Nothing in this chapter shall be construed as authorizing an occupational therapist to practice physical therapy, as defined in Section 2620; speech-language pathology or audiology, as defined in Section 2530.2;

nursing, as defined in Section 2725; psychology, as defined in Section 2903; or spinal manipulation or other forms of healing, except as authorized by this section.

(d) An occupational therapist may provide advanced practices if the therapist has the knowledge, skill, and ability to do so and has ~~demonstrated to the satisfaction of the~~ *attested, under penalty of perjury, to the* board that he or she has met educational training and competency requirements. These advanced practices include the following:

(1) Hand therapy.

(2) The use of physical agent modalities.

(3) Swallowing assessment, evaluation, or intervention.

(e) An occupational therapist providing hand therapy services shall demonstrate to the satisfaction of the board that he or she has completed ~~post professional~~ education and training in all of the following areas:

(1) Anatomy of the upper extremity and how it is altered by pathology.

(2) Histology as it relates to tissue healing and the effects of immobilization and mobilization on connective tissue.

(3) Muscle, sensory, vascular, and connective tissue physiology.

(4) Kinesiology of the upper extremity, such as biomechanical principles of pulleys, intrinsic and extrinsic muscle function, internal forces of muscles, and the effects of external forces.

(5) The effects of temperature and electrical currents on nerve and connective tissue.

(6) Surgical procedures of the upper extremity and their postoperative course.

(f) An occupational therapist using physical agent modalities shall demonstrate to the satisfaction of the board that he or she has completed ~~post professional~~ education and training in all of the following areas:

(1) Anatomy and physiology of muscle, sensory, vascular, and connective tissue in response to the application of physical agent modalities.

(2) Principles of chemistry and physics related to the selected modality.

(3) Physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of a modality.

(4) Guidelines for the preparation of the ~~patient,~~ *client,* including education about the process and possible outcomes of treatment.

(5) Safety rules and precautions related to the selected modality.

(6) Methods for documenting immediate and long-term effects of treatment.

(7) Characteristics of the equipment, including safe operation, adjustment, indications of malfunction, and care.

(g) An occupational therapist in the process of achieving the education, training, and competency requirements established by the board for providing hand therapy or using physical agent modalities may practice these techniques under the supervision of an occupational therapist who has already met the requirements established by the board, a physical therapist, or a physician and surgeon.

(h) The board shall develop and adopt regulations regarding the educational training and competency requirements for advanced practices in collaboration with the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, and the Physical Therapy Board of California.

(i) Nothing in this chapter shall be construed as authorizing an occupational therapist to seek reimbursement for services other than for the practice of occupational therapy as defined in this chapter.

(j) "Supervision of an occupational therapy assistant" means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client's record, with his or her signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant

assigned to that client functions under appropriate supervision. As part of the responsible occupational therapist's appropriate supervision, he or she shall conduct at least weekly review and inspection of all aspects of occupational therapy services by the occupational therapy assistant.

(1) The supervising occupational therapist has the continuing responsibility to follow the progress of each ~~patient,~~ *client,* provide direct care to the ~~patient,~~ *client,* and to assure that the occupational therapy assistant does not function autonomously.

(2) An occupational therapist shall not supervise more occupational therapy assistants, at any one time, than can be appropriately supervised in the opinion of the board. ~~Two~~ *Three* occupational therapy assistants shall be the maximum number of occupational therapy assistants supervised by an occupational therapist at any one time, but the board may permit the supervision of a greater number by an occupational therapist if, in the opinion of the board, there would be adequate supervision and the public's health and safety would be served. In no case shall the total number of occupational therapy assistants exceed twice the number of occupational therapists regularly employed by a facility at any one time.

(k) The amendments to subdivisions (d), (e), (f), and (g) relating to advanced practices, that are made by the act adding this subdivision, shall become operative no later than January 1, 2004, or on the date the board adopts regulations pursuant to subdivision (h), whichever first occurs.

SEC. 4. *Section 2570.6 of the Business and Professions Code is amended to read:*

2570.6. An applicant applying for a license as an occupational therapist *or* as an occupational therapy assistant shall file with the board a written application provided by the board, showing to the satisfaction of the board that he or she meets all of the following requirements:

(a) That the applicant is in good standing and has not committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) (1) That the applicant has successfully completed the academic requirements of an educational program for occupational therapists or occupational therapy assistants that is approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE), or accredited or approved by the American Occupational Therapy Association's (AOTA) predecessor organization, or approved by AOTA's Career Mobility Program.

(2) The curriculum of an educational program for occupational therapists shall contain the content required by the ACOTE accreditation standards, or as approved by AOTA's predecessor organization, or as approved by AOTA's Career Mobility ~~Program, including all of the following subjects:~~ *Program.*

~~(A)Biological, behavioral, and health sciences.~~

~~(B)Structure and function of the human body, including anatomy, kinesiology, physiology, and the neurosciences.~~

~~(C)Human development throughout the lifespan.~~

~~(D)Human behavior in the context of sociocultural systems.~~

~~(E)Etiology, clinical course, management, and prognosis of disease processes and traumatic injuries, and the effects of those conditions on human functioning.~~

~~(F)Occupational therapy theory, practice, and processes.~~

~~(3)The curriculum of an educational program for occupational therapy assistants shall contain the content required by the ACOTE accreditation standards, or as approved or accredited by AOTA's predecessor organization, including all of the following subjects:~~

~~(A)Biological, behavioral, and health sciences.~~

~~(B)Structure and function of the normal human body.~~

~~(C)Human development.~~

~~(D)Conditions commonly referred to occupational therapists.~~

~~(E)Occupational therapy principles and skills.~~

(c) (1) For an applicant who is a graduate of an occupational therapy or occupational therapy assistant educational program who is unable to provide evidence of having met the requirements of paragraph (2)~~ or (3)~~ of subdivision (b), he or she may demonstrate passage of the examination administered by the National Board for Certification in Occupational Therapy, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association, as evidence of having successfully satisfied the requirements of paragraph (2)~~ or (3)~~ of subdivision (b).

(2) For an applicant who completed AOTA's Career Mobility Program, he or she shall demonstrate participation in the program and passage of the examination administered by the National Board for Certification in Occupational Therapy, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association, as evidence of having successfully satisfied the requirements of paragraphs (1) and (2) of subdivision (b).

(d) That the applicant has successfully completed a period of supervised fieldwork experience approved by the board and arranged by a recognized educational institution where he or she met the academic requirements of subdivision (b) or (c) or arranged by a nationally recognized professional association. The fieldwork requirements for applicants applying for licensure as an occupational therapist or certification as an occupational therapy assistant shall be consistent with the requirements of the ACOTE accreditation standards, or AOTA's predecessor organization, or AOTA's Career Mobility Program, that were in effect when the applicant completed his or her educational program.

(e) That the applicant has passed an examination as provided in Section 2570.7.

(f) That the applicant, at the time of application, is a person over 18 years of age, is not addicted to alcohol or any controlled substance, and has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 5. *Section 2570.7 of the Business and Professions Code is amended to read:*

2570.7. (a) An applicant who has satisfied the requirements of Section 2570.6 may apply for examination for licensure in a manner prescribed by the board. Subject to the provisions of this chapter, an applicant who fails an examination may apply for reexamination.

(b) Each applicant for licensure shall successfully complete the entry level~~ certification~~ examination for occupational therapists or occupational therapy assistants, such as the examination administered by the National Board for Certification in Occupational Therapy, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association. The examination shall be appropriately validated. Each applicant shall be examined by written examination to test his or her knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and any other subjects that the board may require to determine the applicant's fitness to practice under this chapter.

(c) Applicants for licensure shall be examined at a time and place and under that supervision as the board may require.

SEC. 6. *Section 2570.10 of the Business and Professions Code is amended to read:*

2570.10. (a) Any license issued under this chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license as provided for in Section 163.5.

(b) In addition to any other qualifications and requirements for licensure renewal, the board~~ may~~ *shall* by rule establish and require the satisfactory completion of continuing~~ competency~~ *competence* requirements as a condition of renewal of a license. *Only a portion of continuing competence requirements, as determined by the board to protect public health, safety, and welfare, may be fulfilled through competency assessment activities performed within the context of a broader professional development plan.*

SEC. 7. *Section 2570.14 of the Business and Professions Code is amended to read:*

2570.14. An initial applicant who has not been actively engaged in the practice of occupational therapy within the past five years shall provide to the board, in addition to the requirements for licensure under Section 2570.6,

any of the following:

(a) Evidence of continued competency as referred to in subdivision (b) of Section 2570.10 for the previous two-year period.

(b) Evidence of having completed the ~~certification~~ entry-level examination as described in subdivision (b) of Section 2570.7 within the previous two-year period.

SEC. 8. *Section 2570.18 of the Business and Professions Code is amended to read:*

2570.18. (a) A person shall not represent to the public by title, education, or background, or by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this state, unless authorized to practice occupational therapy under this chapter.

(b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations "O.T.,"~~ "O.T.R.," or "O.T.R./L.," or~~ *"O.D.T.,"* "Occupational Therapist," or ~~"Occupational Therapist Registered," or~~ any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.

~~(c)A licensee who has earned a doctoral degree in occupational therapy (OTD) or, after adoption of the regulations described in subdivision (e), a doctoral degree in a related area of practice or study may do the following:~~

~~(1)In a written communication, use the initials OTD, DrPH, PhD, or EdD, as applicable, following the licensee's name.~~

~~(2)In a written communication, use the title "Doctor" or the abbreviation "Dr." preceding the licensee's name, if the licensee's name is immediately followed by an unabbreviated specification of the applicable doctoral degree held by the licensee.~~

~~(3)In a spoken communication while engaged in the practice of occupational therapy, use the title "Doctor" preceding the licensee's name, if the licensee specifies that he or she is an occupational therapy practitioner.~~

~~(d)A doctoral degree described in subdivision (c) shall be granted by an institution and program accredited by the Western Association of Schools and Colleges, the Accreditation Council on Occupational Therapy Education, or by an accrediting agency recognized by the National Commission on Accrediting or the United States Department of Education that the board determines is equivalent to the Western Association of Schools and Colleges.~~

~~(e)The board shall define, by regulation, the doctoral degrees that are in a related area of practice or study for purposes of subdivision (c).~~

~~(f)~~

(c) Unless licensed to assist in the practice of occupational therapy as an occupational therapy assistant under this chapter, a person may not use the professional abbreviations "O.T.A.," "O.T.A/L.,"~~ "C.O.T.A.," "C.O.T.A./L.,"~~ or "Occupational Therapy Assistant," "Licensed Occupational Therapy Assistant," or any other words, letters, or symbols, with the intent to represent that the person assists in, or is authorized to assist in, the practice of occupational therapy as an occupational therapy assistant.

~~(g)~~

(d) The unauthorized practice or representation as an occupational therapist or as an occupational therapy assistant constitutes an unfair business practice under Section 17200 and false and misleading advertising under Section 17500.

SEC. 9. *Section 2570.185 of the Business and Professions Code is amended to read:*

2570.185. (a) An occupational therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment in the ~~patient~~ *client* record.

(b) An occupational therapy assistant shall document the services provided in the ~~patient~~ *client* record.

(c) Occupational therapists and occupational therapy assistants shall document and sign the ~~patient~~ *client* record legibly.

(d) ~~Patient~~ *Client* records shall be maintained for a period of no less than seven years following the discharge of the ~~patient,~~ *client,* except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years.

SEC. 10. *Section 2570.20 of the Business and Professions Code is amended to read:*

2570.20. (a) The board shall administer, coordinate, and enforce the provisions of this ~~chapter,~~ *chapter and* evaluate the ~~qualifications, and approve the examinations~~ *qualifications* for licensure under this chapter.

(b) The board shall adopt rules in accordance with the Administrative Procedure Act ~~relating~~ *necessary* to ~~professional conduct to carry out~~ *effectuate* the purpose of this ~~chapter, including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice~~ *chapter* for persons holding a license to ~~practice~~ *provide* occupational therapy or to assist in ~~the practice of~~ *providing* occupational therapy in this state.

(c) Proceedings under this chapter shall be conducted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 11. *Section 2570.28 of the Business and Professions Code is amended to read:*

2570.28. The board may deny or discipline a licensee for any of the following:

(a) Unprofessional conduct, including, but not limited to, the following:

(1) Incompetence or gross negligence in carrying out usual occupational therapy functions.

(2) Repeated similar negligent acts in carrying out usual occupational therapy functions.

(3) A conviction ~~of~~ *for* practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(4) The use of advertising relating to occupational therapy ~~which~~ *that* violates Section 17500.

(5) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.

(b) Procuring a license by fraud, misrepresentation, or mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter.

(d) Making or giving any false statement or information in connection with the application for issuance or renewal of a license.

(e) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence thereof.

(f) Impersonating an applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(g) Impersonating a licensed practitioner, or permitting or allowing another unlicensed person to use a license.

(h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

(i) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee, in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(j) Using excessive force upon or mistreating or abusing any ~~patient.~~ *client.* For the purposes of this subdivision, "excessive force" means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(k) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in ~~a patient~~ *client* or hospital record or any other record.

(l) Changing the prescription of a physician and surgeon or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual ~~patient~~ *client* harm.

(m) Failing to maintain confidentiality of ~~patient~~ *client* medical information, except as disclosure is otherwise permitted or required by law.

(n) Delegating to an unlicensed employee or person a service that requires the knowledge, skills, abilities, or judgment of a licensee.

(o) Committing any act that would be grounds for denial of a license under Section 480.

(p) Except for good cause, the knowing failure to protect ~~patients~~ *clients* by failing to follow infection control guidelines of the board, thereby risking transmission of infectious diseases from licensee to ~~patient, from patient to patient, or from patient~~ *client, from client to client, or from client* to licensee.

(1) In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 63001) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary to encourage appropriate consistency in the implementation of this subdivision, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians.

(2) The board shall seek to ensure that licensees are informed of their responsibility to minimize the risk of transmission of infectious diseases from health care provider to ~~patient, from patient to patient, and from patient~~ *client, from client to client, and from client* to health care provider, and are informed of the most recent scientifically recognized safeguards for minimizing the risks of transmission.

SEC. 12. *Section 2570.29 of the Business and Professions Code is amended to read:*

2570.29. In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, optometrist, or podiatrist, to administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use to an extent or in a manner dangerous or injurious to himself or herself, to any other person, or to the public, or that impairs his or her ability to conduct with safety to the public the practice authorized by his or her license, of any of the following:

(1) A controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(2) A dangerous drug or dangerous device as defined in Section 4022.

(3) Alcoholic beverages.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or

confinement is prima facie evidence of the commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital or ~~patient~~ *client* record, or any other record, pertaining to the substances described in subdivision (a) of this section.

SEC. 13. *Section 2571 of the Business and Professions Code is amended to read:*

2571. (a) An occupational therapist licensed pursuant to this chapter and approved by the board in the use of physical agent modalities may apply topical medications prescribed by the ~~patient's~~ *client's* physician and surgeon, certified nurse-midwife pursuant to Section 2746.51, nurse practitioner pursuant to Section 2836.1, or physician assistant pursuant to Section 3502.1, if the licensee complies with regulations adopted by the board pursuant to this section.

(b) The board shall adopt regulations implementing this section, after meeting and conferring with the Medical Board of California, the California State Board of Pharmacy, and the Physical Therapy Board of California, specifying those topical medications applicable to the practice of occupational therapy and protocols for their use.

(c) Nothing in this section shall be construed to authorize an occupational therapist to prescribe medications.

SEC. 14. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

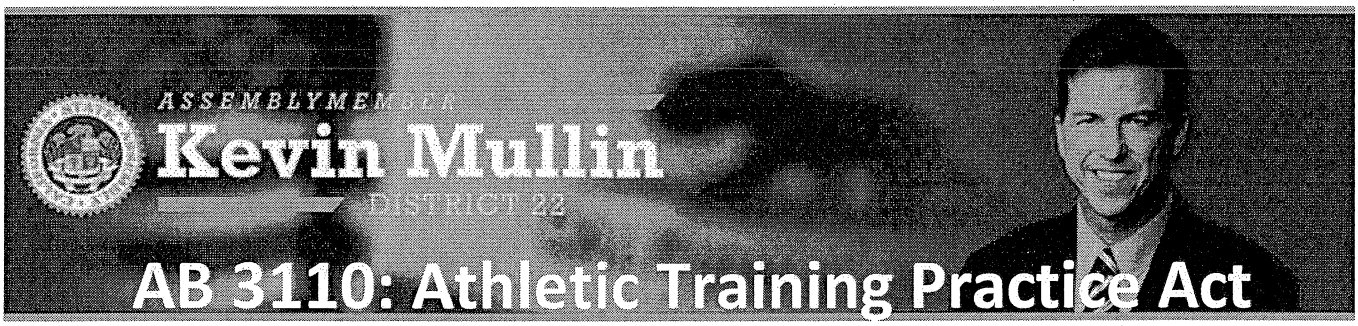
~~SECTION 1.Section 2570 of the Business and Professions Code is amended to read:~~

~~2570.This chapter is known and may be cited as the Occupational Therapy Practice Act.~~

Agenda Item 3(d) – AB 3110

The following are attached for your review:

- AB 3110 Fact Sheet.
- AB 3110 dated April 4, 2018.
- AB 1510 (AT licensing bill from last year).
- April 13, 2017, Board meeting minutes.



AB 3110: Athletic Training Practice Act

PURPOSE

AB 3110 creates the Athletic Training Practice Act, which licenses and regulates athletic trainers under the Athletic Trainer Licensing Committee (Committee) within the California Board of Occupational Therapy.

EXISTING LAW

Existing law provides for the licensure and regulation of various professions and vocations by boards, bureaus, and other entities within the California Department of Consumer Affairs. Current law makes it a crime for a healing arts licensee to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed.

BACKGROUND & PROBLEM

Athletic trainers are physical medicine and rehabilitation specialists who focus on the prevention, treatment, and rehabilitation of injuries. California is the only state that does not regulate the profession of athletic training. Fifteen universities in California, including seven CSUs, have nationally accredited athletic training education programs. However, anyone can still act as an athletic trainer. Approximately 30% of individuals calling themselves athletic trainers in high schools have not completed a university level athletic training program. This puts student athletes at risk, since the mistakes of unlicensed athletic trainers can lead to serious issues.

In several states, including Utah, Texas, Hawaii, and Massachusetts, it is illegal for unregulated athletic trainers to practice for any period of time in their state. When California athletic trainers travel to these states with their teams or companies, they risk violating those state laws because they are not regulated in California.

SOLUTION

To effectively protect the public, the profession, and California employers, athletic trainers need to be licensed. AB 3110 establishes the Athletic Training Practice Act to license and regulate athletic trainers through a Committee under the California Occupational Therapy Board. The Committee will have powers similar to those of other licensing boards under the California Department of Consumer affairs to promulgate regulations, approve training and educational programs, investigate applicants and issue licenses, and order disciplinary measures up to, and including, license suspension.

Regulating the profession of athletic training will:

- Increase safety by guaranteeing that athletic trainers are qualified to identify and treat injuries.
- Reduce liability by ensuring that employers are legally able to travel with their athletic trainers to other states in which it is illegal for unregulated athletic trainers to practice.
- Support public education by making sure that tax payer supported public education is no longer undermined by unprepared individuals calling themselves athletic trainers and taking jobs away from graduates of these programs.

SUPPORT

California Athletic Trainers' Association

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AB-3110 Athletic trainers. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 3110

Introduced by Assembly Member Mullin
(Coauthors: Assembly Members ~~Berman and Calderon~~ *Berman, Calderon, Chau, Kalra, and McCarty*)

February 16, 2018

An act to amend, repeal, and add Sections 101 and 144 of, and to add and repeal Chapter 5.8 (commencing with Section 2697) of Division 2 of, the Business and Professions Code, relating to athletic trainers.

LEGISLATIVE COUNSEL'S DIGEST

AB 3110, as introduced, Mullin. Athletic trainers.

Existing law provides for the licensure and regulation of various professions and vocations, including those of an athlete agent. Existing law makes it a crime for a healing arts licensee to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed.

This bill would enact the Athletic Training Practice Act, which would, after a determination is made that sufficient funds have been received to pay initial costs of this bill, provide for the licensure and regulation of athletic trainers, as defined. The bill would, after that determination, establish the Athletic Trainer Licensing Committee within the California Board of Occupational Therapy to implement these provisions, including issuing and renewing athletic training licenses and imposing disciplinary action. Under the bill, the committee would be comprised of 7 members, to be appointed to 4-year terms, except as specified. Commencing 6 months after the committee is established by this bill, the bill would prohibit a person from practicing as an athletic trainer or using certain titles without a license issued by the committee, except as specified. The bill would prohibit, except in specified cases for a specified period, a person from using the title "athletic trainer," unless the person is licensed by the committee or other conditions are met. The bill would specify the requirements for licensure,

including education, examination, and the payment of a license application fee established by the committee. The bill would define the practice of athletic training and prescribe direction requirements on athletic trainers.

The bill would also establish the Athletic Trainers' Fund for the deposit of license application and renewal fees, as specified, and would make those fees available to the committee for the purpose of implementing these provisions upon appropriation by the Legislature. The bill would authorize the Director of Consumer Affairs to seek and receive donations from the California Athletic Trainers Association or any other private person or entity for purposes of obtaining funds for the startup costs of implementing the act. The bill would require the director to determine that sufficient funds for that purpose have been obtained and to provide notice to the Legislature, the Governor, and on the department's Internet Web site of the determination, as specified. The bill would repeal these provisions on January 1, 2026. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) California is the only state that does not currently regulate the practice of athletic training. This lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will come to California to practice, thereby putting the public in danger and degrading the standards of the profession as a whole.

(b) There is a pressing and immediate need to regulate the profession of athletic training in order to protect the public health, safety, and welfare. This need is particularly important because athletic trainers often work with school age children.

(c) There is also a pressing and immediate need to regulate the profession of athletic training because the absence of regulation puts California businesses, colleges, universities, and other organizations at risk of liability solely because of the unlicensed status of athletic trainers in the state.

SEC. 2. Section 101 of the Business and Professions Code, as added by Section 4 of Chapter 828 of the Statutes of 2017, is amended to read:

101. The department is comprised of the following:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The ~~Bureau~~ *State Board* of Barbering and Cosmetology.

(i) The Board for Professional Engineers, Land Surveyors, and Geologists.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary Education.

(l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(m) The Board of Registered Nursing.

(n) The Board of Behavioral Sciences.

(o) The State Athletic Commission.

(p) The Cemetery and Funeral Bureau.

(q) The State Board of Guide Dogs for the Blind.

(r) The Bureau of Security and Investigative Services.

(s) The Court Reporters Board of California.

(t) The Board of Vocational Nursing and Psychiatric Technicians.

(u) The Landscape Architects Technical Committee.

(v) The Division of Investigation.

(w) The Bureau of Automotive Repair.

(x) The Respiratory Care Board of California.

(y) The Acupuncture Board.

(z) The Board of Psychology.

(aa) The California Board of Podiatric Medicine.

(ab) The Physical Therapy Board of California.

(ac) The Arbitration Review Program.

(ad) The Physician Assistant Committee.

(ae) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(af) The California Board of Occupational Therapy.

(ag) The Osteopathic Medical Board of California.

(ah) The Naturopathic Medicine Committee.

(ai) The Dental Hygiene Committee of California.

(aj) The Professional Fiduciaries Bureau.

(ak) The State Board of Chiropractic Examiners.

(al) The Bureau of Real Estate Appraisers.

(am) The Structural Pest Control Board.

(an) The Bureau of Medical Cannabis Regulation.

(ao) The Athletic Trainer Licensing Committee if a determination is made pursuant to Section 2697.20.

~~(ao)~~

(ap) Any other boards, offices, or officers subject to its jurisdiction by law.

~~(ap)~~

(aq) This section shall ~~become operative on July 1, 2018.~~ *remain in effect only until January 1, 2026, and as of that date is repealed.*

SEC. 3. Section 101 is added to the Business and Professions Code, to read:

101. The department is comprised of the following:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The State Board of Barbering and Cosmetology.

(i) The Board for Professional Engineers, Land Surveyors, and Geologists.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary Education.

(l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(m) The Board of Registered Nursing.

(n) The Board of Behavioral Sciences.

(o) The State Athletic Commission.

(p) The Cemetery and Funeral Bureau.

(q) The State Board of Guide Dogs for the Blind.

(r) The Bureau of Security and Investigative Services.

(s) The Court Reporters Board of California.

(t) The Board of Vocational Nursing and Psychiatric Technicians.

(u) The Landscape Architects Technical Committee.

(v) The Division of Investigation.

(w) The Bureau of Automotive Repair.

(x) The Respiratory Care Board of California.

(y) The Acupuncture Board.

(z) The Board of Psychology.

(aa) The California Board of Podiatric Medicine.

(ab) The Physical Therapy Board of California.

(ac) The Arbitration Review Program.

(ad) The Physician Assistant Committee.

(ae) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(af) The California Board of Occupational Therapy.

(ag) The Osteopathic Medical Board of California.

(ah) The Naturopathic Medicine Committee.

(ai) The Dental Hygiene Committee of California.

(aj) The Professional Fiduciaries Bureau.

(ak) The State Board of Chiropractic Examiners.

(al) The Bureau of Real Estate Appraisers.

(am) The Structural Pest Control Board.

(an) The Bureau of Medical Cannabis Regulation.

(ao) Any other boards, offices, or officers subject to its jurisdiction by law.

(ap) This section shall become operative on January 1, 2026.

SEC. 4. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Board of Vocational Nursing and Psychiatric Technicians.

(10) Respiratory Care Board of California.

(11) Physical Therapy Board of California.

(12) Physician Assistant Committee of the Medical Board of California.

(13) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(14) Medical Board of California.

(15) State Board of Optometry.

(16) Acupuncture Board.

(17) Cemetery and Funeral Bureau.

(18) Bureau of Security and Investigative Services.

(19) Division of Investigation.

(20) Board of Psychology.

(21) California Board of Occupational Therapy.

(22) Structural Pest Control Board.

(23) Contractors' State License Board.

(24) Naturopathic Medicine Committee.

(25) Professional Fiduciaries Bureau.

(26) Board for Professional Engineers, Land Surveyors, and Geologists.

(27) Bureau of Medical Cannabis Regulation.

(28) California Board of Podiatric Medicine.

(29) Osteopathic Medical Board of California.

(30) Athletic Trainer Licensing Committee if a determination is made pursuant to Section 2697.20.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 5. Section 144 is added to the Business and Professions Code, to read:

144. (a) Notwithstanding any other law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Board of Vocational Nursing and Psychiatric Technicians.

(10) Respiratory Care Board of California.

(11) Physical Therapy Board of California.

(12) Physician Assistant Committee of the Medical Board of California.

(13) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(14) Medical Board of California.

(15) State Board of Optometry.

(16) Acupuncture Board.

(17) Cemetery and Funeral Bureau.

(18) Bureau of Security and Investigative Services.

(19) Division of Investigation.

(20) Board of Psychology.

(21) California Board of Occupational Therapy.

(22) Structural Pest Control Board.

(23) Contractors' State License Board.

(24) Naturopathic Medicine Committee.

(25) Professional Fiduciaries Bureau.

(26) Board for Professional Engineers, Land Surveyors, and Geologists.

(27) Bureau of Medical Cannabis Regulation.

(28) California Board of Podiatric Medicine.

(29) Osteopathic Medical Board of California.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

(d) This section shall become operative on January 1, 2026.

SEC. 6. Chapter 5.8 (commencing with Section 2697) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 5.8. Athletic Trainers
Article 1. Administration

2697. This chapter shall be known, and may be cited, as the Athletic Training Practice Act.

2697.1. For the purposes of this chapter, the following definitions apply:

(a) "Athletic trainer" means a person who meets the requirements of this chapter, is licensed by the committee, and practices under the direction of a licensed physician or surgeon. An athletic trainer is a healing arts licensee.

(b) "Board" means the California Board of Occupational Therapy.

(c) "Committee" means the Athletic Trainer Licensing Committee.

(d) "Director" means the Director of Consumer Affairs.

2697.2. (a) There is established the Athletic Trainer Licensing Committee within the California Board of Occupational Therapy. The committee shall consist of seven members.

(b) The seven committee members shall include the following:

(1) Three licensed athletic trainers. Initially, the committee shall include three athletic trainers who have graduated from a professional degree program described in subdivision (b) of either Section 2697.4 or 2697.5 prior to approval by the committee and who will satisfy the remainder of the licensure requirements described in Section 2697.5, including submission of application for licensure, as soon as it is practically possible.

(2) Two public members.

(3) One physician and surgeon licensed by the Medical Board of California or one osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California.

(4) One occupational therapist licensed by the board.

(c) Subject to confirmation by the Senate, the Governor shall appoint one of the licensed athletic trainers, the public members, the physician and surgeon or osteopathic physician and surgeon, and the licensed occupational therapist. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a licensed athletic trainer.

(d) (1) All appointments shall be for a term of four years and shall expire on June 30 of the year in which the term expires. Appointees may be reappointed once. Vacancies shall be filled for any unexpired term.

(2) Notwithstanding paragraph (1), for initial appointments to the committee, one public member and the licensed occupational therapist appointed by the Governor and one of the licensed athletic trainers shall serve terms of two years, and the remaining members shall serve terms of four years.

(e) Each member of the committee shall receive per diem and expenses as provided in Section 103.

(f) Subject to Sections 107 and 154, the committee may employ an executive officer and other officers and employees.

2697.3. (a) (1) The committee shall adopt, repeal, and amend regulations as may be necessary to administer and enforce this chapter.

(2) Before adopting regulations, the committee may consult the professional standards issued by the National Athletic Trainers Association, the Board of Certification, Inc., the Commission on Accreditation of Athletic Training Education, or any other nationally recognized professional athletic training organization.

(b) The committee shall investigate each applicant before a license is issued in order to determine whether the applicant meets the qualifications required by this chapter.

(c) The committee shall give protection of the public the highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Article 1.5. Licensure

2697.4. Except as otherwise provided in this chapter, the committee shall issue an athletic training license to an applicant who meets all of the following requirements:

(a) At the time of application, is over 18 years of age, is not addicted to alcohol or any controlled substance, and has not committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) Has submitted an application developed by the committee that provides evidence that the applicant has graduated from a professional degree program in athletic training accredited by the Commission on Accreditation of Athletic Training Education, or its predecessors or successors, and approved by the committee, at an accredited postsecondary institution or institutions approved by the committee. The professional degree program shall consist of didactic, clinical, and research experiences in athletic training using critical thinking and weighing of evidence.

(c) Has passed an athletic training certification examination offered by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the committee.

(d) Has passed a criminal background check.

(e) Has paid the application fee established by the committee.

2697.5. Notwithstanding Section 2697.4, the committee shall issue an athletic training license to an applicant who did not graduate from an accredited professional degree program described in subdivision (b) of Section 2697.4, but who received athletic training via an internship, if the applicant meets all of the following requirements:

(a) At the time of application, is over 18 years of age, is not addicted to alcohol or any controlled substance, and has not committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) Furnishes evidence satisfactory to the committee of completion of a professional degree program at an accredited postsecondary institution that includes instruction in basic sciences related to, and on the practice of, athletic training.

(c) Passes the examination described in subdivision (c) of Section 2697.4.

(d) Completes at least 1,500 hours of clinical experience under an athletic trainer certified by a certification agency described in subdivision (c) of Section 2697.4.

(e) Has passed a criminal background check.

(f) Has paid the application fee established by the committee.

2697.6. A license issued by the committee pursuant to Section 2697.4 or 2697.5 is valid for two years and thereafter is subject to the renewal requirements described in Sections 2697.7 and 2697.8.

2697.7. The committee shall establish license application and renewal fees in an amount sufficient to cover the reasonable regulatory costs of administering this chapter.

2697.8. The committee shall renew a license if an applicant meets both of the following requirements:

(a) Pays the renewal fee as established by the committee.

(b) Submits proof of both of the following:

(1) Satisfactory completion of continuing education, as determined by the committee.

(2) Has a current athletic training certification from a certification body approved by the committee, including, but not limited to, the Board of Certification, Inc., or its predecessors or successors.

2697.9. (a) The committee may deny a license or discipline a licensee who is described by any of the following:

(1) Does not meet the requirements of this chapter.

(2) Has had an athletic training license, certification, or registration revoked or suspended by an accredited organization, state, or territory.

(3) Has been convicted of a crime that is substantially related to the functions or duties of an athletic trainer.

(4) Has committed unprofessional conduct, as described in Section 2697.11.

(b) The committee may order any of the following actions regarding an athletic training license after a hearing to determine unprofessional conduct:

(1) Placing the license on probation with terms and conditions.

(2) Suspending the license and the ability to practice athletic training for a period not to exceed one year.

(3) Revoking the license.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Issuing an initial license on probation, with specific terms and conditions, to an applicant who has violated this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

(6) Taking any other action as the committee, in its discretion, deems proper to protect the public health and safety.

(c) If a license is suspended, the holder may not practice as an athletic trainer during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated and the holder entitled to resume practice under any remaining terms of the discipline, unless it is established to the satisfaction of the committee that the holder of the license practiced in this state during the term of suspension. In this event, the committee may, after a hearing on this issue alone, revoke the license.

(d) The committee shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the committee or a court of law, or by the voluntary surrender of a license by the licensee.

2697.10. (a) A holder of a license that has been revoked, suspended, or placed on probation, may petition the committee 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 committee 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.

(b) The committee 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.

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

(d) The committee 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 committee. 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.

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

(f) The committee 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.

(g) The committee shall 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.

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

2697.11. For purposes of this chapter, unprofessional conduct includes, but is not limited to, the following:

(a) Incompetence, negligence, or gross negligence in carrying out usual athletic trainer functions.

(b) Repeated similar negligent acts in carrying out usual athletic trainer functions.

(c) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(d) The use of advertising relating to athletic training which violates Section 17500.

(e) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California healing arts licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.

(f) Procuring a license by fraud, misrepresentation, or mistake.

(g) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter.

(h) Making or giving any false statement or information in connection with the application for issuance or renewal of a license.

(i) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence thereof.

(j) Impersonating an applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(k) Impersonating a licensee, or permitting or allowing another unlicensed person to use a license.

(l) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

(m) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee, in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(n) Using excessive force upon or mistreating or abusing any patient. For purposes of this subdivision, "excessive force" means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(o) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or hospital record or any other record.

(p) Changing the prescription of a physician and surgeon or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(q) Failing to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(r) Delegating to an unlicensed employee or person a service that requires the knowledge, skills, abilities, or judgment of a licensee or registrant.

(s) Committing any act that would be grounds for denial of a license or registration under Section 480.

(t) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of infectious diseases from licensee to patient, from patient to patient, or from patient to licensee.

(u) As a licensee, obtaining or possessing in violation of law, or prescribing, or, except as directed by a licensed physician and surgeon, dentist, optometrist, or podiatrist, administering to himself or herself, or furnishing or administering to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(v) As a licensee, using to an extent or in a manner dangerous or injurious to himself or herself, to any other person, or to the public, or that impairs his or her ability to conduct with safety to the public the practice authorized by his or her license, of any of the following:

(1) A controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(2) A dangerous drug or dangerous device as defined in Section 4022.

(3) Alcoholic beverages.

(w) As a licensee, being convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in paragraphs (1) and (2) of subdivision (v), or the possession of, or falsification of a record pertaining to, the substances described in paragraph (1) of subdivision (v), in which event the record of the conviction is conclusive evidence thereof.

(x) As a licensee, being committed or confined by a court of competent jurisdiction for intemperate use of any of the substances described in paragraphs (1) and (2) of subdivision (v), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(y) As a licensee, falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient record, or any other record.

Article 2. Athletic Training

2697.12. (a) A person shall not practice athletic training or hold himself or herself out as an athletic trainer or as being able to practice athletic training, or to render athletic training services in this state unless licensed as an athletic trainer pursuant to this chapter.

(b) A person shall not use the title "athletic trainer," "licensed athletic trainer," "certified athletic trainer," "athletic trainer certified," "a.t.," "a.t.l.,""l.a.t," "c.a.t.," "a.t.c.," or any other variation of these terms, or any other similar terms indicating that the person is an athletic trainer unless that person is licensed pursuant to this chapter.

(c) Notwithstanding subdivisions (a) and (b), a person who practiced athletic training in California for a period of 20 consecutive years prior to July 1, 2019, and is not eligible on that date for an athletic training license may engage in the practice of athletic training and use the title "athletic trainer" without being licensed by the committee. However, on and after January 1, 2021, a person shall not engage in the practice of athletic training or use the title "athletic trainer" unless he or she is licensed by the committee pursuant to this chapter.

2697.13. (a) The practice of athletic training includes all of the following:

(1) Risk management and injury or illness prevention through preactivity screening and evaluation, educational programs, physical conditioning and reconditioning programs, application of commercial products, use of protective equipment, promotion of healthy behaviors, and reduction of environmental risks.

(2) The clinical evaluation and assessment of an injury sustained or exacerbated while participating in athletic activity or a condition exacerbated while participating in athletic activity, for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the scope of practice of athletic training, by obtaining a history of the injury or condition, inspection and palpation of the injured part and associated structures, and performance of specific testing techniques related to stability and function to determine the extent of an injury.

(3) The immediate care of an injury sustained or exacerbated while participating in athletic activity or a condition exacerbated while participating in athletic activity, for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the scope of practice of athletic training, by the application of first-aid and emergency procedures, techniques and equipment for nonlife-threatening or life-threatening injuries or conditions.

(4) The rehabilitation and reconditioning from an injury sustained or exacerbated while participating in athletic activity and reconditioning from a condition, for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the scope of practice of athletic training, including, but not limited to, the application of physical agents and modalities, therapeutic exercise, manual therapy and massage, standard reassessment techniques and procedures, commercial products and durable medical equipment, and educational programs, in accordance with guidelines established with a healing arts licensee.

(b) The practice of athletic training does not include grade 5 spinal manipulations, the diagnosis of disease or the practice of medicine.

(c) An athletic trainer shall refer a patient to an appropriate licensed health care provider when the management of the injury or condition does not fall within the practice of athletic training.

(d) An athletic trainer shall not provide, offer to provide, or represent that he or she is qualified to provide any treatment that he or she is not qualified to perform by his or her professional education or advanced postprofessional study or does not fall within the scope of practice of athletic training.

(e) For purposes of this section, "athletic activity" means participation in activity requiring physical strength, range-of-motion, flexibility, body awareness and control, speed, stamina, or agility.

2697.14. (a) An athletic trainer shall render treatment within his or her scope of practice under the direction of a physician and surgeon licensed by the Medical Board of California or an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California. This direction shall be provided by verbal or written order by the directing physician and surgeon or osteopathic physician and surgeon or by athletic training treatment plans or protocols established by the physician and surgeon or osteopathic physician and surgeon.

(b) Notwithstanding any other law, and consistent with this chapter, the committee may establish other alternative mechanisms for the adequate direction of an athletic trainer.

(c) For purposes of this section, "under the direction of a physician and surgeon" means that the physician and surgeon is available to the athletic trainer in person or via telehealth, as defined in paragraph (6) of subdivision (a) of Section 2290.5.

2697.15. The practice of athletic training does not include any of the following:

(a) The practice of occupational therapy, as defined in Chapter 5.6 (commencing with Section 2570).

(b) The practice of physical therapy, as defined in Chapter 5.7 (commencing with Section 2600).

(c) The practice of physician assistants, as defined in Chapter 7.7 (commencing with Section 3500).

(d) The practice of medicine, as defined in Chapter 5 (commencing with Section 2000).

(e) The practice of nursing, as defined in Chapter 6 (commencing with Section 2700).

(f) The practice of chiropractic, as defined in Chapter 2 (commencing with Section 1000).

2697.16. The requirements of this chapter do not apply to the following:

(a) An athletic trainer licensed, certified, or registered in another state or country who is in California temporarily, while traveling with a team or organization, to engage in the practice of athletic training for, among other things, an athletic or sporting event and only when this athletic trainer limits his or her scope of practice to the members of the team or organization or during an emergency.

(b) An athletic trainer licensed, certified, or registered in another state or country who is invited by a sponsoring organization, such as the United States Olympic Committee, to temporarily provide athletic training services under his or her state's scope of practice for athletic training.

(c) A student enrolled in an athletic training education program, while participating in educational activities during the course of his or her educational rotations under the supervision and guidance of an athletic trainer licensed under this chapter, a physician and surgeon licensed by the Medical Board of California, an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, or other any licensed health care provider, when the student's title clearly indicates student status.

(d) A member or employee of the United States Armed Forces, licensed, certified, or registered in another state as an athletic trainer, as part of his or her temporary federal deployment or employment in California for a limited time.

2697.17. This chapter does not limit, impair, or otherwise apply to the practice of any person licensed and regulated under any other chapter of this division.

2697.18. This chapter does not require new or additional third-party reimbursement for services rendered by an individual licensed under this chapter.

Article 3. Athletic Trainers' Fund

2697.19. (a) The Athletic Trainers' Fund is hereby established in the State Treasury. All fees collected pursuant to this chapter shall be paid into the fund. Moneys in the fund shall be available to the committee, upon appropriation by the Legislature, for expenditure by the committee to defray its expenses for administering this chapter.

(b) The committee shall charge the following fees:

(1) An application fee of not more than one hundred dollars ($100).

(2) An initial license fee, which shall be prorated and, based on the biennial renewal fee.

(3) A renewal fee to be established by the committee, not to exceed the costs of providing the regulatory administration of this chapter.

(4) A delinquency fee for late payment of the license renewal fee in the following amounts:

(A) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 50 percent of the renewal fee in effect at the time or renewal.

(B) If the license is renewed more than two years after date of expiration of the license, the delinquency fee shall be 100 percent of the renewal fee in effect at the time of renewal.

(5) A duplicate license fee, to replace one that is lost or destroyed, or in the event of a name change, of thirty-five dollars ($35).

(6) An endorsement fee of not more fifty dollars ($50).

(7) A fee to collect fingerprints for criminal history record checks charged by the Department of Justice and the Federal Bureau of Investigation.

2697.20. (a) Notwithstanding any other law, including Section 11005 of the Government Code, the Director of Consumer Affairs may seek and receive funds from the California Athletic Trainers Association or any other private individual of entity for the initial costs of implementing this chapter.

(b) Article 1 (commencing with Section 2697), Article 1.5 (commencing with Section 2697.4), and Article 2 (commencing with Section 2697.12) shall not become operative unless the director determines, on or before January 1, 2020, that sufficient funds to pay for the initial costs of this chapter have been received from the California Athletic Trainers Association, or some other source of funding, and the funds are deposited in the Athletic Trainers' Fund, in which case Article 1 (commencing with Section 2697) and Article 1.5 (commencing with Section 2697.4) shall become operative on the first January 1 or July 1, whichever occurs first, immediately following this determination. Article 2 (commencing with Section 2697.12) shall become operative on the first January 1 or July 1, whichever occurs first, immediately following the operative date of Article 1 (commencing with Section 2697) and Article 1.5 (commencing with Section 2697.4). If the director finds that sufficient funds are not available by January 1, 2020, the director shall reexamine the funding status by June 30 of each subsequent year until either the director determines that sufficient funds have been received and deposited or until January 1, 2022, whichever occurs first.

(c) The director shall provide written notification to the Legislature and the Governor when the determination described in subdivision (b) has been made, and shall concurrently post a notice on the Department of Consumer Affairs Internet Web site that the determination has been made.

(d) A failure of the director to comply with subdivision (c) shall not affect the validity of a determination made pursuant to subdivision (b).

2697.21. This chapter shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

REVISIONS:
Heading—Line 2.

AB-1510 Athletic trainers. (2017-2018)

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Date Published: 02/17/2017 09:00 PM

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 1510

Introduced by Assembly Member Dababneh

February 17, 2017

An act to add and repeal Chapter 5.8 (commencing with Section 2697) of Division 2 of the Business and Professions Code, relating to athletic trainers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1510, as introduced, Dababneh. Athletic trainers.

Existing law provides for the regulation of various professions and vocations, including those of an athlete agent.

This bill would enact the Athletic Training Practice Act, which would, after a determination is made that sufficient funds have been received to pay initial costs of this bill, provide for the licensure and regulation of athletic trainers, as defined. The bill would, after that determination, establish the Athletic Trainer Licensing Committee within the California Board of Occupational Therapy to implement these provisions, including issuing and renewing athletic training licenses and imposing disciplinary action. Under the bill, the committee would be comprised of 7 members, to be appointed to 4-year terms, except as specified. Commencing 6 months after the committee is established by this bill, the bill would prohibit a person from practicing as an athletic trainer or using certain titles without a license issued by the committee, except as specified. The bill would prohibit, except in specified cases for a specified period, a person from using the title "athletic trainer," unless the person is licensed by the committee. The bill would specify the requirements for licensure, including education, examination, and the payment of a license application fee established by the committee. The bill would define the practice of athletic training and prescribe supervision requirements on athletic trainers.

The bill would also establish the Athletic Trainers' Fund for the deposit of license application and renewal fees, and would make those fees available to the committee for the purpose of implementing these provisions upon appropriation by the Legislature. The bill would authorize the Director of Consumer Affairs to seek and receive donations from the California Athletic Trainers Association for purposes of obtaining funds for the startup costs of implementing the act. The bill would require the director to determine that sufficient funds for that purpose have been obtained and to provide notice to the Legislature, the Governor, and on the department's Internet Web site of the determination, as specified. This bill would repeal these provisions on January 1, 2025.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) California is one of only two states that does not currently regulate the practice of athletic training. This lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will come to California to practice, thereby putting the public in danger and degrading the standards of the profession as a whole.

(b) There is a pressing and immediate need to regulate the profession of athletic training in order to protect the public health, safety, and welfare. This need is particularly important because athletic trainers often work with schoolage children.

(c) There is also a pressing and immediate need to regulate the profession of athletic training because the absence of regulation puts California businesses, colleges, universities, and other organizations at risk of liability solely because of the unlicensed status of athletic trainers in the state.

SEC. 2. Chapter 5.8 (commencing with Section 2697) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 5.8. Athletic Trainers
Article 1. Administration

2697. This chapter shall be known, and may be cited, as the Athletic Training Practice Act.

2697.1. For the purposes of this chapter, the following definitions apply:

(a) "Athletic trainer" means a person who meets the requirements of this chapter, is licensed by the committee, and practices under the direction of a licensed physician or surgeon.

(b) "Board" means the California Board of Occupational Therapy.

(c) "Committee" means the Athletic Trainer Licensing Committee.

(d) "Director" means the Director of Consumer Affairs.

2697.2. (a) There is established the Athletic Trainer Licensing Committee within the California Board of Occupational Therapy. The committee shall consist of seven members.

(b) The seven committee members shall include the following:

(1) Four licensed athletic trainers. Initially, the committee shall include four athletic trainers who have graduated from a professional degree program described in subdivision (a) of Section 2697.5 prior to approval by the committee and who will satisfy the remainder of the licensure requirements, including submission of an application, described in Section 2697.5 as soon as it is practically possible.

(2) One public member.

(3) One physician and surgeon licensed by the Medical Board of California or one osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California.

(4) One occupational therapist licensed by the board.

(c) Subject to confirmation by the Senate, the Governor shall appoint two of the licensed athletic trainers, the public member, the physician and surgeon or osteopathic physician and surgeon, and the licensed occupational therapist. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a licensed athletic trainer.

(d) (1) All appointments are for a term of four years and shall expire on June 30 of the year in which the term expires. Vacancies shall be filled for any unexpired term.

(2) Notwithstanding paragraph (1), for initial appointments to the committee, the public member appointed by the Governor and two of the athletic trainers shall serve terms of two years, and the remaining members shall

serve terms of four years.

(e) Each member of the committee shall receive per diem and expenses as provided in Section 103.

2697.3. (a) (1) The committee shall adopt, repeal, and amend regulations as may be necessary to enable it to administer this chapter. All regulations shall be in accordance with this chapter.

(2) Before adopting regulations, the committee may consult the professional standards issued by the National Athletic Trainers Association, the Board of Certification, Inc., the Commission on Accreditation of Athletic Training Education, or any other nationally recognized professional athletic training organization.

(b) The committee shall approve programs for the education and training of athletic trainers.

(c) The committee shall investigate each applicant, before a license is issued, in order to determine whether the applicant meets the qualifications required by this chapter.

(d) Protection of the public shall be the highest priority for the committee in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

2697.4. Except as otherwise provided in this chapter, the committee shall issue an athletic training license to an applicant who meets all of the following requirements:

(a) Has submitted an application developed by the committee that includes evidence that the applicant has graduated from a professional degree program in athletic training accredited by the Commission on Accreditation of Athletic Training Education, or its predecessors or successors, and approved by the committee, at an accredited postsecondary institution or institutions approved by the committee. The professional degree program shall consist of didactic, clinical, and research experiences in athletic training using critical thinking and weighing of evidence.

(b) Has passed an athletic training certification examination offered by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the committee.

(c) Possesses a certificate in Cardio Pulmonary Resuscitation (CPR) and Automated External Defibrillator (AED) for professional rescuers and health care providers from a certification body, approved by the committee, that adheres to the most current international guidelines for cardiopulmonary resuscitation and emergency cardiac care.

(d) Has paid the application fee established by the committee.

2697.5. Notwithstanding Section 2697.4, the committee shall issue an athletic training license to an applicant who did not graduate from an accredited athletic training education program described in subdivision (a) of Section 2697.4, but who received athletic training via an internship, if the applicant meets all of the following requirements:

(a) Furnishes evidence satisfactory to the committee of completion of a degree at an accredited postsecondary institution that included instruction in basic sciences related to, and on the practice of, athletic training.

(b) Passes the examination described in subdivision (b) of Section 2697.4.

(c) Completes at least 1,500 hours of clinical experience under an athletic trainer certified by a certification agency described in subdivision (b) of Section 2697.4.

(d) Possesses a certificate in CPR and AED for professional rescuers and health care providers from a certification body, approved by the committee, that adheres to the most current international guidelines for cardiopulmonary resuscitation and emergency cardiac care.

(e) Has paid the application fee established by the committee.

2697.6. A license issued by the committee pursuant to Section 2697.4 or 2697.5 is valid for two years and thereafter is subject to the renewal requirements described in Sections 2697.7 and 2697.8.

2697.7. The committee shall establish license application and renewal fees in an amount sufficient to cover the reasonable regulatory costs of administering this chapter.

2697.8. The committee shall renew a license if an applicant meets all of the following requirements:

(a) Pays the renewal fee as established by the committee.

(b) Submits proof of all of the following:

(1) Satisfactory completion of continuing education, as determined by the committee.

(2) Current athletic training certification from a certification body approved by the committee, including, but not limited to, the Board of Certification, Inc., or its predecessors or successors.

(3) Current certification described in subdivision (c) of Section 2697.4.

2697.9. (a) The committee may deny a license or the renewal of a license for an applicant or licensee who is described by any of the following:

(1) Does not meet the requirements of this chapter.

(2) Has had an athletic training license, certification, or registration revoked or suspended by an accredited organization, state, or territory.

(3) Has been convicted of a felony or any other crime that substantially relates to the functions or duties of an athletic trainer.

(4) Has committed unprofessional conduct, as described in subdivision (b).

(b) The committee may order any of the following actions relative to an athletic training license after a hearing for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, any regulation adopted by the committee pursuant to this chapter, and revocation or suspension of an athletic training license, certification, or registration by an accredited organization, state, or territory:

(1) Issuance of the athletic training license subject to terms and conditions.

(2) Suspension or revocation of the athletic training license.

(3) Imposition of probationary conditions upon the athletic training license.

Article 2. Athletic Training

2697.10. (a) A person shall not engage in the practice of athletic training unless licensed pursuant to this chapter.

(b) A person shall not use the title "athletic trainer," "licensed athletic trainer," "certified athletic trainer," "athletic trainer certified," "a.t.," "a.t.l.," "c.a.t.," "a.t.c.," or any other variation of these terms, or any other similar terms indicating that the person is an athletic trainer unless that person is licensed pursuant to this chapter.

(c) Notwithstanding subdivisions (a) and (b), a person who practiced athletic training in California for a period of 20 consecutive years prior to July 1, 2018, and is not eligible on that date for an athletic training license may engage in the practice of athletic training and use the title "athletic trainer" without being licensed by the committee, upon registration with the committee. However, on and after January 1, 2021, a person shall not engage in the practice of athletic training or use the title "athletic trainer" unless he or she is licensed by the committee pursuant to this chapter.

2697.11. (a) The practice of athletic training includes all of the following:

(1) Risk management and injury or illness prevention.

(2) The clinical evaluation and assessment of an injury sustained or exacerbated while participating in physical activity.

(3) The immediate care of an injury sustained or exacerbated while participating in physical activity or a condition exacerbated while participating in physical activity.

(4) The rehabilitation and reconditioning from an injury or an illness sustained or exacerbated while participating in physical activity.

(b) The practice of athletic training does not include grade 5 spinal manipulations.

(c) An athletic trainer shall refer a patient to an appropriate licensed health care provider when the treatment or management of the injury or condition does not fall within the practice of athletic training.

(d) An athletic trainer shall not provide, offer to provide, or represent that he or she is qualified to provide any treatment that he or she is not qualified to perform by his or her education, training, or experience, or that he or she is otherwise prohibited by law from performing.

(e) (1) For purposes of this section, "injury" means an injury sustained as a result of, or exacerbated by, participation in athletics or physical activity for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the practice of athletic training.

(2) For purposes of this section, "condition" means a condition acutely exacerbated while participating in athletics or physical activity for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the practice of athletic training.

2697.12. (a) An athletic trainer shall render treatment within his or her scope of practice under the direction of a physician and surgeon licensed by the Medical Board of California or an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California. This direction shall be provided by verbal or written order by the directing physician and surgeon or osteopathic physician and surgeon or by athletic training treatment plans or protocols established by the physician and surgeon or osteopathic physician and surgeon.

(b) Notwithstanding any other law, and consistent with this chapter, the committee may establish other alternative mechanisms for the adequate direction of an athletic trainer.

2697.13. The requirements of this chapter do not apply to the following:

(a) An athletic trainer licensed, certified, or registered in another state or country who is in California temporarily, traveling with a team or organization, to engage in the practice of athletic training for, among other things, an athletic or sporting event.

(b) An athletic trainer licensed, certified, or registered in another state who is invited by a sponsoring organization, such as the United States Olympic Committee, to temporarily provide athletic training services under his or her state's scope of practice for athletic training.

(c) A student enrolled in an athletic training education program, while participating in educational activities during the course of his or her educational rotations under the supervision and guidance of an athletic trainer licensed under this chapter, a physician and surgeon licensed by the Medical Board of California, an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, or other licensed health care provider.

(d) A member or employee of the United States Armed Forces, licensed, certified, or registered in another state, as part of his or her temporary federal deployment or employment in California for a limited time.

2697.14. This chapter does not limit, impair, or otherwise apply to the practice of any person licensed and regulated under any other chapter of Division 2 (commencing with Section 500).

2697.15. This chapter does not require new or additional third-party reimbursement for services rendered by an individual licensed under this chapter.

Article 3. Athletic Trainers' Fund

2697.16. The Athletic Trainers' Fund is hereby established. All fees collected pursuant to this chapter shall be paid into the fund. These fees shall be available to the committee, upon appropriation by the Legislature, for the regulatory purpose of implementing this chapter.

2697.17. (a) Notwithstanding any other law, including Section 11005 of the Government Code, the Director of Consumer Affairs may seek and receive funds from the California Athletic Trainers Association for the initial costs

of implementing this chapter.

(b) Articles 1 (commencing with Section 2697) and 2 (commencing with Section 2697.10) shall not become operative unless the director determines, on or before January 1, 2019, that sufficient funds to pay for the initial costs of this chapter have been received from the California Athletic Trainers Association, or some other source of funding, and the funds are deposited in the Athletic Trainers' Fund, in which case Article 1 shall become operative on the first January 1 or July 1, whichever occurs first, immediately following this determination. Article 2 shall become operative on the first January 1 or July 1, whichever occurs first, immediately following the operative date of Article 1. If the director finds that sufficient funds are not available by January 1, 2019, the director shall reexamine the funding status by June 30 of each subsequent year until either the director determines that sufficient funds have been received and deposited or until January 1, 2021, whichever occurs first.

(c) The director shall provide written notification to the Legislature and the Governor when the determination described in subdivision (b) has been made, and shall concurrently post a notice on the Department of Consumer Affairs Internet Web site that the determination has been made.

(d) A failure of the director to comply with subdivision (c) shall not affect the validity of a determination made pursuant to subdivision (b).

2697.18. This chapter shall remain in effect only until January 1, 2025, and as of that date is repealed.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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SPECIAL TELECONFERENCE CALIFORNIA BOARD OF OCCUPATIONAL THERAPY MEETING MINUTES

Thursday, April 13, 2017

Board Member(s) Present
Denise Miller, OT – President
Richard Bookwalter, OT - Vice President
Sharon Pavlovich, OTA – Secretary
Jeff Ferro
Beata Morcos

Board Staff Present
Heather Martin, Executive Officer
Jeff Hanson, Enforcement Coordinator
Jody Quesada, Enforcement Analyst
Ileana Butu, Legal Counsel

3:00 pm – Board Meeting

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

   At 3:04 p.m. President Denise Miller called the meeting to order. Contact was established at each teleconference site. Roll was called; and a quorum was established.

2. Finding of Necessity for Special Meeting. (Gov. Code, § 11125.4(c).)

   - Richard Bookwalter moved that the necessity for a special meeting is supported by the fact that providing the usual 10 day notice of a Board meeting would have posed a hardship on the Board, in that the Board would be deprived of the ability to discuss, deliberate, and take a position on Assembly Bill 1510, legislation that could substantially impact consumer protection and enforcement, before the legislature completes its review and action. The Board's next regularly scheduled meeting is not until June 1 and 2, 2017.
   - Beata Morcos seconded the motion.

   Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Jeff Ferro	Aye
Beata Morcos	Aye

   Motion carried.

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

   Public Comment
   There was no public comment.

4. Review, discussion, and potential action and/or position related to Assembly Bill 1510 (Dababneh) relating to athletic trainers.

Executive Officer Heather Martin reported that due to time constraints the Ad Hoc committee did not have a quorum for the third and final Ad Hoc meeting thus the committee was unable to submit a formal recommendation to the Board regarding Assembly Bill (AB) 1510. AB 1510 proposes to establish the Athletic Trainer Licensing Committee within the California Board of Occupational Therapy (CBOT).

President Denise Miller gave an overview of the meeting handouts which included copies of AB 1510, Athletic Trainers Educational Competencies, 'highlights' from two CBOT Ad Hoc meetings that were held, a memo from the Board's Legal Counsel Ileana Butu, identifying issues for the Board to consider, and other materials pertinent to concerns regarding the scope of practice, licensure requirements, disciplinary language, clarification about staffing, and other matters pertaining to the administration and coordination of the Athletic Trainer Licensing Committee.

A discussion ensued amongst the Board following a careful review of AB 1510, including proposed changes to the language that would address consumer-protection concerns, cite specific authorities for the Committee to promulgate regulations, impose discipline, hire an Executive Officer and staff. The Board also made recommendations regarding adding language to make the Bill's language to make it consistent with other boards and committees under the umbrella of the Department of Consumer Affairs.

The Board thought the existing language regarding the scope of practice for an Athletic Trainer is overly broad. Specific concern was also raised regarding the 'silence' in the scope of practice about the use of physical agent modalities and the storage and administration and/or dispensation of medications. Consumer protection requires clarification on whether these activities fall within the athletic trainer scope of practice. After further discussion,the Board proposed changes outlined as follows:

- Pertaining to the scope, using a more appropriate reference to athletics, such as 'risk management and injury or illness prevention *in the course of performing athletics, in the practice for athletic events, or in the event of an athletic injury*.'
- Pertaining to the scope, changing the language from 'rehabilitation and reconditioning from an injury or an illness sustained or exacerbated while participating in physical activity.' to read 'rehabilitation and reconditioning from an injury or an illness sustained or exacerbated during athletic activity or in the event of an athletic injury, or something similar.

  - Richard Bookwalter moved to accept the proposed legislative changes outlined in AB1510 with the addition of the changes outlined by the Board.
  - Sharon Pavlovich seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	Aye
Sharon Pavlovich	Aye
Jeff Ferro	Aye
Beata Morcos	Aye

Motion carried.

Public Comment
There was no public comment.

Executive Officer Heather Martin stated that she needed clarification on whether the Board wanted to submit a letter of support if amended or oppose unless amended.

- Richard Bookwalter moved to oppose unless amended.
- Beata Morcos seconded the motion.

Roll Call Vote

Denise Miller	No
Richard Bookwalter	Aye
Sharon Pavlovich	No
Jeff Ferro	No
Beata Morcos	No

Motion did not carry.

Discussion ensued regarding the difference between 'support if amended' or 'oppose unless amended'.

- Jeff Ferro moved to support AB 1510, if amended
- Sharon Pavlovich seconded the motion.

Roll Call Vote

Denise Miller	Aye
Richard Bookwalter	No
Sharon Pavlovich	Aye
Jeff Ferro	Aye
Beata Morcos	Aye

Motion carried.

The Board members directed Executive Officer Heather Martin to draft a letter of 'Support If Amended' to Assembly Member Matt Dababneh on behalf of the Board.

Mike Chisar, Governmental Affairs Chair, California Athletic Trainers' Association stated that he understood the concerns posed by the Board. He also thanked the Board for their time, thoughtfulness and thoroughness in reviewing the bill and their willingness to work with the athletic trainers.

5. Adjournment.

The meeting was adjourned at 6:14 p.m.

Agenda Item 4 – AB 2386

The following are attached for your review:

- AB 2386 Fact Sheet.
- AB 2386 dated February 14, 2018.

Updated 3/2/18

AB 2386 (Rubio)
Credentialing: Occupational Therapy & Physical Therapy

Bill Summary

AB 2386 would authorize the Commission on Teacher Credentialing (CTC) to establish a credential for occupational therapists, as well as physical therapists that are employed by school districts.

Existing Law

Under existing law, occupational therapists and physical therapists are one of the few remaining health care professions that work in the schools and are not credentialed under CTC. Due to absence of a preliminary credential, these healthcare professionals are ineligible for management, development or leadership positions within their school districts.

Background

Since the 1970s both occupational therapists (OTs) and physical therapists (PTs) have provided therapy services to students in public school settings. OT and PT services are mandated under the Individuals with Disabilities Education Act (IDEA-2004) and designed to help children develop, improve, and restore functional and academic skills in order to make progress in their educational environment.

Section 44210 of the Education Code authorizes the CTC as the governing body to grant credentials in the state of California. Examples of credentialed personnel are teachers, school psychologists, speech pathologists, etc. General requirements to obtain CTC credentials include: a) baccalaureate degree or higher; b) specialized and professional preparation; c) possession of a valid license, certificate, or registration; and d) mentored practical experience.

The requirements listed above are met in both physical therapist and occupational therapist accredited educational programs.

The CTC offers a wide variety of credentials to ensure high quality instruction, intervention, and opportunities are readily available to serve students, except for OTs and PTs. Under Ed Code provisions these two professions do not have an option to obtain a credential and have not been included in the credentialing process. Furthermore, credentialing affords the professional status that is commensurate with the knowledge base and education of both OTs and PTs.

In order to pursue an administrative credential, educators need to have a prerequisite credential. Under current law, OTs and PTs do not have a prerequisite credential option thus limiting opportunities to assume leadership roles, which could benefit schoolwide student outcomes and individual student achievement in the classroom.

Details of the Bill

AB 2386 amends Section 44270 and adds Section 44268.2 of the Education Code to provide the CTC with the authority to establish a services credential for occupational therapists and physical therapists that work in public schools. In addition, this bill would allow for the following:

- The CTC is directed to determine the effective date of the credential, and provide not less than 5 years for an OT or PT to become credentialed.
- Allows for OTs and PTs with five or more years of work experience in their field, to be eligible to receive their teaching credential.
- Finally, this bill establishes certain minimal requirements for all OTs and PTs to be credentialed and authorizes the CTC to determine any additional specialized and professional preparation that is needed to be credentialed.

Support

Occupational Therapy Association of California
California Physical Therapy Association

For More Information

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AB-2386 Teacher credentialing: services credential with a specialization in occupational therapy or physical therapy services. (2017-2018)

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Date Published: 02/14/2018 09:00 PM

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 2386

Introduced by Assembly Member Rubio

February 14, 2018

An act to amend Section 44270 of, and to add Section 44268.2 to, the Education Code, relating to teacher credentialing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2386, as introduced, Rubio. Teacher credentialing: services credential with a specialization in occupational therapy or physical therapy services.

(1) Existing law requires the Commission on Teacher Credentialing to, among other things, establish professional standards, assessments, and examinations for entry and advancement in the education profession and to establish standards for the issuance and renewal of credentials, certificates, and permits. Existing law sets forth the minimum requirements for a services credential with a specialization in health and excludes services as an occupational therapist or physical therapist from the health services the holder of a services credential with a specialization in health is authorized to perform.

This bill would require the commission to develop a services credential with a specialization in occupational therapy or physical therapy services and would establish the minimum requirements for the credential, as provided. The bill would require the commission to determine the effective date of the credential and would authorize, on that date, any person with at least 5 years of experience providing occupational therapy or physical therapy services in a public school setting to apply for the credential if that person satisfies specified conditions.

(2) Existing law specifies the minimum requirements for the preliminary services credential with a specialization in administrative services, which include, among other requirements, possession of one of various types of credentials.

This bill would provide that possession of the services credential with a specialization in occupational therapy or physical therapy services satisfies that requirement.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 44268.2 is added to the Education Code, to read:

44268.2. (a) The commission shall develop a services credential with a specialization in occupational therapy or physical therapy services. The minimum requirements for the services credential with a specialization in occupational therapy or physical therapy services shall include all of the following:

(1) A baccalaureate degree or higher degree from an accredited institution.

(2) A fifth year, or its equivalent, including, but not limited to, postgraduate continuing education or fieldwork, of college or university education in occupational therapy or physical therapy.

(3) A valid license issued by the California Board of Occupational Therapy or the Physical Therapy Board of California.

(4) Such specialized and professional preparation as the commission may require.

(b) (1) The services credential with a specialization in occupational therapy or physical therapy services shall become effective not less than five years after the commission determines the minimum requirements for the services credential. The commission shall determine the effective date of the services credential.

(2) Notwithstanding subdivision (a), on the effective date of the services credential established by the commission, any person with at least five years of experience providing occupational therapy or physical therapy services in a public school setting shall be eligible to apply for the services credential with a specialization in occupational therapy or physical therapy services if that person does all of the following:

(A) Provides to the commission positive performance evaluations from the person's two most recent years providing occupational therapy or physical therapy services in a public school setting.

(B) Holds a valid license issued by the California Board of Occupational Therapy or the Physical Therapy Board of California.

(C) Fulfills the state basic skills proficiency requirement pursuant to Section 44252.

(D) Passes a professional fitness review by the commission pursuant to Article 3 (commencing with Section 44240).

SEC. 2. Section 44270 of the Education Code is amended to read:

44270. (a) The minimum requirements for the preliminary services credential with a specialization in administrative services are all of the following:

(1) Possession of one of the following:

(A) A valid teaching credential requiring the possession of a baccalaureate degree and a professional preparation program including student teaching.

(B) A valid designated subjects career technical education, adult education, or special subjects teaching credential, as specified in Section 44260, 44260.1, 44260.2, 44260.3, or 44260.4, provided the candidate also possesses a baccalaureate degree.

(C) A valid services credential with a specialization in pupil personnel, health, ~~or~~ clinical or rehabilitative services, *or occupational therapy or physical therapy services,* as specified in Section 44266, 44267, 44267.5, ~~or~~ 44268, or *44268.2, or* a valid services credential authorizing service as a teacher librarian, as specified in Section 44269.

(D) A valid credential issued under the laws, rules, and regulations in effect on or before December 31, 1971, which authorizes the same areas as in subparagraphs (B) and (C).

(2) Completion of a minimum of three years of successful, full-time classroom teaching experience in the public schools, including, but not limited to, service in state- or county-operated schools, or in private schools of equivalent status or three years of experience in the fields of pupil personnel, health, clinical or rehabilitative, or librarian services.

(3) Completion of an entry-level program of specialized and professional preparation in administrative services approved by the commission or a one-year internship in a program of supervised training in administrative services, approved by the commission as satisfying the requirements for the preliminary services credential with a specialization in administrative services.

(4) Current employment in an administrative position after completion of professional preparation as defined in paragraph (3), whether full or part time, in a public school or private school of equivalent status. The commission shall encourage school districts to consider the recency of preparation or professional growth in school administration as one of the criteria for employment.

(b) The preliminary administrative services credential shall be valid for a period of five years from the date of initial employment in an administrative position, whether full or part time, and shall not be renewable.

(c) A candidate who completed, by September 30, 1984, the requirements for the administrative services credential in effect on June 30, 1982, is eligible for the credential authorized under those requirements. All other candidates shall satisfy the requirements set forth in this section.