

AGENDA ITEM 9

CONSIDERATION AND POSSIBLE ADOPTION OF PROPOSED REGULATORY LANGUAGE TO ADD TITLE 16, DIVISION 39, CCR SECTION 4176, NOTICE TO CONSUMER.

The following are attached for review: Notice, Proposed Text, Initial Statement of Reasons, and one (1) public comment.

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) 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 August 15, 2016.

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 CBOT. The request must be received in the Board office not later than 5:00 pm on July 31, 2016.

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 section 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific section 138 of said Code, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt 16 CCR Section 4176.

Existing law, Business and Professions Code section 138, requires every board in the Department of Consumer Affairs to adopt regulations to require its licentiates to provide notice to their customers that the practitioner is licensed by this state.

Existing law, Business and Professions Code Section 680 requires health care practitioners to disclose, while working, his or her name and license on a name tag in at least 18 point font or as an alternative post a copy of his or her license in a prominent area of their office or practice.

Existing law, Business and Professions Code Section 680.5 requires a healthcare practitioner to communicate to a patient his or her name, license, and highest level of academic degree by one or both of the following methods: (1) in writing at the patient's initial office visit, and/or (2) in a prominent display in an area visible to patients in his or her office.

This proposed action implements Business and Professions Code Sections 138, 680, and 680.5 by requiring occupational therapists (OTs) and occupational therapy assistants (OTAs) to notify consumers that they are licensed and regulated by the California Board of Occupational Therapy. More specifically it would require OTs and OTAs to wear a name tag in 18-point font while working, or as an alternative, prominently display a copy of their license in the practice area of the office where the therapist works. It would require OTs and OTAs to provide their name, license type, license number, and highest level of earned academic degree related to the provision of occupational therapy services to consumers at the time of initial evaluation, or as an alternative, display the same in at least 24-point font in an area visible to patients and clients. In addition, the proposed regulation would require licensees to display the information specified on any website directly controlled or administered by the licensee or his or her office personnel.

Pursuant to section 680.5 of the Business and Professions Code, the requirements of the proposed regulation would not apply to licensees working in a facility licensed under Section 1250 of the Health and Safety Code, as specified.

Benefit of Proposed Regulations

Name tags or identification badges help patients, their family and other visitors know the name and type of license held by the practitioner providing occupational therapy services and is important for the safety of patients, visitors and staff. The same holds true when the patient and family members are advised of the regulatory entity that has oversight over the licensee with its contact information. If the patient, family member, or other visitor has a concern or complaint, he or she will be able to identify the practitioner by name and license type and contact the Board with any concerns.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any): None.

Business Impact

This regulation will not have a significant adverse economic impact on business. This initial determination is based on the following facts or evidence/documents/testimony:

We believe that the economic impact will be minor.

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 regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- 1) Not adopt regulation. This alternative was rejected because Business and Professions Code Sections 138, 680, and 680.5 mandate that the Board adopt regulations to require its licensees to provide notification to their patients that the practitioner is licensed by the state and other specified information.
- 2) Adopt the regulation. The Board determined that this alternative was the most feasible because it will comply with the provisions of Business and Professions Code Sections 138, 680, and 680.5.

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:

The Board has made a determination that the proposed regulatory action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS

Impact on Jobs/New Business:

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 to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

Name tags or identification badges help patients, their family and other visitors know the name and type of license held by the practitioner providing occupational therapy services and is important for the safety of patients, visitors and staff.

Cost Impact on Affected Private Persons:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Any cost impact resulting from the proposed action results from the statutory requirements in sections 138, 680, and 680.5 of the Business and Professions Code.

Effect on Housing Costs: None

Effect on Small Business:

The Board has determined that the proposed regulations would affect small businesses because some licensees may work in a small business or private practice setting. This proposed regulation would require licensees to determine which method of notification is the most appropriate for their practice setting.

The methods include: posting a sign where their patients may see it or include a written statement signed and dated by the patient and placed in their medical record. The Board believes that the impact would be minimal, since it is anticipated that most offices will post one sign in an area where all patients may see it.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative 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 2250
Sacramento, CA 95815
(916) 263-2294 (Tel) (916) 263-2701 (Fax)

The backup contact person is:

Ranjila Sandhu
[Same contact information as above]

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

PROPOSED AMENDED REGULATORY LANGUAGE

Title 16, Division 39, California Code of Regulations

All proposed language is new.

Add section 4176 to Article 8 of Division 39 of Title 16 of the California Code of Regulations to read as follows:

§ 4176. Notice to Consumers.

(a) Occupational therapists and occupational therapy assistants shall provide notice to their patients or clients that they are licensed and regulated by the California Board of Occupational Therapy.

(b) Except for employees exempt by their employer pursuant to section 680 of the Code, occupational therapists and occupational therapy assistants shall wear a name tag while working, in at least 18-point font that provides the first and last name and license type and number. However, the name tag requirement shall not apply to occupational therapists or occupational therapy assistants who prominently display a copy of their license in the practice area or office where he or she works.

(c)(1) Occupational therapists and occupational therapy assistants shall provide to the patients or clients at the time of initial evaluation, or display in at least 24-point font in an area visible to patients or clients, written notice specifying that the licensee is regulated by the California Board of Occupational Therapy, and provide the following personal information: Licensee's first and last name; License type and number; and highest level of earned academic degree related to the provision of occupational therapy services.

(2) As required by section 680.5 of the Code, this information shall also be displayed on any Internet website directly controlled or administered by the occupational therapist or occupational therapy assistant or his or her office personnel.

(d) This section shall not apply to occupational therapists or occupational therapy assistants who work in the following types of facilities:

(1) General acute care hospital;

(2) Acute psychiatric hospital;

(3) Skilled nursing facility;

(4) Intermediate care facility;

(5) Intermediate care facility/developmentally disabled-habilitative;

(6) Special hospital;

(7) Intermediate care facility/developmentally disabled;

(8) Intermediate care facility/developmentally disabled-nursing;

(9) Congregate living health facility;

(10) Correctional treatment center;

(11) Nursing facility;

(12) Intermediate care facility/developmentally disabled-continuous nursing; or

(13) Hospice facility.

Authority cited: Section 2570.20, Business and Professions Code; Reference: Sections 138, 680, and 680.5, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Notice to Consumers

Sections Affected: Title 16, Division 39, California Code of Regulations (CCR), section 4176

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.

Existing law, Business and Professions Code Section 138 requires that every board within the Department of Consumer Affairs adopt regulations requiring its licensees to provide notification to their customers that the practitioner is licensed by the state.

Existing law, Business and Professions Code Section 680 requires health care practitioners to disclose, while working, his or her name and license on a name tag in at least 18 point font or as an alternative post a copy of his or her license in a prominent area of their office or practice.

Existing law, Business and Professions Code Section 680.5 requires a healthcare practitioner to communicate to a patient his or her name, license, and highest level of academic degree by one or both of the following methods: (A) in writing at the patient's initial office visit, and/or (B) in a prominent display in an area visible to patients in his or her office.

This proposed action implements Business and Professions Code Sections 138, 680, and 680.5 by requiring occupational therapists (OTs) and occupational therapy assistants (OTAs) to notify consumers that they are licensed and regulated by the California Board of Occupational Therapy. Specifically, it would require OTs and OTAs to wear a name tag in at least 18-point font while working, or as an alternative, prominently display a copy of their license in the practice area of the office where the therapist works. It would require OTs and OTAs to provide their name, license type, license number, and highest level of earned academic degree related to the provision of occupational therapy services to consumers at the time of initial evaluation, or as an alternative, display the same in at least 24-point font in an area visible to patients and clients. This proposed action would also require licensees to provide this information on any website controlled or administered by the therapist or his or her office staff and identify facilities where this proposed action would not apply.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL:

Add 16 CCR section 4176

The proposed language contained in this section is intended to implement Business and Professions Code Sections 138, 680, and 680.5, as described in the 'Introduction' above.

16 CCR section 4176(a)

The proposed language in Section 4176(a) establishes that occupational therapists and occupational therapy assistants will be required to provide notice to their patients or clients that they are licensed and regulated by the California Board of Occupational Therapy.

Factual Basis/Rationale: This language is designed to comply with section 138 of the Business and Professions Code, which requires all boards within the Department of Consumer Affairs to adopt regulations requiring its licensees to provide notification to their customers that the practitioner is licensed by the state.

16 CCR section 4176(b)

The proposed language in Section 4176(b) is intended to comply and implement a requirement for occupational therapists and occupational therapy assistants to wear a name tag in 18 point font that provides the first and last name, license type, and license number of the practitioner or in the alternative prominently display a copy of their license in the practice area or office where he or she works.

Factual Basis/Rationale: The proposed language is designed to comply with section 680(a) of the Business and Professions Code that requires a practitioner to disclose, while working, his or her name and license or as an option prominently display that information.

16 CCR section 4176(c)

The proposed language in Section 4176(c)(1) is intended to comply and implement a requirement for occupational therapists and occupational therapy assistants to provide written notice to their clients, at the time of initial evaluation, that they are regulated by the California Board of Occupational Therapy and provide their first and last name, license type and number, and the highest level of earned academic degree related to the provision of occupational therapy. The proposed language also provides an alternative, in that the licensee may display the same information on a sign in at least 24 point font in an area visible to patients or clients.

Factual Basis/Rationale: This language is designed to comply with section 680.5(a) of the Business and Professions Code to require a practitioner to communicate to a patient his or her name, license, and highest level of academic degree.

The proposed language in Section 4176(c)(2) would require the same information that is specified in Section 4176(c)(1) to be displayed on any internet website that is directly controlled or administered by the licensee or his or her office personnel.

Factual Basis/Rationale: This language is designed to comply with section 680.5(e) of the Business and Professions Code. It is the Board's intention to adopt this language in this proposed action to alleviate the need of a licensee to reference section 680.5(e).

16 CCR section 4176(d)

Proposed language in Section 4176(d) is intended to comply with section 680.5(d) of the Business and Professions Code. It specifically identifies facilities that are exempt from the proposed regulation.

Factual Basis/Rationale: The Board is listing the types of exempt facilities in this proposed action so that practitioners will not need to look up or reference Section 680 for this information. The reason these facilities are exempted is that Business and Professions Code Section 680 requires these facilities to develop and implement a name tag requirement which will be verified through periodic inspections by the agency that has jurisdiction over the facility.

DOCUMENT INCORPORATED BY REFERENCE: None

DATA RELIED UPON: None

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business. This initial determination is based on the following facts or evidence/documents/testimony:

The Board believes that the economic impact will be minor. Occupational therapy practitioners and/or their employer will be required to post a sign that occupational therapists and occupational therapy assistants are licensed and regulated by the California Board of Occupational Therapy. Occupational therapy practitioners and/or their employers will be required to either post a copy of the practitioner's license in the practice area where the therapist works or purchase name tags for consumer notification purposes. Occupational therapy practitioners and/or their employer will be required to display or provide written notice of the practitioner's first and last name, license type and number, and highest level of earned degree related to the provision of occupational therapy services at the time of initial evaluation.

ECONOMIC IMPACT ANALYSIS

Background

This proposed action is designed to implement Business and Professions Code Section 138, 680, and 680.5. The purpose and intent of this proposed action is to advance and enhance consumer protection.

Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate jobs within California. The purpose and intent of this proposed action is to advance and enhance consumer protection, it will not result in the creation or elimination of jobs in California.

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. The purpose and intent of this proposed action is to advance and enhance consumer protection, it will not result in new businesses or eliminate existing jobs in California.

Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California. The purpose and intent of this proposed action is to advance and enhance consumer protection.

Benefits of Regulations

Name tags or identification badges help patients and other visitors know with whom they are dealing. It is important for the safety of patients, visitors and staff. All patients, as well as their family members, have the right to know the name and status of the person providing their care. If the patient or family member has a concern or complaint, he or she will be able to identify the practitioner with the name rather than a description and know which state agency issued a license to the practitioner.

This proposed action is designed to benefit and advance the safety and welfare of California consumers.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

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

CONSIDERATION OF ALTERNATIVES:

Alternative:

- 1) Not adopt regulation. This alternative was rejected because Business and Professions Code Sections 138, 680, and 680.5 mandates that the Board adopt regulations to require its licensees to provide specific notifications to their patients.
- 2) Adopt the regulation. The Board determined that this was the most feasible because it will comply with the provisions of Business and Professions Code Section 138, 680, and 680.5.

cbot@dca.ca.gov

Comment on Proposed Regulation

Hello and thank you for your work to regulate our professional standards and assure consumer protection.

The proposed regulation I will comment to is that ...

Requirement for OTs and OTAs to notify consumers that they are licensed and regulated by CBOT as well as require that OTs and OTAs wear a name tag in 18-point font while working, or as an alternative, prominently display a copy of their license in the practice area of the office where the therapist works.

I feel I understand the intent of this proposal for consumer information and protection.

My concerns related to this are two-fold,

- 1) I garner that most agencies employing OTs have are ever growing requirements for identification for security reasons. I believe these types of identification take precedence and are sufficient to provide easy access for both professional identification and that for security purposes.
- 2) If employed through an agency I feel it is an administrative function of the agency to require evidence from the employed professional and provide consumers evidence of license verification on request. I suspect most agencies notify and/or post information about their hiring practices and the professional standards they hold their employees to as well. In my job setting providing itinerate OT services in public schools I do not have an office to display my license and do not feel separate notification from me as one service provider and employee directly to a consumer is warranted, reasonable or appropriate.

In summary although I feel the intent of this proposal is reasonable and needed I do not feel that a state level regulation of this type is the best way to put it into practice. It does not reflect the diverse environments in which it would be implemented and would perhaps be better implemented in a way more localized to the environments i.e. within agency and company standards than to the requirements of therapists themselves. If this was needed to apply to self-employed OTs, that would perhaps not fall under other regulations, guidelines or standards of a company than it might be need to be considered for implementation at this regulatory level.

Thank you for the opportunity to make a comment. If I might add it would facilitate consumer access to make comment if there was a link to do so on your webpage where proposed legislation is posted.

With appreciation for your work,

Beth Anderson OTR/L

beth@sbceo.org

CBOT L# OT 5934

cbot, CBOT@DCA

From: beth@sbceo.org
Sent: Thursday, July 21, 2016 12:00 PM
To: cbot, CBOT@DCA
Subject: Comment on Proposed Regulation
Attachments: Comment on cbot proposed regulation.docx

Greetings,

Please see attached for my submission of comment.

thank you,

Beth Anderson OTR/L
beth@sbceo.org
CBOT L# OT 5934