

AGENDA ITEM 12

DISCUSS AND POSSIBLE ACTION ON INCLUDING OCCUPATIONAL THERAPISTS IN LABOR CODE SECTION 2783, RELATING TO CONTRACTOR STATUS.

Labor Code Section 2775

(a) As used in this article:

(1) “Dynamex” means *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903.

(2) “Borello” means the California Supreme Court’s decision in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341.

(b) (1) For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity’s business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms “employee,” “employer,” “employ,” or “independent contractor,” and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of “employee” in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court’s decision in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello).

(Added by Stats. 2020, Ch. 38, Sec. 2. (AB 2257) Effective September 4, 2020.)

Labor Code Section 2783

Section 2775 and the holding in *Dynamex* do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by *Borello*:

(a) A person or organization that is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code or a person who provides underwriting inspections, premium audits, risk management, claims adjusting, third-party administration consistent with use of the term “third-party administrator,” as defined in subdivision (cc) of Section 10112.1 of Title 8 of the California Code of Regulations, or loss control work for the insurance and financial service industries.

(b) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian **licensed by the State of California pursuant to Division 2** (commencing with Section 500) **of the Business and Professions Code**, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall circumvent, undermine, or restrict the rights under federal law to organize and collectively bargain.

(c) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, landscape architect, engineer, private investigator, or accountant.

(d) A securities broker-dealer or investment adviser or their agents and representatives that are either of the following:

(1) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.

(2) Licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(e) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(f) A manufactured housing salesperson, subject to all obligations under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, including all regulations promulgated by the Department of Housing and Community Development relating to manufactured home salespersons and all other obligations of manufactured housing salespersons to members of the public. The statutorily imposed duties of a manufactured housing dealer under Section 18060.5 of the Health and Safety Code are not factors to be considered under the Borello test.

(g) A commercial fisher working on an American vessel.

(Amended by Stats. 2021, Ch. 422, Sec. 4.5. (AB 1561) Effective January 1, 2022.)

AGENDA ITEM 13

CONSIDERATION AND POSSIBLE ACTION ON REQUIRING AN ATTESTATION TO READING AND UNDERSTANDING THE BOARD'S LAWS AND REGULATIONS UPON SUBMISSION OF AN APPLICATION FOR AN INITIAL LICENSE AND UPON RENEWAL.

4161. Continuing Competency

(a) Each licensee renewing a license under Section 2570.10 of the Code shall submit evidence of meeting continuing competency requirements by having completed 24 professional development units (PDUs) during the preceding renewal period, or in the case of a license delinquently renewed, within the two years immediately preceding the renewal, acquired through participation in professional development activities.

(1) One hour of participation in a professional development activity qualifies for one PDU;

(2) One academic credit equals 10 PDUs;

(3) One Continuing Education Unit (CEU) equals 10 PDUs.

(b) Topics and subject matter shall be pertinent to the practice of occupational therapy and course material must have a relevance or direct application to a consumer of occupational therapy services. Except as provided in subsection (c), professional development activities acceptable to the board include 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; or otherwise meets all of the following criteria:

(1) The program or activity contributes directly to professional knowledge, skill, and ability; and

(2) 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 participants.

Three hours of participation equals one PDU, with a maximum of six PDUs credited per renewal period.

(2) Structured mentoring with an individual skilled in a particular area. For each 20 hours of being mentored, the practitioner will receive three PDUs, with a maximum of six PDUs credited per renewal period.

(3) Structured mentoring of a colleague to improve his/her skills. Twenty hours of mentoring equals three PDUs, with a maximum of six PDUs credited per renewal period.

(4) Supervising the fieldwork of Level I and Level II occupational therapist and occupational therapy assistant students shall be credited as follows:

(A) Supervising the fieldwork of a Level I student. For each student supervised the practitioner will receive one PDU.

(B) Supervising the fieldwork of a Level II student. For each 40 hours of supervision the practitioner will receive one PDU.

(C) A maximum of 12 PDUs of credit for supervising Level II and/or Level I students shall be allowed per renewal period.

(D) The supervision shall not be the primary responsibility of the licensee's employment.

(E) Credit for PDUs shall only be earned for the dates of supervision occurring during the renewal period.

(F) Fieldwork supervision hours of a single student may be divided between licensees. Total weekly hours claimed by more than one licensee sharing supervision of a single student shall not exceed 40 hours per week.

(5) Publication of an article in a non-peer reviewed publication. Each article equals five PDUs, with a maximum of 10 PDUs credited per renewal period.

(6) Publication of an article in a peer-reviewed professional publication. Each article equals 10 PDUs, with a maximum of 10 PDUs credited per renewal period.

(7) Publication of chapter(s) in occupational therapy or related professional textbook. Each chapter equals 10 PDUs, with a maximum of 10 PDUs credited per renewal period.

(8) Making professional presentations at workshops, seminars, and conferences. For each hour presenting, the practitioner will receive two PDUs, with a maximum of six PDUs credited per renewal period.

(9) Attending a meeting of the California Board of Occupational Therapy. Each meeting attended equals two PDUs, with a maximum of six PDUs credited per renewal period.

(10) Attending board outreach activities. Each presentation attended equals two PDUs, with a maximum of four PDUs credited per renewal period.

(d) Partial credit will not be given for the professional development activities listed in subsection (c) and a maximum of 12 PDUs may be credited for the activities listed in subsection (c).

(e) This section shall not apply to the first license renewal following issuance of the initial license.

(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, which 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 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, 40 PDUs that meet the requirements of subsection (b). The 40 PDUs shall include:

(1) 37 PDUs directly related to the delivery of occupational therapy services, which may include the scope of practice for occupational therapy practitioners or the occupational therapy practice framework;

(2) Three PDUs related to ethical standards of practice in occupational therapy.

Note: Authority cited: Sections 2570.10 and 2570.20, Business and Professions Code. Reference: Section 2570.10, Business and Professions Code.

AGENDA ITEM 14

CONSIDERATION AND POSSIBLE ACTION ON REQUIRING AN ETHICS COURSE AS A REQUIREMENT FOR RENEWAL.

California Code of Regulations Section 4161

4161. Continuing Competency

(a) Each licensee renewing a license under Section 2570.10 of the Code shall submit evidence of meeting continuing competency requirements by having completed 24 professional development units (PDUs) during the preceding renewal period, or in the case of a license delinquently renewed, within the two years immediately preceding the renewal, acquired through participation in professional development activities.

(1) One hour of participation in a professional development activity qualifies for one PDU;

(2) One academic credit equals 10 PDUs;

(3) One Continuing Education Unit (CEU) equals 10 PDUs.

(b) Topics and subject matter shall be pertinent to the practice of occupational therapy and course material must have a relevance or direct application to a consumer of occupational therapy services. Except as provided in subsection (c), professional development activities acceptable to the board include 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; or otherwise meets all of the following criteria:

(1) The program or activity contributes directly to professional knowledge, skill, and ability; and

(2) 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 participants. Three hours of participation equals one PDU, with a maximum of six PDUs credited per renewal period.

(2) Structured mentoring with an individual skilled in a particular area. For each 20 hours of being mentored, the practitioner will receive three PDUs, with a maximum of six PDUs credited per renewal period.

(3) Structured mentoring of a colleague to improve his/her skills. Twenty hours of mentoring equals three PDUs, with a maximum of six PDUs credited per renewal period.

(4) Supervising the fieldwork of Level I and Level II occupational therapist and occupational therapy assistant students shall be credited as follows:

(A) Supervising the fieldwork of a Level I student. For each student supervised the practitioner will receive one PDU.

(B) Supervising the fieldwork of a Level II student. For each 40 hours of supervision the practitioner will receive one PDU.

(C) A maximum of 12 PDUs of credit for supervising Level II and/or Level I students shall be allowed per renewal period.

(D) The supervision shall not be the primary responsibility of the licensee's employment.

(E) Credit for PDUs shall only be earned for the dates of supervision occurring during the renewal period.

(F) Fieldwork supervision hours of a single student may be divided between licensees. Total weekly hours claimed by more than one licensee sharing supervision of a single student shall not exceed 40 hours per week.

(5) Publication of an article in a non-peer reviewed publication. Each article equals five PDUs, with a maximum of 10 PDUs credited per renewal period.

(6) Publication of an article in a peer-reviewed professional publication. Each article equals 10 PDUs, with a maximum of 10 PDUs credited per renewal period.

(7) Publication of chapter(s) in occupational therapy or related professional textbook. Each chapter equals 10 PDUs, with a maximum of 10 PDUs credited per renewal period.

(8) Making professional presentations at workshops, seminars, and conferences. For each hour presenting, the practitioner will receive two PDUs, with a maximum of six PDUs credited per renewal period.

(9) Attending a meeting of the California Board of Occupational Therapy. Each meeting attended equals two PDUs, with a maximum of six PDUs credited per renewal period.

(10) Attending board outreach activities. Each presentation attended equals two PDUs, with a maximum of four PDUs credited per renewal period.

(d) Partial credit will not be given for the professional development activities listed in subsection (c) and a maximum of 12 PDUs may be credited for the activities listed in subsection (c).

(e) This section shall not apply to the first license renewal following issuance of the initial license.

(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, which 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 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, 40 PDUs that meet the requirements of subsection (b). The 40 PDUs shall include:

(1) 37 PDUs directly related to the delivery of occupational therapy services, which may include the scope of practice for occupational therapy practitioners or the occupational therapy practice framework;

(2) Three PDUs related to ethical standards of practice in occupational therapy.

Note: Authority cited: Sections 2570.10 and 2570.20, Business and Professions Code. Reference: Section 2570.10, Business and Professions Code.

AGENDA ITEM 15

CONSIDERATION AND POSSIBLE ACTION ON REQUIRING A COURSE ON CULTURAL DIVERSITY AS A REQUIREMENT FOR RENEWAL.



May 2, 2022

California Board of Occupational Therapy
c/o Heather Martin, Executive Officer
1610 Arden Way, Suite 121
Sacramento, CA 95815

Dear California Board of Occupational Therapy,

The Occupational Therapy Association of California is formally requesting that the California Board of Occupational Therapy consider and explore creating, as a condition of biennial licensure renewal, a requirement to complete a certain amount of educational hours related to cultural diversity, cultural humility and working with diverse populations. This would be a state-wide effort to increase diversity, equity, and inclusion knowledge of occupational therapy practitioners in California in hopes of promoting justice, acceptance, and occupational participation.

This aligns with current continuing education requirements outlined in Section 4161(b) of the practice act, which reads:

"Topics and subject matter shall be pertinent to the practice of occupational therapy and course material must have a *relevance or direct application to a consumer of occupational therapy services*...[P]rofessional development activities acceptable to the board include ...coursework completed through any approved or accredited educational institution; or otherwise meets all of the following criteria: (1) The program or activity contributes directly to professional knowledge, skill, and ability; and (2) The program or activity must be objectively measurable in terms of the hours involved."

The current Accreditation Council for Occupational Therapy Education (ACOTE) standards include language within its Preamble noting that graduates shall have foundational knowledge and skills to work with diverse populations. Furthermore, Standards B.1.2, B.40, B.4.4, B.4.5, B.4.18, and B.50 include language related to culturally-relevant practice, sociocultural factors, and working with diverse populations. As the intent of the continued competency requirements for licensure renewal are to promote lifelong learning and knowledge and skill acquisition that aligns with contemporary needs, it is important to consider creating this requirement as an extension of ACOTE standards.

Other states and professions have enacted requirements for specific content in their licensure renewal process. For example:

- California Board of Physical Therapy requires two (2) hours of ethics, laws, and regulation education and four (4) hours of life support for health professionals training per renewal period;

- Oregon Board of Occupational Therapy requires a one-time, 7-hour course on pain management within the first two years of licensure;
- Florida Board of Occupational Therapy requires two (2) hours of Prevention of Medical Errors education, two (2) hours of Laws and Rules education, and one (1) hour of education on Human Trafficking per renewal cycle; for first time renewals, there is a one (1) hour educational requirement on HIV/AIDS (in lieu of the Laws and Rules requirement); and
- The Medical Board of California has, as a requirement of continued competency, verbiage that states “all continuing medical education courses shall contain curriculum that includes cultural and linguistic competency in the practice of medicine.”

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bryant Edwards', written in a cursive style.

Bryant Edwards, OTD, MA, OTR/L, BCP, MPH
President