

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

LAWS & REGULATIONS 2013



STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

PREFACE

The California Board of Occupational Therapy is pleased to present the 2013 edition of the California Laws and Regulations relating to the practice of occupational therapy. This publication is a condensed version of the various codes and does not incorporate all sections of law contained within any of the respective codes.

To access a complete listing of the California Codes, please visit the following websites:

For California Codes contact:

<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

For California Code of Regulations contact:

<http://ccr.oal.ca.gov>

GENERAL PROVISIONS

- 22. “Board”
- 30. Provision of federal employer identification number or social security number by licensee
- 31. Compliance with judgment or order for support upon issuance or renewal of license

CHAPTER 1. THE DEPARTMENT

- 114. Reinstatement of expired license of licensee serving in military
- 114.3. Waiver of fees and requirements for “active duty” licensees
- 115. Applicability of Section 114
- 115.5. Board required to expedite licensing process
- 118. Effect of withdrawal of application; Effect of suspension, forfeiture, etc., of license
- 119. Misdemeanors pertaining to use of licenses
- 121. Practice during period between renewal and receipt of evidence of renewal
- 122. Fee for issuance of duplicate certificate
- 123. Conduct constituting subversion of licensing examination; Penalties and damages
- 125. Misdemeanor offenses by licensees
- 125.3. Direction to licensee violating licensing act to pay costs of investigation and enforcement
- 125.5. Enjoining violations; restitution orders
- 125.6. Unlawful discrimination by licensees
- 125.7. Restraining orders
- 125.8. Temporary order restraining licensee engaged or about to engage in violation of law
- 125.9. System for issuance of citations to licensees; Contents; Fines
- 128. Sale of equipment, supplies, or services for use in violation of licensing requirements
- 129. Handling of complaints; Reports to Legislature
- 134. Proration of license fees
- 136. Notification of change of address; Punishment for failure to comply

-
- 137. Regulations requiring inclusion of license numbers in advertising, etc.
 - 138. Notice that practitioner is licensed; Evaluation of licensing examination
 - 140. Disciplinary action; Licensee's failure to record cash transactions in payment of employee wages
 - 141. Disciplinary action by foreign jurisdiction; Grounds for disciplinary action by state licensing board
 - 143. Proof of license as condition of bringing action for collection of compensation
 - 144. Requirement of fingerprints for criminal record checks

CHAPTER 1.5. UNLICENSED ACTIVITY ENFORCEMENT

- 145. Legislative findings and declarations
- 147. Authority to issue written notice to appear in court
- 148. Establishment of administrative citation system

CHAPTER 3. FUNDS OF THE DEPARTMENT

- 201. Levy for administrative expenses
- 206. Dishonored check tendered for payment of fine, fee, or penalty.

ARTICLE 3.6. UNIFORM STANDARDS REGARDING SUBSTANCE-ABUSING HEALING ARTS LICENSEES

- 315. Establishment of Substance Abuse Coordination committee; Members; Duties
- 315.2 Cease practice order
- 315.4. Cease practice order for violation of probation or diversion program

CHAPTER 6. PUBLIC MEMBERS

- 450. Qualifications generally
- 450. Avoiding conflict of interest
- 450.3 Conflicting pecuniary interests
- 450.4 [Repealed]
- 405.5 Prior industrial and professional pursuits

-
-
- 450.6 Age
 - 451. Delegation of duties
 - 452. “Board”
 - 453. Training and orientation program for new board members

CHAPTER 7. LICENSEE

- 462. Inactive category of licensure

DIVISION 1.5. DENIAL, SUSPENSION AND REVOCATION OF LICENSES

CHAPTER 1. GENERAL PROVISIONS

- 475. Applicability of division
- 476. Exceptions
- 477. “Board” and “License” Defined
- 478. “Application”; “Material”

CHAPTER 2. DENIAL OF LICENSES

- 480. Grounds for denial; Effect of obtaining certificate of rehabilitation
- 481. Crime and job-fitness criteria
- 482. Rehabilitation Criteria
- 484. Attestation to good moral character of applicant
- 485. Procedure Upon Denial
- 486. Contents of decision or notice
- 487. Hearing; Time
- 489. Denial of Application without a hearing

CHAPTER 3. SUSPENSION AND REVOCATION OF LICENSES

- 490. Grounds for suspension or revocation
- 490.5. Suspension of license for failure to comply with child support order
- 491. Procedure upon suspension or revocation
- 492. Effect of completion of drug diversion program on disciplinary action or denial of license
- 493. Evidentiary effect of record of conviction of crime involving moral turpitude
- 494. Interim suspension or restriction order

CHAPTER 4. PUBLIC REPROVALS

- 494.5 Agency actions when licensee is on certified lists; Definitions; Collection and distribution of certified list information
- 495. Procedure

CHAPTER 5. EXAMINATION SECURITY

- 496. Grounds for denial, suspension, or revocation of license
- 498. Fraud, deceit or misrepresentation as grounds for action against license
- 499. Action against license based on licentiate's actions regarding application of another

DIVISION 2. HEALING ARTS

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 4. FRAUDS OF MEDICAL RECORDS

- 581. Purchase or fraudulent alteration of diplomas or other writings
- 583. False statements in documents or writings
- 584. Violation of examination security; Impersonation
- 585. Punishment

ARTICLE 6. UNEARNED REBATES, REFUNDS, AND DISCOUNTS

- 651. Dissemination of false or misleading information concerning professional services or products; Permissible advertising
- 652. Violations by licensees

ARTICLE 7.5. HEALTH CARE PRACTITIONERS

- 680. Health care practitioner's disclosure of name and license status
- 680.5 Additional disclosures of specified information; Applicability
- 683 Reporting name and license number of licensee prohibited from practicing
- 685 Citation of health care practitioner in default of education loan

ARTICLE 9. INACTIVE LICENSE

- 701. Issuance
- 702. Holder prohibited from engaging in active license activity
- 703. Renewal; Fees
- 704. Restoration to active status

ARTICLE 10.5. UNPROFESSIONAL CONDUCT

- 726. Commission of act of sexual abuse or misconduct with patient or client
- 731. Violations at work as unprofessional conduct

ARTICLE 11. PROFESSIONAL REPORTING

- 800 Central files of licensees' individual historical records
- 801 Insurers' reports of malpractice settlement or arbitration awards; Insured's written consent to settlement
- 801.1 Report of settlement or arbitration award where state or local government acts as a self-insurer in cases of negligence, error, omission in practice, or rendering of unauthorized services resulting in death or personal injury
- 802 Reports of malpractice settlements or arbitration awards involving uninsured licensees; Penalties for noncompliance
- 803 Report of crime or liability for death or injury on part of specified licensees to licensing agency
- 803.5 Notice to board of filing charging licensee with felony; Transmittal of copy of conviction

ARTICLE 12. INSURANCE FRAUD

810. Grounds for disciplinary action against health care professional

ARTICLE 12.5. MENTAL ILLNESS OR PHYSICAL ILLNESS

820. Examination of licentiate for mental illness or physical illness affecting competency
821. Effectiveness of licentiate's failure to comply with order for examination
822. Action by Licensing Agency
823. Reinstatement of licentiate
824. Options open to licensing agency when proceeding against licentiate
826. Format of proceedings under Sections 821 and 822; Rights and powers
827. Authority of licensing agency to convene in closed session
828. Determination of insufficient evidence to bring action against licentiate; Effect on records of proceedings

CHAPTER 1.5 EXEMPTION FROM LICENSURE

900. Requirements for exemption; Immunity from liability

CHAPTER 5.6 OCCUPATIONAL THERAPY

2570. Citation of chapter
- 2570.1 Legislative findings and declarations
- 2570.2 Definitions
- 2570.3 Licensing requirement
- 2570.4 Persons exempt from requirements
- 2570.5 Limited permit; Procedure pending announcement of examination results
- 2570.6 Filing of written application for license
- 2570.7 Examinations
- 2570.8 Reliance on information posted on the Internet Web site
- 2570.9 Issuance of license

2570.10	Renewal of license
2570.11	Inactive status
2570.13	Rules for supervision of assistants and aides
2570.14	Procedure for applicant not engaged in practice for five years
2570.15	Therapists and assistants trained outside of United States
2570.16	Fees
2570.17	Issued of retired license
2570.18	Representation to public
2570.185	Patient records
2570.19	California Board of Occupational Therapy
2570.20	Duties of Board; Rules; Proceedings
2570.21	Board's officers and executive officers
2570.22	Creation of Occupational Therapy Fund
2570.23	Violations
2570.24	Severability of provisions
2570.25	Priority of board; Protection of the public
2570.26	Denial, suspension, revocation, or probation of license
2570.27	Discipline; Initial license issued on probation
2570.28	Grounds for denial or discipline
2570.29	Acts constituting unprofessional conduct
2570.30	Jurisdiction of board
2570.31	Practicing occupational therapy with suspended license
2570.32	Petition for reinstatement
2570.36	Reporting of violations
2571.	Application of prescribed topical medication

DIVISION 7. GENERAL BUSINESS REGULATIONS.

CHAPTER 5. ENFORCEMENT

- 17200. Definition.
- 17500. False or misleading statements generally

CALIFORNIA CODE OF REGULATIONS, TITLE 16, DIVISION 39

ARTICLE 1. GENERAL PROVISIONS

- 4100. Definitions
- 4101. Delegation of Certain Functions
- 4102. Filing of Addresses

ARTICLE 2. APPLICATIONS

- 4110. Application
- 4111. Place of Filing
- 4112. Review of Application
- 4113. [Reserved-Permitted Processing Times to be Established]
- 4114. Abandonment of Application

ARTICLE 2.1. SPONSORED FREE HEALTH CARE EVENTS - REQUIREMENTS FOR EXEMPTION

- 4116. Definitions
- 4117. Sponsoring Entity Registration and Recordkeeping Requirements
- 4118. Out-of-State Practitioner Authorization to Participate in Sponsored Event
- 4119. Termination of Authorization and Appeal

ARTICLE 3. LICENSE, CERTIFICATE, LIMITED PERMIT, INACTIVE STATUS

- 4120. Renewal of License or Certificate
- 4121. Renewal of Expired License or Certificate; Application; Fees; Effective Date of Renewal

-
-
- 4122. Inactive Status
 - 4123. Limited Permit
 - 4125. Representation

ARTICLE 4. FEES

- 4130. Fees

ARTICLE 5. CITATIONS

- 4140. Issuance of Citations
- 4141. Assessment of Administrative Fines
- 4142. Appeal of Citations
- 4143. Compliance with Citations
- 4144. Disciplinary Guidelines
- 4145. Record Retention

ARTICLE 5.5. STANDARDS RELATED TO DENIAL, DISCIPLINE, AND REINSTATEMENT OF LICENSES

- 4146. Definitions
- 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
- 4148. Mental or Physical Examination of Fitness for Licensure
- 4149. Other Actions Constituting Unprofessional Conduct
- 4149.1. Revocation for Sexual Contact

ARTICLE 6. ADVANCED PRACTICES

- 4150. Definitions
- 4151. Hand Therapy
- 4152. Physical Agent Modalities
 - 4152.1. Use of Topical Medications
- 4153. Swallowing Assessment, Evaluation, or Intervention
- 4154. Post Professional Education and Training
- 4155. Application for Approval in Advanced Practice Areas

ARTICLE 7. CONTINUING COMPETENCY REQUIREMENTS

- 4160. Definitions
- 4161. Continuing Competency
- 4162. Completion and Reporting Requirements
- 4163. Exemption from Continued Competency Requirements

ARTICLE 8. ETHICAL STANDARDS OF PRACTICE

- 4170. Ethical Standards of Practice
- 4175. Minimum Standards for Infection Control

ARTICLE 9. SUPERVISION STANDARDS

- 4180. Definitions
- 4181. Supervision Parameters
- 4182. Treatments Performed by Occupational Therapy Assistants
- 4183. Treatments Performed by Occupational Therapy Limited Permit Holders and Students
- 4184. Delegation of Tasks to Aides
- 4187. Occupational Therapy Assistants Serving in Administrative Positions

LIST OTHER CODE SECTIONS

Proposed/pending regulatory amendments and approved regulatory amendments with future effective dates

Extract from the Board's *Disciplinary Guidelines*

Rehabilitation Criteria

BUSINESS AND PROFESSIONS CODE

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS

GENERAL PROVISIONS

22. “Board”

“Board,” as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

30. Provision of federal employer identification number or social security number by licensee

- (a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that the licensee provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others.
- (b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.
- (c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.
- (d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:
 - (1) Name.
 - (2) Address or addresses of record.
 - (3) Federal employer identification number if the entity is a partnership or social security number for all others.
 - (4) Type of license.
 - (5) Effective date of license or a renewal.
 - (6) Expiration date of license.

-
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or a renewal.
- (e) For the purposes of this section:
- (1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.
 - (2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.
 - (3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.
- (f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.
- (g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.
- (h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.
- (i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).
- (j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.
- (k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

-
-
- (l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that each licensee provide the social security number of each individual listed on the license and any person who qualifies the license. For the purposes of this subdivision, “licensee” means any entity that is issued a license by any board, as defined in Section 22, the State Bar, the Department of Real Estate, and the Department of Motor Vehicles.

31. Compliance with judgment or order for support upon issuance or renewal of license

- (a) As used in this section, “board” means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.
- (b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.
- (c) “Compliance with a judgment or order for support” has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.
- (d) Each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code shall be subject to Section 494.5.
- (e) Each application for a new license or renewal of a license shall indicate on the application that the law allows the State Board of Equalization and the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay his or her state tax obligation and that his or her license may be suspended if the state tax obligation is not paid.
- (f) For purposes of this section, “tax obligation” means the tax imposed under, or in accordance with, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 1. THE DEPARTMENT

114. Reinstatement of expired license of licensee serving in military

- (a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces,

may, upon application, reinstate his or her license or registration without examination or penalty, provided that all of the following requirements are satisfied:

- (1) His or her license or registration was valid at the time he or she entered the California National Guard or the United States Armed Forces.
 - (2) The application for reinstatement is made while serving in the California National Guard or the United States Armed Forces, or not later than one year from the date of discharge from active service or return to inactive military status.
 - (3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service, or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.
- (b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing agency, may be required to pass an examination.
- (c) If application for reinstatement is filed and the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, then the licensing agency may require the applicant to pass an examination.
- (d) Unless otherwise specifically provided in this code, any licensee or registrant who, either part time or full time, practices in this state the profession or vocation for which he or she is licensed or registered shall be required to maintain his or her license in good standing even though he or she is in military service.

For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which he or she is prevented from practicing his or her profession or vocation shall be excluded from said period of one year.

114.3. Waiver of fees and requirements for “active duty” licensees

- (a) Notwithstanding any other provision of law, every board, as defined in Section 22, within the department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if all of the following requirements are met:
- (1) The licensee or registrant possessed a current and valid license with the board at the time he or she was called to active duty.
 - (2) The renewal requirements are waived only for the period during which the licensee or registrant is on active duty service.
 - (3) Written documentation that substantiates the licensee or registrant's active duty service is provided to the board.

-
-
- (b)(1) Except as specified in paragraph (2), the licensee or registrant shall not engage in any activities requiring a license during the period that the waivers provided by this section are in effect
 - (2) If the licensee or registrant will provide services for which he or she is licensed while on active duty, the board shall convert the license status to military active and no private practice of any type shall be permitted.
 - (c) In order to engage in any activities for which he or she is licensed once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the board within six months from the licensee's or registrant's date of discharge from active duty service.
 - (d) After a licensee or registrant receives notice of his or her discharge date, the licensee or registrant shall notify the board of his or her discharge from active duty within 60 days of receiving his or her notice of discharge.
 - (e) A board may adopt regulations to carry out the provisions of this section.
 - (f) This section shall not apply to any board that has a similar license renewal waiver process statutorily authorized for that board.

115. Applicability of Section 114

The provisions of Section 114 of this code are also applicable to a licensee or registrant whose license or registration was obtained while in the armed services.

115.5. Board required to expedite licensing process

- (a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:
 - (1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.
 - (2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.
- (b) A board may adopt regulations necessary to administer this section.

118. Effect of withdrawal of application; Effect of suspension, forfeiture, etc., of license

- (a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

-
- (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.
- (c) As used in this section, “board” includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and “license” includes “certificate,” “registration,” and “permit.”

119. Misdemeanors pertaining to use of licenses

Any person who does any of the following is guilty of a misdemeanor:

- (a) Displays or causes or permits to be displayed or has in his or her possession either of the following:
- (1) A canceled, revoked, suspended, or fraudulently altered license.
 - (2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.
- (b) Lends his or her license to any other person or knowingly permits the use thereof by another.
- (c) Displays or represents any license not issued to him or her as being his or her license.
- (d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.
- (e) Knowingly permits any unlawful use of a license issued to him or her.
- (f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.
- (g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, “fraudulent” means containing any misrepresentation of fact.

As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration” or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

121. Practice during period between renewal and receipt of evidence of renewal

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, “license” includes “certificate,” “permit,” “authorization,” and “registration,” or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

122. Fee for issuance of duplicate certificate

Except as otherwise provided by law, the department and each of the boards, bureaus, committees, and commissions within the department may charge a fee for the processing and issuance of a duplicate copy of any certificate of licensure or other form evidencing licensure or renewal of licensure. The fee shall be in an amount sufficient to cover all costs incident to the issuance of the duplicate certificate or other form but shall not exceed twenty-five dollars (\$25).

123. Conduct constituting subversion of licensing examination; Penalties and damages

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

- (a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.
- (b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

- (c) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

125. Misdemeanor offenses by licensees

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

- (a) Allows his or her license to be used by that person.
- (b) Acts as his or her agent or partner.

125.3. Direction to licentiate violating licensing act to pay costs of investigation and enforcement

- a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
- (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.
- (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.
- (d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

-
-
- (e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.
 - (f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
 - (g)
 - (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.
 - (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.
 - (h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.
 - (i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.
 - (j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.
 - (k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

125.5. Enjoining violations; restitution orders

- (a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The 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. As used in this section, "board" includes commission, bureau, division, agency and a medical quality review committee.
- (b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section, or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

125.6. Unlawful discrimination by licensees

Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity.

Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section. Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

- (a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.
- (b) A record of such an impairment.
- (c) Being regarded as having such an impairment.

125.7. Restraining orders

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with Section 500), or any initiative act referred to in

that division, has engaged or is about to engage in any act that constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2 (commencing with Section 500), may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with this section.

- (a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.
- (b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.
- (c) Except as otherwise specifically provided by this section, 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.
- (d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code or, in the case of a licensee of the State Department of Health Services, with that department pursuant to Section 100171 of the Health and Safety Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date the decision is received from the administrative law judge, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.
- (e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

125.8. Temporary order restraining licensee engaged or about to engage in violation of law

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary

restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

- (a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he is licensed.
- (b) Such order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.
- (c) Except as otherwise specifically provided by this section, 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.
- (d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board must provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at such time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

125.9. System for issuance of citations to licensees; Contents; Fines

- (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.
- (b) The system shall contain the following provisions:
 - (1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.
 - (2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

-
-
- (3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars (\$5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.
- (4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.
- (c) The system may contain the following provisions:
- (1) A citation may be issued without the assessment of an administrative fine.
 - (2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.
- (d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.
- (e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

128. Sale of equipment, supplies, or services for use in violation of licensing requirements

Notwithstanding any other provision of law, it is a misdemeanor to sell equipment, supplies, or services to any person with knowledge that the equipment, supplies, or services are to be used in the performance of a service or contract in violation of the licensing requirements of this code.

The provisions of this section shall not be applicable to cash sales of less than one hundred dollars (\$100).

For the purposes of this section, “person” includes, but is not limited to, a company, partnership, limited liability company, firm, or corporation.

For the purposes of this section, “license” includes certificate or registration.

A violation of this section shall be punishable by a fine of not less than one thousand dollars (\$1,000) and by imprisonment in the county jail not exceeding six months.

129. Handling of complaints; Reports to Legislature

- (a) As used in this section, “board” means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.
- (b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.
- (c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licentiate.
- (d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board’s functions and responsibilities under this section.
- (e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

134. Proration of license fees

When the term of any license issued by any agency in the department exceeds one year, initial license fees for licenses which are issued during a current license term shall be prorated on a yearly basis.

136. Notification of change of address; Punishment for failure to comply

- (a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.

-
- (b) Except as otherwise provided by law, failure of a licentiate to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

137. Regulations requiring inclusion of license numbers in advertising, etc.

Any agency within the department may promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.

However, nothing in this section shall be construed to authorize regulation of any person not a licensee who engages in advertising, solicitation, or who makes any other presentment to the public on behalf of a licensee. Such a person shall incur no liability pursuant to this section for communicating in any advertising, soliciting, or other presentment to the public a licensee's license number exactly as provided to him by the licensee or for failure to communicate such number if none is provided to him by the licensee.

138. Notice that practitioner is licensed; Evaluation of licensing examination

Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

140. Disciplinary action; Licensee's failure to record cash transactions in payment of employee wages

Any board, as defined in Section 22, which is authorized under this code to take disciplinary action against a person who holds a license may take disciplinary action upon the ground that the licensee has failed to record and preserve for not less than three years, any and all cash transactions involved in the payment of employee wages by a licensee. Failure to make these records available to an authorized representative of the board may be made grounds for disciplinary action. In any action brought and sustained by the board which involves a violation of this section and any regulation adopted thereto, the board may assess the licensee with the actual investigative costs incurred, not to exceed two thousand five hundred dollars (\$2,500). Failure to pay those costs may result in revocation of the license. Any moneys collected pursuant to this section shall be deposited in the respective fund of the board.

141. Disciplinary action by foreign jurisdiction; Grounds for disciplinary action by state licensing board

- (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

-
- (b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

143. Proof of license as condition of bringing action for collection of compensation

- (a) No person engaged in any business or profession for which a license is required under this code governing the department or any board, bureau, commission, committee, or program within the department, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required without alleging and proving that he or she was duly licensed at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.
- (b) The judicial doctrine of substantial compliance shall not apply to this section.
- (c) This section shall not apply to an act or contract that is considered to qualify as lawful practice of a licensed occupation or profession pursuant to Section 121.

144. Requirement of fingerprints for criminal record checks

- (a) Notwithstanding any other provision of 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 Dispenser 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.
- (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.

CHAPTER 1.5. UNLICENSED ACTIVITY ENFORCEMENT

145. Legislative findings and declarations

The Legislature finds and declares that:

- (a) Unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of California.
- (b) The law enforcement agencies of the state should have sufficient, effective, and responsible means available to enforce the licensing laws of the state.
- (c) The criminal sanction for unlicensed activity should be swift, effective, appropriate, and create a strong incentive to obtain a license.

147. Authority to issue written notice to appear in court

- (a) Any employee designated by the director shall have the authority to issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. Employees so designated are not peace officers and are not entitled to safety member retirement benefits, as a result of such designation. The employee's authority is limited to the issuance of written notices to appear for infraction violations of provisions of this code and only when the violation is committed in the presence of the employee.
- (b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the person, at the time of such arrest, had reasonable cause to believe was lawful.

148. Establishment of administrative citation system

Any board, bureau, or commission within the department may, in addition to the administrative citation system authorized by Section 125.9, also establish, by regulation, a similar system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. The administrative citation system authorized by this section shall meet the requirements of Section 125.9 and may not be applied to an unlicensed person who is otherwise exempted from the provisions of the applicable licensing act. The establishment of an administrative citation system for unlicensed activity does not preclude the use of other enforcement statutes for unlicensed activities at the discretion of the board, bureau, or commission.

CHAPTER 3. FUNDS OF THE DEPARTMENT

201. Levy for administrative expenses

A charge for the estimated administrative expenses of the department, not to exceed the available balance in any appropriation for any one fiscal year, may be levied in advance on a pro rata share basis against any of the funds of any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance.

206. Dishonored check tendered for payment of fine, fee, or penalty.

Notwithstanding any other provision of law, any person tendering a check for payment of a fee, fine, or penalty that was subsequently dishonored, shall not be granted a license, or other authority that they were seeking, until the applicant pays the amount outstanding from the dishonored payment together with the applicable fee, including any delinquency fee. The board may require the person whose check was returned unpaid to make payment of all fees by cashier's check or money order.

ARTICLE 3.6. UNIFORM STANDARDS REGARDING SUBSTANCE-ABUSING HEALING ARTS LICENSEES

315. Establishment of Substance Abuse Coordination committee; Members; Duties

- (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Health Care Services. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.
- (b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).
- (c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:
- (1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.
 - (2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.
 - (3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.
 - (4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.
 - (5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

-
- (6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.
 - (7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.
 - (8) Procedures to be followed when a licensee tests positive for a banned substance.
 - (9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
 - (10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.
 - (11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.
 - (12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.
 - (13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor’s approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee’s termination from the program and referral to enforcement.
 - (14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.
 - (15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor’s performance in adhering to the standards adopted by the committee.
 - (16) Measurable criteria and standards to determine whether each board’s method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

315.2 Cease practice order

- (a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.
- (b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (c) A cease practice order under this section shall not constitute disciplinary action.
- (d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

315.4. Cease practice order for violation of probation or diversion program

- (a) A board, as described in Section 315, may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315.
- (b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (c) A cease practice order under this section shall not constitute disciplinary action.
- (d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

CHAPTER 6. PUBLIC MEMBERS

450. Qualifications generally

In addition to the qualifications provided in the respective chapters of this code, a public member or a lay member of any board shall not be, nor shall he have been within the period of five years immediately preceding his appointment, any of the following:

- (a) An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licentiate of such board, except that this shall not preclude the appointment of a person which maintains infrequent employer status with such licentiate, or maintains a client, patient, or customer relationship with any such licentiate which does not constitute more than 2 percent of the practice or business of the licentiate.
- (b) A person maintaining a contractual relationship with a licentiate of such board, which would constitute more than 2 percent of the practice or business of any such licentiate, or an officer, director, or substantially full-time representative of such person or group of persons.

-
- (c) An employee of any licentiate of such board, or a representative of such employee, except that this shall not preclude the appointment of a person who maintains an infrequent employee relationship or a person rendering professional or related services to a licentiate if such employment or service does not constitute more than 2 percent of the employment or practice of the member of the board.

450.2. Avoiding conflict of interest

In order to avoid a potential for a conflict of interest, a public member of a board shall not:

- (a) Be a current or past licensee of that board.
- (b) Be a close family member of a licensee of that board.

450.3. Conflicting pecuniary interests

No public member shall either at the time of his appointment or during his tenure in office have any financial interest in any organization subject to regulation by the board, commission or committee of which he is a member.

450.5. Prior industrial and professional pursuits

A public member, or a lay member, at any time within five years immediately preceding his or her appointment, shall not have been engaged in pursuits which lie within the field of the industry or profession, or have provided representation to the industry or profession, regulated by the board of which he or she is a member, nor shall he or she engage in those pursuits or provide that representation during his or her term of office.

450.6. Age

Notwithstanding any other section of law, a public member may be appointed without regard to age so long as the public member has reached the age of majority prior to appointment.

451. Delegation of duties

If any board shall as a part of its functions delegate any duty or responsibility to be performed by a single member of such board, such delegation shall not be made solely to any public member or any lay member of the board in any of the following instances:

- (a) The actual preparation of, the administration of, and the grading of, examinations.
- (b) The inspection or investigation of licentiates, the manner or method of practice or doing business, or their place of practice or business.

Nothing in this section shall be construed as precluding a public member or a lay member from participating in the formation of policy relating to the scope of the activities set forth in subdivisions (a) and (b) or in the approval, disapproval or modification of the action of its individual members, nor preclude such member from participating as a member of a subcommittee consisting of more than one member of the board in the performance of any duty.

452. “Board”

“Board,” as used in this chapter, includes a board, advisory board, commission, examining committee, committee or other similarly constituted body exercising powers under this code.

453. Training and orientation program for new board members

Every newly appointed board member shall, within one year of assuming office, complete a training and orientation program offered by the department regarding, among other things, his or her functions, responsibilities, and obligations as a member of a board. The department shall adopt regulations necessary to establish this training and orientation program and its content.

CHAPTER 7. LICENSEE

462. Inactive category of licensure

- (a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.
- (b) The regulation shall contain the following provisions:
 - (1) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.
 - (2) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license.
 - (3) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.
 - (4) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with all the following:
 - (A) Pay the renewal fee.
 - (B) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.
- (c) This section shall not apply to any healing arts board as specified in Section 701.

DIVISION 1.5. DENIAL, SUSPENSION, AND REVOCATION OF LICENSES

CHAPTER 1. GENERAL PROVISIONS.

475. Applicability of division

- a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
- (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
 - (2) Conviction of a crime.
 - (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.
 - (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
- (b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).
- (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

477. "Board" and "License" Defined

As used in this division:

- (a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."
- (b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

478. "Application"; "Material"

- (a) As used in this division, "application" includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.
- (b) As used in this division, "material" includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

CHAPTER 2. DENIAL OF LICENSES

480. Grounds for denial; Effect of obtaining certificate of rehabilitation

- (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
 - (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
 - (3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.
- (b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.
- (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

481. Crime and job-fitness criteria

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

482. Rehabilitation Criteria

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

484. Attestation to good moral character of applicant

No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

485. Procedure upon denial

Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

- (a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

486. Contents of decision or notice

Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

- (a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.
- (b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

487. Hearing; Time

If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

488. Hearing request

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

- (a) Grant the license effective upon completion of all licensing requirements by the applicant.
- (b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.
- (c) Deny the license.
- (d) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

489. Denial of application

Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

CHAPTER 3. SUSPENSION AND REVOCATION OF LICENSES

490. Grounds for suspension or revocation

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

490.5. Suspension of license for failure to comply with child support order

A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment.

491. Procedure upon suspension or revocation

Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

- (a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.
- (b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

492. Effect of completion of drug diversion program on disciplinary action or denial of license

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

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

493. Evidentiary effect of record of conviction of crime substantially related to licensee's qualifications, functions, and duties

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

494. Interim suspension or restriction order

- (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:
 - (1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

-
-
- (2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.
- (b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.
- (c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.
- (d) At the hearing on the petition for an interim order, the licentiate may:
- (1) Be represented by counsel.
 - (2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.
 - (3) Present affidavits and other documentary evidence.
 - (4) Present oral argument.
- (e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.
- (f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.
- (g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse

of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

- (h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).
- (i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

- (j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.
- (k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.
- (l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.
- (m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

CHAPTER 4. PUBLIC REPROVALS

494.5 Agency actions when licensee is on certified lists; Definitions; Collection and distribution of certified list information

- (a) (1) Except as provided in paragraphs (2), (3), and (4), a state governmental licensing entity shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's name is included on a certified list.
- (2) The Department of Motor Vehicles shall suspend a license if a licensee's name is included on a certified list. Any reference in this section to the issuance, reactivation, reinstatement, renewal, or denial of a license shall not apply to the Department of Motor Vehicles.
- (3) The State Bar of California may recommend to refuse to issue, reactivate, reinstate, or renew a license and may recommend to suspend a license if a licensee's name is included on a certified list. The word "may" shall be substituted for the word "shall" relating to the issuance of a temporary license, refusal to issue, reactivate, reinstate, renew, or suspend a license in this section for licenses under the jurisdiction of the California Supreme Court.
- (4) The Department of Alcoholic Beverage Control may refuse to issue, reactivate, reinstate, or renew a license, and may suspend a license, if a licensee's name is included on a certified list.
- (b) For purposes of this section:
- (1) "Certified list" means either the list provided by the State Board of Equalization or the list provided by the Franchise Tax Board of persons whose names appear on the lists of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code, as applicable.
- (2) "License" includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. "License" includes a driver's license issued pursuant to Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code. "License" excludes a vehicle registration issued pursuant to Division 3 (commencing with Section 4000) of the Vehicle Code.
- (3) "Licensee" means an individual authorized by a license to drive a motor vehicle or authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.
- (4) "State governmental licensing entity" means any entity listed in Section 101, 1000, or 19420, the office of the Attorney General, the Department of Insurance, the Department of Motor Vehicles, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing an individual to engage in a profession or occupation, including any certificate, business or occupational license, or permit or license issued by the Department of Motor Vehicles or the Department of the California Highway Patrol. "State governmental licensing entity" shall not include the Contractors' State License Board.

-
- (c) The State Board of Equalization and the Franchise Tax Board shall each submit its respective certified list to every state governmental licensing entity. The certified lists shall include the name, social security number or taxpayer identification number, and the last known address of the persons identified on the certified lists.
- (d) Notwithstanding any other law, each state governmental licensing entity shall collect the social security number or the federal taxpayer identification number from all applicants for the purposes of matching the names of the certified lists provided by the State Board of Equalization and the Franchise Tax Board to applicants and licensees.
- (e)(1) Each state governmental licensing entity shall determine whether an applicant or licensee is on the most recent certified list provided by the State Board of Equalization and the Franchise Tax Board.
- (2) If an applicant or licensee is on either of the certified lists, the state governmental licensing entity shall immediately provide a preliminary notice to the applicant or licensee of the entity's intent to suspend or withhold issuance or renewal of the license. The preliminary notice shall be delivered personally or by mail to the applicant's or licensee's last known mailing address on file with the state governmental licensing entity within 30 days of receipt of the certified list. Service by mail shall be completed in accordance with Section 1013 of the Code of Civil Procedure.
- (A) The state governmental licensing entity shall issue a temporary license valid for a period of 90 days to any applicant whose name is on a certified list if the applicant is otherwise eligible for a license.
 - (B) The 90-day time period for a temporary license shall not be extended. Only one temporary license shall be issued during a regular license term and the term of the temporary license shall coincide with the first 90 days of the regular license term. A license for the full term or the remainder of the license term may be issued or renewed only upon compliance with this section.
 - (C) In the event that a license is suspended or an application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the state governmental licensing entity.
- (f)(1) A state governmental licensing entity shall refuse to issue or shall suspend a license pursuant to this section no sooner than 90 days and no later than 120 days of the mailing of the preliminary notice described in paragraph (2) of subdivision (e), unless the state governmental licensing entity has received a release pursuant to subdivision (h). The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial or suspension of, or refusal to renew, a license or the issuance of a temporary license pursuant to this section.
- (2) Notwithstanding any other law, if a board, bureau, or commission listed in Section 101, other than the Contractors' State License Board, fails to take action in accordance with this section, the Department of Consumer Affairs shall issue a temporary license or suspend or refuse to issue, reactivate, reinstate, or renew a license, as appropriate.

-
-
- (g) Notices shall be developed by each state governmental licensing entity. For an applicant or licensee on the State Board of Equalization's certified list, the notice shall include the address and telephone number of the State Board of Equalization, and shall emphasize the necessity of obtaining a release from the State Board of Equalization as a condition for the issuance, renewal, or continued valid status of a license or licenses. For an applicant or licensee on the Franchise Tax Board's certified list, the notice shall include the address and telephone number of the Franchise Tax Board, and shall emphasize the necessity of obtaining a release from the Franchise Tax Board as a condition for the issuance, renewal, or continued valid status of a license or licenses.
- (1) The notice shall inform the applicant that the state governmental licensing entity shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 90 calendar days if the applicant is otherwise eligible and that upon expiration of that time period, the license will be denied unless the state governmental licensing entity has received a release from the State Board of Equalization or the Franchise Tax Board, whichever is applicable.
 - (2) The notice shall inform the licensee that any license suspended under this section will remain suspended until the state governmental licensing entity receives a release along with applications and fees, if applicable, to reinstate the license.
 - (3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any moneys paid by the applicant or licensee shall not be refunded by the state governmental licensing entity. The state governmental licensing entity shall also develop a form that the applicant or licensee shall use to request a release by the State Board of Equalization or the Franchise Tax Board. A copy of this form shall be included with every notice sent pursuant to this subdivision.
- (h) If the applicant or licensee wishes to challenge the submission of his or her name on a certified list, the applicant or licensee shall make a timely written request for release to the State Board of Equalization or the Franchise Tax Board, whichever is applicable. The State Board of Equalization or the Franchise Tax Board shall immediately send a release to the appropriate state governmental licensing entity and the applicant or licensee, if any of the following conditions are met:
- (1) The applicant or licensee has complied with the tax obligation, either by payment of the unpaid taxes or entry into an installment payment agreement, as described in Section 6832 or 19008 of the Revenue and Taxation Code, to satisfy the unpaid taxes.
 - (2) The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of a preliminary notice described in paragraph (2) of subdivision (e), but the State Board of Equalization or the Franchise Tax Board, whichever is applicable, will be unable to complete the release review and send notice of its findings to the applicant or licensee and state governmental licensing entity within 45 days after the State Board of Equalization's or the Franchise Tax Board's receipt of the applicant's or licensee's request for release. Whenever a release is granted under this paragraph, and, notwithstanding that release, the applicable license or licenses have been suspended erroneously, the state

governmental licensing entity shall reinstate the applicable licenses with retroactive effect back to the date of the erroneous suspension and that suspension shall not be reflected on any license record.

- (3) The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. “Financial hardship” means financial hardship as determined by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, where the applicant or licensee is unable to pay any part of the outstanding liability and the applicant or licensee is unable to qualify for an installment payment arrangement as provided for by Section 6832 or Section 19008 of the Revenue and Taxation Code. In order to establish the existence of a financial hardship, the applicant or licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, for purposes of making that determination.
- (i) An applicant or licensee is required to act with diligence in responding to notices from the state governmental licensing entity and the State Board of Equalization or the Franchise Tax Board with the recognition that the temporary license will lapse or the license suspension will go into effect after 90 days and that the State Board of Equalization or the Franchise Tax Board must have time to act within that period. An applicant’s or licensee’s delay in acting, without good cause, which directly results in the inability of the State Board of Equalization or the Franchise Tax Board, whichever is applicable, to complete a review of the applicant’s or licensee’s request for release shall not constitute the diligence required under this section which would justify the issuance of a release. An applicant or licensee shall have the burden of establishing that he or she diligently responded to notices from the state governmental licensing entity or the State Board of Equalization or the Franchise Tax Board and that any delay was not without good cause.
- (j) The State Board of Equalization or the Franchise Tax Board shall create release forms for use pursuant to this section. When the applicant or licensee has complied with the tax obligation by payment of the unpaid taxes, or entry into an installment payment agreement, or establishing the existence of a current financial hardship as defined in paragraph (3) of subdivision (h), the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall mail a release form to the applicant or licensee and provide a release to the appropriate state governmental licensing entity. Any state governmental licensing entity that has received a release from the State Board of Equalization and the Franchise Tax Board pursuant to this subdivision shall process the release within five business days of its receipt. If the State Board of Equalization or the Franchise Tax Board determines subsequent to the issuance of a release that the licensee has not complied with their installment payment agreement, the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall notify the state governmental licensing entity and the licensee in a format prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee is not in compliance and the release shall be rescinded. The State Board of Equalization and the Franchise Tax Board may, when it is economically feasible for the state governmental licensing entity to develop an automated process for complying with this subdivision, notify the state governmental licensing entity in a manner prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee has not complied with the installment

payment agreement. Upon receipt of this notice, the state governmental licensing entity shall immediately notify the licensee on a form prescribed by the state governmental licensing entity that the licensee's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The licensee shall be further notified that the license will remain suspended until a new release is issued in accordance with this subdivision.

- (k) The State Board of Equalization and the Franchise Tax Board may enter into interagency agreements with the state governmental licensing entities necessary to implement this section.
- (l) Notwithstanding any other law, a state governmental licensing entity, with the approval of the appropriate department director or governing body, may impose a fee on a licensee whose license has been suspended pursuant to this section. The fee shall not exceed the amount necessary for the state governmental licensing entity to cover its costs in carrying out the provisions of this section. Fees imposed pursuant to this section shall be deposited in the fund in which other fees imposed by the state governmental licensing entity are deposited and shall be available to that entity upon appropriation in the annual Budget Act.
- (m) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.
- (n) Any state governmental licensing entity receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or who has been granted a temporary license under this section shall respond that the license was denied or suspended or the temporary license was issued only because the licensee appeared on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Any state governmental licensing entity that discloses on its Internet Web site or other publication that the licensee has had a license denied or suspended under this section or has been granted a temporary license under this section shall prominently disclose, in bold and adjacent to the information regarding the status of the license, that the only reason the license was denied, suspended, or temporarily issued is because the licensee failed to pay taxes.
- (o) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.
- (p) The State Board of Equalization, the Franchise Tax Board, and state governmental licensing entities, as appropriate, shall adopt regulations as necessary to implement this section.

-
- (q)(1) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the State Board of Equalization or the Franchise Tax Board, pursuant to this section, except to inform the public of the denial, refusal to renew, or suspension of a license or the issuance of a temporary license pursuant to this section. The release or other use of information received by a state governmental licensing entity pursuant to this section, except as authorized by this section, is punishable as a misdemeanor. This subdivision may not be interpreted to prevent the State Bar of California from filing a request with the Supreme Court of California to suspend a member of the bar pursuant to this section.
- (2) A suspension of, or refusal to renew, a license or issuance of a temporary license pursuant to this section does not constitute denial or discipline of a licensee for purposes of any reporting requirements to the National Practitioner Data Bank and shall not be reported to the National Practitioner Data Bank or the Healthcare Integrity and Protection Data Bank.
- (3) Upon release from the certified list, the suspension or revocation of the applicant's or licensee's license shall be purged from the state governmental licensing entity's Internet Web site or other publication within three business days. This paragraph shall not apply to the State Bar of California.
- (r) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.
- (s) All rights to review afforded by this section to an applicant shall also be afforded to a licensee.
- (t) Unless otherwise provided in this section, the policies, practices, and procedures of a state governmental licensing entity with respect to license suspensions under this section shall be the same as those applicable with respect to suspensions pursuant to Section 17520 of the Family Code.
- (u) No provision of this section shall be interpreted to allow a court to review and prevent the collection of taxes prior to the payment of those taxes in violation of the California Constitution.
- (v) This section shall apply to any licensee whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code on or after July 1, 2012.

495. Public reproof of licentiate or certificate holder for act constituting grounds for suspension or revocation of license or certificate; Proceedings

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

CHAPTER 5. EXAMINATION SECURITY

496. Grounds for denial, suspension, or revocation of license

A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

498. Fraud, deceit or misrepresentation as grounds for action against license

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

499. Action against license based on licentiate's actions regarding application of another

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

DIVISION 2. HEALING ARTS

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 4. FRAUDS OF MEDICAL RECORDS

581. Purchase or fraudulent alteration of diplomas or other writings

No person, company, or association shall purchase or procure by barter or by any unlawful means or method, or have in possession any diploma, certificate, transcript, or any other writing with intent that it shall be used as evidence of the holder's qualifications to practice as a physician and surgeon, osteopathic physician, podiatrist, any other system or mode of treating the sick or afflicted, as provided in the Medical Practice Act, Chapter 5 (commencing with Section 2000), or to practice as any other licentiate under this division or in any fraud of the law regulating this practice or, shall with fraudulent intent, alter in a material regard, any such diploma, certificate, transcript, or any other writing.

583. False statements in documents or writings

No person shall in any document or writing required of an applicant for examination, license, certificate, or registration under this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, willfully make a false statement in a material regard.

584. Violation of examination security; Impersonation

No person shall violate the security of any examination, as defined in subdivision (a) of Section 123, or impersonate, attempt to impersonate, or solicit the impersonation of, another in any examination for a license, certificate, or registration to practice as provided in this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or under any other law providing for the regulation of any other system or method of treating the sick or afflicted in this state.

585. Punishment

Any person, company, or association violating the provisions of this article is guilty of a felony and upon conviction thereof shall be punishable by a fine of not less than two thousand dollars (\$2,000) nor more than six thousand dollars (\$6,000), or by imprisonment in the state prison. The enforcement remedies provided under this article are not exclusive and shall not preclude the use of any other criminal, civil, or administrative remedy.

ARTICLE 6. UNEARNED REBATES, REFUNDS, AND DISCOUNTS

651. Dissemination of false or misleading information concerning professional services or products; Permissible advertising

- (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A “public communication” as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.
- (b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:
 - (1) Contains a misrepresentation of fact.
 - (2) Is likely to mislead or deceive because of a failure to disclose material facts.
 - (3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

-
-
- (C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents “before” and “after” views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any “before” and “after” views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same “before” and “after” results may not occur for all patients.
- (4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.
- (5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
- (6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.
- (7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.
- (8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.
- (c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, “as low as,” “and up,” “lowest prices,” or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.
- (d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.
- (e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).
- (f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

- (1) A statement of the name of the practitioner.
- (2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.
- (3) A statement of office hours regularly maintained by the practitioner.
- (4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.
- (5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

- (I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.
- (II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.
- (III) Successful completion of oral and written examinations based on psychometric principles.

-
-
- (iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.
- (iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.
- (B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

- (C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” unless the full name of the certifying board is also used and given comparable prominence with the term “board certified” in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” in reference to that certification.

For purposes of this subparagraph, a “multidisciplinary board or association” means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant’s education, training, and experience. For purposes of the term “board certified,” as used in this subparagraph, the terms “board” and “association” mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

- (6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.
- (7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.
- (8) A statement of publications authored by the practitioner.

-
-
- (9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.
 - (10) A statement of his or her affiliations with hospitals or clinics.
 - (11) A statement of the charges or fees for services or commodities offered by the practitioner.
 - (12) A statement that the practitioner regularly accepts installment payments of fees.
 - (13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.
 - (14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.
 - (15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.
 - (16) A statement, or statements, providing public health information encouraging preventative or corrective care.
 - (17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.
- (i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

- (j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

652. Violations by licensees

Violation of this article in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein. However, in the case of a licensee of the State Department of Health Services, the proceedings shall be conducted in accordance with Section 110171 of the Health and Safety Code. In addition, any violation constitutes a misdemeanor as to any and all persons offering, delivering, receiving, accepting, or participating in any rebate, refund, commission, preference, patronage dividend, unearned discount, or consideration, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the imprisonment and fine.

ARTICLE 7.5 HEALTH CARE PRACTITIONERS

680. Health care practitioner's disclosure of name and license status

- (a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.
- (b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of Health Services shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of Health Services shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.
- (c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

680.5. Additional disclosures of specified information; Applicability

- (a)(1) A health care practitioner licensed under Division 2 (commencing with Section 500) shall communicate to a patient his or her name, state-granted practitioner license type, and highest level of academic degree, by one or both of the following methods:

(A) In writing at the patient's initial office visit.

(B) In a prominent display in an area visible to patients in his or her office.

(2) An individual licensed under Chapter 6 (commencing with Section 2700) or Chapter 9 (commencing with Section 4000) is not required to disclose the highest level of academic degree he or she holds.

(b) A person licensed under Chapter 5 (commencing with Section 2000) or under the Osteopathic Act, who is certified by (1) an American Board of Medical Specialties member board, (2) a board or association with requirements equivalent to a board described in paragraph (1) approved by that person's medical licensing authority, or (3) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in the person's specialty or subspecialty, shall disclose the name of the board or association by either method described in subdivision (a).

(c) A health care practitioner who chooses to disclose the information required by subdivisions (a) and (b) pursuant to subparagraph (A) of paragraph (1) of subdivision (a) shall present that information in at least 24-point type in the following format:

HEALTH CARE PRACTITIONER INFORMATION

1. Name and license

2. Highest level of academic degree

3. Board certification (ABMS/MBC)

(d) This section shall not apply to the following health care practitioners:

(1) A person who provides professional medical services to enrollees of a health care service plan that exclusively contracts with a single medical group in a specific geographic area to provide or arrange for professional medical services for the enrollees of the plan.

(2) A person who works in a facility licensed under Section 1250 of the Health and Safety Code or in a clinical laboratory licensed under Section 1265.

(3) A person licensed under Chapter 3 (commencing with Section 1200), Chapter 7.5 (commencing with Section 3300), Chapter 8.3 (commencing with Section 3700), Chapter 11 (commencing with Section 4800), Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990.1), or Chapter 16 (commencing with Section 4999.10).

(e) A health care practitioner, who provides information regarding health care services on an Internet Web site that is directly controlled or administered by that health care practitioner or his or her office personnel, shall prominently display on that Internet Web site the information required by this section.

683. Reporting name and license number of licensee prohibited from practicing

- (a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider's professional license.
- (b) "Board," as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, and the California Board of Occupational Therapy.
- (c) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

685. Citation of health care practitioner in default of educational loan

- (a)(1) A board may cite and fine a currently licensed health care practitioner if he or she is in default on a United States Department of Health and Human Services education loan, including a Health Education Assistance Loan.
 - (2) Each board that issues citations and imposes fines shall retain the money from these fines for deposit into its appropriate fund.
- (b) The board may deny a license to an applicant to be a health care practitioner or deny renewal of a license if he or she is in default on a United States Department of Health and Human Services education loan, including a Health Education Assistance Loan, until the default is cleared or until the applicant or licensee has made satisfactory repayment arrangements.
- (c) In determining whether to issue a citation and the amount of the fine to a health care practitioner or to deny a license to an applicant to be a health care practitioner or to deny the renewal of a license, a board shall take into consideration the following:
 - (1) The population served by the health care practitioner.
 - (2) The health care practitioner's economic status.
- (d) For purposes of this section, the following terms shall have the following meanings:
 - (1) "Board" means a licensing board or agency having jurisdiction of a licensee, but does not include the Board of Chiropractic Examiners.
 - (2) "Health care practitioner" means a person licensed or certified pursuant to this division or licensed pursuant to the Osteopathic Initiative Act.
- (e) This section shall become operative on July 1, 2003.

ARTICLE 9. INACTIVE LICENSE

701. Issuance

Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

As used in this article, “board” refers to any healing arts board, division, or examining committee which licenses or certifies health professionals.

702. Holder prohibited from engaging in active license activity

The holder of an inactive healing arts license or certificate issued pursuant to this article shall not engage in any activity for which an active license or certificate is required.

703. Renewal; Fees

An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder thereof need not comply with any continuing education requirement for renewal of an active license or certificate.

The renewal fee for a license or certificate in an active status shall apply also for renewal of a license or certificate in an inactive status.

704. Restoration to active status

In order for the holder of an inactive license or certificate issued pursuant to this article to restore his or her license or certificate to an active status, the holder of an inactive license or certificate shall comply with all the following:

- (a) Pay the renewal fee; provided, that the renewal fee shall be waived for a physician and surgeon who certifies to the Medical Board of California that license restoration is for the sole purpose of providing voluntary, unpaid service to a public agency, not-for-profit agency, institution, or corporation which provides medical services to indigent patients in medically underserved or critical-need population areas of the state.
- (b) If the board requires completion of continuing education for renewers of an active license or certificate, complete continuing education equivalent to that required for a single license renewal period.

ARTICLE 10.5. UNPROFESSIONAL CONDUCT

726. Commission of act of sexual abuse or misconduct with patient or client

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

731. Violations at work as unprofessional conduct

- (a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.
- (b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) for the first offense, and not to exceed five thousand dollars (\$5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

ARTICLE 11. PROFESSIONAL REPORTING

800. Central files of licensees' individual historical records

- (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, the Acupuncture Board, and the Physician Assistant Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:
 - (1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.
 - (2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of

damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

- (3) Any public complaints for which provision is made pursuant to subdivision (b).
- (4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licensee pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.
- (5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

- (b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

- (c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of

unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

801. Insurers' reports of malpractice settlement or arbitration awards; Insured's written consent to settlement

- (a) Except as provided in Section 801.01 and subdivisions (b), (c), and (d) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.
- (b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.
- (c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.
- (d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.
- (e) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), or (c) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

-
- (f) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

801.1. Report of settlement or arbitration award where state or local government acts as a self-insurer in cases of negligence, error, omission in practice, or rendering of unauthorized services resulting in death or personal injury

- (a) Every state or local governmental agency that self-insures a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.
- (b) Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

802. Reports of malpractice settlements or arbitration awards involving uninsured licensees; Penalties for noncompliance

- (a) Every settlement, judgment, or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency specified in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the

claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

- (b) Every settlement, judgment, or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10), respectively, who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist, clinical social worker, or professional clinical counselor or claimant (or, if represented by counsel, his or her counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

803. Report of crime or liability for death or injury on part of specified licensees to licensing agency

- (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Sciences or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

-
-
- (b) For purposes of a physician and surgeon, osteopathic physician and surgeon, doctor of podiatric medicine, or physician assistant, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

803.5. Notice to board of filing charging licensee with felony; Transmittal of copy of conviction

- (a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Physician Assistant Board, or other appropriate allied health board, and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.
- (b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

ARTICLE 12. INSURANCE FRAUD

810. Grounds for disciplinary action against health care professional

- (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:
- (1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.
 - (2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.
- (b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.
- (c) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

ARTICLE 12.5 MENTAL ILLNESS OR PHYSICAL ILLNESS

820. Examination of licentiate for mental illness or physical illness affecting competency

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

821. Effective of licentiate's failure to comply with order for examination

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

822. Action by Licensing Agency

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

823. Reinstatement of licentiate

Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

- (a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.

-
-
- (b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.
 - (c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.
 - (d) Requiring the licentiate to undergo continuing treatment.
 - (e) Restricting or limiting the extent, scope or type of practice of the licentiate.

824. Options open to licensing agency when proceeding against licentiate

The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

826. Format of proceedings under Sections 821 and 822; Rights and powers

The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

827. Authority of licensing agency to convene in closed session

Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

828. Determination of insufficient evidence to bring action against licentiate; Effect on records of proceedings

If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensing agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiate's fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

CHAPTER 1.5 EXEMPTION FROM LICENSURE

900. Requirements for exemption; Immunity from liability

- (a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision(b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.
- (b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.
- (c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.
- (d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.
- (e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.
- (f) For the purposes of this chapter, “health care practitioner” means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.
- (g) For purposes of this chapter, “director” means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

CHAPTER 5.6 OCCUPATIONAL THERAPY

2570. Citation of chapter

This chapter may be cited as the Occupational Therapy Practice Act.

2570.1. Legislative findings

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

2570.2. Definitions

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 and who is trained by an occupational therapist to perform, under appropriate supervision, delegated, selected client and nonclient-related tasks for which the aide has demonstrated competency. An occupational therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the occupational therapist in his or her practice of occupational therapy.
- (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) “Examination” means an entry level certification examination for occupational therapists and occupational therapy assistants administered by the National Board for Certification in Occupational Therapy or by another nationally recognized credentialing body.
- (f) “Good standing” means that the person has a current, valid license to practice occupational therapy or assist in the practice of occupational therapy and has not been disciplined by the recognized professional certifying or standard-setting body within five years prior to application or renewal of the person’s license.
- (g) “Occupational therapist” means an individual who meets the minimum education requirements specified in Section 2570.6 and is licensed pursuant to the provisions of this chapter and whose license is in good standing as determined by the board to practice occupational therapy under this chapter. Only the occupational therapist is responsible for the occupational therapy assessment of a client, and the development of an occupational therapy plan of treatment.
- (h) “Occupational therapy assistant” means an individual who is licensed pursuant to the provisions of this chapter, who is in good standing as determined by the board, and based thereon, who is qualified to assist in the practice of occupational therapy under this chapter, and who works under the appropriate supervision of a licensed occupational therapist.
- (i) “Occupational therapy services” means the services of an occupational therapist or the services of an occupational therapy assistant under the appropriate supervision of an occupational therapist.
- (j) “Person” means an individual, partnership, unincorporated organization, or corporation.
- (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.

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

2570.3. Licensing requirement

- (a) No person shall practice occupational therapy or hold himself or herself out as an occupational therapist or as being able to practice occupational therapy, or to render occupational therapy services in this state unless he or she is licensed as an occupational therapist under the provisions of this chapter. No person shall hold himself or herself out as an occupational therapy assistant or work as an occupational therapy assistant under the supervision of an occupational therapist unless he or she is licensed as an occupational therapy assistant under the provisions of this chapter.
- (b) Only an individual may be licensed under this chapter.
- (c) Nothing in this chapter shall be construed as authorizing an occupational therapist to practice physical therapy, as defined in Section 2620; speech-language pathology or audiology, as defined in Section 2530.2; nursing, as defined in Section 2725; psychology, as defined in Section 2903; or spinal manipulation or other forms of healing, except as authorized by this section.
- (d) An occupational therapist may provide advanced practices if the therapist has the knowledge, skill, and ability to do so and has demonstrated to the satisfaction of the board that he or she has met educational training and competency requirements. These advanced practices include the following:

-
-
- (1) Hand therapy.
 - (2) The use of physical agent modalities.
 - (3) Swallowing assessment, evaluation, or intervention.
- (e) An occupational therapist providing hand therapy services shall demonstrate to the satisfaction of the board that he or she has completed post professional education and training in all of the following areas:
- (1) Anatomy of the upper extremity and how it is altered by pathology.
 - (2) Histology as it relates to tissue healing and the effects of immobilization and mobilization on connective tissue.
 - (3) Muscle, sensory, vascular, and connective tissue physiology.
 - (4) Kinesiology of the upper extremity, such as biomechanical principles of pulleys, intrinsic and extrinsic muscle function, internal forces of muscles, and the effects of external forces.
 - (5) The effects of temperature and electrical currents on nerve and connective tissue.
 - (6) Surgical procedures of the upper extremity and their postoperative course.
- (f) An occupational therapist using physical agent modalities shall demonstrate to the satisfaction of the board that he or she has completed post professional education and training in all of the following areas:
- (1) Anatomy and physiology of muscle, sensory, vascular, and connective tissue in response to the application of physical agent modalities.
 - (2) Principles of chemistry and physics related to the selected modality.
 - (3) Physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of a modality.
 - (4) Guidelines for the preparation of the patient, including education about the process and possible outcomes of treatment.
 - (5) Safety rules and precautions related to the selected modality.
 - (6) Methods for documenting immediate and long-term effects of treatment.
 - (7) Characteristics of the equipment, including safe operation, adjustment, indications of malfunction, and care.
- (g) An occupational therapist in the process of achieving the education, training, and competency requirements established by the board for providing hand therapy or using physical agent modalities may practice these techniques under the supervision of an occupational therapist who has already met the requirements established by the board, a physical therapist, or a physician and surgeon.

-
- (h) The board shall develop and adopt regulations regarding the educational training and competency requirements for advanced practices in collaboration with the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, and the Physical Therapy Board of California.
- (i) Nothing in this chapter shall be construed as authorizing an occupational therapist to seek reimbursement for services other than for the practice of occupational therapy as defined in this chapter.
- (j) “Supervision of an occupational therapy assistant” means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client’s record, with his or her signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned to that client functions under appropriate supervision. As part of the responsible occupational therapist’s appropriate supervision, he or she shall conduct at least weekly review and inspection of all aspects of occupational therapy services by the occupational therapy assistant.
- (1) The supervising occupational therapist has the continuing responsibility to follow the progress of each patient, provide direct care to the patient, and to assure that the occupational therapy assistant does not function autonomously.
 - (2) An occupational therapist shall not supervise more occupational therapy assistants, at any one time, than can be appropriately supervised in the opinion of the board. Two 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.

2570.4 Persons exempt from licensure

Nothing in this chapter shall be construed as preventing or restricting the practice, services, or activities of any of the following persons:

- (a) Any person licensed or otherwise recognized in this state by any other law or regulation when that person is engaged in the profession or occupation for which he or she is licensed or otherwise recognized.
- (b) Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited educational program, if the person is designated by a title that clearly indicates his or her status as a student or trainee.

-
-
- (c) Any person fulfilling the supervised fieldwork experience requirements of subdivision (c) of Section 2570.6, if the experience constitutes a part of the experience necessary to meet the requirement of that provision.
 - (d) Any person performing occupational therapy services in the state if all of the following apply:
 - (1) An application for licensure as an occupational therapist or an occupational therapy assistant has been filed with the board pursuant to Section 2570.6 and an application for a license in this state has not been previously denied.
 - (2) The person possesses a current, active, and non-restricted license to practice occupational therapy under the laws of another state that the board determines has licensure requirements at least as stringent as the requirements of this chapter.
 - (3) Occupational therapy services are performed in association with an occupational therapist licensed under this chapter, and for no more than 60 days from the date on which the application for licensure was filed with the board.
 - (e) Any person employed as an aide subject to the supervision requirements of this section.

2570.5. Limited permit

- (a) A limited permit may be granted to any person who has completed the education and experience requirements of this chapter.
- (b) A person who meets the qualifications to be admitted to the examination for licensure under this chapter and is waiting to take the examination or awaiting the announcement of the results of the examination, according to the application requirements for a limited permit, may practice as an occupational therapist or as an occupational therapy assistant under the direction and appropriate supervision of an occupational therapist duly licensed under this chapter. If that person fails to pass the examination during the initial eligibility period, all privileges under this section shall automatically cease upon due notice to the applicant of that failure and may not be renewed.
- (c) A limited permit shall be subject to other requirements set forth in rules adopted by the board.

2570.6. Filing of application

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

- (a) That the applicant is in good standing and has not committed acts or crimes constituting grounds for denial of a license under Section 480.
- (b) (1) That the applicant has successfully completed the academic requirements of an educational program for occupational therapists or occupational therapy assistants that is approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE), or accredited or approved by the American Occupational Therapy Association's (AOTA) predecessor organization, or approved by AOTA's Career Mobility Program.

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

- (A) Biological, behavioral, and health sciences.
- (B) Structure and function of the human body, including anatomy, kinesiology, physiology, and the neurosciences.
- (C) Human development throughout the lifespan.
- (D) Human behavior in the context of sociocultural systems.
- (E) Etiology, clinical course, management, and prognosis of disease processes and traumatic injuries, and the effects of those conditions on human functioning.
- (F) Occupational therapy theory, practice, and processes.

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

- (A) Biological, behavioral, and health sciences.
- (B) Structure and function of the normal human body.
- (C) Human development.
- (D) Conditions commonly referred to occupational therapists.
- (E) Occupational therapy principles and skills.

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

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

(d) That the applicant has successfully completed a period of supervised fieldwork experience approved by the board and arranged by a recognized educational institution where he or she met the academic requirements of subdivision (b) or (c) or arranged by a nationally recognized professional association. The fieldwork requirements for applicants applying for licensure as an occupational therapist or certification as an occupational therapy assistant shall be consistent with the requirements of the

ACOTE accreditation standards, or AOTA's predecessor organization, or AOTA's Career Mobility Program, that were in effect when the applicant completed his or her educational program.

- (e) That the applicant has passed an examination as provided in Section 2570.7.
- (f) That the applicant, at the time of application, is a person over 18 years of age, is not addicted to alcohol or any controlled substance, and has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

2570.7. Examinations

- (a) An applicant who has satisfied the requirements of Section 2570.6 may apply for examination for licensure in a manner prescribed by the board. Subject to the provisions of this chapter, an applicant who fails an examination may apply for reexamination.
- (b) Each applicant for licensure shall successfully complete the entry level certification examination for occupational therapists or occupational therapy assistants, such as the examination administered by the National Board for Certification in Occupational Therapy, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association. The examination shall be appropriately validated. Each applicant shall be examined by written examination to test his or her knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and any other subjects that the board may require to determine the applicant's fitness to practice under this chapter.
- (c) Applicants for licensure shall be examined at a time and place and under that supervision as the board may require.

2570.8. Reliance on information posted on the Internet Website

For the purposes of verifying a license issued under this chapter, a person may rely on the licensure information posted on the board's Internet Web site, which includes the issuance and expiration dates of a license issued by the board.

2570.9. Issuance of license

The board shall issue a license to any applicant who meets the requirements of this chapter, including the payment of the prescribed licensure or renewal fee, and who meets any other requirement in accordance with applicable state law.

2570.10. Renewal of license

- (a) Any license issued under this chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license as provided for in Section 163.5.
- (b) In addition to any other qualifications and requirements for licensure renewal, the board may by rule establish and require the satisfactory completion of continuing competency requirements as a condition of renewal of a license.

2570.11. Inactive status

Upon a written request, the board may grant inactive status to an occupational therapist or occupational therapy assistant who is in good standing, who meets the requirements of Section 462.

2570.13. Rules for supervision of assistants and aides

- (a) Consistent with this section, subdivisions (a), (b), and (c) of Section 2570.2, and accepted professional standards, the board shall adopt rules necessary to assure appropriate supervision of occupational therapy assistants and aides.
- (b) An occupational therapy assistant may practice only under the supervision of an occupational therapist who is authorized to practice occupational therapy in this state.
- (c) An aide providing delegated, client-related supportive services shall require continuous and direct supervision by an occupational therapist or occupational therapy assistant.

2570.14. Procedure for applicant not engaged in practice for five years

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 certification examination as described in subdivision (b) of Section 2570.7 within the previous two-year period.

2570.15. Therapists and assistants trained outside of United States

Occupational therapists and occupational therapy assistants trained outside of the United States and its possessions shall be required to satisfy the examination requirements of Section 2570.7. The board shall require that these applicants have completed educational and supervised fieldwork requirements substantially equal to those contained in Section 2570.6, before taking the examination.

2570.16. Fees

Initial license and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars (\$150) per year. The board shall establish the following additional fees:

- (a) An application fee not to exceed fifty dollars (\$50).
- (b) A late renewal fee as provided for in Section 2570.10.
- (c) A limited permit fee.
- (d) A fee to collect fingerprints for criminal history record checks.

2570.17. Issuance of retired license

- (a) The board shall issue, upon application and payment of a twenty-five dollar (\$25) fee, a retired license to an occupational therapist or an occupational therapy assistant who holds a license that is current and active, or capable of being renewed pursuant to Section 2570.10, and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline under this chapter.
- (b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active license is required. An occupational therapist holding a retired license shall be permitted to use the title “occupational therapist, retired” or “retired occupational therapist.” An occupational therapy assistant holding a retired license shall be permitted to use the title “occupational therapy assistant, retired” or “retired occupational therapy assistant.” The designation of retired shall not be abbreviated in any way.
- (c) The holder of a retired license shall not be required to renew that license.
- (d) In order for the holder of a retired license issued pursuant to this section to restore his or her license, he or she shall comply with Section 2570.14.

2570.18. Representation to public

- (a) A person shall not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this state, unless authorized to practice occupational therapy under this chapter.
- (b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations “O.T.,” “O.T.R.,” or “O.T.R./L.,” or “Occupational Therapist,” or “Occupational Therapist Registered,” or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.
- (c) Unless licensed to assist in the practice of occupational therapy as an occupational therapy assistant under this chapter, a person may not use the professional abbreviations “O.T.A.,” “O.T.A./L.,” “C.O.T.A.,” “C.O.T.A./L.,” or “Occupational Therapy Assistant,” “Licensed Occupational Therapy Assistant,” or any other words, letters, or symbols, with the intent to represent that the person assists in, or is authorized to assist in, the practice of occupational therapy as an occupational therapy assistant.
- (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.

2570.185. Patient records

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

-
- (b) An occupational therapy assistant shall document the services provided in the patient record.
 - (c) Occupational therapists and occupational therapy assistants shall document and sign the patient record legibly.
 - (d) Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, 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.

2570.19. California Board of Occupational Therapy; Occupational Therapy Fund

- (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.
- (b) The members of the board shall consist of the following:
 - (1) Three occupational therapists who shall have practiced occupational therapy for five years.
 - (2) One occupational therapy assistant who shall have assisted in the practice of occupational therapy for five years.
 - (3) Three public members who shall not be licentiates of the board, of any other board under this division, or of any board referred to in Section 1000 or 3600.
- (c) The Governor shall appoint the three occupational therapists and one occupational therapy assistant to be members of the board.

The Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall each appoint a public member. Not more than one member of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

- (d) All members shall be residents of California at the time of their appointment. The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least five years preceding their appointments.
- (e) The public members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become occupational therapists or occupational therapy assistants. The public members may not be related to, or have a household member who is, an occupational therapist or an occupational therapy assistant, and may not have had, within two years of the appointment, a substantial financial interest in a person regulated by the board.
- (f) The Governor shall appoint two board members for a term of one year, two board members for a term of two years, and one board member for a term of three years. Appointments made thereafter shall be for four-year terms, but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar

year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section. Vacancies shall be filled by appointment for the unexpired term. The board shall annually elect one of its members as president.

- (g) The board shall meet and hold at least one regular meeting annually in the Cities of Sacramento, Los Angeles, and San Francisco. The board may convene from time to time until its business is concluded. Special meetings of the board may be held at any time and place designated by the board.
- (h) Notice of each meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).
- (i) Members of the board shall receive no compensation for their services, but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties in accordance with Section 103.
- (j) The appointing power shall have the power to remove any member of the board from office for neglect of any duty imposed by state law, for incompetency, or for unprofessional or dishonorable conduct.
- (k) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

2570.20. Duties of board; rules; proceedings

- (a) The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications, and approve the examinations for licensure under this chapter.
- (b) The board shall adopt rules in accordance with the Administrative Procedure Act relating to professional conduct to carry out the purpose of this chapter, including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy or to assist in the practice of 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.

2570.21. Board's officers and executive officers

Subject to Sections 107 and 154, the board may employ an executive officer and other officers and employees.

2570.22. Creation of Occupational Therapy Fund

All fees collected by the board shall be paid into the State Treasury and shall be credited to the Occupational Therapy Fund which is hereby created. The money in the fund shall be available, upon appropriation by the Legislature, for expenditure by the board to defray its expenses and to otherwise administer this chapter .

2570.23. Violations

Any person who violates Section 2570.3 is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars (\$5,000), or by imprisonment of not more than one year in a county jail, or by both that fine and imprisonment.

2570.24. Severability of provisions

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

2570.25. Priority of board; Protection of the public

Protection of the public shall be the highest priority for the California Board of Occupational Therapy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

2570.26. Denial, suspension, revocation, or probation of license

- (a) The board may, after a hearing, deny, suspend, revoke, or place on probation a license, inactive license, or limited permit.
- (b) As used in this chapter, “license” includes a license, limited permit, or any other authorization to engage in practice regulated by this chapter.
- (c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

2570.27. Discipline; Initial license

- (a) The board may discipline a licensee by any or a combination of the following methods:
 - (1) Placing the license on probation with terms and conditions.
 - (2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.
 - (3) Revoking the license.
 - (4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
 - (5) Taking other action as the board, in its discretion, deems proper.

-
-
- (b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

2570.28. Grounds for denial or discipline

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

- (a) Unprofessional conduct, including, but not limited to, the following:
- (1) Incompetence or gross negligence in carrying out usual occupational therapy functions.
 - (2) Repeated similar negligent acts in carrying out usual occupational therapy functions.
 - (3) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event a certified copy of the record of conviction shall be conclusive evidence thereof.
 - (4) The use of advertising relating to occupational therapy which violates Section 17500.
 - (5) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.
- (b) Procuring a license by fraud, misrepresentation, or mistake.
- (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter.
- (d) Making or giving any false statement or information in connection with the application for issuance or renewal of a license.
- (e) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence thereof.
- (f) Impersonating an applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.
- (g) Impersonating a licensed practitioner, or permitting or allowing another unlicensed person to use a license.
- (h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.
- (i) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee, in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

-
- (j) Using excessive force upon or mistreating or abusing any patient. For the purposes of this subdivision, “excessive force” means force clearly in excess of that which would normally be applied in similar clinical circumstances.
 - (k) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or hospital record or any other record.
 - (l) Changing the prescription of a physician and surgeon or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.
 - (m) Failing to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.
 - (n) Delegating to an unlicensed employee or person a service that requires the knowledge, skills, abilities, or judgment of a licensee.
 - (o) Committing any act that would be grounds for denial of a license under Section 480.
 - (p) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of infectious diseases from licensee to patient, from patient to patient, or from patient to licensee.
 - (1) In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 63001) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary to encourage appropriate consistency in the implementation of this subdivision, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians.
 - (2) The board shall seek to ensure that licensees are informed of their responsibility to minimize the risk of transmission of infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and are informed of the most recent scientifically recognized safeguards for minimizing the risks of transmission.

2570.29. Acts constituting unprofessional conduct

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

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

-
-
- (b) Use to an extent or in a manner dangerous or injurious to himself or herself, to any other person, or to the public, or that impairs his or her ability to conduct with safety to the public the practice authorized by his or her license, of any of the following:
- (1) A controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.
 - (2) A dangerous drug or dangerous device as defined in Section 4022.
 - (3) Alcoholic beverages.
- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.
- (d) Be committed or confined by a court of competent jurisdiction for intemperate use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.
- (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital or patient record, or any other record, pertaining to the substances described in subdivision (a) of this section.

2570.30. Jurisdiction of board

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

2570.31. Practicing occupational therapy with suspended license

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

2570.32. Petition for reinstatement or modification of penalty

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

-
- (1) For a license that was revoked for any reason other than mental or physical illness, at least three years.
 - (2) For early termination of probation scheduled for three or more years, at least two years.
 - (3) For modification of a penalty, reinstatement of a license revoked for mental or physical illness, or termination of probation scheduled for less than three years, at least one year.
 - (4) The board may, in its discretion, specify in its disciplinary order a lesser period of time, provided that the period shall not be less than one year.
- (b) The petition submitted shall contain any information required by the board, which may include a current set of fingerprints accompanied by the fingerprinting fee.
 - (c) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.
 - (d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.
 - (e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.
 - (f) The board may refuse to consider a petition while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code.
 - (g) No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

2570.36. Reporting violations

If a licensee has knowledge that an applicant or licensee may be in violation of, or has violated, any of the statutes or regulations administered by the board, the licensee shall report this information to the board in writing and shall cooperate with the board in providing information or assistance as may be required.

2571. Application of prescribed topical medication by therapist licensed to use physical agent modalities

- (a) An occupational therapist licensed pursuant to this chapter and approved by the board in the use of physical agent modalities may apply topical medications prescribed by the patient's 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. medications.

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

17200. Definitions

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

17500. False or misleading statements

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

CALIFORNIA CODE OF REGULATIONS

ARTICLE 1. GENERAL PROVISIONS

4100. Definitions

In addition to the definitions found in Business and Professions Code section 2570.2, the following terms are used and defined herein:

(a) “Code” means the Business and Professions Code.

(b) “Holder” means the person to whom a license or limited permit has been issued by the board.

-
- (c) “License” means the authority granted by the board to a person to offer occupational therapy as an occupational therapist or an occupational therapy assistant.
 - (d) “Limited permit” means the authority granted by the board to a person to offer occupational therapy services under the direction and appropriate supervision of a licensed occupational therapist.
 - (e) “The Occupational Therapy Practice Act” or “Act” means Chapter 5.6 of Division 2, of the Business and Professions Code.

4101. Delegation of Certain Functions

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

4102. Filing of Addresses

- (a) Each person licensed or issued a limited permit by the board, shall report to the board every change of residence address within 30 days after the change, giving both the old and new addresses. In addition to the residence address, the person may provide the board with an alternate address of record. If an alternate address is the person’s address of record, he or she may request, in writing, that the residence address not be disclosed to the public.
- (b) Each person licensed or issued a limited permit by the board shall report to the board every change of name within 30 days after the change, giving both the old and new names.
- (c) This section refers to every person who holds an active, inactive, unexpired, suspended license or a limited permit.

ARTICLE 2. APPLICATIONS

4110. Application

- (a) An application for a license, certificate, or limited permit shall contain the information required by sections 30, 144, 851, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, and 2570.16 of the Code and Family Code section 17520, accompanied by the appropriate fees.
- (b) For an applicant applying for licensure pursuant to section 2570.15 of the Code, “substantially equal” means that the applicant has successfully completed the academic requirements of an

educational program, including the educational program and supervised fieldwork requirements, for an occupational therapist or an occupational therapy assistant that are approved by the board and approved by the foreign credentialing review process of the National Board of Certification in Occupational Therapy (NBCOT), the American Occupational Therapy Certification Board, or the American Occupational Therapy Association.

4111. Place of Filing

Applications shall be filed with the board's principal office.

4112. Review of Application

Within thirty (30) days after receipt of an application for a license, certificate, or limited permit, the board shall inform the applicant, in writing, whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

4114. Abandonment of Application

- a) An application for a license shall be deemed abandoned and the application fee forfeited when:
- (1) The applicant fails to complete the application within two years after it is originally received by the board.
 - (2) The applicant fails to submit the initial license fee within sixty (60) days after the date of notification of eligibility by the board.
- (b) An application for a limited permit shall be deemed abandoned and the application fee forfeited if the applicant fails to complete the application or submit the required fee within sixty (60) days after it is originally received by the board.
- (c) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

Article 2.1 sponsored free health care events

4116. Definitions.

For the purposes of section 901 of the Business and Professions Code:

- (a) "Community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.
- (b) "Out-of-state practitioner" means a person who is not licensed in California to engage in the practice of occupational therapy, but who holds a current valid and unrestricted license, registration, or certificate in good standing in another state, district, or territory of the United States to practice as an occupational therapist or occupational therapy assistant.

4117. Sponsoring Entity Registration and Recordkeeping Requirements.

- (a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the board by submitting to the board, or its delegatee, a completed “Sponsored Free Health Care Events Registration of Sponsoring Entity Under Business & Professions Code Section 901,” Form 901-A (DCA/2011), which is hereby incorporated by reference.
- (b) Determination of Completeness of Form. The board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process “Sponsored Free Health Care Events Registration of Sponsoring Entity Under Business & Professions Code Section 901,” Form 901-A (DCA/2011) on behalf of the Board. The Board or its delegatee shall inform the sponsoring entity in writing within 15 calendar days of receipt of the form that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.
- (c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 of the Code as well as a copy of the authorization for participation issued by the board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the board.
- (d) Notice. A sponsoring entity shall place a notice visible to patients at every station where patients are being seen by an occupational therapist or occupational therapy assistant. The notice shall be in at least 48 point type in Arial font and shall include the following statement and information:

NOTICE

Occupational therapists and occupational therapy assistants providing health care services at this health fair are either licensed and regulated by the California Board of Occupational Therapy or hold a current valid license from another state and have been authorized to provide health care services in California only at this specific health fair.

For more information:
CA Board of Occupational Therapy
1-800-952-5210 or 1-916-263-2294
www.bot.ca.gov

-
-
- (e) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the board confirming that the out-of-state practitioner has been approved to participate in the event.
- (f) Report. Within 15 calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:
- (1) The date(s) of the sponsored event;
 - (2) The location(s) of the sponsored event;
 - (3) The type(s) and general description of all health care services provided at the sponsored event; and
 - (4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

4118. Out-of-State Practitioner Authorization to Participate in Sponsored Event.

- (a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the board to provide those services. An applicant shall request authorization by submitting to the board a completed "Request for Authorization to Practice Without a California License at a Sponsored Free Health Care Event," Form CBOT 901-B (Rev. 03/2012), which is hereby incorporated by reference, accompanied by a non-refundable, non-transferable processing fee of fifty dollars (\$50). The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history record check. The fingerprint and criminal history check requirement shall apply only to the first application for authorization that is submitted by the applicant, unless an electronic record of the fingerprint submission no longer exists in the California Department of Justice criminal offender record information database.
- (b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the board shall notify the sponsoring entity or local governmental entity whether that request is approved or denied.
- (c) Denial of Request for Authorization to Participate.
- (1) The board shall deny a request for authorization to participate if:
 - (A) The submitted form is incomplete and the applicant has not responded within 7 calendar days to the board's request for additional information; or
 - (B) The applicant has not graduated from a school or program approved by the Accreditation Council for Occupational Therapy Education, its predecessor organization, or otherwise approved by the board; or

-
- (C) The applicant has not passed the examination administered by the National Board for Certification in Occupational Therapy or its predecessor organization; or
 - (D) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial of an application for licensure by the board; or
 - (E) The applicant does not possess a current, active, and valid license in good standing.

The term “good standing” means the applicant:

1. Has not been charged with an offense for any act substantially related to the practice for which the applicant is licensed by any public agency;
2. Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant’s professional conduct or practice, including any voluntary surrender of license;
3. Has not been the subject of an adverse action nor judgment resulting from the practice for which the applicant is licensed that the board determines constitutes evidence of a pattern of negligence or incompetence.

- (F) The board has been unable to obtain a timely report of the results of the criminal history check.

- (G) The applicant has been previously disciplined or denied licensure by the California Board of Occupational Therapy.

(2) The board may deny a request for authorization to participate if:

- (A) The request is received less than 20 calendar days before the date on which the sponsored event will begin; or

- (B) The applicant has been previously denied a request for authorization by the board to participate in a sponsored event; or

- (C) The applicant has previously had an authorization to participate in a sponsored event terminated by the board.

(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 4119(d) and/or (e).

4119. Termination of Authorization and Appeal.

(a) Grounds for Termination. The board may terminate an out-of-state practitioner’s authorization to participate in a sponsored event for any of the following reasons:

- (1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the board.

-
-
- (2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the board.
 - (3) The board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.
- (b) Notice of Termination. The board shall provide both the sponsoring entity or local government entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the board may provide the notice to any representative of the sponsored event on the premises of the event.
 - (c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data bank and the healthcare integrity protection data bank. In addition, the board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

- (d) Appeal of Termination. An out-of-state practitioner may appeal the board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the Code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act.
- (e) Agency Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the executive officer regarding the reasons for the termination of authorization to participate. The executive officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the executive officer may affirm or dismiss the termination of authorization to participate. The executive officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.

ARTICLE 3. LICENSE, CERTIFICATE, LIMITED PERMIT, INACTIVE STATUS

4120. Renewal of License or Certificate

- (a) The term of a license or certificate shall be two years.
 - (1) Unless renewed, a license or certificate issued by the board shall expire at 12 midnight on the last day of the holder's birth month during an odd year if the licensee was born in an odd year or during an even year, if the licensee was born in an even year. The initial license fee shall be prorated from the month of issuance based on the holder's birth month and birth year.

-
- (2) To renew an unexpired license or certificate, the holder shall, before the time at which the license or certificate would otherwise expire, apply for renewal, pay the renewal fee., and certify that the licensee's or certificate holder's representations on the renewal form are true, correct, and contain no material omissions of fact, signed under penalty of perjury.
 - (3) The renewal application shall include a statement specifying whether the licensee or certificate holder was convicted of a crime or disciplined by another public agency during the preceding renewal period, and whether the continuing competency requirements have been met if renewing in an active status.
 - (4) For a license or certificate that expires on or after July 1, 2010, as a condition of renewal, an applicant for renewal not previously fingerprinted by the board, or for whom a record of the submission of fingerprints no longer exists, is required to furnish to the Department of Justice, as directed by the board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license or certificate is grounds for discipline by the board. It shall be certified on the renewal form whether the fingerprints have been submitted. This requirement is waived if the license or certificate is renewed in an inactive status, or the licensee or certificate holder is actively serving in the military outside the country.
 - (5) An inactive license or certificate may be renewed.
 - (6) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.

(b) A limited permit cannot be renewed.

4121. Renewal of Expired License or Certificate; Application; Fees; Effective Date of Renewal

Except as otherwise provide in the Code, a license or certificate which has expired may be renewed at any time within five years after its expiration on filing of an application for renewal, and payment of all accrued and unpaid renewal fees. If a license or certificate is renewed after its expiration, the licensee or certificate holder, as a condition precedent to renewal, shall also pay a delinquency fee. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or certificate shall continue in effect through the expiration date provided in section 4120 above which next occurs after the effective date of renewal, when it shall expire if it is not renewed.

4122. Inactive Status

Upon written request, the board may grant inactive status to a license holder under the following conditions:

- (a) At the time of application for inactive status, the holder's license shall be current and not suspended, revoked, or otherwise punitively restricted by the board.

-
-
- (b) The holder of an inactive license shall not engage in any activity for which a license is required.
 - (c) An inactive license shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license or certificate need not comply with any continuing education requirement for renewal of an active license.
 - (d) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.
 - (e) In order for the holder of an inactive license to restore his or her license to an active status, he or she shall comply with all of the following:
 - (1) Pay the renewal fee.
 - (2) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for a single renewal period of an active license.

4123. Limited Permit

- (a) To qualify for a limited permit, a person must have applied to the National Board for Certification in Occupational Therapy (NBCOT) to take the licensing examination within four (4) months of completing the education and fieldwork requirements for licensure or certification and request NBCOT provide their examination score report be forwarded to the Board.
 - (1) Upon receipt from NBCOT, the applicant must forward to the Board a copy of the Authorization to Test (ATT) letter.
 - (2) The applicant must provide documentation or other evidence to the Board, to prove that the applicant requested their examination score be sent from NBCOT to the Board, before a limited permit may be issued.
 - (3) A limited permit shall only be valid for three (3) months from the date of issuance by the Board, upon receipt of a failing result, or two (2) weeks following the expiration of the applicants' eligibility to test period, whichever occurs first.
 - (4) The limited permit holder must immediately notify the Board of the results of the examination.
 - (5) The limited permit holder must provide to the Board the name, address and telephone number of his or her employer and the name and license number of his or her supervising occupational therapist (OT). Any change of employer or supervising OT must be provided to the Board, in writing, within 10 days of the change.
- (b) The limited permit will be cancelled, and the fee forfeited, upon notification to the Board or the limited permit holder by the test administrator that the holder failed to pass the first examination.

4125. Representation

(a)(1) Unless licensed as an occupational therapist by the Board, a person may not use the professional abbreviations “O.T.” or “O.T./L.,” or refer to themselves as an “Occupational Therapist” or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

(2) Unless licensed as an occupational therapist by the Board, and currently registered with the National Board for Certification in Occupational Therapy (NBCOT), a person may not use the professional abbreviations “O.T.R.,” or “O.T.R./L.,” or refer to themselves as “Occupational Therapist, Registered,” or “Registered Occupational Therapist” or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

(b)(1) Unless licensed as an occupational therapy assistant, a person may not use the professional abbreviations “O.T.A.,” or “O.T.A./L.,” or refer to themselves as an “Occupational Therapy Assistant,” or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

(2) Unless licensed as an occupational therapy assistant and currently registered with NBCOT, a person may not use the professional abbreviations “C.O.T.A.,” or “C.O.T.A./L.,” or refer to themselves as “Certified Occupational Therapy Assistant,” or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

(c) Pursuant to section 2570.18 of the Business and Professions Code, the unauthorized representation by an occupational therapist or an occupational therapy assistant constitutes an unfair business practice and false and misleading advertising under Business and Professions Code section 17200 and 17500, respectively, and a violation of section 4170, the Ethical Standards of Practice.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.3, 2570.18, 17200 and 17500, Business and Professions Code.

ARTICLE 4. FEES

4130. Fees

Fees are fixed by the board as follows:

(a) The initial license or certificate fee shall be prorated pursuant to Section 4120(a)(1) and based on a biennial fee of \$150.

(b) The fee for a limited permit is \$75.

(c) For a license that expires on or before December 31, 2006, the annual renewal fee for a license or certificate is \$150.

-
-
- (d) For a license that expires on or after January 1, 2007, the renewal fee shall be in accordance with the following schedule:
- (1) For a license that expires between January 1, 2007, and December 31, 2007, a licensee with an even birth year shall renew for one year and the renewal fee shall be seventy-five dollars (\$75).
 - (2) For a license that expires on or after January 1, 2007, and biennially thereafter, a licensee with an odd birth year shall renew for two years and the renewal fee shall be one hundred fifty dollars (\$150).
 - (3) For a license that expires on or after January 1, 2008, and biennially thereafter, a licensee with an even birth year shall renew for two years and the renewal fee shall be one hundred fifty dollars (\$150).
- (e) The delinquency fee is one-half of the renewal fee.
- (f) The renewal fee for an inactive license or certificate is \$25.
- (g) The fee for a duplicate license is \$15.
- (h) The fees for fingerprint services are those charged by the California Department of Justice and the Federal Bureau of Investigation.

ARTICLE 5. CITATIONS

4140. Issuance of Citations

- (a) The Board's executive officer, or his or her designee, is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to section 125.9 of the Business and Professions Code against occupational therapists or occupational therapy assistants who have committed any acts or omissions which are in violation of the Occupational Therapy Practice Act or any regulation adopted pursuant thereto.
- (b) The Board's executive officer, or his or her designee, is authorized to issue citations containing orders of abatement, orders of correction, and/or administrative fines pursuant to section 148 of the Business and Professions Code against unlicensed persons who have committed any acts or omissions which are in violation of the Occupational Therapy Practice Act or any regulation adopted pursuant thereto.
- (c) Each citation:
 - (1) shall be in writing,
 - (2) shall describe with particularity the nature of the violation, including specific reference to the provision or provisions of law determined to have been violated,

-
- (3) may contain one or more of the following:
- (A) an assessment of an administrative fine;
 - (B) an order of abatement fixing a reasonable period of time for abatement of the violation;
 - (C) an order of correction,
- (4) shall be served on the cited person, in person, or by certified and regular mail at the address of record on file with the Board. Citations served by certified and regular mail shall be deemed “served” on the date of mailing.
- (5) shall inform the cited person that, if he or she desires an informal conference to contest the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from service of the citation,
- (6) shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, the hearing shall be requested by written notice to the Board within 30 calendar days from service of the citation,
- (7) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of service, unless the citation is being appealed, may result in disciplinary action being taken by the Board.
- (d) If a citation is not contested and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.
- (e) The sanction authorized under this section shall be separate from, and in addition to, any civil or criminal remedies.

4141. Assessment of Administrative Fines

- (a) Where citations include an assessment of an administrative fine, the fine shall be not less than \$50 or exceed \$5,000 for each violation. Each violation shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:
- (1) Class “A” violations shall not be less than \$1,001 nor more than \$5,000. Class “A” violations are violations that the executive officer, or his or her designee, has determined involve a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the Occupational Therapy Practice Act. Class “A” violations are more serious in nature and may include, but are not limited to, violations which resulted in or had significant potential for patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure public safety. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when the aide performed a client related task that resulted in harm to the patient, or failing to provide adequate supervision

to an occupational therapy assistant that resulted in harm to the patient, or fraudulent medical billing, or practicing without a current and active license for more than one year, or functioning autonomously as an occupational therapy assistant. A Class “A” violation may be issued to a person who has committed a class “B” violation who has had two or more prior, separate class “B” violations.

- (2) Class “B” violations shall not be less than \$501 nor more than \$2,500. Class “B” violations are violations that the executive officer, or his or her designee, has determined involve a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the Occupational Therapy Practice Act. Class “B” violations are less serious in nature and may include, but are not limited to, violations which could have resulted in patient harm. Typically some degree of mitigation will exist. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when the aide performed a client related task that did not result in harm to a patient, or failure to provide adequate supervision to an occupational therapy assistant, limited permit holder, student, or occupational therapy aid, resulting in no patient harm, or providing advanced practice services without board approval, or practicing when the license has been expired or inactive for a period of more than three months but less than one year, or supervising more occupational therapy assistants than allowed by law. A class “B” violation may be issued to a person who has committed a class “C” violation who has two or more prior, separate class “C” violations.
 - (3) Class “C” violations shall not be less than \$50 nor more than \$1,000. Class “C” violations are violations that the executive officer, or his or her designee, has determined involve a person who has violated a statute or regulation relating to the practice of occupational therapy. A class “C” violation is a minor or technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care. Such violations may include, but are not limited to, practicing when the license has been expired or inactive for a period of three months or less, failing to disclose a conviction or convictions in the application process, or failing to provide a patient or client or the guardian of a patient or client access to their medical records pursuant to Health and Safety Code Section 123110. A class “C” violation may also be issued to a licensee who fails to respond to a written request by the board for additional information relating to a renewal application.
 - (4) Class “D” violations shall not be less than \$50 nor more than \$250. Class “D” violations occur when the executive officer, or his or her designee, has determined that an applicant or licensee has failed to provide a change of address within 30 days as required by Section 4102. A class “D” violation is a minor technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care.
- (b) In determining the amount of an administrative fine, the executive officer, or his or her designee, shall consider the following factors:
- (1) Gravity of the violation,
 - (2) History of previous violations involving the same or similar conduct,

-
- (3) Length of time that has passed since the date of the violation,
 - (4) Consequences of the violation, including potential for patient harm,
 - (5) The good or bad faith exhibited by the cited individual,
 - (6) Evidence that the violation was willful,
 - (7) The extent to which the individual cooperated with the board's investigation,
 - (8) The extent to which the individual has remediated any knowledge and/or skills deficiencies,
 - (9) Any other mitigating or aggravating factors.
- (c) In his or her discretion, the executive officer, or his or her designee, may issue an order of abatement without levying a fine for the first violation of any provision set forth in subsection (a).
- (d) The executive officer, or his or her designee, may assess a fine which shall not exceed five thousand dollars (\$5,000) for each violation if the violation involves fraudulent billing.

4142. Appeal of Citations

- (a) The cited person may, within 30 calendar days of service of the citation, submit a written request for an informal conference with the executive officer.
- (b) In addition to requesting an informal conference described in subsection (a), a cited person may contest a citation, in whole or in part, by submitting a written request for an administrative hearing to the Board within 30 calendar days of service of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.
- (c) The request for a hearing to contest a citation is not waived if the executive officer affirms the citation at an informal conference.
- (d) The executive officer, or his or her designee, shall within 30 working days from receipt of a written request for an informal conference, hold an informal conference with the cited person. The 30-day period may be extended by the executive officer for good cause. Following the informal conference, the executive officer, or his or her designee, may affirm, modify, or dismiss the citation, including any fine assessed or order of abatement issued. A written order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine.
- (e) If the informal conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but not withdrawn. A cited person is entitled to a hearing to contest the modified citation if he or she filed a timely request. A cited person is not entitled to an informal conference to contest a modified citation. If a timely request for a hearing was not filed, the decision in the modified citation shall be considered final.

-
-
- (f) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed withdrawn.
 - (g) Submittal of a written request for an informal conference as provided in subsection (a) or an administrative hearing as provided in subsection (b), or both, stays the time period in which to pay the fine.
 - (h) If a written request for an informal conference as provided in subsection (a), or a written request for a hearing as provided in subsection (b), or both, is not submitted to the board within 30 calendar days from service of the citation, the cited person is deemed to have waived his or her right to an informal conference and/or administrative hearing.

4143. Compliance with Citations

- (a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, he or she may request an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.
- (b) Failure of an applicant to abate the violation or to pay the fine within the time allowed is a ground for denial of licensure or registration.
- (c) If an informal conference or hearing is not requested, payment of the fine shall not constitute an admission of the violation charged and payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

4144. Disciplinary Guidelines. [Renumbered to 4147]

4145. Record Retention.

- (a) Every citation, once it has been resolved by payment of the administrative fine and/or compliance with the order of abatement, shall be purged five (5) years from the date of resolution, except for citations referenced in subsection (b).
- (b) No citation shall be purged if issued pursuant to CCR Section 4140(b), and no citation shall be purged for any citation issued for unlicensed practice.

ARTICLE 5.5. STANDARDS RELATED TO DENIAL, DISCIPLINE, AND REINSTATEMENT OF LICENSES

4146. Definitions.

- (a) “Incompetence” is the lack of possession of or the failure to exercise that degree of knowledge, learning, skill, ability, care or experience ordinarily possessed and exercised by a competent licensed professional.
- (b) “Negligence” is a departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.
- (c) “Gross negligence” is an extreme departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.
- (d) For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be “substantially related to the qualifications, functions or duties of an occupational therapy practitioner,” if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include, but are not limited to, those involving the following:
 - (1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Occupational Therapy Practice Act.
 - (2) Fiscal dishonesty, theft or larceny.
 - (3) An incident involving controlled substances or alcohol to the extent that practice is impaired or a threat to the health or safety of themselves or others.
 - (4) Conviction of a crime involving harassment or stalking (as defined by the Penal Code).
 - (5) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code).
 - (6) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
 - (7) Failure to comply with any mandatory reporting requirements.
 - (8) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

- (a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code 11400 et seq.), the Board shall comply with the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines[July 2011] which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including

the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

- (b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports, “Quarterly Written Report (4/2011)” and “Work Performance Evaluation (02/2011)” shall be obtained from the Board and are hereby incorporated by reference.

4148. Mental or Physical Examination of Fitness for Licensure.

In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice occupational therapy safely because the applicant’s ability to practice may be impaired due to mental illness or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant’s failure to comply with the requirement shall render his or her application incomplete.

The report of the evaluation shall be made available to the applicant.

4149. Other Actions Constituting Unprofessional Conduct.

In addition to the conduct described in Section 2570.28(a) and 2570.29 of the Code, “unprofessional conduct” also includes, but is not limited to, the following:

- (a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee’s practice, whether the agreement is made before or after the filing of an action:
- (1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
 - (2) A provision that requires another party to the dispute to withdraw a complaint the party has filed with the board.
- (b) Failure to provide to the board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the certified documents with this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.
- (c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privilege. This subsection shall not be construed to require a licensee to cooperate with a request

that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

- (d) Failure to report to the board within 30 days any of the following:
- (1) The bringing of an indictment or information charging a felony against the licensee.
 - (2) The arrest of the licensee.
 - (3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.
 - (4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.
- (e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

4149.1. Revocation for Sexual Contact.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, which is defined as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

ARTICLE 6. ADVANCED PRACTICES

4150. Definitions

For the purpose of this article:

- (a) "ACOTE" means the Accreditation Council for Occupational Therapy Education.
- (b) "Post professional education and training" means education and training obtained subsequent to the qualifying degree program or beyond current ACOTE standards for the qualifying degree program.
- (c) "Contact hour" means sixty (60) minutes of coursework or classroom instruction.
- (d) "Semester unit" means fifteen (15) contact hours.
- (e) "Quarter unit" means ten (10) contact hours.
- (f) "Rehabilitation of the hand, wrist, and forearm" as used in Code section 2570.2(l) refers to occupational therapy services performed as a result of surgery or injury to the hand, wrist, or forearm.

-
-
- (g) “Upper extremity” as used in Code section 2570.3(e) includes education relating to the hand, wrist, or forearm.
 - (h) “Swallowing” as used in Code section 2570.3 is the passage of food, liquid, or medication through the pharyngeal and esophageal phases of the swallowing process.
 - (i) “Instrumental evaluation” is the assessment of any aspect of swallowing using imaging studies that include, but are not limited to, endoscopy and videofluoroscopy
 - (1) “Endoscopic evaluation of swallowing” or “endoscopy” is the process of observing structures and function of the swallowing mechanism to include the nasopharynx, oropharynx, and hypopharynx.
 - (2) “Videofluoroscopic swallowing study” or “videofluoroscopy” is the fluoroscopic recording and videotaping of the anatomy and physiology of the oral cavity, pharynx, and upper esophagus using a variety of bolus consistencies to assess swallowing function. This procedure may also be known as videofluorography, modified barium study, oral-pharyngeal motility study and videoradiography.

4151. Hand Therapy

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

4152. Physical Agent Modalities

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

(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to physical agent modalities.

(b) An occupational therapist may use only those physical agent modalities he or she is competent to use.

4152.1. Use of Topical Medications

(a) As used in this section, “topical medications” means medications applied locally to the skin or underlying tissue where such medications require a prescription or order under federal or state law. The following medications are applicable to the practice of occupational therapy and may be used by an occupational therapist:

- (1) Bacteriocidal agents;
- (2) Debriding agents;
- (3) Topical anesthetic agents;
- (4) Anti-inflammatory agents;
- (5) Antispasmodic agents; and
- (6) Adrenocortico-steroids.

(b) An occupational therapist shall apply or administer topical medications in accordance with this subsection.

(1) Any topical medication applied or administered shall have been ordered on a specific or standing basis by a practitioner legally authorized to order or prescribe such medication pursuant to Business and Professions Code section 2571(a).

(2) An occupational therapist may administer a topical medication by the use of a physical agent modality, only if the occupational therapist is approved by the Board in the advanced practice area of physical agent modalities.

(3) An occupational therapist shall follow written protocols in applying or administering topical medications. The protocols shall:

- (A) Be prepared by the facility within which the topical medications are being applied or administered;
- (B) Be approved by the medical director or equivalent of the facility;
- (C) Include a description of each medication, its actions, its indications and contraindications, and the proper procedure and technique for application;
- (D) Require that the administration be consistent with the manufacturer’s guidelines for any equipment to be used in the administration of the topical medication; and
- (E) Be based on research and evidence-based practice, pharmaceutical standards of practice and known desired outcomes.

-
-
- (4) Supervision of the application or administration of topical medications by an occupational therapy assistant under this section shall be in accordance with Article 9.
- (c) Under no circumstance does this section authorize an occupational therapist or occupational therapist assistant to administer a medication via injection.

4153. Swallowing Assessment, Evaluation, or Intervention

- (a) The role of an occupational therapist in instrumental evaluations is to observe structure and function of the swallowing mechanism in order to assess swallowing capability and determine swallowing interventions. The occupational therapist may not perform the physically invasive components of the instrumental evaluation.
- (b) Swallowing assessment, evaluation or intervention may be performed only when an occupational therapist has demonstrated to the Board that he or she has met the post professional education and training requirements established by this section as follows:
- (1) Education: Completion of 45 contact hours in the following subjects:
 - (A) Anatomy, physiology and neurophysiology of the head and neck with focus on the structure and function of the aerodigestive tract;
 - (B) The effect of pathology on the structures and functions of the aerodigestive tract including medical interventions and nutritional intake methods used with patients with swallowing problems;
 - (C) Interventions used to improve pharyngeal swallowing function.
 - (2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to swallowing assessment, evaluation or intervention. An occupational therapist in the process of completing the training requirements of this section may practice swallowing assessment, evaluation or intervention under the supervision of an occupational therapist who has been approved under this article, a speech language pathologist with expertise in this area, or a physician and surgeon.
- (c) An occupational therapist may provide only those swallowing assessment, evaluation or intervention services he or she is competent to perform.

4154. Post Professional Education and Training

- (a) Post professional education courses shall be obtained at any of the following:
- (1) College or university degree programs accredited or approved by ACOTE;
 - (2) College or university degree programs accredited or approved by the Commission on Accreditation in Physical Therapy Education;
 - (3) Colleges or universities with Speech and Hearing Programs accredited or approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;

(4) Any approved provider. To be approved by the Board the provider shall submit the following:

(A) A clear statement as to the relevance of the course to the advanced practice area.

(B) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.

(C) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.

(D) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area; or

(5) A provider that has not been approved by the Board, if the applicant occupational therapist demonstrates that the course content meets the subject matter requirements set forth in sections 2570.3(e) or 2570.3(f) of the Code, or section 4153 of these regulations, and submits the following:

(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.

(B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise on the relevant subject matter), particularly as it relates to the advanced practice area.

(b) Post professional training shall be supervised which means, at a minimum:

(1) The supervisor and occupational therapist have a written agreement, signed and dated by both parties prior to accruing the supervised experience, outlining the plan of supervision and training in the advanced practice area. The level of supervision is determined by the supervisor whose responsibility it is to ensure that the amount, degree, and pattern of supervision is consistent with the knowledge, skill and ability of the occupational therapist, and appropriate for the complexity of client needs and number of clients for whom the occupational therapist is providing advanced practice services.

(2) The supervisor is readily available in person or by telecommunication to the occupational therapist while the therapist is providing advanced practice services.

(3) The supervisor does not have a co-habitative, familial, intimate, business, excluding employment relationships, or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or that violates the Ethical Standards of Practice, pursuant to section 4170.

-
-
- (c) Any course instructor providing post-professional education under Section 4154(a)(4) or (5) who is a health care practitioner as defined in Section 680 of the code shall possess an active, current and unrestricted license.
 - (d) Post professional education and training must be completed within the five years immediately preceding the application for approval in each advanced practice area.

4155. Application for Approval in Advanced Practice Areas

In order to provide any of the advanced practice services set forth in Code section 2570.3(d), an occupational therapist shall apply to the Board and receive approval in that advanced practice area.

- (a) To apply for approval, an occupational therapist shall submit to the Board an application as specified in subsections (1), (2), or (3), along with the required documentation.
 - (1) Applicants seeking approval in the area of Hand Therapy shall submit the Application for Advanced Practice Approval in Hand Therapy (Form APH, Rev. 10/09), hereby incorporated by reference;
 - (2) Applicants seeking approval in the use of physical agent modalities shall submit the Application for Advanced Practice Approval in Physical Agent Modalities (Form APP, Rev. 07/11), hereby incorporated by reference;
 - (3) Applicants seeking approval in the area of Swallowing Assessment, Evaluation, or Intervention shall submit the Application for Advanced Practice Approval in Swallowing (Form APS, Rev. 10/09), hereby incorporated by reference;
- (b) The documentation must include the following:
 - (1) Documented proof of attendance and completion of each course (i.e., certificate of completion or transcript).
 - (2) Evidence of the number of contact hours completed for each course for courses that are not Board approved.
 - (3) Outline or syllabus of each course for courses that are not Board approved.
 - (4) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) as it relates to the advanced practice area.
 - (5) Resume or credentials of each instructor for courses that are not Board approved.
 - (6) Verification of completion of supervised on-the-job training, clinical internship or affiliation reflecting the nature of the training and the number of hours. Such verification must be signed by the supervisor(s) under penalty of perjury.
- (c) An advanced practice application not completed within six months of receipt or notification of deficiency, whichever is later, shall be deemed abandoned.
- (d) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

ARTICLE 7. CONTINUING COMPETENCY REQUIREMENTS

4160. Definitions

For the purpose of this section:

- (a) “Continuing competency” means an ongoing process in which an occupational therapy practitioner maintains the knowledge, skills, and abilities necessary to perform his or her professional responsibilities.
- (b) “Continuing education unit (CEU)” is an assigned unit of measure for each professional development activity.
- (c) “Professional development activity” means an activity (except participation in a course of study leading to an entry-level academic degree or normal and routine employment responsibilities) engaged in subsequent to professional education, primarily concerned with maintaining and increasing the occupational therapy practitioner’s knowledge, skill and ability.
- (d) “Professional development unit (PDU)” is an assigned unit of measure for each professional development activity.
- (e) “Level II occupational therapy and occupational therapy assistant students” are those participating in the fieldwork requirements of the entry-level academic degree program.

4161. Continuing Competency

- (a) Effective January 1, 2006, each occupational therapy practitioner renewing a license or certificate under Section 2570.10 of the Code shall submit evidence of meeting continuing competency requirements by having completed, during the preceding renewal period, twelve (12) PDUs for each twelve month period, acquired through participation in professional development activities.
 - (1) One (1) hour of participation in a professional development activity qualifies for one PDU;
 - (2) One (1) academic credit equals 10 PDUs;
 - (3) One (1) Continuing Education Unit (CEU) equals 10 PDUs.
- (b) Professional development activities acceptable to the board include, but are not limited to, programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Occupational Therapy Association of California; post-professional coursework completed through any approved or accredited educational institution that is not part of a course of study leading to an academic degree; or otherwise meet all of the following criteria:
 - (1) The program or activity contributes directly to professional knowledge, skill, and ability;
 - (2) The program or activity relates directly to the practice of occupational therapy; and
 - (3) The program or activity must be objectively measurable in terms of the hours involved.

-
-
- (c) PDUs may also be obtained through any or a combination of the following:
- (1) Involvement in structured special interest or study groups with a minimum of three (3) participants. Three (3) hours of participation equals one (1) PDU.
 - (2) Structured mentoring with an individual skilled in a particular area. For each 20 hours of being mentored, the practitioner will receive three (3) PDUs.
 - (3) Structured mentoring of a colleague to improve his/her skills. Twenty (20) hours of mentoring equals three (3) PDUs.
 - (4) Supervising the fieldwork of Level II occupational therapist and occupational therapy assistant students. For each 60 hours of supervision, the practitioner will receive .5 PDU.
 - (5) Publication of an article in a non-peer reviewed publication. Each article equals five (5) PDUs.
 - (6) Publication of an article in a peer-reviewed professional publication. Each article equals 10 PDUs.
 - (7) Publication of chapter(s) in occupational therapy or related professional textbook. Each chapter equals 10 PDUs.
 - (8) Making professional presentations at workshops, seminars and conferences. For each hour, the practitioner will receive two (2) PDUs.
 - (9) Attending a meeting of the California Board of Occupational Therapy. Each meeting attended equals two (2) PDUs, with a maximum of six (6) PDUs earned per renewal period.
 - (10) Attending board outreach activities. Each presentation attended equals two (2) PDUs, with a maximum of four (4) PDUs earned per renewal period.
- (d) Partial credit will not be given for the professional development activities listed in subsection (c).
- (e) This section shall not apply to the first license or certificate renewal following issuance of the initial license or certificate.
- (f) Of the total number of PDUs required for each renewal period, a minimum of one half of the units must be directly related to the delivery of occupational therapy services.
- (1) The delivery of occupational therapy services may include: models, theories or frameworks that relate to client/patient care in preventing or minimizing impairment, enabling function within the person/environment or community context. Other activities may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to one's practice.
- (g) Applicants who have not been actively engaged in the practice of occupational therapy within the past five years completing continuing competency pursuant to section 2570.14(a) of the Code to qualify for licensure/certification shall submit evidence of meeting the continuing competency

requirements by having completed, during the two year period immediately preceding the date the application was received, forty (40) PDUs that meet the requirements of subsection (b). The forty PDUs shall include:

- (1) Thirty-seven (37) PDUs directly related to the delivery of occupational therapy services;
- (2) One (1) PDU related to occupational therapy scope of practice;
- (3) One (1) PDU related to occupational therapy framework;
- (4) One (1) PDU related to ethical standards of practice for an occupational therapist.

4162. Completion and Reporting Requirements

- (a) The occupational therapy practitioner shall record the following information for each activity on the renewal form:
 - (1) the date each course or activity was completed;
 - (2) the provider, course number, and course title, if applicable;
 - (3) a description of the course; and
 - (4) the total number of PDUs.
- (b) Records showing participation in each professional development activity must be maintained by the occupational therapy practitioner for four (4) years following the renewal period.
- (c) A maximum of three (3) PDUs in excess of the required 12 PDUs may be carried over to the next renewal period for those practitioners renewing after one year. A maximum of six (6) PDUs in excess of the required 24 PDUs may be carried over to the next renewal period for those practitioners renewing after two years.
- (d) Any occupational therapy practitioner who is unable to provide records documenting completion of the continuing competency requirements is subject to citation and/or administrative fine or disciplinary action.

4163. Exemption from Continued Competency Requirements

At the time of applying for renewal of a license, an occupational therapy practitioner may request an exemption from the continuing competency requirements. The renewal application must provide the following information:

- (a) Evidence that during the renewal period prior to the expiration of the license, the practitioner was residing in another country for one year or longer, reasonably preventing completion of the continuing competency requirements; or
- (b) Evidence that the practitioner was absent from California because of military service for a period of one year or longer during the renewal period, preventing completion of the continuing competency requirements; or

-
-
- (c) Evidence that the practitioner should be exempt from the continuing competency requirements for reasons of health or other good cause which include:
- (1) Total physical and/or mental disability for one (1) year or more during the renewal period and the inability to work during this period has been verified by a licensed physician or surgeon or licensed clinical psychologist; or
 - (2) Total physical and/or mental disability for one (1) year or longer of an immediate family member for whom the practitioner had total responsibility, as verified by a licensed physician or surgeon or licensed clinical psychologist.

ARTICLE 8. ETHICAL STANDARDS OF PRACTICE

4170. Ethical Standards of Practice

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, certificate or limited permit issued by the board shall comply with the following ethical standards of practice:

- (a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.
- (b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.
 - (1) Occupational therapy practitioners shall not exploit clients in any manner.
 - (2) Occupational therapy practitioners shall avoid relationships or activities that interfere with professional judgment and objectivity.
- (c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.
 - (1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.
 - (2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.
 - (3) Occupational therapy practitioners shall respect the client's right to refuse professional services or involvement in research or educational activities.
 - (4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.
- (d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so.

-
- (1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.
 - (2) Occupational therapy practitioners shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation should be done in collaboration with the client.
- (e) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws.
- (f) Occupational therapy practitioners shall provide accurate information about occupational therapy services.
- (1) Occupational therapy practitioners shall accurately represent their credentials, qualifications, education, experience, training, and competence.
 - (2) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.
 - (3) Occupational therapy practitioners shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.
- (g) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.

4175. Minimum Standards for Infection Control

- (a) Occupational Therapists and Occupational Therapy Assistants must comply with all applicable Standard Precautions.
- (b) Standard Precautions combine the major features of Universal Precautions and Body Substance Isolation and are based on the principle that all blood, body fluids, secretions, excretions (except sweat), non-intact skin, and mucus membranes may contain transmissible infectious agents. All contact with these substances is treated as if known to be infectious for Human Immunodeficiency Virus (HIV), Hepatitis, and other transmissible infectious agents. Standard Precautions are also intended to protect patients/clients by ensuring that occupational therapy personnel do not carry infectious agents to patients/clients on their hands or via equipment used during delivery of occupational therapy services. Standard Precautions must be used in the care of all patients/clients, regardless of suspected or confirmed infection status, in all settings in which occupational therapy services are delivered. Standard Precautions include:
 - (1) Proper Hand Hygiene
 - (A) Avoid unnecessary touching of face, nose and surfaces in close proximity to the patient to prevent both contamination of clean hands from environmental surfaces and transmission of pathogens from contaminated hands to surfaces, during the delivery of healthcare.

-
-
- (B) When hands are visibly soiled, hands shall be washed with soap and water for a 20-second scrub and 10- second rinse or an antimicrobial hand wash.
 - (C) If hands are not visibly soiled, an acceptable alternative of hand decontamination is with an alcohol-based hand rub (except in cases of spores, as described below).
 - (D) Hands shall be washed or decontaminated as follows:
 - (1) Before having direct contact with any patient/client.
 - (2) After contact with blood, body fluids or excretions, mucous membranes, non-intact skin, or wound dressings.
 - (3) After contact with a patient's/client's intact skin (e.g., when assisting with bathing/dressing or lifting a patient).
 - (4) If hands will be moving from a contaminated-body site to a clean-body site during patient/client care.
 - (5) After contact with inanimate objects (including medical equipment) in the immediate vicinity of the patient/client.
 - (6) After removing gloves.
 - (E) Artificial fingernails or extenders shall not be worn if duties include direct contact with patients at high risk for infection and associated adverse outcomes (e.g., those in ICUs or special care units).
 - (F) After each patient/client session ends, a practitioner shall wash hands with soap and water or an antimicrobial hand wash if contact with spores (e.g., *C. difficile* or *Bacillus anthracis*) is likely to have occurred. The physical action of washing and rinsing hands under such circumstances is required because alcohols, chlorhexidine, iodophors, and other antiseptic agents have poor activity against spores.
 - (2) Use of Personal Protective Equipment
 - (A) The use of personal protective equipment (PPE) includes observing the following principles of use at all times:
 - (1) Wear gloves, gowns and mouth/nose/eye protection when the nature of the anticipated patient/client interaction indicates that contact with blood, body fluids, secretions or excretions may occur. Select masks, goggles, face shields and combinations of each according to the need anticipated by the task performed.
 - (2) Prevent contamination of clothing and skin during the process of removing PPE.
 - (3) Before leaving the patient's/client's room or service area, remove and discard PPE.

-
- (B) PPE includes the use of disposable medical examination gloves, which must be worn when it can be reasonably anticipated that contact with blood or other potentially infectious materials, mucus membranes, non-intact skin, or potentially contaminated intact skin (e.g. of a patient/client incontinent of stool or urine) could occur.
- (1) Non-sterile gloves may be used for all non-surgical procedures.
 - (2) Wear disposable gloves for cleaning the environment or equipment.
 - (3) Wear gloves with fit and durability appropriate to the task.
 - (4) Remove gloves after contact with a patient/client or the surrounding environment (including equipment) using proper technique to prevent hand contamination.
 - (5) Do not wear the same pair of gloves for the care of more than one patient/client.
 - (6) Do not wash gloves for the purpose of reuse since this practice has been associated with the transmission of pathogens.
 - (7) Change gloves during patient/client care if the hands will move from a contaminated body-site to a clean body-site.
- (C) PPE includes wearing a gown that is appropriate to the task to protect skin and prevent soiling or contamination of clothing during procedures and patient/client-care activities when contact with blood, body fluids, secretions, excretions is anticipated. Proper use of a gown includes the following:
- (1) Remove gown and perform hand hygiene before leaving the patient's/client's environment. Place gown in an appropriately-designated area or container for storage, washing, decontamination or disposal.
 - (2) Do not reuse gowns, even for repeated contacts with the same patient.
 - (3) Routine donning of gowns upon entrance into high risk units (e.g. ICU, NICU) is not indicated.
- (D) Personal protective equipment does not include lab coats or uniforms, including scrubs. Lab coats and uniforms shall be changed or washed at least daily, or more frequently if visibly soiled.
- (E) During an aerosol-generating procedure (e.g. suctioning of the respiratory tract if not using in-line suction catheters) in a patient who is not suspected of being infected with an agent for which respiratory protection is otherwise recommended (e.g. M. tuberculosis, SARS or hemorrhagic fever viruses), wear one of the following: a face shield that fully covers the front and sides of the face, a mask with an attached shield, or a mask and goggles, in addition to gloves and a gown.

-
-
- (F) Face shields and protective eyewear must be washed and disinfected between each patient or when visibly soiled.
- (3) Respiratory hygiene/cough etiquette. Measures shall be implemented to contain respiratory secretions and to prevent droplet and fomites transmission of respiratory pathogens, especially during seasonal outbreaks of viral respiratory infections such as influenza, RSV, adenovirus, or parainfluenza virus.
- (A) A practitioner shall provide tissues and, where practical, use no-touch receptacles (e.g. foot-pedal operated lid or open plastic-lined waste basket) for disposal of tissues.
- (B) A practitioner shall wear a mask during all patient/client interactions if the practitioner has any symptoms of respiratory infection.
- (4) Patient/client care equipment, instruments, devices, and environment of care.
- (A) Equipment, instruments, and devices include, but are not limited to: toys and play equipment, shared craft supplies, computers, multi-use electronic equipment, transfer belts, bandage scissors, debridement utensils, patient lifting and/or transporting devices, commode chairs, bath/shower chairs and benches, and dressing equipment.
- (B) A practitioner shall follow employer-established policies and procedures for containing, transporting, handling and cleaning patient/client-care equipment and instruments/devices that may be contaminated with blood or body fluids.
- (C) In the absence of employer-established policies and procedures for containing, transporting, handling and cleaning patient/client-care equipment and instruments/devices that may be contaminated with blood or body fluids, practitioners are responsible for establishing and following policies and procedures for containing, transporting, handling and cleaning patient/client-care equipment and instruments/devices that may be contaminated with blood or body fluids. Such policies and procedures must include the use of PPE (e.g. gloves and gowns and masks, worn according to the level of anticipated contamination.
- (D) A Practitioner shall follow employer-established policies and procedures for routine and targeted cleaning of environmental surfaces as indicated by the service-delivery setting, the level of patient/client contact and degree of soiling.
- (E) In the absence of employer-established policies and procedures for routine and targeted cleaning of environmental surfaces as indicated by the service-delivery setting, the level of patient/client contact and degree of soiling, practitioners are responsible for establishing and following said policies and procedures for routine and targeted cleaning of environmental surfaces.

-
- (F) A Practitioner shall clean and disinfect surfaces that are likely to be contaminated with pathogens, especially those in close proximity to the patient and frequently touched surfaces in the patient care environment. The practitioner is personally responsible for cleaning of shared items and shared surfaces in the occupational therapy setting such as treatment tables, toys, bandage scissors, shared bathing and toileting equipment, and wound care areas, in the absence of an organization-wide housekeeping or environmental cleaning organization.
 - (G) Select equipment that can be easily cleaned and disinfected. Do not use fabric-based equipment (e.g. chairs, stuffed toys, furry toys, transfer belts) if it will likely be contaminated by body fluids.
- (c) Practitioners shall comply with all minimum standards for infection control practices and comply with local, state, or federal recommendations, issued in response to an emergency health and safety situation.

ARTICLE 9. SUPERVISION STANDARDS

4180. Definitions

In addition to the definitions found in Business and Professions Code sections 2570.2 and 2570.3 the following terms are used and defined herein:

- (a) “Client related tasks” means tasks performed as part of occupational therapy services rendered directly to the client.
- (b) “Level I student” means an occupational therapy or occupational therapy assistant student participating in activities designed to introduce him or her to fieldwork experiences and develop an understanding of the needs of clients.
- (c) “Level II student” means an occupational therapy or occupational therapy assistant student participating in delivering occupational therapy services to clients with the goal of developing competent, entry-level practitioners.
- (d) “Level II fieldwork educator” means a licensed occupational therapist or occupational therapy assistant who has a minimum of one year of practice experience following issuance of a license, or other authorization to practice issued by another state’s regulatory board.
- (e) “Non-client related tasks” means clerical, secretarial and administrative activities; transportation of patients/clients; preparation or maintenance of treatment equipment and work area; taking care of patient/client personal needs during treatments; and assisting in the construction of adaptive equipment and splints.
- (f) “Periodic” means at least once every 30 days.

4181. Supervision Parameters

- (a) Appropriate supervision of an occupational therapy assistant includes, at a minimum:
 - (1) The weekly review of the occupational therapy plan and implementation and periodic onsite review by the supervising occupational therapist. The weekly review shall encompass all aspects of occupational therapy services and be completed by telecommunication or onsite.
 - (2) Documentation of the supervision, which shall include either documentation of direct client care by the supervising occupational therapist, documentation of review of the client's medical and/or treatment record and the occupational therapy services provided by the occupational therapy assistant, or co-signature of the occupational therapy assistant's documentation.
 - (3) The supervising occupational therapist shall be readily available in person or by telecommunication to the occupational therapy assistant at all times while the occupational therapy assistant is providing occupational therapy services.
 - (4) The supervising occupational therapist shall provide periodic on-site supervision and observation of client care rendered by the occupational therapy assistant.
- (b) The supervising occupational therapist shall at all times be responsible for all occupational therapy services provided by an occupational therapy assistant, a limited permit holder, a student or an aide. The supervising occupational therapist has continuing responsibility to follow the progress of each client, provide direct care to the client, and assure that the occupational therapy assistant, limited permit holder, student or aide do not function autonomously.
- (c) The level of supervision for all personnel is determined by the supervising occupational therapist whose responsibility it is to ensure that the amount, degree, and pattern of supervision are consistent with the knowledge, skill and ability of the person being supervised.
- (d) Occupational therapy assistants may supervise:
 - (1) Level I occupational therapy students;
 - (2) Level I and Level II occupational therapy assistant students; and
 - (3) Aides providing non-client related tasks.
- (e) The supervising occupational therapist shall determine that the occupational therapy practitioner possesses a current license or permit to practice occupational therapy prior to allowing the person to provide occupational therapy services.

4182. Treatments Performed by Occupational Therapy Assistants

- (a) The supervising occupational therapist shall determine the occupational therapy treatments the occupational therapy assistant may perform. In making this determination, the supervising occupational therapist shall consider the following:

-
- (1) the clinical complexity of the patient/client;
 - (2) skill level of the occupational therapy assistant in the treatment technique; and
 - (3) whether continual reassessment of the patient/client status is needed during treatment. This rule shall not preclude the occupational therapy assistant from responding to acute changes in the client's condition that warrant immediate action. The occupational therapy assistant shall inform the supervising occupational therapist immediately of the acute changes in the patient's/client's condition and the action taken.
- (b) The supervising occupational therapist shall assume responsibility for the following activities regardless of the setting in which the services are provided:
- (1) Interpretation of referrals or prescriptions for occupational therapy services.
 - (2) Interpretation and analysis for evaluation purposes.
 - (A) The occupational therapy assistant may contribute to the evaluation process by gathering data, administering standardized tests and reporting observations. The occupational therapy assistant may not evaluate independently or initiate treatment before the supervising occupational therapist performs an assessment/evaluation.
 - (3) Development, interpretation, implementation, and modifications of the treatment plan and the discharge plan.
 - (A) The supervising occupational therapist shall be responsible for delegating the appropriate interventions to the occupational therapy assistant.
 - (B) The occupational therapy assistant may contribute to the preparation, implementation and documentation of the treatment and discharge summary.

4183. Treatments Performed by Occupational Therapy Limited Permit Holders and Students

- (a) Consistent with Code section 2570.4, subdivisions (b) and (c), a Level II student may, at the discretion of the supervising occupational therapy practitioner, be assigned duties or functions commensurate with his or her education and training.
- (b) All documented client-related services by the limited permit holder or student shall be reviewed and cosigned by the supervising occupational therapist.

Note: Authority: Sections 2570.13 and 2570.20, Business and Professions Code. Reference: Sections 2570.2, 2570.3, 2570.4, 2570.5, 2570.6, and 2570.13, Business and Professions Code.

4184. Delegation of Tasks to Aides

- (a) The primary function of an aide in an occupational therapy setting is to perform routine tasks related to occupational therapy services. Non-client related tasks may be delegated to an aide when the

supervising occupational therapy practitioner has determined that the person has been appropriately trained and has supportive documentation for the performance of the services.

- (b) Client related tasks that may be delegated to an aide include specifically selected routine aspects of an intervention session. In addition to the requirements of Code section 2570.2, subdivisions (a) and (b), the following factors must be present when an occupational therapist delegates a selected aspect of an intervention to an aide:
- (1) The outcome anticipated for the aspects of the intervention session being delegated is predictable.
 - (2) The situation of the client and the environment is stable and will not require that judgment or adaptations be made by the aide.
 - (3) The client has demonstrated previous performance ability in executing the task.
 - (4) The aide has demonstrated competence in the task, routine and process.
- (c) The supervising occupational therapist shall not delegate to an aide the following tasks:
- (1) Performance of occupational therapy evaluative procedures;
 - (2) Initiation, planning, adjustment, or modification of treatment procedures.
 - (3) Acting on behalf of the occupational therapist in any matter related to occupational therapy treatment that requires decision making.
- (d) All documented client related services shall be reviewed and cosigned by the supervising occupational therapist.

4187. Occupational Therapy Assistants Serving in Administrative Positions

An occupational therapy assistant in an administrative role, or supervisory role related to the provision of occupational therapy services, may provide administrative responsibilities in a setting where permitted by law.

CALIFORNIA GOVERNMENT CODE - ADMINISTRATIVE PROCEDURES ACT

CHAPTER 5. ADMINISTRATIVE ADJUDICATION: FORMAL HEARING

11503. Accusation

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

11504. Statement of Issues

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation, except that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

11505. Service of accusation and accompanying papers; Notice of defense; Request for hearing

- (a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.
- (b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: (here insert name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the agency, you may contact: (here insert name and address of appropriate person).

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

- (c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

11506. Filing of notice of defense; Contents; Rights to hearing on the merits

- (a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense in which the respondent may:
 - (1) Request a hearing.
 - (2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.
 - (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.
 - (4) Admit the accusation in whole or in part.
 - (5) Present new matter by way of defense.
 - (6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

-
-
- (b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.
 - (d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.
 - (e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

11507. Amended or supplemental accusation; Objections

At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

11512. Administrative law judge to reside over hearing; Disqualification; Reporting of proceedings

- (a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.
- (b) When the agency itself hears the case, the administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the administrative law judge alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the administrative law judge admitting or excluding evidence is subject to review in the same manner and to the same extent as the administrative law judge's proposed decision in the proceeding.
- (c) An administrative law judge or agency member shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under Section 11425.40. The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the administrative law judge or agency member, and included in the record. Any party may request the disqualification of any administrative law judge or agency member by filing an affidavit, prior to

the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the administrative law judge or agency member is disqualified. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. Where the request concerns the administrative law judge, the issue shall be determined by the agency itself if the agency itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge. No agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular case, except that a substitute qualified to act may be appointed by the appointing authority.

- (d) The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically.
- (e) Whenever, after the agency itself has commenced to hear the case with an administrative law judge presiding, a quorum no longer exists, the administrative law judge who is presiding shall complete the hearing as if sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517.

11516. Amendment of accusation after submission

The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

11517. Contested cases

- (a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.
- (b) If a contested case is originally heard before an agency itself, all of the following provisions apply:
 - (1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.
 - (2) No member of the agency who did not hear the evidence shall vote on the decision.
 - (3) The agency shall issue its decision within 100 days of submission of the case.
- (c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

- (A) Adopt the proposed decision in its entirety.
- (B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
- (C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.
- (D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.
- (E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:
 - (i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.
 - (ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.
 - (iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.
 - (iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge,

the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

- (d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

11518. Copies of decision to parties

Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

11518.5. Application to correct mistake or error in decision; Modification; Service after correction

- (a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.
- (b) The agency may refer the application to the administrative law judge who formulated the proposed decision or may delegate its authority under this section to one or more persons.
- (c) The agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the agency does not dispose of it within 15 days after it is made or a longer time that the agency provides by regulation.
- (d) Nothing in this section precludes the agency, on its own motion or on motion of the administrative law judge, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.
- (e) The agency shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

11519. Effective date of decision; Stay of execution; Notice of suspension or revocation; Restitution; Actual knowledge as condition of enforcement

- (a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.
- (b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

-
-
- (c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.
 - (d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.
 - (e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.
 - (f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.
 - (g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with Section 11460.10) of Chapter 4.5.

11520. Defaults and uncontested cases

- (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.
- (b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.
- (c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:
 - (1) Failure of the person to receive notice served pursuant to Section 11505.
 - (2) Mistake, inadvertence, surprise, or excusable neglect.

11521. Reconsideration

- (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of

the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

- (b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

11522. Reinstatement of license or reduction of penalty

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

OTHER CALIFORNIA CODES

EDUCATION CODE

44010 . “Sex offense,” as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, and 45123, means any one or more of the offenses listed below:

- (a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision
- (a) or (d) of Section 647 of the Penal Code.
- (b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the

Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

- (c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.
- (d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.
- (e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.
- (f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
- (g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.
- (h) Any attempt to commit any of the offenses specified in this section.
- (i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.
- (j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

FAMILY CODE

17520. Child support enforcement

(a) As used in this section:

- (1) "Applicant" means any person applying for issuance or renewal of a license.
- (2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee,

examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

- (3) “Certified list” means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.
- (4) “Compliance with a judgment or order for support” means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.
- (5) “License” includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. “License” also includes any driver’s license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.
- (6) “Licensee” means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver’s license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. “Licensee” also

means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, "licensee" includes any individual who is either listed on the license or who qualifies for the license.

- (b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.
- (c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.
- (d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.
- (e)(1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.
- (2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.
- (A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

-
- (B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.
- (C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.
- (D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.
- (3)(A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.
- (B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.
- (C) The 150-day notice period shall not be extended.
- (D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.
- (E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.
- (f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

-
-
- (1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.
 - (2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.
 - (3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

HEALTH AND SAFETY CODE

123105. As used in this chapter:

- (a) “Health care provider” means any of the following:
 - (1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.
 - (2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.
 - (3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.
 - (4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.
 - (5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.
 - (6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.
 - (7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

-
- (8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.
- (9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.
- (10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
- (11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.
- (12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.
- (13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).**
- (14) A professional clinical counselor licensed pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.
- (b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.
- (c) “Patient” means a patient or former patient of a health care provider.
- (d) “Patient records” means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. “Patient records” includes only records pertaining to the patient requesting the records or whose representative requests the records. “Patient records” does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. “Patient records” does not include information contained in aggregate form, such as indices, registers, or logs.
- (e) “Patient’s representative” or “representative” means any of the following:
- (1) A parent or guardian of a minor who is a patient.
 - (2) The guardian or conservator of the person of an adult patient.
 - (3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.
 - (4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.
- (f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

PENAL CODE

11166. Child abuse neglect reporting

- (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow-up report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any non-privileged documentary evidence the mandated reporter possesses relating to the incident.
- (1) For purposes of this article, “reasonable suspicion” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.
 - (2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.
 - (3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.
- (b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone follow-up call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written follow-up report.
- (c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.
- (d)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence,

including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(e)(1) Any commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practically possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written follow-up report of the incident with a copy of the image or material attached.

(2) Any commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or an image, including, but not limited, to any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or material are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written follow-up report of the incident with a brief description of the images or materials.

(3) For purposes of this article, “commercial computer technician” includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (41) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, “electronic medium” includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, “sexual conduct” means any of the following:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

-
-
- (D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
- (E) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.
- (f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).
- (g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, “any other person” includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.
- (h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.
- (i)(1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

WELFARE AND INSTITUTIONS CODE

15630. Mandatory and nonmandatory reports of abuse

- (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.
- (b)(1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting

tool, as authorized by Section 15658, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days:

- (A) If the suspected or alleged abuse is physical abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the following shall occur:
 - (i) If the suspected abuse results in serious bodily injury, a telephone report shall be made to the local law enforcement agency immediately, and no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(additional non-essential text not included)

- (c)(1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.
 - (2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.
 - (3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of State Hospitals or the State Department of Developmental Services or to a local law enforcement agency. Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.
 - (4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.
 - (5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.
- (d) If two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and there is agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team.

Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

- (e) A telephone report or Internet report, as authorized by Section 15658, of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.
- (f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(additional non-essential text not included)

- (h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.
- (i) For purposes of this section, "dependent adult" shall have the same meaning as in Section 15610.23.

PROPOSED/PENDING REGULATORY AMENDMENTS AND APPROVED REGULATORY AMENDMENTS WITH FUTURE EFFECTIVE DATES; CHECK THE BOARD'S WEBSITE FOR THE LATEST INFORMATION.

4101. Delegation of Certain Functions.

Except for those powers reserved exclusively to the “agency itself” under the Administrative

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

4127. Inactive Status

Upon written request, the board may grant inactive status to a license or certificate holder under the following conditions:

- (a) At the time of application for inactive status, the holder’s license or certificate shall be current and not suspended, revoked, or otherwise punitively restricted by the board.
- (b) The holder of an inactive license or certificate shall not engage in any activity for which a license or certificate is required.
- (c) An inactive license or certificate shall be renewed during the same time period in which an active license or certificate is renewed. The holder of an inactive license or certificate need not comply with any continuing education requirement for renewal of an active license.
- (d) The renewal fee for a license or certificate in an active status shall apply also for a renewal of a license or certificate in an inactive status, unless a lesser renewal fee is specified by the board.
- (e) In order for the holder of an inactive license or certificate to restore his or her license or certificate to an active status, he or she shall comply with all of the following:
 - (1) Pay the renewal fee.
 - (2) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for a single renewal period of an active license or certificate, unless a different requirement is specified by the board on a case-by-case basis.

4128. Retired Status.

- (a) On or after July 1, 2013, a holder of an occupational therapist or occupational therapy assistant license that is current and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline, may apply for retired status, upon application and payment of the fee prescribed in section 2570.17 of the Code.
- (b) The application shall be on a form prescribed by the Board titled “Application for Retired Status” (Form ARS, New 7/2012), and shall disclose under penalty of perjury whether the licensee has been disciplined by another public agency or been convicted or pled nolo contendere to any violation of any statute in the United States or foreign country.
- (c) A license in retired status is not subject to renewal.
- (d) The holder of a license in retired status shall not engage in any activity for which an active license is required. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.
- (e) An occupational therapist holding a license in retired status shall be permitted to use the title “occupational therapist, retired” or “retired occupational therapist.” An occupational therapy assistant holding a license in retired status shall be permitted to use the title “occupational therapy assistant, retired” or “retired occupational therapy assistant.” The designation of retired shall not be abbreviated in any way. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.
- (f) In order to restore his or her license to active status the holder of a license in retired status shall:
 - (1) Complete a form prescribed by the board titled “Application to Restore License to Active Status,” (Form ARL, New 7/2012), and pay the biennial renewal fee in effect at the time the request for activation is received; and.
 - (2) Satisfy continuing competency requirements as follows:
 - (A) Complete 24 PDUs, within two (2) years preceding the date the application for reactivation is received, if the license is in retired status for a period of five (5) years or less, or
 - (B) Meet one of the requirements set forth in section 2570.14 of the Code if the license is in retired status for a period of more than five (5) years. If qualifying under 2570.14(a), the holder of a license in retired status must complete 40 PDUs as specified in section 4161(g).
- (g) A licensee may be granted a license in retired status on no more than two separate occasions.

4130. Fees.

Fees are fixed by the board as follows:

- (a) On or after July 1, 2014, the fee for processing an Initial Application for Licensure (Form ILA, Revised 8/2012) shall be fifty dollars (\$50).
- (b) The initial license fee shall be prorated pursuant to Section 4120(a)(1) and based on a biennial fee of one hundred fifty dollars (\$150).
- (c) The fee for a limited permit shall be seventy five dollars (\$75).
- (d) For the biennial renewal fee shall be one hundred fifty dollars (\$150).
- (e) The delinquency fee is one-half of the renewal fee.
- (f) The renewal fee for an inactive license shall be twenty-five dollars (\$25).
- (g) On or after July 1, 2013, the fee for an Application for Retired Status (Form ARS, New 7/2012), shall be twenty-five dollars (\$25).
- (h) The fee for a duplicate license is \$15.
- (i) The fees for fingerprint services are those charged by the California Department of Justice and the Federal Bureau of Investigation.

4146.5. Effective Dates of Decisions

Unless otherwise specified in an Order of the Board, the effective date of a decision made by the Board pursuant to the Administrative Procedure Act (section 11500 et seq. of the Government Code) shall be established as follows:

- (a) A Default Decision and Order shall become effective 10-days from the date of service of the decision on the parties.
- (b) A Stipulated Settlement and Order shall become effective 10-days from the date of service of the decision on the parties.

4147. Disciplinary Guidelines.

- (a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code 11400 et seq.), the Board shall consider and apply Disciplinary Guidelines (October 2013), which are hereby incorporated by reference. The Disciplinary Guidelines shall apply to all disciplinary matters. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; or evidentiary issues.
- (b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports, “Quarterly Written Report (4/2011)” and “Work Performance Evaluation (02/2011)” shall be obtained from the Board and are hereby incorporated by reference.

4147.5. Uniform Standards Related to Substance Abuse.

- (a) The Board shall also apply, as required, the Department of Consumer Affairs' Substance Abuse Coordination Committee's Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011), which are hereby incorporated by reference. The Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.
- (b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for the purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all relevant terms and conditions contained in the Disciplinary Guidelines, the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the licensee on probation.

4154. Post Professional Education and Training

- (a) Post professional education courses shall be obtained at any of the following:
 - (1) College or university degree programs accredited or approved by ACOTE;
 - (2) College or university degree programs accredited or approved by the Commission on Accreditation in Physical Therapy Education;
 - (3) Colleges or universities with Speech and Hearing Programs accredited or approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;
 - (4) Any approved provider. To be approved by the Board the provider shall submit the following:
 - (A) A clear statement as to the relevance of the course to the advanced practice area.
 - (B) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
 - (C) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
 - (D) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area; or
 - (5) A provider that has not been approved by the Board, if the applicant occupational therapist demonstrates that the course content meets the subject matter requirements set forth in sections 2570.3(e) or 2570.3(f) of the Code, or section 4153 of these regulations, and submits the following:

-
-
- (A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
 - (B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise on the relevant subject matter), particularly as it relates to the advanced practice area.
- (b) Post professional training shall be supervised which means, at a minimum:
- (1) The supervisor and occupational therapist have a written agreement, signed and dated by both parties prior to accruing the supervised experience, outlining the plan of supervision and training in the advanced practice area. The level of supervision is determined by the supervisor whose responsibility it is to ensure that the amount, degree, and pattern of supervision is consistent with the knowledge, skill and ability of the occupational therapist, and appropriate for the complexity of client needs and number of clients for whom the occupational therapist is providing advanced practice services.
 - (2) The supervisor is readily available in person or by telecommunication to the occupational therapist while the therapist is providing advanced practice services.
 - (3) The supervisor does not have a co-habitative, familial, intimate, business, excluding employment relationships, or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or that violates the Ethical Standards of Practice, pursuant to section 4170.
- (c) Any course instructor providing post-professional education under section 4154(a)(4) or (5) who is a health care practitioner as defined in section 680 of the Code shall possess an active, current, and unrestricted license.
- (d) Post professional education and training must be completed within the five years immediately preceding the application for approval in each advanced practice area.

4170. Ethical Standards of Practice.

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license a limited permit issued by the board, or is practicing on a license issued by another state, shall comply with the following ethical standards of practice:

- (a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.
 - (1) Occupational therapy practitioner's services shall be provided consistent with socio-economic factors such as economic status, age, ethnicity, race, disability, marital status, sexual orientation, gender, gender identity, religion, residence, culture and political affiliation and insurance coverage. (2) An occupational therapy practitioner offering pro bono ("for the good") or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services.

-
-
- (b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.
- (1) Occupational therapy practitioners shall not exploit or harm recipients of occupational therapy services, students, research participants, or employees.
 - (2) Occupational therapy practitioners shall, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer and within six (6) months of termination of occupational therapy services, avoid relationships which may include emotional, physical, psychological, financial, social or the like, or activities that interfere with professional judgment and objectivity including avoiding:
 - (A) Any sexual relationship, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, and
 - (B) Bartering for services or any relationship established as an occupational therapist or occupational therapy assistant to further one's own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, or the potential for exploitation and conflict of interest.
- (c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.
- (1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.
 - (2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.
 - (3) Occupational therapy practitioners shall respect the client's right to refuse services.
 - (4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.
- (d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so and shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation shall be done in collaboration with the client.
- (e) Occupational therapy practitioners shall, through professional development units required for license renewal or in other ways assure continued competence with respect to their own current practice and technology.
- (f) Occupational therapy practitioners shall report to the Board any acts committed by another occupational therapy practitioner that they have reason to believe are unethical or illegal in practice, education, research, billing, or documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be allowed by law.

-
- (g) Occupational therapy practitioners shall make all other mandatory reporting to the appropriate authorities as required by law.
 - (h) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws, and shall comply with the following:
 - (1) Practice occupational therapy only when holding a current and valid license issued by the Board, and appropriate national, state, or other requisite credentials for the services they provide; and
 - (2) Practice occupational therapy within his or her own level of competence and scope of practice.
 - (i) Occupational therapy practitioners shall provide accurate information about occupational therapy services and shall accurately represent their credentials, qualifications, education, experience, training, and competence.
 - (j) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.
 - (k) Occupational therapy practitioners shall not use or participate in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.
 - (l) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.

SECTION 4172. Standards of Practice for Telehealth.

- (a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant providing services to a patient or client in this State must have a valid and current license issued by the Board.
- (b) An occupational therapist shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth consistent with Section 2290.5 of the Code.
- (c) Prior to providing occupational therapy services via telehealth:
 - (1) an occupational therapist shall determine whether an in-person evaluation is necessary and ensure that a therapist must be available if an onsite visit is required;
 - (2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.

-
-
- (d) In making the determination whether an in-person evaluation or in-person interventions are necessary, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.
- (e) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:
- (1) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;
 - (2) Provide services consistent with section 2570.2(k) of the Code; and
 - (3) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.
- (f) Failure to comply with these regulations shall be considered unprofessional conduct as set forth in the Occupational Therapy Practice Act.

EXTRACT FROM DISCIPLINARY GUIDELINES

I. INTRODUCTION

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Board of Occupational Therapy (Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by attorney's, administrative law judges, occupational therapists, occupational therapy assistants, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

For purposes of this document, the term "license" includes the occupational therapy license and the occupational therapy assistant certificate. The terms and conditions of probation are divided into two general categories:

- (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
- (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board requests that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

II. GENERAL CONSIDERATIONS

The Board requests that Proposed Decisions following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he/she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

- a. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- b. Actual or potential harm to any consumer, client or the general public.
- c. Prior disciplinary record.
- d. Number and/or variety of current violations.
- e. Mitigation evidence.
- f. Rehabilitation evidence.
- g. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- h. Overall criminal record.
- i. Time passed since the act(s) or offense(s) occurred.
- j. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
- k. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

III. DEFINITION OF PENALTIES

Revocation: Loss of a license as the result of any one (1) or more violations of the Occupational Therapy Practice Act. Revocation of a license is permanent, unless the respondent takes affirmative action to petition the Board for reinstatement of his/her license and demonstrates to the Board's satisfaction that he/she is rehabilitated.

Suspension: Invalidation of a license for a fixed period of time, not to exceed one (1) year.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Probation: A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to improving his/her conduct or preventing the likelihood of a recurrence of the violation.

IV. DISCIPLINARY GUIDELINES

The offenses are listed by statute number in the Business and Professions Code. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages 15-24.

BUSINESS AND PROFESSIONS CODE SECTIONS – OCCUPATIONAL THERAPY PRACTICE ACT

Section 2570.23: Violation of 2570.3 - Unlicensed Person Engaging in Practice - Sanctions

Applicant Maximum: Denial of application for a license

Applicant Minimum: Thirty (30) days actual suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#26 and #30]

Section 2570.28(a)(1),(2),or(3): Unprofessional Conduct – Incompetence, Gross Negligence, Repeated Negligent Acts, Conviction of Practicing Medicine

Maximum: Revocation

Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1- #13]
- b. Optional conditions [#23, #25, #26, #28, #30]

Section 2570.28(a)(4): Unprofessional Conduct – False Advertising

Maximum: Revocation

Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#26 and #30]

Section 2570.28(a)(5): Unprofessional Conduct – Discipline by Other Government Agency

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.28(b): Procuring a License by Fraud, Misrepresentation, Mistake

Maximum: Revocation

Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#23, #26, #28]

Section 2570.28(c): Violating Any Provision of the Occupational Therapy Practice Act or Regulations

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.28(d): False Statement on Application for License or Renewal

Maximum: Revocation

Minimum: Stayed revocation, thirty (30) days suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#26 and #30]

Section 2570.28(e): Conviction of Crime Substantially Related to License

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#26, #27, #28, #30]

Section 2570.28(f) or (g): Impersonating an Applicant or Acting as Proxy for Another in an Examination for Licensure, Impersonating a Licensee or Allowing Another Person to Use License

Maximum: Revocation

Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#26 and #30]

Section 2570.28(h): Committing Fraud, Dishonest or Corrupt Act

Maximum: Revocation

Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#26 and #30]

Section 2570.28(i): Committing Any Act Punishable as Sexually Related Crime

Maximum: Revocation

Minimum: Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional Conditions [#15, #16, #24, #26, #30]

Section 2570.28(j): Using Excessive Force, Mistreating or Abusing Patient

Maximum: Revocation

Minimum: Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#15, #16, #25, #26, 30]

Section 2570.28(k): Falsifying, Making Grossly Incorrect, Inconsistent, or Unintelligible Entries in Patient/Hospital Record

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.28(l): Changing the Prescription of Physician or Falsifying Verbal or Written Orders

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.28(m): Failing to Maintain Patient Confidentiality

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.28(n): Delegating Services that Require License to Unlicensed Person

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.28(o): Committing Act that would be Grounds for Denial under Section 480

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.28(p): Failing to Follow Infection Control Guidelines

Maximum: Revocation

Minimum: Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 2570.29(a): Obtain, Possess, Administer to Self, Furnish or Administer to Others, Controlled Substance

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#14, #17, #18, #19a and/or 19b or 19c, #20, #21, #22, #24, #31]

Section 2570.29(b)(1)(2) or (3): Use Controlled Substance, Dangerous Drug, Alcohol in Manner Dangerous, Injurious to Self or Others

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#14, #17, #18, #19a and/or 19b or 19c, #20, #21, #22, #24, #31]

Section 2570.29(c): Conviction of Crime Involving Controlled Substance, Dangerous Drug, Alcohol or Falsifying a Record Involving Same

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#14, #17, #18, #19a and/or 19b or 19c, #20, #21, #22, #24, #28, #31]

Section 2570.29(d): Committed or Confined by Court for Intemperate Use of Controlled Substance, Dangerous Drug, Alcohol

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#14, #17, #18, #19a and/or 19b or 19c, #20, #21, #22, #24, #28, #31]

Section 2570.29(e): Falsify, Make Grossly Incorrect, Inconsistent, or Unintelligible Entries in Hospital/Patient Record involving Controlled Substance or Dangerous Drug

Maximum: Revocation

Minimum: Stayed revocation and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#14, #17, #18, #19a and/or 19b or 19c, #20, #21, #22, #24, #31]

GENERAL PROVISIONS OF BUSINESS AND PROFESSIONS CODE

Section 119: Misdemeanor Pertaining to Use of a License

Maximum: Revocation

Minimum: Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 125: Misdemeanor Pertaining to Conspiring with Unlicensed Person for Use of a License

Maximum: Revocation

Minimum: Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 125.6: Discrimination by Licensee

Maximum: Revocation

Minimum: Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 480(a): Denial of Licenses

Maximum/Minimum: Denial of license

Section 480(c): Denial of Licenses

Maximum/Minimum: Denial of license

Section 496: Subversion of Licensing Examinations or Administration of Examinations.

Maximum: Denial or revocation of license

Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#23, #26, #30]

Section 726: Sexual Abuse, Misconduct, or Relations with a Patient or Client

Maximum: Revocation

Minimum: Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#25, #26, #30]

Section 730: Performing Medical Evaluation Without Certification

Maximum: Revocation

Minimum: Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1-#13]

Section 810: Fraudulent Claims

Maximum: Revocation

Minimum: Stayed revocation and one (1) year probation on the following conditions:

- a. Standard conditions [#1-#13]
- b. Optional conditions [#26, #27, #30]

REHABILITATION CRITERIA

When considering the denial of an occupational therapy practitioner license under section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, which also could be considered as grounds for denial under section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

When considering the suspension or revocation of the license of an occupational therapy practitioner on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, shall consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

**CALIFORNIA BOARD OF
OCCUPATIONAL THERAPY**

2005 Evergreen Street, Ste.
2050 Sacramento, CA 95815

Tel 916/263-2294

Fax 916/263-2701

www.bot.ca.gov

