

AGENDA ITEM 13

CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4170, ETHICAL STANDARDS OF PRACTICE.

The following are attached for review:

- Notice
- Proposed text
- Initial Statement of Reasons
- AOTA's *Occupational Therapy Code of Ethics and Ethics Standards (2010)*

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (CBOT) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on February 3, 2014.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the Board. The request must be received in the CBOT office not later than 5:00 pm on January 20, 2014.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.28, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest

Existing regulations contained in section 4170 of Division 39 of Title 16 of the California Code Regulations identify Ethical Standards of Practice that have been adopted by the Board. Any violation of the adopted standards would constitute grounds for the CBOT to take an enforcement action against a licensee. This proposed action provides more detail and clarity regarding the Board's existing professional standards to better serve the profession and public on expected standards and otherwise assist in identifying potential ethical dilemmas.

Policy Statement/Anticipated Benefits of Proposal

Pursuant to BPC section 2570.25, protection of the public shall be the highest priority of the CBOT in exercising its licensing, regulatory, and disciplinary functions. The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

Consistency with Existing State Regulations

The Board has conducted a review of any related regulations and has determined that these are the only regulations dealing with Ethical Standards of Practice for Occupational Therapists. Therefore, this regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: This regulation will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with business in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Proposed Regulation

The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

Cost Impact on Affected Private Persons:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business:

The Board has determined that compliance with proposed regulations would not affect small business. Individual occupational therapy practitioners are required to comply with regulations that have been adopted by the Board which are necessary for public protection. The Board acknowledges the potential exists that the owner or an employee of a small occupational therapy business might subject their license to an enforcement action for violating professional and ethical standards. The Board does not anticipate a significant number of small businesses would be affected and any detrimental impact or hardship that might be incurred would be outweighed by the Board's mandate to protect the health, safety, and welfare of California consumers.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered it considered to the regulation or that has otherwise been identified and brought to its attention would either

be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to the private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations within the timeframes identified in this Notice, or at a hearing in the event that such a request is made by the public.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
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2005 Evergreen Street, Suite 2050
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(916) 263-2294 (Tel)
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Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > Laws and Regulations > Proposed Regulations.

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

Proposed Text

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

Amend Title 16, Division 39, Article 8 California Code of Regulations to read as follows:

Article 8. ~~Ethical Standards of Practice~~ Service Delivery Standards

§ 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 a~~ a limited permit issued by the board, ~~or is practicing on a license issued by another state pursuant to section 2570.4 of the Code,~~ shall comply with the following ethical standards of practice:

(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.

(1) An occupational therapy practitioner's services shall reflect an understanding of how those services can be affected by socio-economic factors such as economic status, age, ethnicity, race, disability, marital status, sexual orientation, gender, gender identity, religion, residence, culture, political affiliation, and insurance coverage.

(2) An occupational therapist offering free or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services as for full fee 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 clients in any manner 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 or associations that include, but are not limited to emotional, physical, psychological, financial, social, or activities that interfere with professional judgment and objectivity, including avoiding:

(A) Any sexual relationship or activity, 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 establishing any relationship 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 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 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 ~~should~~ shall be done in collaboration with the client.

(e) Occupational therapy practitioners shall, through completion of professional development activities required for license renewal or in other ways assure continued competence with respect to his or her 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.

~~(e)~~ (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.

~~(f)~~ (i) Occupational therapy practitioners shall provide accurate information about occupational therapy services.

~~(1) Occupational therapy practitioners and~~ shall accurately represent their credentials, qualifications, education, experience, training, and competence.

~~(2)~~ (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.

~~(3)~~ (k) Occupational therapy practitioners shall refrain from using not use or participating participate in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.

~~(g)~~ (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.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2570.4, 2570.20 and 2570.36.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Ethical Standards of Practice

Section Affected: Title 16, Division 39, California Code of Regulations (CCR), Section 4170

Introduction

The California Board of Occupational Therapy (Board) is the state agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of California consumers. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

Existing regulations identify and provide practice standards that occupational therapy practitioners must abide by in providing services to the public. Any violation of these standards serves as grounds for disciplinary action against a licensee. This proposed action enhances and removes ambiguity regarding several aspects of existing ethical standards by providing more detail and clarity regarding the requirements.

Factual Basis/Rationale

Amend Title of Article 8

The existing title of Article 8 is 'Ethical Standards of Practice.' This proposed action will amend the title to read "Service Delivery Standards".

The Board is seeking this amendment because 16 CCR Section 4170 titled 'Ethical Standards of Practice,' and 16 CCR Section 4175 titled 'Minimum Standards for Infection Control' are incorporated under this Article. A pending regulatory action (2013-1119-04S) regarding 16 CCR Section 4172 pertaining to 'Standards of Practice for Telehealth,' if approved by the Office of Administrative Law, will also be incorporated into this Article.

Thus the existing title is too specific and not representative of all language that is, and potentially might be, incorporated into the Article. The proposed new title "Service Delivery Standards" is broader than the existing title and describes the various standards affecting practice that are incorporated under this Article. The proposed action promotes clarity.

First Paragraph of 16 CCR Section 4170

The first paragraph of existing Section 4170 establishes the section applies to licensees and limited permit holders. The paragraph has been amended, deleting reference to "certificate" and adds new language "or is practicing on a license issued in another state."

The Board is seeking this modification since occupational therapy assistants are now “licensed” as opposed to “certified” (SB 821, Committee on Business, Professions and Economic Development, Chapter 307, Statutes 2009); it is no longer necessary for “certificate” to be referenced in the regulation. Since existing statutes and regulations provide for license exemptions in certain circumstances and conditions, the Board feels it is necessary to adopt language that clarifies that these ethical standards also apply to out-of-state practitioners providing or rendering services under licensing exemptions established in Business and Professions Code Section 2570.4 and Title 16 CCR Section 4116.

16 CCR Section 4170(a)

Existing language establishes occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination. The Board is proposing to expand and clarify the meaning of existing 16 CCR Section 4170(a) by adding subsection (1) to clarify that practitioners must take into account various factors, when providing services and subsection (2) to establish that practitioners offering free or reduced-fee services shall exercise the same standard of care as full-fee services.

The Board is seeking these amendments to establish and clarify there are many factors that must be considered when rendering services to different populations. The Board also feels it is necessary to establish and clarify that in the event a practitioner decides to provide free or reduced fee services, the practitioner shall not construe that to mean, in any way, the services can be provided in a substandard manner.

16 CCR Section 4170(b)(1)

Existing language established occupational therapy practitioners must take reasonable precautions to avoid imposing or inflicting harm to a client or to his or her property. The Board is proposing to expand this ethical standard to establish that a practitioner shall not exploit or harm a recipient of occupational therapy services (client), but also shall not harm any students, research participants, or employees.

The Board is seeking this amendment because existing language is too limited in only specifying clients and wishes to clarify that the meaning of ‘harm’ in this section also applies to other relationships that a practitioner might be involved in, including relationships with students, research participants, or employees.

16 CCR Section 4170(b)(2)

Existing language establishes that it is an ethical violation to enter into a relationship or activity that interferes with professional judgment and objectivity. The Board is proposing to expand and clarify the meaning of this section by establishing that 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, practitioners must avoid relationships which may include emotional, physical, psychological, financial, or social relationships that interfere with professional judgment and objectivity.

The Board is seeking this amendment because existing language would benefit by clarifying the various roles and types of relationships or activities that would fall within the meaning and intent of this section. The Board believes it is necessary to establish a time period, in this case six (6) months, from when a professional relationship terminates to when it would be allowable by parties to explore or pursue a prohibited relationship without committing a violation this section.

The Board is proposing further modification to 16 CCR Section 4170(b)(2) by adding additional subsections (A) and (B) pertaining to sexual relationships and bartering for services. Proposed Section 16 CCR 4170(b)(2)(A) would establish and clarify that it is an ethical violation to enter into a sexual relationship (either consensual or nonconsensual) with any recipient of services, any family member or significant other of the recipient of services, any student, any research participant, or any employee. Proposed 16 CCR Section 4170(b)(2)(B) would establish and clarify that it is an ethical violation for bartering for services or any relationship established as an occupational therapy practitioner to further one's own interests at the expense of, or exploitation of, or in a conflict of interest, with the recipient of services.

The Board is seeking these amendments because regulations make no specific reference to sexual relationships or sexual bartering for services. The Board feels it is beneficial and in the best interests of the public and profession to make specific reference to these issues and dispel any notion these standards would not apply if a sexual relationship or activity is consensual or that they only apply to the recipient of services.

16 CCR Section 4170(c)(3)

Existing language establishes it is an ethical violation if a practitioner does not respect a client's right to refuse professional services or involvement in research or educational activities. The Board is proposing to amend the language to delete "or involvement in research or educational activities."

The Board seeks this amendment for brevity and conciseness. Elimination of the language does not change the meaning or intent of this subsection. A client has the right to refuse any and all services in any and all situations. The Board feels it is not necessary to draw any distinction to research or educational activities in the meaning of this subsection.

16 CCR Section 4170(d)

Existing language establishes "Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so." The Board proposes to eliminate existing 16 CCR Section 4170(d)(1), "Occupational therapy practitioners shall hold appropriate credentials for the services they provide" and moves it to a new section, Section 4170(h)(1). This amendment will also deleting reference to 16 CCR Section 4170(d)(2) but maintains the language in Section 4170(d). The Board is amending language "Such referral or consultation should be done in collaboration with the client," by deleting "should" and replacing it with "shall."

The Board is seeking these amendments to make the language clearer and formatted in a manner that is better for the section. Modification to the language "Such referral or

consultation shall be done in collaboration with the client” was necessary for clarity because existing language appears to make it an option, where replacing it with “shall” makes it a requirement which is the Board’s intent. This correction is consistent with the standards and core values of the profession.

16 CCR Section 4170(e)

The Board is proposing to establish new language in 16 CCR Section 4170(e) requiring practitioners to maintain competence in their own practice area(s) through course work and activities that are specific to the practitioner’s own area(s) of practice and/or use of practice-specific technology.

The Board is seeking this new language because it feels it is necessary to clarify the intent of its continuing competence requirement which is for practitioners stay current and aware of emerging trends and technologies in their practice areas. This will result in better and safer services provided to the public.

{Existing language in 16 CCR Section 4170(e) is being moved to Section 4170(h)}

16 CCR Section 4170(f)

The Board is proposing to establish new language in 16 CCR Section 4170(f) to define and clarify Business and Professions Code section 2570.36, which requires practitioners to report to the Board any acts committed by an applicant or another occupational therapy practitioner that they believe violates any law or regulation administered by the Board or is illegal. The reporting practitioner is also responsible for cooperating with the Board by providing information, documentation, declarations, or assistance as may be allowed law.

The Board is seeking this new language to define, clarify, administer, and implement the statute. Implementation of this proposed regulation will foster principles supported by the profession, establish and clarify expected standards of conduct for practitioners, and otherwise help resolve ethical dilemmas. The Board must be notified when a practitioner behaves unethically or performs in a negligent or incompetent manner in order for it to fulfill its mandate to protect the public.

{Existing language in 16 CCR Section 4170(f) is being moved to Section 4170(i)}

16 CCR Section 4170(g)

The Board is proposing to establish new language in 16 CCR Section 4170(g) establishing “Occupational therapy practitioners shall make all mandatory reporting to appropriate authorities as required by law.” As an example, occupational therapy practitioners are mandated to report known or reasonably suspected incidents of child abuse or neglect pursuant to Penal Code Section 11166, and elder abuse pursuant to Welfare and Institutions Code section 15630.

The Board seeks this new language to define and clarify the expectations placed on occupational therapy practitioners to make mandated reports as required by law. Adoption

of this language will enhance the Board's ability to take administrative disciplinary action for these violations.

Existing language in 16 CCR Section 4170(e) is being moved to subsection (h)

Existing language establishes 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. The Board is proposing to add new language in subsection (1) that will establish and clarify occupational therapy practitioners may only practice when they hold a current and active license issued by the Board or other requisite credentials for the services they provide, and subsection (2) that will establish and clarify that occupational therapy practitioners provide services within his or her own competence level and scope of practice.

The Board is seeking the new language to provide clarification to practitioners that practicing on an expired license is a violation of law; just because they have been issued a license, does not mean they are authorized to provide services once the license expires. Practitioners should not provide services unless they possess the level of knowledge, skill, and ability (e.g., education and experience) consistent with best practices and regard for client safety. Implementation of this proposed language will clarify and establish principles and standards that practitioners should already be following, but will now be more easily held accountable should they fail to abide by these standards.

Existing language in 16 CCR Section 4170(f) is being moved to subsection (i).

Existing language establishes occupational therapy practitioners shall provide accurate information about occupational therapy services. The Board is proposing to delete reference to existing subsection (1) but maintains and integrates the language "and shall accurately represent their credentials, qualifications, education, experience, training, and competence" into 16 CCR Section 4170(i).

The Board is seeking this amendment because the language contained in subsection (1) can be easily integrated into the section. This change is technical and formatting in nature. It does not change the meaning and intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(2) is being moved to subsection (j)

Existing language establishes occupational therapy practitioners shall disclose conflicts of interest with those whom they may establish a professional, contractual, or working relationship. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(3) is being moved to subsection (k)

Existing language establishes an occupational therapy practitioner shall refrain from using or participating in the use of any communication that is false, fraudulent, deceptive

statements or claims. The Board is proposing to delete language “refrain from” and replace it with “not use”.

The Board is seeking these amendments to make the language specific and more direct as opposed to a passive suggestion. This amendment also makes minor technical formatting changes to place this language in its own subsection.

Existing language in 16 CCR Section 4170(g) is being moved to Section 4170(l)

Existing language establishes occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Business and Professions Code section 2570.8. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Amend Authorities and Reference

The Board is proposing a technical edit by adding Business and Professions Code sections ‘2570.4’ and ‘2570.36’ in the reference section for the note of authorities and references.
BUSINESS IMPACT:

This regulation will not have an adverse economic impact on business.

ECONOMIC IMPACT ANALYSIS

Background

The purpose of the proposed regulatory action is to establish and expand existing regulations relating to ethical standards of practice for occupational therapy practitioners. The proposed regulatory action will enhance and foster the Board’s role in administering, regulating, and taking disciplinary action against occupational therapy practitioners who violate these principals.

Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate jobs within California for reasonable compliance with the proposed action. The proposed regulatory action expands, defines, and clarifies standards and principles held by the profession in delivering occupational therapy services to the public and do not have a direct correlation on creation or elimination of jobs for reasonable compliance.

Creation of New Business or Elimination of Existing Business Within California

The Board has determined the proposed regulatory action will not create new business or eliminate existing business within California for reasonable compliance with the proposed action. The Board does not anticipate that any healthcare or rehabilitation businesses seeking to establish itself in California, or that currently does business in California, would decline opening a business or close an existing business based on implementation of professional standards that are widely held, and nationally recognized.

Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California. The proposed regulatory action expands, defines, and clarifies standards and principles for the delivery of occupational therapy services to California consumers and does not contain any inducement for expansion of business.

Benefits of Regulations

This proposed regulatory change serves to:

- Identify and describe principles and standards accepted and supported by the occupational therapy profession.
- Inform the public of established principles and standards to which occupational therapy practitioners should adhere and will be held accountable.
- Make transparent and clear the standards of conduct expected of occupational therapy practitioners.
- Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.
- Enhance and facilitate the Board's regulatory role in enforcing and regulating the profession to ensure public protection.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

Alternative 1:

The Board considered doing nothing and leaving the provisions as they are written. This alternative was rejected because the Board's existing ethical standards do not contain the detail and definition that is contained in this proposed action. Without providing the level of detail contained in this action the Board's ability to take disciplinary action against a licensee may prove to be more difficult or hindered. The level of detail contained in this action will better help practitioners avoid ethical violations and assist the public in identifying and/or avoiding ethical dilemmas with their occupational therapy practitioner.

Alternative 2:

The Board considered incorporating the American Occupational Therapy Association's 'Occupational Therapy Code of Ethics and Ethical Standards' by reference into the Board's ethical standards regulatory language. This alternative was rejected because they standards were developed by a professional organization as opposed to a regulatory agency and the standards were written in a manner that would be difficult to enforce or regulate.

Occupational Therapy Code of Ethics and Ethics Standards (2010)

PREAMBLE

The American Occupational Therapy Association (AOTA) *Occupational Therapy Code of Ethics and Ethics Standards (2010)* ("Code and Ethics Standards") is a public statement of principles used to promote and maintain high standards of conduct within the profession. Members of AOTA are committed to promoting inclusion, diversity, independence, and safety for all recipients in various stages of life, health, and illness and to empower all beneficiaries of occupational therapy. This commitment extends beyond service recipients to include professional colleagues, students, educators, businesses, and the community.

Fundamental to the mission of the occupational therapy profession is the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings.

"Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well being, and quality of life" AOTA, (2004). Occupational therapy personnel have an ethical responsibility primarily to recipients of service and secondarily to society.

The *Occupational Therapy Code of Ethics and Ethics Standards (2010)* was tailored to address the most prevalent ethical concerns of the profession in education, research, and practice. The concerns of stakeholders including the public, consumers, students, colleagues, employers, research participants, researchers, educators, and practitioners were addressed in the creation of this document. A review of issues raised in ethics cases, member questions related to ethics, and content of other professional codes of ethics were utilized to ensure that the revised document is applicable to occupational therapists, occupational therapy assistants, and students in all roles.

The historical foundation of this Code and Ethics Standards is based on ethical reasoning surrounding practice and professional issues, as well as on empathic reflection regarding these interactions with others (see e.g., AOTA, 2005, 2006). This reflection resulted in the establishment of principles that guide ethical action, which goes beyond rote following of rules or application of principles. Rather, *ethical action* is a manifestation of moral character and mindful reflection. It is a commitment to benefit others, to virtuous practice of artistry and science, to genuinely good behaviors, and to noble acts of courage.

While much has changed over the course of the profession's history, more has remained the same. The profession of occupational therapy remains grounded in seven core concepts, as identified in the *Core Values and Attitudes of Occupational Therapy Practice* (AOTA, 1993): *altruism, equality, freedom, justice, dignity, truth, and prudence*. *Altruism* is the individual's ability to place the needs of others before their own. *Equality* refers to the desire to promote fairness in interactions with others. The concept of *freedom* and personal choice is paramount in a profession in which the desires of the client must guide our interventions. Occupational therapy practitioners, educators, and researchers relate in a fair and impartial manner to individuals with whom they interact and respect and adhere to the applicable laws and standards regarding their area of practice, be it direct care, education, or research (*justice*). Inherent in the practice of

occupational therapy is the promotion and preservation of the individuality and *dignity* of the client, by assisting him or her to engage in occupations that are meaningful to him or her regardless of level of disability. In all situations, occupational therapists, occupational therapy assistants, and students must provide accurate information, both in oral and written form (*truth*). Occupational therapy personnel use their clinical and ethical reasoning skills, sound judgment, and reflection to make decisions to direct them in their area(s) of practice (*prudence*). These seven core values provide a foundation by which occupational therapy personnel guide their interactions with others, be they students, clients, colleagues, research participants, or communities. These values also define the ethical principles to which the profession is committed and which the public can expect.

The *Occupational Therapy Code of Ethics and Ethics Standards (2010)* is a guide to professional conduct when ethical issues arise. Ethical decision making is a process that includes awareness of how the outcome will impact occupational therapy clients in all spheres. Applications of Code and Ethics Standards Principles are considered situation-specific, and where a conflict exists, occupational therapy personnel will pursue responsible efforts for resolution. These Principles apply to occupational therapy personnel engaged in any professional role, including elected and volunteer leadership positions.

The specific purposes of the *Occupational Therapy Code of Ethics and Ethics Standards (2010)* are to

1. Identify and describe the principles supported by the occupational therapy profession.
2. Educate the general public and members regarding established principles to which occupational therapy personnel are accountable.
3. Socialize occupational therapy personnel to expected standards of conduct.
4. Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.

The *Occupational Therapy Code of Ethics and Ethics Standards (2010)* define the set of principles that apply to occupational therapy personnel at all levels:

DEFINITIONS

- **Recipient of service:** Individuals or groups receiving occupational therapy.
- **Student:** A person who is enrolled in an accredited occupational therapy education program.
- **Research participant:** A prospective participant or one who has agreed to participate in an approved research project.
- **Employee:** A person who is hired by a business (facility or organization) to provide occupational therapy services.
- **Colleague:** A person who provides services in the same or different business (facility or organization) to which a professional relationship exists or may exist.
- **Public:** The community of people at large.

BENEFICENCE

Principle 1. Occupational therapy personnel shall demonstrate a concern for the well-being and safety of the recipients of their services.

Beneficence includes all forms of action intended to benefit other persons. The term *beneficence* connotes acts of mercy, kindness, and charity (Beauchamp & Childress, 2009). Forms of beneficence typically include altruism, love, and humanity. Beneficence requires taking action by helping others, in other words, by promoting good, by preventing harm, and by removing harm. Examples of beneficence include protecting and defending the rights of others, preventing harm from occurring to others, removing conditions that will cause harm to others, helping persons with disabilities, and rescuing persons in danger (Beauchamp & Childress, 2009).

Occupational therapy personnel shall

- A. Respond to requests for occupational therapy services (e.g., a referral) in a timely manner as determined by law, regulation, or policy.
- B. Provide appropriate evaluation and a plan of intervention for all recipients of occupational therapy services specific to their needs.
- C. Reevaluate and reassess recipients of service in a timely manner to determine if goals are being achieved and whether intervention plans should be revised.
- D. Avoid the inappropriate use of outdated or obsolete tests/assessments or data obtained from such tests in making intervention decisions or recommendations.
- E. Provide occupational therapy services that are within each practitioner's level of competence and scope of practice (e.g., qualifications, experience, the law).
- F. Use, to the extent possible, evaluation, planning, intervention techniques, and therapeutic equipment that are evidence-based and within the recognized scope of occupational therapy practice.
- G. Take responsible steps (e.g., continuing education, research, supervision, training) and use careful judgment to ensure their own competence and weigh potential for client harm when generally recognized standards do not exist in emerging technology or areas of practice.
- H. Terminate occupational therapy services in collaboration with the service recipient or responsible party when the needs and goals of the recipient have been met or when services no longer produce a measurable change or outcome.
- I. Refer to other health care specialists solely on the basis of the needs of the client.
- J. Provide occupational therapy education, continuing education, instruction, and training that are within the instructor's subject area of expertise and level of competence.
- K. Provide students and employees with information about the Code and Ethics Standards, opportunities to discuss ethical conflicts, and procedures for reporting unresolved ethical conflicts.
- L. Ensure that occupational therapy research is conducted in accordance with currently accepted ethical guidelines and standards for the protection of research participants and the dissemination of results.
- M. Report to appropriate authorities any acts in practice, education, and research that appear unethical or illegal.

- N. Take responsibility for promoting and practicing occupational therapy on the basis of current knowledge and research and for further developing the profession's body of knowledge.

NONMALEFICENCE

Principle 2. Occupational therapy personnel shall intentionally refrain from actions that cause harm.

Nonmaleficence imparts an obligation to refrain from harming others (Beauchamp & Childress, 2009). The principle of nonmaleficence is grounded in the practitioner's responsibility to refrain from causing harm, inflicting injury, or wronging others. While beneficence requires action to incur benefit, nonmaleficence requires non-action to avoid harm (Beauchamp & Childress, 2009). Nonmaleficence also includes an obligation to not impose risks of harm even if the potential risk is without malicious or harmful intent. This principle often is examined under the context of *due care*. If the standard of due care outweighs the benefit of treatment, then refraining from treatment provision would be ethically indicated (Beauchamp & Childress, 2009).

Occupational therapy personnel shall

- A. Avoid inflicting harm or injury to recipients of occupational therapy services, students, research participants, or employees.
- B. Make every effort to ensure continuity of services or options for transition to appropriate services to avoid abandoning the service recipient if the current provider is unavailable due to medical or other absence or loss of employment.
- C. Avoid relationships that exploit the recipient of services, students, research participants, or employees physically, emotionally, psychologically, financially, socially, or in any other manner that conflicts or interferes with professional judgment and objectivity.
- D. Avoid engaging in any sexual relationship or activity, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer.
- E. Recognize and take appropriate action to remedy personal problems and limitations that might cause harm to recipients of service, colleagues, students, research participants, or others.
- F. Avoid any undue influences, such as alcohol or drugs, that may compromise the provision of occupational therapy services, education, or research.
- G. Avoid situations in which a practitioner, educator, researcher, or employer is unable to maintain clear professional boundaries or objectivity to ensure the safety and well-being of recipients of service, students, research participants, and employees.
- H. Maintain awareness of and adherence to the Code and Ethics Standards when participating in volunteer roles.
- I. Avoid compromising client rights or well-being based on arbitrary administrative directives by exercising professional judgment and critical analysis.

- J. Avoid exploiting 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, students, research participants, employees, or colleagues.
- K. Avoid participating in bartering for services because of the potential for exploitation and conflict of interest unless there are clearly no contraindications or bartering is a culturally appropriate custom.
- L. Determine the proportion of risk to benefit for participants in research prior to implementing a study.

AUTONOMY AND CONFIDENTIALITY

Principle 3. Occupational therapy personnel shall respect the right of the individual to self-determination.

The principle of autonomy and confidentiality expresses the concept that practitioners have a duty to treat the client according to the client's desires, within the bounds of accepted standards of care and to protect the client's confidential information. Often *autonomy* is referred to as the *self-determination* principle. However, respect for autonomy goes beyond acknowledging an individual as a mere agent and also acknowledges a "person's right to hold views, to make choices, and to take actions based on personal values and beliefs" (Beauchamp & Childress, 2009, p. 103). Autonomy has become a prominent principle in health care ethics; the right to make a determination regarding care decisions that directly impact the life of the service recipient should reside with that individual. The principle of autonomy and confidentiality also applies to students in an educational program, to participants in research studies, and to the public who seek information about occupational therapy services.

Occupational therapy personnel shall

- A. Establish a collaborative relationship with recipients of service including families, significant others, and caregivers in setting goals and priorities throughout the intervention process. This includes full disclosure of the benefits, risks, and potential outcomes of any intervention; the personnel who will be providing the intervention(s); and/or any reasonable alternatives to the proposed intervention.
- B. Obtain consent before administering any occupational therapy service, including evaluation, and ensure that recipients of service (or their legal representatives) are kept informed of the progress in meeting goals specified in the plan of intervention/care. If the service recipient cannot give consent, the practitioner must be sure that consent has been obtained from the person who is legally responsible for that recipient.
- C. Respect the recipient of service's right to refuse occupational therapy services temporarily or permanently without negative consequences.
- D. Provide students with access to accurate information regarding educational requirements and academic policies and procedures relative to the occupational therapy program/educational institution.
- E. Obtain informed consent from participants involved in research activities, and ensure that they understand the benefits, risks, and potential outcomes as a result of their participation as research subjects.

- F. Respect research participant's right to withdraw from a research study without consequences.
- G. Ensure that confidentiality and the right to privacy are respected and maintained regarding all information obtained about recipients of service, students, research participants, colleagues, or employees. The only exceptions are when a practitioner or staff member believes that an individual is in serious foreseeable or imminent harm. Laws and regulations may require disclosure to appropriate authorities without consent.
- H. Maintain the confidentiality of all verbal, written, electronic, augmentative, and non-verbal communications, including compliance with HIPAA regulations.
- I. Take appropriate steps to facilitate meaningful communication and comprehension in cases in which the recipient of service, student, or research participant has limited ability to communicate (e.g., aphasia or differences in language, literacy, culture).
- J. Make every effort to facilitate open and collaborative dialogue with clients and/or responsible parties to facilitate comprehension of services and their potential risks/benefits.

SOCIAL JUSTICE

Principle 4. Occupational therapy personnel shall provide services in a fair and equitable manner.

Social justice, also called *distributive justice*, refers to the fair, equitable, and appropriate distribution of resources. The principle of social justice refers broadly to the distribution of all rights and responsibilities in society (Beauchamp & Childress, 2009). In general, the principle of social justice supports the concept of achieving justice in every aspect of society rather than merely the administration of law. The general idea is that individuals and groups should receive fair treatment and an impartial share of the benefits of society. Occupational therapy personnel have a vested interest in addressing unjust inequities that limit opportunities for participation in society (Braveman & Bass-Haugen, 2009). While opinions differ regarding the most ethical approach to addressing distribution of health care resources and reduction of health disparities, the issue of social justice continues to focus on limiting the impact of social inequality on health outcomes.

Occupational therapy personnel shall

- A. Uphold the profession's altruistic responsibilities to help ensure the common good.
- B. Take responsibility for educating the public and society about the value of occupational therapy services in promoting health and wellness and reducing the impact of disease and disability.
- C. Make every effort to promote activities that benefit the health status of the community.
- D. Advocate for just and fair treatment for all patients, clients, employees, and colleagues, and encourage employers and colleagues to abide by the highest standards of social justice and the ethical standards set forth by the occupational therapy profession.
- E. Make efforts to advocate for recipients of occupational therapy services to obtain needed services through available means.

- F. Provide services that reflect an understanding of how occupational therapy service delivery can be affected by factors such as economic status, age, ethnicity, race, geography, disability, marital status, sexual orientation, gender, gender identity, religion, culture, and political affiliation.
- G. Consider offering *pro bono* (“for the good”) or reduced-fee occupational therapy services for selected individuals when consistent with guidelines of the employer, third-party payer, and/or government agency.

PROCEDURAL JUSTICE

Principle 5. Occupational therapy personnel shall comply with institutional rules, local, state, federal, and international laws and AOTA documents applicable to the profession of occupational therapy.

Procedural justice is concerned with making and implementing decisions according to fair processes that ensure “fair treatment” (Maiese, 2004). Rules must be impartially followed and consistently applied to generate an unbiased decision. The principle of procedural justice is based on the concept that procedures and processes are organized in a fair manner and that policies, regulations, and laws are followed. While *the law* and *ethics* are not synonymous terms, occupational therapy personnel have an ethical responsibility to uphold current reimbursement regulations and state/territorial laws governing the profession. In addition, occupational therapy personnel are ethically bound to be aware of organizational policies and practice guidelines set forth by regulatory agencies established to protect recipients of service, research participants, and the public.

Occupational therapy personnel shall

- A. Be familiar with and apply the Code and Ethics Standards to the work setting, and share them with employers, other employees, colleagues, students, and researchers.
- B. Be familiar with and seek to understand and abide by institutional rules, and when those rules conflict with ethical practice, take steps to resolve the conflict.
- C. Be familiar with revisions in those laws and AOTA policies that apply to the profession of occupational therapy and inform employers, employees, colleagues, students, and researchers of those changes.
- D. Be familiar with established policies and procedures for handling concerns about the Code and Ethics Standards, including familiarity with national, state, local, district, and territorial procedures for handling ethics complaints as well as policies and procedures created by AOTA and certification, licensing, and regulatory agencies.
- E. Hold appropriate national, state, or other requisite credentials for the occupational therapy services they provide.
- F. Take responsibility for maintaining high standards and continuing competence in practice, education, and research by participating in professional development and educational activities to improve and update knowledge and skills.
- G. Ensure that all duties assumed by or assigned to other occupational therapy personnel match credentials, qualifications, experience, and scope of practice.
- H. Provide appropriate supervision to individuals for whom they have supervisory responsibility in accordance with AOTA official documents and local, state, and federal or national laws, rules, regulations, policies, procedures, standards, and guidelines.

- I. Obtain all necessary approvals prior to initiating research activities.
- J. Report all gifts and remuneration from individuals, agencies, or companies in accordance with employer policies as well as state and federal guidelines.
- K. Use funds for intended purposes, and avoid misappropriation of funds.
- L. Take reasonable steps to ensure that employers are aware of occupational therapy's ethical obligations as set forth in this Code and Ethics Standards and of the implications of those obligations for occupational therapy practice, education, and research.
- M. Actively work with employers to prevent discrimination and unfair labor practices, and advocate for employees with disabilities to ensure the provision of reasonable accommodations.
- N. Actively participate with employers in the formulation of policies and procedures to ensure legal, regulatory, and ethical compliance.
- O. Collect fees legally. Fees shall be fair, reasonable, and commensurate with services delivered. Fee schedules must be available and equitable regardless of actual payer reimbursements/contracts.
- P. Maintain the ethical principles and standards of the profession when participating in a business arrangement as owner, stockholder, partner, or employee, and refrain from working for or doing business with organizations that engage in illegal or unethical business practices (e.g., fraudulent billing, providing occupational therapy services beyond the scope of occupational therapy practice).

VERACITY

Principle 6. Occupational therapy personnel shall provide comprehensive, accurate, and objective information when representing the profession.

Veracity is based on the virtues of truthfulness, candor, and honesty. The principle of *veracity* in health care refers to comprehensive, accurate, and objective transmission of information and includes fostering the client's understanding of such information (Beauchamp & Childress, 2009). Veracity is based on respect owed to others. In communicating with others, occupational therapy personnel implicitly promise to speak truthfully and not deceive the listener. By entering into a relationship in care or research, the recipient of service or research participant enters into a contract that includes a right to truthful information (Beauchamp & Childress, 2009). In addition, transmission of information is incomplete without also ensuring that the recipient or participant understands the information provided. Concepts of veracity must be carefully balanced with other potentially competing ethical principles, cultural beliefs, and organizational policies. Veracity ultimately is valued as a means to establish trust and strengthen professional relationships. Therefore, adherence to the Principle also requires thoughtful analysis of how full disclosure of information may impact outcomes.

Occupational therapy personnel shall

- A. Represent the credentials, qualifications, education, experience, training, roles, duties, competence, views, contributions, and findings accurately in all forms of communication about recipients of service, students, employees, research participants, and colleagues.
- B. Refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, misleading, or unfair statements or claims.

- C. Record and report in an accurate and timely manner, and in accordance with applicable regulations, all information related to professional activities.
- D. Ensure that documentation for reimbursement purposes is done in accordance with applicable laws, guidelines, and regulations.
- E. Accept responsibility for any action that reduces the public's trust in occupational therapy.
- F. Ensure that all marketing and advertising are truthful, accurate, and carefully presented to avoid misleading recipients of service, students, research participants, or the public.
- G. Describe the type and duration of occupational therapy services accurately in professional contracts, including the duties and responsibilities of all involved parties.
- H. Be honest, fair, accurate, respectful, and timely in gathering and reporting fact-based information regarding employee job performance and student performance.
- I. Give credit and recognition when using the work of others in written, oral, or electronic media.
- J. Not plagiarize the work of others.

FIDELITY

Principle 7. Occupational therapy personnel shall treat colleagues and other professionals with respect, fairness, discretion, and integrity.

The principle of fidelity comes from the Latin root *fidelis* meaning loyal. *Fidelity* refers to being faithful, which includes obligations of loyalty and the keeping of promises and commitments (Veatch & Flack, 1997). In the health professions, fidelity refers to maintaining good-faith relationships between various service providers and recipients. While respecting fidelity requires occupational therapy personnel to meet the client's reasonable expectations (Purtillo, 2005), Principle 7 specifically addresses fidelity as it relates to maintaining collegial and organizational relationships. Professional relationships are greatly influenced by the complexity of the environment in which occupational therapy personnel work. Practitioners, educators, and researchers alike must consistently balance their duties to service recipients, students, research participants, and other professionals as well as to organizations that may influence decision-making and professional practice.

Occupational therapy personnel shall

- A. Respect the traditions, practices, competencies, and responsibilities of their own and other professions, as well as those of the institutions and agencies that constitute the working environment.
- B. Preserve, respect, and safeguard private information about employees, colleagues, and students unless otherwise mandated by national, state, or local laws or permission to disclose is given by the individual.
- C. Take adequate measures to discourage, prevent, expose, and correct any breaches of the Code and Ethics Standards and report any breaches of the former to the appropriate authorities.
- D. Attempt to resolve perceived institutional violations of the Code and Ethics Standards by utilizing internal resources first.
- E. Avoid conflicts of interest or conflicts of commitment in employment, volunteer roles, or research.

- F. Avoid using one's position (employee or volunteer) or knowledge gained from that position in such a manner that gives rise to real or perceived conflict of interest among the person, the employer, other Association members, and/or other organizations.
- G. Use conflict resolution and/or alternative dispute resolution resources to resolve organizational and interpersonal conflicts.
- H. Be diligent stewards of human, financial, and material resources of their employers, and refrain from exploiting these resources for personal gain.

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