AB 2221 (BLOOM), OCCUPATIONAL THERAPY PRACTICE ACT.

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AB 2221 proposes to amend the Act to include the revision of outdated definitions, clarification of provisions related to advance practices, revision of continuing competence and coursework requirements, and language to clarify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

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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. (I)

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

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez Fletcher, Chair
AB 2221 (Bloom) – As Amended April 5, 2018

Policy Committee: Business and Professions Vote: 16 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill makes numerous changes to code governing the California Board of Occupational Therapy's (CBOT's) regulation of occupational therapy. Specifically, this bill, among other provisions:

1) Changes and adds definitions, including inserting additional language related to occupational therapy for mental health disorders into the definition of occupational therapy and changing the responsibilities of occupational therapists (OTs) with respect to assessment and development of a treatment plan.

2) Strikes provisions specifying educational requirements and provisions specifying requirements a person must meet to use the term O.T.D., or doctor of occupational therapy.

3) Allows an OT to provide advanced practices based on an attestation to the board that they possess the training and competence, rather than being required to demonstrate to the board that he or she has met the training and competence requirements.

4) Limits the board's oversight authority to the profession, rather than the practice, of occupational therapy.

FISCAL EFFECT:

1) Ongoing administrative costs to the CBOT within the Department of Consumer Affairs, not likely to exceed $100,000, for personnel to review attestations and verify compliance (all costs are Occupational Therapy Fund).

2) Uncertain, potentially significant ongoing enforcement costs if individuals are found in violation of new rules governing advanced practice.

3) Uncertain, potentially significant one-time regulatory and legal workload to respond to and interpret various definitional changes.

COMMENTS:

1) **Purpose**. According to co-sponsors, the American Occupational Therapy Association and the Occupational Therapy Association of California, this bill updates statute governing regulation of occupational therapy to allow OTs to practice to the full extent of their training.

2) **Background**. Current law defines the practice of occupational therapy as the therapeutic use of purposeful and meaningful goal-directed activities (occupations) that engage the

individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health. For instance, an OT may teach a stroke victim how to get dressed or demonstrate how to stretch joints for arthritis pain relief. According to the federal Occupational Outlook Handbook, about half of occupational therapists work in offices of occupational therapy or in hospitals, while others work in schools, nursing homes, and home health services. CBOT licenses about 13,000 OTs and 3,000 Occupational Therapy Assistants. CBOT was most recently reviewed by the Legislature last year, when the board's sunset was extended and minor statutory changes were made through AB 1706 (Low), Chapter 454, Statutes of 2017.

Analysis Prepared by: Lisa Murawski / APPR. / (916) 319-2081

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).

AB 2386 (RUBIO), Services credentialing: services credential with a specialization in occupational therapy or physical therapy services.

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

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

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Date Published: 05/01/2018 09:00 PM

AMENDED IN ASSEMBLY MAY 01, 2018

AMENDED IN ASSEMBLY APRIL 10, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 2386

Introduced by Assembly Member Rubio

February 14, 2018

An act to add Section 44268.2 to the Education Code, relating to services credentialing.

LEGISLATIVE COUNSEL'S DIGEST

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

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 convene a ~~workgroup to develop a proposed~~ *workgroup, as provided, to consider whether the development of a* services credential with a specialization in occupational therapy or physical therapy ~~services, as provided, and~~ *services is warranted and, if so warranted, to consider specified requirements for the credential. The bill* would require the workgroup to provide a report on ~~the proposed credential~~ *its findings* to the Legislature, the Governor, and the Superintendent of Public Instruction on or before January 1, 2020.

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) ~~(1)~~The commission shall convene a workgroup, as provided in subdivision (c), to ~~develop a proposed~~ *consider whether the development of a* services credential with a specialization in occupational therapy or physical therapy ~~services. The workgroup shall provide a report on the proposed credential to the Legislature, the Governor, and the Superintendent on or before January 1, 2020.~~ *services is warranted.*

~~(2)The report described in paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.~~

(b) ~~In developing the proposed services credential with a specialization in occupational therapy or physical therapy services,~~ *If a determination is made that the credential is warranted,* the workgroup shall consider all of the following:

(1) The minimum requirements for the credential.

(2) What experience may automatically qualify an occupational therapist or physical therapist to earn the credential.

(3) Any additional specialized preparation necessary to qualify for the credential.

(4) What options may be made available to occupational therapists and physical therapists with respect to obtaining a credential.

(c) The workgroup membership shall ~~include~~ *include, but not be limited to,* all of the following:

(1) A representative from the Occupational Therapy Association of California.

(2) A representative from the California Physical Therapy Association.

(3) A representative from a labor union representing certificated employees.

(4) A representative from a labor union representing classified employees.

(5) A school administrator.

(6) At least two academic representatives from educational institutions that have occupational therapy or physical therapy degree programs.

(7) A representative from the department.

(8) A representative from a special education local plan area.

(d) (1) The workgroup shall provide a report on its findings pursuant to this section to the Legislature, the Governor, and the Superintendent on or before January 1, 2020.

(2) The report described in paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

Date of Hearing: May 16, 2018

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez Fletcher, Chair
AB 2386 (Rubio) – As Amended May 1, 2018

Policy Committee: Education Vote: 4 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY: This bill requires the Commission on Teacher Credentialing (CTC) to convene a workgroup to consider whether developing a service credential with a specialization in occupational therapy or physical therapy is warranted, and, if it is, requirements for that credential. It requires the CTC to provide a report on its findings by January 1, 2020.

FISCAL EFFECT:

$250,000 from the Teacher Credentialing Fund (special fund) for CTC to convene a workgroup and produce a report about whether developing a service credential with a specialization in occupational therapy or physical therapy is warranted, and if it is, requirements for that credential.

COMMENTS:

1) **Purpose.** According to the author:

   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 by CTC. Due to absence of a preliminary credential, these healthcare professionals are ineligible for management, development, or leadership positions within their school districts.

2) **School-based Occupational Therapists and Physical Therapists.** In schools, occupational therapists (OTs) are health professionals who support a child's engagement and participation in educational activities, play, and social interactions. These services are mandated for students with special needs under the federal Individuals With Disability Act (IDEA). To be licensed to practice in California, OTs must earn a master's degree, pass the National Board for Certification in Occupational Therapy examination, and obtain a license through the California Board of Occupational Therapy.

   Physical therapists (PTs) are health professionals who correct, facilitate, or adapt a child's functional performance in motor control and coordination, functional mobility, and the use of assistive devices. These services are mandated for students with special needs under the federal IDEA. To be licensed to practice in California, PTs must earn a master's degree and pass national and state licensure examinations.

3) **CTC.** The CTC is an independent governmental entity that is responsible for accrediting educator credential preparation programs, issuing credentials and permits for service in

California public schools, and administering credential discipline when necessary. Current services authorized by the CTC include school administrators, nurses, counselors, and audiologists.

CTC's revenue comes from two primary sources: credential application fees support the Teacher Credential Fund and educator exam fees support the Teacher Development and Assessment Account.

4) **Related Legislation.** AB 1087 (Irwin), of this session, requires the CTC to develop a services credential with a specialization in occupational therapy and physical therapy services. The bill was held in Assembly Education.

Analysis Prepared by: Natasha Collins / APPR. / (916) 319-2081

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2386 (Rubio) – As Amended April 10, 2018

SUBJECT: Services credentialing: services credential with a specialization in occupational therapy or physical therapy services

SUMMARY: Requires the Commission on Teacher Credentialing to convene a workgroup to develop a proposed services credential with a specialization in occupational therapy or physical therapy services. Specifically, **this bill**:

1) Requires the Commission on Teacher Credentialing (CTC) to convene a workgroup to develop a proposed services credential with a specialization in occupational therapy or physical therapy services.

2) Requires the workgroup to provide a report on the proposed credential to the Legislature, the Governor, and the Superintendent of Public Instruction (SPI) by January 1, 2020.

3) Requires that in developing the proposed services credential, the workgroup must consider all of the following:

    a) The minimum requirements for the credential.

    b) What experience may automatically qualify an occupational therapist or physical therapist to earn the credential.

    c) Any additional specialized preparation necessary to qualify for the credential.

    d) What options may be made available to occupational therapists and physical therapists with respect to obtaining a credential.

4) Requires that the workgroup membership includes all of the following:

    a) A representative from the Occupational Therapy Association of California.

    b) A representative from the California Physical Therapy Association.

    c) A representative from a labor union representing certificated employees.

    d) A representative from a labor union representing classified employees.

    e) A school administrator.

    f) At least two academic representatives from educational institutions that have occupational therapy or physical therapy degree programs.

    g) A representative from the California Department of Education (CDE).

h) A representative from a special education local plan area (SELPA).

EXISTING LAW:

1) Specifies that the minimum requirements for a services credential with a specialization in health are:

   a) Five years, or its equivalent, of college or university education, or five years of professional preparation approved by the commission;

   b) Possession of a valid license, certificate, or registration, appropriate to the health service to be designated, issued by the California agency authorized by law to license, certificate, or register persons to practice that health service in California;

   c) Such additional requirements as may be prescribed by the commission.

   Authorizes the holder of a services credential with a specialization in health to perform, at all grade levels, the health service approved by the commission as designated on the credential. Services as an audiometrist, occupational therapist, or physical therapist are not deemed health services within the meaning of this section. (EC 44267)

2) Specifies that the minimum requirements for a services credential in a specialization in clinical or rehabilitative services are:

   a) A baccalaureate degree or higher degree from an institution approved by the commission;

   b) A fifth year, or its equivalent, of college or university education;

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

   Authorizes the holder of a services credential with a specialization in clinical or rehabilitative services to perform, at all grade levels, the service approved by the CTC as designated on the credential. Includes, but is not limited to, speech, language, and hearing services. (EC 44268)

3) Specifies that 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. (Business and Professions Code (BPC) 2570.2).

4) Specifies that physical therapy encompasses the physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive

exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions (BPC 2620).

FISCAL EFFECT: Unknown.

COMMENTS: ***Need for the bill.*** According to the author, "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 by CTC. Due to absence of a preliminary credential, these healthcare professionals are ineligible for management, development, or leadership positions within their school districts."

Therapy services being provided in schools today. According to the California Department of Education's *Guidelines for Occupational Therapy and Physical Therapy in California Public Schools, 2012,* occupational therapists and physical therapists work with the educational team to support a child's ability to gain access to the general education curriculum, meet state standards, participate in postsecondary education, and become functional independent citizens upon graduation.

In school-based practice, occupational therapists are health professionals whose purpose in a public school setting is to support a child's engagement and participation in daily occupations, which include activities of daily living, education, prevocational work, play, rest, leisure, and social participation. Physical therapists are health professionals whose purpose is to correct, facilitate, or adapt the child's functional performance in motor control and coordination, posture and balance, functional mobility, accessibility, and the use of assistive devices.

According to the Occupational Therapy Association of California, occupational therapy services have been provided to students in public schools since the 1970s. These services are mandated to be provided to students with special needs, under the IDEA. There are currently 16,000 occupational therapists licensed to practice in California and 3,000 or 20% of these are estimated to practice in school-based settings.

According to the California Physical Therapy Association, physical therapy services have been provided in schools since the 1970s and are mandated for students with special needs under IDEA. There are 22,000 physical therapy practitioners currently licensed in California and approximately 8% of these or over 1,700 practice in school-based settings.

Licensure requirements. In order to be licensed to practice in California, occupational therapists must have graduated from an accredited institution, pass the National Board for Certification in Occupational Therapy examination, and obtain a license through the California Board of Occupational Therapy. In order to be licensed as a physical therapist in California, physical therapists must earn a master's degree from an accredited institution, and pass national and state licensure examinations. Both professions are required to earn continuing education units and meet professional and ethical standards to maintain licensure.

Role of the CTC. The CTC is an independent governmental entity that is responsible for accrediting educator credential preparation programs, issuing credentials and permits for service in California public schools, and administering credential discipline when necessary.

Current services credentials authorized by the CTC include:

- School administrators
- School nurses
- Teacher librarians
- School counselors
- School social workers
- School psychologists
- Speech language pathologists
- Audiologists
- Orientation and mobility specialists.

Occupational therapists and physical therapists do not currently have the opportunity to earn a credential in their field. This bill would require the CTC to convene a workgroup to develop a proposed services credential with a specialization in occupational therapy or physical therapy and to report to the Legislature by January 1, 2020.

Arguments in support. The Occupational Therapy Association of California and the California Physical Therapy Association state that a school credential will recognize the unique value of OTs and PTs and help to recruit, hire, and retain highly qualified therapists and open new opportunities comparable to other related service providers who are already credentialed by the Commission on Teacher Credentialing. OTs and PTs possess masters and doctoral level degrees, require supervised clinical experience, are licensed by the State of California, and are required to complete ongoing professional development to maintain licensure, and therefore are deserving of a credential status. A basic credential will create opportunities for these professionals to pursue advanced education leading to an administrative credential and allow them to engage in leadership roles such as Autism Coordinators, Program Specialists, Inclusion Specialists, or Transition Specialists.

Over 60 individuals, writing in support include practicing OTs and PTs as well as graduate students in OT and PT programs, note that allowing these professionals to pursue a credential will offer increased collaboration professionals within a leadership capacity as well as the option to advance professionally through the education system.

Arguments in opposition. The California School Employees Association (CSEA) opposes the bill as it requires the development of a service credential for OTs and PTs without an optional credential and they oppose any mandated credential. CSEA notes that some OTs and PTs currently working in schools do not want to be forced to have a credential to do the same work they are doing now. Some CSEA members have Bachelor's degrees and fear that they could receive a pay cut of $20-30,000 per year if they are required to become credentialed and could face loss of their jobs. While some OTs and PTs want to remain as classified staff, there are others who do wish to have the opportunity to gain a service credential. CSEA does not believe

that all OTs and PTs want this career path and should not be forced to do so. They believe that an optional credential is the only fair solution. Finally, they note that the workgroup is not directed to consider OTs or PTs working in charter schools or for private contractors serving schools.

Committee amendments. In order to ensure a fair process, ***committee staff recommends*** that the bill be amended to require the workgroup, in developing the proposed services credential, consider whether such a credential is warranted.

The bill specifies the make-up of the workgroup, but does not allow for any discretion by CTC, of additional individuals to include on the workgroup. ***Committee staff recommends*** that the bill be amended to specify that the workgroup must include, but not be limited to, the specified individuals listed.

Prior legislation. AB 1087 (Irwin) of this Session requires the Commission on Teacher Credentialing to develop a services credential with a specialization in occupational therapy and physical therapy services. This bill was held in Assembly Education.

REGISTERED SUPPORT / OPPOSITION:

Support

California Physical Therapy Association
Occupational Therapy Association of California
Numerous individuals

Opposition

California School Employees Association

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087

AB 3110 (MULLEN), Athletic Trainers.

AB-3110 Athletic trainers. (2017-2018)

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

AMENDED IN ASSEMBLY MAY 09, 2018

AMENDED IN ASSEMBLY MAY 01, 2018

AMENDED IN ASSEMBLY APRIL 11, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 3110

Introduced by Assembly Member Mullin
(Coauthors: Assembly Members Berman, Calderon, Chau, Kalra, and McCarty)
(Coauthor: Senator Stone)

February 16, 2018

An act to amend Sections 101 and 144 of, to add Chapter 5.8 (commencing with Section 2697) ~~of~~ *to* Division 2 of, and to repeal Section 2697.2 of, the Business and Professions Code, relating to athletic trainers.

LEGISLATIVE COUNSEL'S DIGEST

AB 3110, as amended, Mullin. Athletic trainers.

Existing law provides for the licensure and regulation of various professions and vocations.

This bill would enact the Athletic Training Practice Act, which would establish the Athletic Trainer Board, until January 1, 2023, within the Department of Consumer Affairs to exercise licensing, regulatory, and disciplinary functions under the act. The bill would prohibit a person from practicing as an athletic trainer or using certain titles or terms without being registered with the board, except as specified. The bill would define the practice of athletic training, and would specify requirements for registration as an athletic trainer, including graduating from a professional degree program in athletic training, and would require a registrant to render athletic training services only pursuant to orders from and under the supervision of a physician and surgeon or osteopathic physician and surgeon. The bill would provide that a registration to practice as an athletic trainer would be valid for 2 years and subject to renewal, would authorize the board to deny or revoke a registration for specified reasons, and would establish procedures for the referral of complaints. The bill would specify acts that constitute unprofessional conduct and would make it a misdemeanor for any person to violate the act.

The bill would establish the Athletic Trainers' Fund for the deposit of application and renewal fees, as specified, and would make those fees available to the board 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. By creating a new crime, and expanding the crime of perjury, this bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 may 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 minors.

(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 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 Board.

(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 Cannabis Control.

(ao) The Athletic Training Board.

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

SEC. 3. 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 Cannabis Control.

(28) California Board of Podiatric Medicine.

(29) Osteopathic Medical Board of California.

(30) Athletic Training Board.

(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.

SEC. 4. 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. General Provisions

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) "Athlete" means a person who participates in an athletic activity.

(b) "Athletic activity" means an activity involving an athlete that requires physical strength, range-of-motion, flexibility, body awareness and control, speed, stamina, or agility that is related to the following:

(1) An activity or event conducted by any of the following:

(A) An intercollegiate athletic association or interscholastic athletic association.

(B) A professional athletic organization.

(C) An amateur athletic organization.

(2) A professional or recreational activity that meets all of the following:

(A) Has officially designated coaches or trainers.

(B) Conducts regularly scheduled practices or workouts that are supervised by coaches or trainers.

(C) Has established schedules for performances, competitive events, or exhibitions.

(3) An activity or event defined by the board as "athletic" for purposes of registration under this chapter and as necessary to protect the public.

(c) "Athletic trainer"~~ or "certified athletic trainer"~~ means a~~ registrant~~ *person* who practices athletic training and~~ is registered pursuant to~~ *who meets the requirements of subdivision (b) of* Section 2697.5.

(d) "Athletic training" includes all of the following:

(1) Risk management and injury or illness prevention through preparticipation 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 practice standards 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 practice standards 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 practice standards 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 as described in subdivision (c) of Section 2697.5.

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

(e) "Board" means the Athletic Training Board.

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

(g) "Registrant" means a person who practices athletic training and is registered pursuant to this chapter.

Article 2. Administration

2697.2. (a) There is established the Athletic Training Board within the Department of Consumer Affairs.

(b) The board is comprised of seven members as follows:

(1) Two athletic trainers certified pursuant to Section 2697.5.

(2) Four public ~~members.~~ *members who are not licensed pursuant to this division.*

(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.

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

(d) 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.

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

(f) Subject to Sections 107 and 154, the board may employ an executive officer and other employees as necessary to administer this chapter.

(g) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

2697.3. Notwithstanding any other law, the repeal of Section 2697.2 renders the board or its successor entity subject to review by the appropriate policy committees of the Legislature.

2697.4. (a) (1) The board shall adopt, repeal, and amend regulations as may be necessary to administer and enforce this chapter.

(2) Before adopting regulations, the board 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 board shall verify, to the extent practicable, the information provided, certified, or attested to in an application before a registration is issued.

(c) *(1)* The board shall maintain a publicly accessible registry of all registrants that contains the information specified under ~~Section 2697.6 except that, at the request of the registrant, the board shall not make the registrant's residential address available to the public if the registrant provides an alternate address of record.~~ *subdivision (f) of Section 2697.6.*

(2) In maintaining the publicly accessible registry, the board shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(d) The board shall give protection of the public the highest priority in ~~exercising its licensing, regulatory, and disciplinary functions.~~ *administering this chapter.* Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Article 3. Registration and Protected Titles

2697.5. (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 registered with the board pursuant to this chapter.

(b) A person shall not use the title "athletic trainer," "licensed athletic trainer," "certified athletic trainer," "registered athletic trainer," "athletic trainer certified," "a.t.," ~~"a.t.l.,"~~ "l.a.t," "c.a.t.," *"r.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 registered pursuant to this chapter and meets all of the following requirements:~~ *all of the following apply:*

(1) The ~~registrant 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 board, at an accredited postsecondary institution or institutions approved by the board.~~ *person is registered pursuant to this chapter.*

~~(2)The registrant 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 board.~~

~~(3)~~

(2) The board has received official verification of the registrant's certification issued by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the board.

~~(4)~~

(3) The registrant maintains the certification issued by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the board.

(c) (1) A registrant who meets the requirements of subdivision (b) shall only render athletic training services pursuant to a verbal or written order by, and under the supervision 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.

(2) For purposes of this section, "supervision" means services are only provided pursuant to an athletic training treatment plan or protocol that meets all the following:

(A) The plan or protocol specifies the athletic training services, settings, and referral requirements specific to the athletic trainer's individual training and competence.

(B) The plan or protocol is established with and approved by the supervising physician and surgeon or osteopathic physician and surgeon.

(C) The plan or protocol accounts for the supervising physician and surgeon's availability to the athletic trainer as determined by the supervising physician.

(d) A registrant shall refer an athlete to an appropriate licensed health care provider when the management of the injury or condition does not fall within the competence of the registrant.

(e) A registrant 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, advanced postprofessional study, license, or individual training and competence.

(f) A registrant who does not meet the requirements of subdivision (b) may use the titles "manager," "coach," "assistant," "associate," "volunteer," or any other title that does not imply the registrant is an athletic trainer who meets the requirements of subdivision (b).

2697.6. Except as otherwise provided in this chapter, the board shall issue an athletic training registration to an applicant who meets all of the following requirements at the time of application:

(a) The applicant is over 18 years of age.

(b) The applicant certifies that the applicant 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.

(c) The applicant submits an application developed by the board that includes, but is not limited to, the following:

(1) The name or names of the applicant.

(2) The applicant's contact information, including *the applicant's phone number, email address, and mailing address. An applicant may provide* an alternate address of record for purposes of the public registry. An alternate address of record is anywhere a registrant may receive service of process, including a current work address or a valid post office box. *Nothing in this paragraph prohibits the board from requiring a home address in addition to an alternate address of record for purposes of board communications.*

(3) The~~ name of the~~ applicant's current employer and the employer's contact information. *If the applicant is not employed, the applicant shall list any organization or setting where the applicant practices athletic training on a*

contractual, ongoing, or regular basis, as specified by the board.

(4) The applicant's ~~highest level of education.~~ *completed postsecondary education, degree-granting institutions, and graduation dates, if applicable.*

(5) Whether the applicant ~~has passed an athletic training certification examination offered~~ *is certified* by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the board.

(6) Any of the applicant's other licenses, credentials, or information relevant to the applicant's qualifications in athletic training.

(d) ~~Has completed~~ *The applicant completes* a criminal background history check.

(e) ~~Has paid~~ *The applicant pays* the application fee established by the board.

(f) The applicant authorizes the publication of all of the following information for purposes of the publicly accessible registry:

(1) The applicant's name or names.

(2) The applicant's address of record. If the applicant provides an alternate address of record pursuant to paragraph (2) of subdivision (c), the applicant may instead authorize the publication of the applicant's alternate address of record.

(3) The applicant's current employer. If the applicant is not employed, the authorization shall apply to the organizations or setting provided pursuant to paragraph (3) of subdivision (c).

(4) Whether the applicant is certified by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved by the board.

(5) The applicant's completed postsecondary education, degree-granting institutions, and graduation dates, if applicable.

2697.7. A registration issued by the board pursuant to Section 2697.5 is valid for two years and thereafter is subject to the renewal requirements described in Section 2697.8.

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

(a) Pays the renewal fee established by the board.

(b) Submits the following:

(1) Verification of place of employment.

(2) Verification of certificate and other credentials.

(3) Verification of address of record.

(4) Attestation that the registrant has not been disciplined or convicted of a crime that would be grounds for revocation.

2697.9. (a) The board may deny or revoke a registration for any of the following:

(1) The applicant or registrant fails to provide the information required pursuant to 2697.8.

(2) The applicant or registrant has had an athletic training or other healing arts license, certification, or registration revoked or suspended by an accredited organization, state agency, or territory.

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

(b) If the board suspends a registration based on suspension or other disciplinary action by another board or certifying entity, the suspension shall not exceed the length of the suspension as determined by the other board or certifying entity.

2697.10. (a) The board shall refer complaints as follows:

(1) Unlicensed practice to the appropriate licensing board and law enforcement agencies.

(2) Incompetent practice and unprofessional conduct to the following, as applicable:

(A) The registrant's employer of record.

(B) The Board of Certification, Inc.

(C) The appropriate licensing board.

(b) The board shall include with a complaint referred pursuant to this section a statement disclosing the unverified nature of the complaint.

(c) The board shall not make available to the public complaints that have not resulted in a final disciplinary action or criminal conviction.

(d) (1) The board shall track and report data relating to complaints, registrants, instances of consumer harm, recommendations for improving athlete and consumer safety, and any other information the board finds necessary, to the appropriate policy committees of the Legislature by July 1, 2021. The information shall be aggregated in a manner that does not disclose unverified or criminal or disciplinary actions that did not result in a criminal conviction or formal discipline, or other personal or identifying information.

(2) The requirement for submitting a report imposed under paragraph (1) is inoperative on July 1, 2025, pursuant to Section 10231.5 of the Government Code.

(3) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

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, certificant, or registrant 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 registration.

(i) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a registrant, 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, certificate, or registration.

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

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

(m) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a registrant, 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 athlete. 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 an athlete 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 athlete harm.

(q) Failing to maintain confidentiality of athlete 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 certified athletic trainer who meets the requirements of subdivision (b) of Section 2697.5.

(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 athletes by failing to follow infection control guidelines of the board, thereby risking transmission of infectious diseases from registrant to athlete, from athlete to athlete, or from athlete to registrant.

(u) As a registrant, 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 registrant, 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 registrant, 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 registrant, 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 registrant, falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any athlete record, or any other record.

Article 4. Penalties and Exemptions

2697.14. Any person who violates this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both.

2697.15. Whenever any person has engaged in any act or practice which constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining such conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. The board may commence action in the superior court under the provisions of this section.

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 who meets the requirements of subdivision (b) of Section 2697.5, 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 registered under this chapter.

Article 5. Revenue

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 board, upon appropriation by the Legislature, for expenditure by the committee to defray its expenses for administering this chapter.

(b) The board shall charge the following fees:

(1) An application fee of not more than the reasonable cost of processing the application.

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

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

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

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

(5) A duplicate registration fee, to replace one that is lost or destroyed, or in the event of a name change, not to exceed the reasonable cost of issuing the duplicate registration.

(6) An endorsement fee not to exceed the reasonable cost of issuing the endorsement.

(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. Notwithstanding any other law, including Section 11005 of the Government Code, but subject to ~~regulations implementing~~ the Political Reform Act ~~that are contained in Division 6 (commencing with Section 18110) of Title 2 of the California Code of Regulations,~~ *of 1974 (Title 9 (commencing with Section 81000) 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 or entity for the initial costs of implementing this chapter.

SEC. 5. The Legislature finds and declares that Section 4 of this act, which adds Sections 2697.4 and 2697.10 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the Athletic Training Board to fully accomplish its goals, it is imperative to protect the interests of those persons whose information is submitted to the board to ensure that any personal information that this act requires to be submitted is protected as confidential information.

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.

Date of Hearing: May 16, 2018

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez Fletcher, Chair
AB 3110 (Mullin) – As Amended May 9, 2018

Policy Committee:	Arts, Entertainment, Sports, Tourism, and Internet Media	Vote:	5 - 0
	Business and Professions		10 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill establishes the Athletic Training Practice Act, to be overseen by the newly created Athletic Training Board (ATB) within the Department of Consumer Affairs. Specifically, this bill:

1) Requires anyone in the state practicing athletic training, as defined, or using the title "athletic trainer" (AT) or a similar title, to register with the ATB.

2) Requires registrants to have proof of private certification, as specified.

3) Requires ATs to work under the supervision of a doctor.

4) Requires a two-year renewal and background checks for ATs, and specifies grounds for rejection.

5) Requires the ATB to refer complaints to appropriate licensing or certification entities.

6) Requires the ATB to track data related to complaints, registrants, consumer harm, and other information, and report to the Legislature by July 1, 2021.

7) Defines unprofessional conduct.

8) Establishes the Athletic Trainer's Fund to deposit application fees, initial registration fees, renewal fees, and other fees, which the ATB is required to establish.

9) Allows the DCA to seek funds from the California Athletic Trainers Association or any private individual or entity for the initial costs of implementing the bill.

FISCAL EFFECT:

1) $1.6 million in 2019-20, $1.3 million in 2020-21, and $1.2 million ongoing to the Athletic Trainer's Fund, which would need a GF or special fund loan for start-up costs if private funds were not available.

2) One-time costs to the Department of Justice exceeding $100,000 for background checks (Fingerprint Fees Account).

COMMENTS:

1) **Purpose**. This bill is intended to establish state oversight for athletic trainers to protect consumers from harm associated with unregulated practice.

2) **Background.** According to the Occupational Outlook Handbook published by the federal Bureau of Labor Statistics, ATs specialize in preventing, diagnosing, and treating muscle and bone injuries and illnesses. Nearly all states require ATs to have a license or certification. Requirements vary by state. According to the California Athletic Trainers Association (CATA), there are 3,100 certified ATs in California and a number who are uncertified. Many ATs work in educational settings, including colleges, universities, elementary schools, and secondary schools. Others work in hospitals, fitness centers, or physicians' offices, or for professional sports teams.

   The Legislature uses a "sunrise review" process to assess requests for new state licensure, certification, and registration programs. This process weights potential consumer protection benefits with potential harms from government regulation, such as increased cost and restricted employment opportunities. According to the sunrise review report submitted by the author, the public is at risk of harm without state regulation. CATA asserts there are documented cases of harm to athletes under the care of unqualified individuals.

   According to CATA, education for athletic training is standardized and is accredited by a national accreditation agency, the Commission on Accreditation of Athletic Training Education. This bill requires registrants to possess a private certification that encompasses this training.

3) **Support and Opposition**. CATA, sports medicine schools and associations, the California Medical Association, and others write in support that recognizing ATs through state regulation is critical to consumer protection and allows ATs to operate in a legal, professional manner. Numerous allied health professional organizations oppose this bill, including those comprised of nurses, physician assistants, physical therapists, and occupational therapists. These professionals generally object to the establishment of a new scope of practice, believe the defined scope is overly expansive and overlaps with that of other professionals, and believe a new regulatory program is unnecessary.

4) **Prior Legislation**. A large number of bills over the past 15 years has addressed the issue of state regulation of athletic trainers, including bills establishing licensure, certification, and title protection, as well as bills that required the issue be studied. Five have been vetoed, while another six did not pass the Legislature. The current governor has vetoed two bills, in 2014 and 2015, that established title protection for ATs, on concern the bills posed "unnecessary burdens on athletic trainers without sufficient evidence they are needed." This bill imposes a stricter standard than did those bills, and it is unclear whether this bill and related information submitted by the author would address the governor's veto message.

5) **Staff Comments**.

   a) Technical cleanup is necessary in Section 2967.8, where language refers to a license instead of a registration.

b) This bill specifies consumer complaints must be referred to appropriate licensing or certification entities. The author may wish to consider requiring complaints appropriate to be referred to law enforcement to be referred to such.

c) The author may wish to consider requiring some type of outreach to notify persons currently working as trainers that registration is necessary.

d) This bill was amended to change the originally proposed licensure structure to a registration in order to allow the state to collect data to see if more stringent regulation is required. For persons who may be working as trainers who have not obtained formal certification required for registration, the author may wish to consider whether some flexibility is warranted to allow them to obtain the necessary certification prior to being shut out of a job. This could be effectuated by requiring registration and collecting information about certification status, but removing the certification requirement. Alternatively, requirement that a registrant be certified could be delayed until a later date.

e) This bill specifies private funds may be accepted to pay startup costs. However, the bill is effective regardless of whether private funds are available. The bill should specify that if GF or special fund loan is necessary, that the startup costs must be repaid with fee revenue.

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