

AGENDA ITEM 3

DISCUSSION, AND POTENTIAL ACTION AND/OR POSITION RELATED TO ASSEMBLY BILL 2221 (BLOOM) RELATING TO THE OCCUPATIONAL THERAPY PRACTICE ACT.

Attached for review are the following:

- Ab 2221 Fact Sheet
- AB 2221 (dated April 5, 2018)
- Letter and proposed edits to AB 2221 (not yet in print) provided by OTAC and
- AOTA
- Language from previous leg proposal

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AB 2221 proposes to amend the Act to include the revision of outdated definitions, clarification of provisions related to advance practices, revision of continuing competence and coursework requirements, and language to clarify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

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Version: 3/19/2018



AB-2221 Occupational therapy. (2017-2018)

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Date Published: 04/05/2018 09:00 PM

AMENDED IN ASSEMBLY APRIL 05, 2018

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 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.

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. *The bill would authorize periodic compliance audits of attestations submitted to the board.* 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~~ *authorize, rather than require,* the board to 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: 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 profession of occupational therapy in California affects the public health, safety, and welfare and there is a necessity for that 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 client-related tasks to assist the occupational therapist or occupational therapy assistant in 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.

(f) "Examination" means an entry level 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.

(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 licensing or standard-setting body within five years prior to application or renewal of the person's license.

(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. The occupational therapist directs the evaluation process and develops the intervention plan.

(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.

(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.

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

(l) "Occupational therapy" means the therapeutic use of ~~occupations, including everyday life~~ *purposeful and meaningful goal-directed activities (occupations)* with individuals, groups, populations, or organizations, to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness to those who have, or are at risk of developing, ~~an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction.~~ *health conditions that limit*

activity or cause participation restrictions. Occupational therapy services encompass occupational therapy assessment, treatment, education, and consultation. Occupational therapy addresses the physical, cognitive, psychosocial, ~~sensory-perceptual~~, *sensory-perception* and other aspects of performance in a variety of contexts and environments to 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 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 populations.

(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.

(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 provide occupational therapy or hold himself or herself out as an occupational therapist or as being able to 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 attested, under penalty of perjury, to the board that he or she has met educational training and competency requirements. *All attestations submitted to the board may be subject to periodic compliance audits, as determined by the board.* 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 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 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 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 client, provide direct care to the 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. 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.

(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) 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) 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 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 shall by rule establish and require the satisfactory completion of continuing 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 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.D.T.~~" "O.T.D.," "Occupational Therapist," or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.

(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.," 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.

(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 client record.

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

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

(d) Client records shall be maintained for a period of no less than seven years following the discharge of the 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~~ and *chapter*, evaluate the qualifications for ~~licensure~~ *licensure*, and *may approve the examinations for licensure* under this chapter.

(b) The board shall adopt rules in accordance with the Administrative Procedure Act necessary to effectuate the purpose of this chapter for persons holding a license to provide occupational therapy or to assist in 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 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 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 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 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 client harm.

(m) Failing to maintain confidentiality of 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 clients by failing to follow infection control guidelines of the board, thereby risking transmission of infectious diseases from licensee to 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 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 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 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.



May 14, 2018

Heather Martin, Executive Officer
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2250
Sacramento, CA 95815

RE: Amendments to AB 2221

Dear Ms. Martin,

On behalf of the Occupational Therapy Association of California (OTAC) and the American Occupational Therapy Association (AOTA), we are writing to update you on the progress of AB 2221 (Bloom) and amendments we plan to adopt in response to some very helpful and constructive feedback we received from CBOT and the Assembly Business and Professions Committee. AB 2221 is an important step forward in updating the Occupational Therapy Practice Act to reflect the maturing practice of occupational therapy, changing patient needs which have become more diverse, and healthcare reform which has changed and broadened the services provided by occupational therapy. This evolution in healthcare and occupational therapy services has resulted in the need to update the Occupational Therapy Practice Act.

We very much appreciate the review and input we have received thus far from both the Legislative Affairs Committee and the Board. In response to that feedback, we would like to address the specific sections in the bill that we are planning on amending prior to the bill being heard on the Assembly Floor.

There are numerous sections throughout the OT practice act that make reference to the "practice" of occupational therapy. In AB 2221, we initially introduced language that changed "practice" to "profession." As part of the legislative committee process, it was recommended that we revert back to the original use of "practice" as a more accurate term describing the carrying out of OT services. The following sections will be amended to reflect these changes:

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.

2570.2 (b)

An occupational therapist or occupational therapy assistant licensed pursuant to this chapter may utilize the services of one aide engaged in client-related tasks to assist the occupational therapist or occupational therapy assistant in *the practice of occupational therapy*. The occupational therapist shall be responsible for the overall use and actions of the aide.

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.

2570.20. (b)

The board shall adopt rules in accordance with the Administrative Procedure Act necessary to effectuate the purpose of this chapter for persons holding a license to ~~practice provide~~ occupational therapy or to assist in *the practice of providing* occupational therapy in this state.

CBOT and the Legislative Affairs Committee requested that the term "responsible" be added to section 2570.2(h), as it relates to an occupational therapist's role in the evaluation process and the development of intervention plans. The following section will be amended to reflect this request:

2570.2. (h)

The occupational therapist *is responsible for and* directs the evaluation process and develops the intervention plan.

CBOT and the Legislative Affairs Committee expressed concerns in Section 2570.2(l) that the reference to "health conditions" that limit activity could be interpreted to exclude clients that are in need of occupational therapy services but do not have an illness. In response, we have drafted the following amendment which addresses this concern:

2570.2. (l)

Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness *for clients with disability and non-disability related needs or* to those who have, or are at risk of developing health conditions that limit activity or cause participation restrictions.

CBOT's Board, Legislative Affairs Committee and the Assembly Business & Professions Committee expressed concerns with removing the guidelines for the use of OT professional abbreviations. In our consideration of this request, we reviewed the current language in the OT Practice Act and crafted the following language. These amendments continue to exclude "O.T.R.", "O.T.R./L", "C.O.T.A." and

"C.O.T.A/L" under the rationale that these are all trademarked designations, which seems appropriate to remove, as their use is governed by the owners of these trademarks. However we believe that this language would not preclude someone from using these designations because this section includes the provision stating "...or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy."

2570.18 (b) et seq.

(b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations "O.T.," "O.T./L.," or "O.T.D.," "Occupational Therapist," "Occupational Therapist Licensed," "Occupational Therapist Doctorate" 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).

There were several other recommendations made by the CBOT Legislative Affairs Committee to the Board that we do not address at this time. We would like to explain the reasoning behind this decision and also our willingness to continue the conversations on these provisions as the bill moves through the legislative process.

With respect to the concern raised that "educators" should be required to obtain a license, we agree. However, we have interpreted the current law as requiring anyone who holds themselves out as an OT, regardless of where they work, as being required to have an occupational therapy license. We believe current law is sufficient for CBOT to enforce this requirement. We also have some concerns that such an amendment to the OT Practice Act could

have unintended consequences as it relates to inter-professional education where a "non-OT" instructs OT students. Perhaps the CBOT language we have adopted in AB 2221 that amends section 2570.20(b) to give the Board broader authority to adopt rules "necessary to effectuate" the Act would allow the Board to adopt a regulation that addresses this concern.

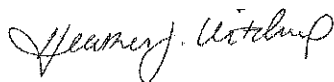
In Section 2570.3(j)(2), we increase the number of occupational therapist assistants that are allowed to be supervised from two to three. As the associations representing OTAs as well as OTs, we would like to expand the framework that provides more opportunities to OTAs in our healthcare system. The Board already has the authority to approve larger supervision ratios and we feel that a modest increase - by one- would meet the increasing demand for occupational therapy services without requiring further Board action, unless the Board encounters circumstances that would warrant a further increase of this ratio by regulation.

The final issue of concern raised by the CBOT Legislative Affairs Committee and shared by the Board is changing the current advance practice "certification" process to an "attestation, under penalty of perjury." There have been a lot of discussions in recent years both at the Board level and amongst the professional associations representing OT regarding the appropriate time to amend the requirements for advance practice certification. In fact, the CBOT legislative committee suggested that it would consider supporting a repeal of the certification requirement after a date certain in the future when the new ACOTE standards are adopted. Both OTAC and AOTA would welcome this repeal, but we also have to acknowledge that the latest draft of the ACOTE standards are just that, a draft. The new draft standards have not been approved and will not go into effect for several years.

In an effort to try and streamline the advance practice application process, we are trying to develop a scheme that does not repeal advance practice, but simultaneously provides more opportunities to practitioners. OTAC and AOTA are open to further discussions about how to address advance practice. We are open to further review of the requirements in regulation and perhaps a revision in light of contemporary education and experience requirements. A broader study of the advance practice provisions, including things like timeline to process and provider approval process, could be examined to build more efficiencies into the process. For example, a conversation could be had about the application process itself and placing a shorter timeframe on the approval process or an automatic approval unless the applications are deficient. These are just some ideas to demonstrate that both OTAC and AOTA are open and willing to continue this discussion with the board to try and find a solution that protects the public and advances the practice of occupational therapy in California.

We look forward to continuing our work with the Board on one of the most significant pieces of legislation that has been introduced since the initial licensure of occupational therapy. Thank you for your attention to this matter. If you have any questions, please contact Ivan Altamura with Capitol Advocacy at (916) 444-0400 or ialtamura@capitoladvocacy.com.

Sincerely,



Heather J. Kitching, OTD, OTR/L
OTAC President



Chuck Willmarth
Director of State Affairs, AOTA

25870.2(k) "Practice of occupational therapy" means the therapeutic use of purposeful and meaningful goal-directed activities (occupations) which engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health. Occupational therapy services encompass occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)). 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. 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.

Version 1

Occupational therapy includes, but is not limited to, performing as a clinician, supervisor of occupational therapy students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, continuing education instructor and educator of consumers/clients.

Version 2

The licensed occupational therapist or occupational therapy assistant may assume a variety of roles in their profession, including but not limited to, clinician, supervisor of occupational therapy students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, continuing education instructor and educator of consumers/clients. The term "client" is used to name the entity that receives occupational therapy services. Clients may be categorized as:

(a) individuals, including individuals who may be involved in supporting or caring for the client (i.e. caregiver, teacher, parent, employer, spouse);

(b) individuals within the context of a group (e.g., a family, a class); or

(c) individuals within the context of a population (e.g., an organization, a community).