

## **AGENDA ITEM 5**

**REVIEW OF BOARD REGULATIONS TO IDENTIFY OTHER SECTIONS POSSIBLY EFFECTED BY PROPOSED AMENDMENTS TO SECTIONS 4180 AND 4181 AND RECOMMEND PROPOSED REGULATORY AMENDMENT(S) TO THE BOARD TO ENSURE CONSISTENCY.**

The Board's regulations are attached for review.

# **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY REGULATIONS**

## **Title 16, Division 39, California Code of Regulations**

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## **Article 1. General Provisions**

### **§ 4100. Definitions**

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

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

### **§ 4101. Delegation of Certain Functions**

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

### **§ 4102. Filing of Addresses**

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

## **Article 2. Applications**

### **§ 4110. Application for Licensure**

- (a) An application for a license or limited permit shall be submitted on the form entitled Initial Application for Licensure, Form ILA, (Rev. 9/2020), hereby incorporated by reference, or by

providing the same information via on-line submission, if available, and shall contain the information required by sections 30, 144, 851, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, and 2570.16 of the Code and Family Code section 17520, accompanied by the appropriate fees.

(b) For an applicant applying for licensure pursuant to section 2570.15 of the Code, "substantially equal" means that the applicant has successfully completed the academic requirements of an educational program, including the educational program and supervised fieldwork requirements, for an occupational therapist or an occupational therapy assistant that are approved by the Board and approved by the foreign credentialing review process of the National Board for Certification in Occupational Therapy (NBCOT), the American Occupational Therapy Certification Board, or the American Occupational Therapy Association.

#### **§ 4111. Place of Filing**

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

#### **§ 4112. Review of Application**

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

#### **§ 4114. Abandonment of Application**

(a) An application for a license shall be deemed abandoned and the application fee forfeited when:

(1) The applicant fails to complete the application within two years after it is originally received by the board.

(2) The applicant fails to submit the Initial license fee within sixty (60) days after the date of notification of eligibility by the board.

(b) An application for a limited permit shall be deemed abandoned and the application fee forfeited if the applicant fails to complete the application or submit the required fee within sixty (60) days after it is originally received by the board.

(c) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, and 2570.16, Business and Professions Code.

### **Article 3. License and Limited Permit**

#### **§ 4120. Renewal of License - Forms**

(a) The term of a license shall be two years.

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

(2) To renew an unexpired license, the holder shall, before the time at which the license would otherwise expire, apply for renewal, pay the renewal fee, and certify that the licensee's representations on the renewal form are true, correct, and contain no material omissions of

fact, signed under penalty of perjury.

(3) The renewal application shall include a statement specifying whether the licensee was convicted of a crime or disciplined by another public agency during the preceding renewal period, and whether the continuing competency requirements have been met if renewing in an active status.

(4) For a license that expires on or after July 1, 2010, as a condition of renewal, an applicant for renewal not previously fingerprinted by the board, or for whom a record of the submission of fingerprints no longer exists, is required to furnish to the Department of Justice, as directed by the board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license is grounds for discipline by the board. It shall be certified on the renewal form whether the fingerprints have been submitted. This requirement is waived if the license is renewed in an inactive status, or the licensee is actively serving in the military outside the country.

(5) An inactive license may be renewed.

(6) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.

(b) A limited permit cannot be renewed.

#### **§ 4121. Renewal of Expired License; Application; Fees; Effective Date of Renewal**

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

#### **§ 4123. Limited Permit**

(a) To qualify for a limited permit, a person must have applied to the National Board for Certification in Occupational Therapy (NBCOT) to take the licensing examination within four (4) months of completing the education and fieldwork requirements for licensure or certification and request NBCOT provide their examination score report be forwarded to the Board.

(1) Upon receipt from NBCOT, the applicant must forward to the Board a copy of the Authorization to Test (ATT) letter.

(2) The applicant must provide documentation or other evidence to the Board, to prove that the applicant requested their examination score be sent from NBCOT to the Board, before a limited permit may be issued.

(3) A limited permit shall only be valid for three (3) months from the date of issuance by the Board, upon receipt of a failing result, or two (2) weeks following the expiration of the applicants' eligibility to test period, whichever occurs first.

(4) The limited permit holder must immediately notify the Board of the results of the examination.

(5) The limited permit holder must provide to the Board the name, address and telephone number of his or her employer and the name and license number of his or her supervising

occupational therapist (OT). Any change of employer or supervising OT must be provided to the Board, in writing, within five (5) days of the change.

(b) A limited permit shall not be denied to an applicant that has completed the fingerprint, education, and examination requirements, yet is unable to provide transcripts due to the college or university's inability to make the transcripts available to the student or the Board in a timely manner. A limited permit issued pursuant to this section shall only be valid for three (3) months from the date of issuance by the Board.

(c) The limited permit will be cancelled, and the fee forfeited, upon notification to the Board or the limited permit holder by the test administrator that the holder failed to pass the first examination.

### **§ 4125. Representation**

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

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

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

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

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

## **Article 3.5. Inactive and Retired Status**

### **§ 4127. Inactive Status**

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

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

(b) The holder of an inactive license shall not engage in any activity for which a license is required.

- (c) An inactive license shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license.
- (d) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.
- (e) In order for the holder of an inactive license to restore his or her license to an active status, he or she shall comply with all of the following:
  - (1) Pays the renewal fee.
  - (2) Provides proof of completion of continuing education equivalent to that required for a single renewal period of an active license, pursuant to Section 4161.

#### **§ 4128. Retired Status**

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



## Article 4. Fees

### § 4130. Fees

Fees are fixed by the board as follows:

- (a) The fee for processing an Initial Application for Licensure (Form ILA, Revised 7/2016) shall be fifty dollars (\$50).
- (b) The initial license fee for occupational therapists shall be prorated pursuant to Section 4120(a)(1) and based on the biennial renewal fee set forth below.
- (c) The initial license fee for occupational therapy assistants shall be prorated pursuant to Section 4120(a)(1) and based on a the biennial renewal fee set forth below.
- (d) The fee for a limited permit shall be one hundred dollars (\$100).
- (e) The biennial renewal fee for occupational therapists shall be two hundred twenty dollars (\$220). For licenses that expire on or after January 1, 2021, the biennial renewal fee shall be two hundred seventy dollars (\$270).
- (f) The biennial renewal fee for occupational therapy assistants shall be one hundred eighty dollars (\$180). For licenses that expire on or after January 1, 2021, the biennial renewal fee shall be two hundred ten dollars (\$210).
- (g) The delinquency fee is one-half of the renewal fee.
- (h) The biennial renewal fee for an inactive license shall be the same as the biennial renewal fee for an active license.
- (i) The fee for an Application for Retired Status (Form ARS, New 7/2012), shall be twenty-five dollars (\$25).
- (j) The fee for a duplicate license shall be twenty five dollars (\$25).
- (k) The fees for fingerprint services are those charged by the California Department of Justice and the Federal Bureau of Investigation.

## Article 5. Citations

### § 4140. Issuance of Citations

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

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

#### **§ 4141. Assessment of Administrative Fines**

- (a) Where citations include an assessment of an administrative fine, the fine shall be not less than \$50 or exceed \$5,000 for each violation. Each violation shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:
- (1) Class "A" violations shall not be less than \$1,001 nor more than \$5,000. Class "A" violations are violations that the executive officer, or his or her designee, has determined involve a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the Occupational Therapy Practice Act. Class "A" violations are more serious in nature and may include, but are not limited to, violations which resulted in or had significant potential for patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure public safety. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when the aide performed a client related task that resulted in harm to the patient, or failing to provide adequate supervision to an occupational therapy assistant that resulted in harm to the patient, or fraudulent medical billing, or practicing without a current and active license for more than one year, or functioning autonomously as an occupational therapy assistant. A Class "A" violation may be issued to a person who has committed a class "B" violation who has had two or more prior, separate class "B" violations.
- (2) Class "B" violations shall not be less than \$501 nor more than \$2,500. Class "B" violations are violations that the executive officer, or his or her designee, has determined involve a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the Occupational Therapy Practice Act. Class "B" violations are less serious in nature and may include, but are not limited to, violations which could have resulted in patient harm. Typically, some degree of mitigation will exist. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when the aide performed a client related task that did not result in harm to a patient, or failure to provide adequate supervision to an occupational therapy assistant, limited permit holder, student, or occupational therapy aid, resulting in no patient harm, or providing advanced practice services without board approval, or practicing when the license has been expired or inactive for a period of more than three months but less than one year, or supervising more occupational therapy assistants than allowed by law. A class "B" violation may be issued to a

person who has committed a class "C" violation who has two or more prior, separate class "C" violations.

(3) Class "C" violations shall not be less than \$50 nor more than \$1,000. Class "C" violations are violations that the executive officer, or his or her designee, has determined involve a person who has violated a statute or regulation relating to the practice of occupational therapy. A class "C" violation is a minor or technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care. Such violations may include, but are not limited to, practicing when the license has been expired or inactive for a period of three months or less, failing to disclose a conviction or convictions in the application process, or failing to provide a patient or client or the guardian of a patient or client access to their medical records pursuant to Health and Safety Code Section 123110. A class "C" violation may also be issued to a licensee who fails to respond to a written request by the board for additional information relating to a renewal application.

(4) Class "D" violations shall not be less than \$50 nor more than \$250. Class "D" violations occur when the executive officer, or his or her designee, has determined that an applicant or licensee has failed to provide a change of address within 30 days as required by Section 4102. A class "D" violation is a minor technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care.

(b) In determining the amount of an administrative fine, the executive officer, or his or her designee, shall consider the following factors:

- (1) Gravity of the violation,
- (2) History of previous violations involving the same or similar conduct,
- (3) Length of time that has passed since the date of the violation,
- (4) Consequences of the violation, including potential for patient harm,
- (5) The good or bad faith exhibited by the cited individual,
- (6) Evidence that the violation was willful,
- (7) The extent to which the individual cooperated with the board's investigation,
- (8) The extent to which the individual has remediated any knowledge and/or skills deficiencies,
- (9) Any other mitigating or aggravating factors.

(c) In his or her discretion, the executive officer, or his or her designee, may issue an order of abatement without levying a fine for the first violation of any provision set forth in subsection (a).

(d) The executive officer, or his or her designee, may assess a fine which shall not exceed five thousand dollars (\$5,000) for each violation if the violation involves fraudulent billing.

#### **§ 4142. Appeal of Citations**

(a) The cited person may, within 30 calendar days of service of the citation, submit a written request for an informal conference with the executive officer.

(b) In addition to requesting an informal conference described in subsection (a), a cited person may contest a citation, in whole or in part, by submitting a written request for an administrative hearing to the Board within 30 calendar days of service of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The request for a hearing to contest a citation is not waived if the executive officer affirms the citation at an informal conference.

(d) The executive officer, or his or her designee, shall within 30 working days from receipt of a written request for an informal conference, hold an informal conference with the cited person. The 30-day period may be extended by the executive officer for good cause.

Following the informal conference, the executive officer, or his or her designee, may affirm, modify, or dismiss the citation, including any fine assessed or order of abatement issued. A written order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine.

(e) If the informal conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but not withdrawn. A cited person is entitled to a hearing to contest the modified citation if he or she filed a timely request. A cited person is not entitled to an informal conference to contest a modified citation. If a timely request for a hearing was not filed, the decision in the modified citation shall be considered final.

(f) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed withdrawn.

(g) Submittal of a written request for an informal conference as provided in subsection (a) or an administrative hearing as provided in subsection (b), or both, stays the time period in which to pay the fine.

(h) If a written request for an informal conference as provided in subsection (a), or a written request for a hearing as provided in subsection (b), or both, is not submitted to the board within 30 calendar days from service of the citation, the cited person is deemed to have waived his or her right to an informal conference and/or administrative hearing.

#### **§ 4143. Compliance with Citations**

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, he or she may request an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of an applicant to abate the violation or to pay the fine within the time allowed is a ground for denial of licensure or registration.

(c) If an informal conference or hearing is not requested, payment of the fine shall not constitute an admission of the violation charged and payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

#### **§ 4144. Disciplinary Guidelines. [Renumbered to 4147]**

#### **§ 4145. Record Retention.**

(a) Every citation, once it has been resolved by payment of the administrative fine and/or compliance with the order of abatement, shall be purged five (5) years from the date of resolution, except for citations referenced in subsection (b).

(b) No citation shall be purged if issued pursuant to CCR Section 4140(b), and no citation shall be purged for any citation issued for unlicensed practice.

### **Article 5.5. Standards Related to Denial, Discipline, and Reinstatement of Licenses**

#### **§ 4146. Definitions.**

(a) "Incompetence" is the lack of possession of or the failure to exercise that degree of knowledge, learning, skill, ability, care or experience ordinarily possessed and exercised by a

competent licensed professional.

(b) "Negligence" is a departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.

(c) "Gross negligence" is an extreme departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.

(d) For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be "substantially related to the qualifications, functions or duties of an occupational therapy practitioner," if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include, but are not limited to, those involving the following:

(1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Occupational Therapy Practice Act.

(2) Fiscal dishonesty, theft or larceny.

(3) An incident involving controlled substances or alcohol to the extent that practice is impaired or a threat to the health or safety of themselves or others.

(4) Conviction of a crime involving harassment or stalking (as defined by the Penal Code).

(5) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code).

(6) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(7) Failure to comply with any mandatory reporting requirements.

(8) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

#### **§4146.5. Effective Dates of Decisions.**

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

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

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

#### **§ 4147. Disciplinary Guidelines.**

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code 11400 et seq.), the Board shall consider and apply the Disciplinary Guidelines [October 2013] which are hereby incorporated by reference. The Disciplinary Guidelines shall apply to all disciplinary matters. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; or evidentiary issues.

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

**§ 4147.5. Uniform Standards Related to Substance Abuse.**

(a) The Board shall also apply, as required, the Department of Consumer Affairs' Substance Abuse Coordination Committee's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) [hereafter "Uniform Standards"], which are hereby incorporated by reference. The "Uniform Standards" describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the "Uniform Standards."

(b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for the purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all relevant terms and conditions contained in the Disciplinary Guidelines, the "Uniform Standards" shall apply as written and be used in the order placing the licensee on probation.

**§ 4148. Mental or Physical Examination of Fitness for Licensure.**

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

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

**§ 4149. Other Actions Constituting Unprofessional Conduct.**

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

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the certified documents with this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privilege. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used

against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

#### **§ 4149.1. Revocation for Sexual Contact.**

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

### **Article 6. Advanced Practices**

#### **§ 4150. Definitions**

For the purpose of this article:

(a) "ACOTE" means the Accreditation Council for Occupational Therapy Education.

(b) "Post professional education and training" means education and training obtained subsequent to the qualifying degree program or beyond current ACOTE standards for the qualifying degree program.

(c) "Contact hour" means sixty (60) minutes of coursework or classroom instruction.

(d) "Semester unit" means fifteen (15) contact hours.

(e) "Quarter unit" means ten (10) contact hours.

(f) "Rehabilitation of the hand, wrist, and forearm" as used in Code section 2570.2(l) refers to occupational therapy services performed as a result of surgery or injury to the hand, wrist, or forearm.

(g) "Upper extremity" as used in Code section 2570.3(e) includes education relating to the hand, wrist, or forearm.

(h) "Swallowing" as used in Code section 2570.3 is the passage of food, liquid, or medication through the pharyngeal and esophageal phases of the swallowing process.

(i) "Instrumental evaluation" is the assessment of any aspect of swallowing using imaging studies that include, but are not limited to, endoscopy and video fluoroscopy

(1) "Endoscopic evaluation of swallowing" or "endoscopy" is the process of observing structures and function of the swallowing mechanism to include the nasopharynx, oropharynx, and hypopharynx.

(2) "Video fluoroscopic swallowing study" or "video fluoroscopy" is the fluoroscopic recording and videotaping of the anatomy and physiology of the oral cavity, pharynx, and upper esophagus using a variety of bolus consistencies to assess swallowing function. This

procedure may also be known as video fluorography, modified barium study, oral-pharyngeal motility study and video radiography.

### **§ 4151. Hand Therapy**

(a) Hand therapy services may be performed only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that they have met the post professional education and training requirements established by this section as follows:

(1) Education: Completion of 45 contact hours in the subjects listed in Code section 2570.3(e), including 30 hours specifically relating to the hand, wrist, and forearm.

(2) Training: Completion of 480 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to hand therapy.

(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.

(c) An occupational therapist providing hand therapy services using physical agent modalities must also comply with the requirements of section 4152. A maximum of 8 contact hours and 60 hours of supervised on-the-job training, clinical internship or affiliation, paid or voluntary, completed under section 4152 will be credited toward the requirements of this section.

(d) An occupational therapist may provide only those hand therapy services the occupational therapist is competent to perform.

### **§ 4152. Physical Agent Modalities**

(a) Physical agent modalities may be used only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that they have met the post professional education and training requirements established by this section as follows:

(1) Education: Completion of 30 contact hours in the subjects listed in Code section 2570.3(f).

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

(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.

(c) An occupational therapist may use only those physical agent modalities the occupational therapist is competent to use.

#### **§ 4152.1. Use of Topical Medications**

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

(1) Bacteriocidal agents;

(2) Debriding agents;

(3) Topical anesthetic agents;

(4) Anti-inflammatory agents;

(5) Antispasmodic agents; and

(6) Adrenocortico-steroids.



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

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

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

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

(A) Be prepared by the facility within which the topical medications are being applied or administered;

(B) Be approved by the medical director or equivalent of the facility;

(C) Include a description of each medication, its actions, its indications and contraindications, and the proper procedure and technique for application;

(D) Require that the administration be consistent with the manufacturer's guidelines for any equipment to be used in the administration of the topical medication; and

(E) Be based on research and evidence-based practice, pharmaceutical standards of practice and known desired outcomes.

(4) Supervision of the application or administration of topical medications by an occupational therapy assistant under this section shall be in accordance with Article 9.

(c) Under no circumstance does this section authorize an occupational therapist or occupational therapist assistant to administer a medication via injection.

#### **§ 4153. Swallowing Assessment, Evaluation, or Intervention**

(a) The role of an occupational therapist in instrumental evaluations is to observe structure and function of the swallowing mechanism in order to assess swallowing capability and determine swallowing interventions. The occupational therapist may not perform the physically invasive components of the instrumental evaluation.

(b) Swallowing assessment, evaluation or intervention may be performed only when an occupational therapist has demonstrated to the Board that they have met the post professional education and training requirements established by this section as follows:

(1) Education: Completion of 45 contact hours in the following subjects:

(A) Anatomy, physiology and neurophysiology of the head and neck with focus on the structure and function of the aerodigestive tract;

(B) The effect of pathology on the structures and functions of the aerodigestive tract including medical interventions and nutritional intake methods used with patients with swallowing problems;

(C) Interventions used to improve pharyngeal swallowing function.

(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to swallowing assessment, evaluation or intervention. An occupational therapist in the process of completing the training requirements of this section may practice swallowing assessment, evaluation or intervention under the supervision of an occupational therapist who has been approved under this article, a speech language pathologist with expertise in this area, or a physician and surgeon.

(c) An occupational therapist may provide only those swallowing assessment, evaluation or intervention services the occupational therapist is competent to perform.

Note: Authority cited: Sections 2570.3 and 2570.20, Business and Professions Code.

Reference: Sections 2570.2 and 2570.3, Business and Professions Code.

## **§ 4154. Post Professional Education and Training**

- (a) Post professional education courses shall be obtained at any of the following:
- (1) College or university degree programs accredited or approved by ACOTE;
  - (2) College or university degree programs accredited or approved by the Commission on Accreditation in Physical Therapy Education;
  - (3) Colleges or universities with Speech and Hearing Programs accredited or approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;
  - (4) Any approved provider. To be approved by the Board the provider shall submit the following:
    - (A) A clear statement as to the relevance of the course to the advanced practice area.
    - (B) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
    - (C) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
    - (D) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area; or
  - (5) A provider that has not been approved by the Board, if the applicant occupational therapist demonstrates that the course content meets the subject matter requirements set forth in sections 2570.3(e) or 2570.3(f) of the Code, or section 4153 of these regulations, and submits the following:
    - (A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
    - (B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise on the relevant subject matter), particularly as it relates to the advanced practice area.
- (b) Post professional training shall be supervised which means, at a minimum:
- (1) The supervisor and occupational therapist have a written agreement, signed and dated by both parties prior to accruing the supervised experience, outlining the plan of supervision and training in the advanced practice area. The level of supervision is determined by the supervisor whose responsibility it is to ensure that the amount, degree, and pattern of supervision is consistent with the knowledge, skill and ability of the occupational therapist, and appropriate for the complexity of client needs and number of clients for whom the occupational therapist is providing advanced practice services.
  - (2) The supervisor is readily available in person or by telecommunication to the occupational therapist while the therapist is providing advanced practice services.
  - (3) The supervisor does not have a co-habitative, familial, intimate, business, excluding employment relationships, or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or that violates the Ethical Standards of Practice, pursuant to section 4170.
- (c) Any course instructor providing post-professional education under section 4154(a)(4) or (5) who is a health care practitioner as defined in section 680 of the Code shall possess an active, current, and unrestricted license.

(d) Post professional education and training must be completed within the five years immediately preceding the application for approval in each advanced practice area.

### **§ 4155. Application for Approval in Advanced Practice Areas**

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

(a) To apply for approval, an occupational therapist shall submit to the Board an application as specified in subsections (1), (2), or (3), along with the required documentation.

(1) Applicants seeking approval in the area of Hand Therapy shall submit the Application for Advanced Practice Approval in Hand Therapy (Form APH, Rev. 10/09), hereby incorporated by reference;

(2) Applicants seeking approval in the use of physical agent modalities shall submit the Application for Advanced Practice Approval in Physical Agent Modalities (Form APP, Rev. 07/11), hereby incorporated by reference;

(3) Applicants seeking approval in the area of Swallowing Assessment, Evaluation, or Intervention shall submit the Application for Advanced Practice Approval in Swallowing (Form APS, Rev. 10/09), hereby incorporated by reference;

(b) The documentation must include the following:

(1) Documented proof of attendance and completion of each course (i.e., certificate of completion or transcript).

(2) Evidence of the number of contact hours completed for each course for courses that are not Board approved.

(3) Outline or syllabus of each course for courses that are not Board approved.

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

(5) Resume or credentials of each instructor for courses that are not Board approved.

(6) Verification of completion of supervised on-the-job training, clinical internship or affiliation reflecting the nature of the training and the number of hours. Such verification must be signed by the supervisor(s) under penalty of perjury.

(c) An advanced practice application not completed within six months of receipt or notification of deficiency, whichever is later, shall be deemed abandoned.

(d) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

## **Article 7. Continuing Competency Requirements**

### **§ 4160. Definitions**

For the purpose of this section:

(a) "Continuing competency" means an ongoing process in which an occupational therapy practitioner maintains the knowledge, skills, and abilities necessary to perform his or her professional responsibilities.

(b) "Continuing education unit (CEU)" is an assigned unit of measure for each professional development activity.

(c) "Professional development activity" means an activity (except participation in a course of study leading to an entry-level academic degree or normal and routine employment responsibilities) engaged in subsequent to professional education, primarily concerned with

- maintaining and increasing the occupational therapy practitioner's knowledge, skill and ability.
- (d) "Professional development unit (PDU)" is an assigned unit of measure for each professional development activity.
- (e) "Level II occupational therapy and occupational therapy assistant students" are those participating in the fieldwork requirements of the entry-level academic degree program.

#### **§ 4161. Continuing Competency**

- (a) 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.

#### **§ 4162. Completion and Reporting Requirements**

(a) The occupational therapy practitioner shall record the following information for each activity on the renewal form:

(1) the date each course or activity was completed:

(2) the provider, course number, and course title, if applicable;

(3) a description of the course; and

(4) the total number of PDUs.

(b) Records showing participation in each professional development activity must be maintained by the occupational therapy practitioner for four years following the renewal period.

(c) A maximum of six PDUs in excess of the required 24 PDUs may be carried over to the next renewal period.

(d) Any occupational therapy practitioner who is unable to provide records documenting

completion of the continuing competency requirements is subject to citation and/or administrative fine or disciplinary action.

(e) Any occupational therapy practitioner who supervises a Level I and/or Level II student shall document said supervision, immediately upon conclusion of the supervision period, using the Fieldwork Education PDU Attestation form (Form FEA New 6/2016), hereby incorporated by reference, and shall contain a statement under penalty of perjury regarding the truthfulness of the information contained therein.

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

Reference: Section 2570.10, Business and Professions Code.

#### § 4163. Exemption from Continued Competency Requirements

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

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

(b) Evidence that the practitioner was absent from California because of military service for a period of one year or longer during the renewal period, preventing completion of the continuing competency requirements; or

(c) Evidence that the practitioner should be exempt from the continuing competency requirements for reasons of health or other good cause, which include:

(1) Total physical and/or mental disability and inability to work for one year or more during the renewal period and the inability to work during this period has been verified by a licensed physician or surgeon or licensed clinical psychologist; or

(2) Total physical and/or mental disability for one year or longer of an immediate family member for whom the practitioner had total responsibility, as verified by a licensed physician or surgeon or licensed clinical psychologist.

(d) An exemption under this section shall not be granted for two consecutive renewal periods. In the event a licensee cannot complete continuing competency requirements following an exemption, the licensee may only renew the license in an inactive status.

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

Reference: Sections 2570.10 and 2570.11, Business and Professions Code.

## **Article 8. 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, 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 shall consider how a client's or patient's economic status, age, ethnicity, race, disability, sexual orientation, gender, gender identity, religion, residence, or culture, impact health care practices and incorporate these considerations in the provision of his or her services.

(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 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, or supervisor, 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, and social, or activities that interfere with professional judgment and objectivity, including avoiding:

(A) Any sexual relationship or activity, even if consensual, with any recipient of service, including any family member or significant other of the recipient of services, and

(B) Any sexual relationship or activity, even if consensual, with any student, or research participant, under direct supervision, and

(C) 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.

(3) This subsection (b) shall not apply to consensual sexual contact between a licensee and his or her spouse, registered domestic partner, or person in an equivalent domestic relationship, when that licensee provides occupational therapy services to his or her spouse, registered domestic partner, or person in an equivalent domestic relationship.

(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.

(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.

(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of potential risks and outcomes.

(3) Occupational therapy practitioners shall respect the client's right to refuse professional services.

(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.

(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so and shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation shall be done in collaboration with the client.

(e) Occupational therapy practitioners shall, through 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.

(h) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws., and shall comply with the following:

(1) Practice occupational therapy only when holding a current and valid license issued by the Board, and appropriate national, state, or other requisite credentials for the services they

provide; and

(2) Practice occupational therapy within his or her own level of competence and scope of practice.

(i) Occupational therapy practitioners shall provide accurate information about occupational therapy services and shall accurately represent their credentials, qualifications, education, experience, training, and competence.

(j) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.

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

(l) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.

#### **§ 4172. Standards of Practice for Telehealth**

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant providing services to a patient or client in this State must have a valid and current license issued by the Board.

(b) An occupational therapist shall inform the patient or client about occupational therapy services via telehealth and obtain consent prior to delivering those services, consistent with Section 2290.5 of the Code.

(c) An occupational therapist shall determine whether an in-person evaluation or in-person interventions are necessary considering: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment.

(d) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

(2) Provide services consistent with section 2570.2(k) of the Code; and

(3) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

(e) Failure to comply with these regulations shall be considered unprofessional conduct as set forth in the Occupational Therapy Practice Act.

#### **§ 4175. Minimum Standards for Infection Control**

(a) Occupational Therapists and Occupational Therapy Assistants must comply with all applicable Standard Precautions.

(b) Standard Precautions combine the major features of Universal Precautions and Body Substance Isolation and are based on the principle that all blood, body fluids, secretions, excretions (except sweat), non-intact skin, and mucus membranes may contain transmissible infectious agents. All contact with these substances is treated as if known to be infectious for Human Immunodeficiency Virus (HIV), Hepatitis, and other transmissible infectious agents. Standard Precautions are also intended to protect patients/clients by ensuring that occupational therapy personnel do not carry infectious agents to patients/clients on their hands or via equipment used during delivery of occupational therapy services. Standard Precautions must be used in the care of all patients/clients, regardless of suspected or



confirmed infection status, in all settings in which occupational therapy services are delivered. Standard Precautions include:

(1) Proper Hand Hygiene

(A) Avoid unnecessary touching of face, nose and surfaces in close proximity to the patient to prevent both contamination of clean hands from environmental surfaces and transmission of pathogens from contaminated hands to surfaces, during the delivery of healthcare.

(B) When hands are visibly soiled, hands shall be washed with soap and water for a 20-second scrub and 10-second rinse or an antimicrobial hand wash.

(C) If hands are not visibly soiled, an acceptable alternative of hand decontamination is with an alcohol-based hand rub (except in cases of spores, as described below).

(D) Hands shall be washed or decontaminated as follows:

(1) Before having direct contact with any patient/client.

(2) After contact with blood, body fluids or excretions, mucous membranes, non-intact skin, or wound dressings.

(3) After contact with a patient's/client's intact skin (e.g., when assisting with bathing/dressing or lifting a patient).

(4) If hands will be moving from a contaminated-body site to a clean-body site during patient/client care.

(5) After contact with inanimate objects (including medical equipment) in the immediate vicinity of the patient/client.

(6) After removing gloves.

(E) Artificial fingernails or extenders shall not be worn if duties include direct contact with patients at high risk for infection and associated adverse outcomes (e.g., those in ICUs or special care units).

(F) After each patient/client session ends, a practitioner shall wash hands with soap and water or an antimicrobial hand wash if contact with spores (e.g., *C. difficile* or *Bacillus anthracis*) is likely to have occurred. The physical action of washing and rinsing hands under such circumstances is required because alcohols, chlorhexidine, iodophors, and other antiseptic agents have poor activity against spores.

(2) Use of Personal Protective Equipment

(A) The use of personal protective equipment (PPE) includes observing the following principles of use at all times:

(1) Wear gloves, gowns and mouth/nose/eye protection when the nature of the anticipated patient/client interaction indicates that contact with blood, body fluids, secretions or excretions may occur. Select masks, goggles, face shields and combinations of each according to the need anticipated by the task performed.

(2) Prevent contamination of clothing and skin during the process of removing PPE.

(3) Before leaving the patient's/client's room or service area, remove and discard PPE.

(B) PPE includes the use of disposable medical examination gloves, which must be worn when it can be reasonably anticipated that contact with blood or other potentially infectious materials, mucus membranes, non-intact skin, or potentially contaminated intact skin (e.g. of a patient/client incontinent of stool or urine) could occur.

(1) Non-sterile gloves may be used for all non-surgical procedures.

(2) Wear disposable gloves for cleaning the environment or equipment.

(3) Wear gloves with fit and durability appropriate to the task.

(4) Remove gloves after contact with a patient/client or the surrounding environment (including equipment) using proper technique to prevent hand contamination.

(5) Do not wear the same pair of gloves for the care of more than one patient/client.

(6) Do not wash gloves for the purpose of reuse since this practice has been associated

with the transmission of pathogens.

(7) Change gloves during patient/client care if the hands will move from a contaminated body-site to a clean body-site.

(C) PPE includes wearing a gown that is appropriate to the task to protect skin and prevent soiling or contamination of clothing during procedures and patient/client-care activities when contact with blood, body fluids, secretions, excretions is anticipated. Proper use of a gown includes the following:

(1) Remove gown and perform hand hygiene before leaving the patient's/client's environment. Place gown in an appropriately designated area or container for storage, washing, decontamination or disposal.

(2) Do not reuse gowns, even for repeated contacts with the same patient.

(3) Routine donning of gowns upon entrance into high risk units (e.g. ICU, NICU) is not indicated.

(D) Personal protective equipment does not include lab coats or uniforms, including scrubs. Lab coats and uniforms shall be changed or washed at least daily, or more frequently if visibly soiled.

(E) During an aerosol-generating procedure (e.g. suctioning of the respiratory tract if not using in-line suction catheters) in a patient who is not suspected of being infected with an agent for which respiratory protection is otherwise recommended (e.g. M. tuberculosis, SARS or hemorrhagic fever viruses), wear one of the following: a face shield that fully covers the front and sides of the face, a mask with an attached shield, or a mask and goggles, in addition to gloves and a gown.

(F) Face shields and protective eyewear must be washed and disinfected between each patient or when visibly soiled.

(3) Respiratory hygiene/cough etiquette. Measures shall be implemented to contain respiratory secretions and to prevent droplet and fomites transmission of respiratory pathogens, especially during seasonal outbreaks of viral respiratory infections such as influenza, RSV, adenovirus, or parainfluenza virus.

(A) A practitioner shall provide tissues and, where practical, use no-touch receptacles (e.g. foot-pedal operated lid or open plastic-lined waste basket) for disposal of tissues.

(B) A practitioner shall wear a mask during all patient/client interactions if the practitioner has any symptoms of respiratory infection.

(4) Patient/client care equipment, instruments, devices, and environment of care.

(A) Equipment, instruments, and devices include, but are not limited to: toys and play equipment, shared craft supplies, computers, multi-use electronic equipment, transfer belts, bandage scissors, debridement utensils, patient lifting and/or transporting devices, commode chairs, bath/shower chairs and benches, and dressing equipment.

(B) A practitioner shall follow employer-established policies and procedures for containing, transporting, handling and cleaning patient/client-care equipment and instruments/devices that may be contaminated with blood or body fluids.

(C) In the absence of employer-established policies and procedures for containing, transporting, handling and cleaning patient/client-care equipment and instruments/devices that may be contaminated with blood or body fluids, practitioners are responsible for establishing and following policies and procedures for containing, transporting, handling and cleaning patient/client-care equipment and instruments/devices that may be contaminated with blood or body fluids. Such policies and procedures must include the use of PPE (e.g. gloves and gowns and masks, worn according to the level of anticipated contamination.

(D) A Practitioner shall follow employer-established policies and procedures for routine and targeted cleaning of environmental surfaces as indicated by the service-delivery setting,

the level of patient/client contact and degree of soiling.

(E) In the absence of employer-established policies and procedures for routine and targeted cleaning of environmental surfaces as indicated by the service-delivery setting, the level of patient/client contact and degree of soiling, practitioners are responsible for establishing and following said policies and procedures for routine and targeted cleaning of environmental surfaces.

(F) A Practitioner shall clean and disinfect surfaces that are likely to be contaminated with pathogens, especially those in close proximity to the patient and frequently touched surfaces in the patient care environment. The practitioner is personally responsible for cleaning of shared items and shared surfaces in the occupational therapy setting such as treatment tables, toys, bandage scissors, shared bathing and toileting equipment, and wound care areas, in the absence of an organization-wide housekeeping or environmental cleaning organization.

(G) Select equipment that can be easily cleaned and disinfected. Do not use fabric-based equipment (e.g. chairs, stuffed toys, furry toys, transfer belts) if it will likely be contaminated by body fluids.

(H) Practitioners shall comply with all minimum standards for infection control practices and comply with local, state, or federal recommendations, issued in response to an emergency health and safety situation.

#### **§ 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, as specified in (b) and (c) below.

(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. 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 in at least 24-point font and in the format required by section 680.5(c) of the Code, 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 highest level of earned academic degree related to the provision of occupational therapy services.

(2) As required by section 680.5(d) 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.

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

(A) General acute care hospital;

(B) Acute psychiatric hospital;

(C) Skilled nursing facility;

(D) Intermediate care facility;

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

(F) Special hospital;

(G) Intermediate care facility/developmentally disabled;

- (H) Intermediate care facility/developmentally disabled-nursing;
- (I) Congregate living health facility;
- (J) Correctional treatment center;
- (K) Nursing facility;
- (L) Intermediate care facility/developmentally disabled-continuous nursing; or
- (M) Hospice facility.

## **Article 9. Supervision Standards**

### **§ 4180. Definitions**

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

- (a) "Client related tasks" means tasks performed as part of occupational therapy services rendered directly to the client.
- (b) "Level I student" means an occupational therapy or occupational therapy assistant student participating in activities designed to introduce him or her to fieldwork experiences and develop an understanding of the needs of clients.
- (c) "Level II student" means an occupational therapy or occupational therapy assistant student participating in delivering occupational therapy services to clients with the goal of developing competent, entry-level practitioners.
- (d) "Non-client related tasks" means clerical, secretarial and administrative activities; transportation of patients/clients; preparation or maintenance of treatment equipment and work area; taking care of patient/client personal needs during treatments; and assisting in the construction of adaptive equipment and splints.
- (e) "Periodic" means at least once every 30 days.

### **§ 4181. Supervision Parameters**

- (a) Appropriate supervision of an occupational therapy assistant includes, at a minimum:
  - (1) The weekly review of the occupational therapy plan and implementation and periodic onsite review by the supervising occupational therapist. The weekly review shall encompass all aspects of occupational therapy services and be completed by telecommunication or onsite.
  - (2) Documentation of the supervision, which shall include either documentation of direct client care by the supervising occupational therapist, documentation of review of the client's medical and/or treatment record and the occupational therapy services provided by the occupational therapy assistant, or co-signature of the occupational therapy assistant's documentation.
  - (3) The supervising occupational therapist shall be readily available in person or by telecommunication to the occupational therapy assistant at all times while the occupational therapy assistant is providing occupational therapy services.
  - (4) The supervising occupational therapist shall provide periodic on-site supervision and observation of client care rendered by the occupational therapy assistant.
- (b) The supervising occupational therapist shall at all times be responsible for all occupational therapy services provided by an occupational therapy assistant, a limited permit holder, a student or an aide. The supervising occupational therapist has continuing responsibility to follow the progress of each client, provide direct care to the client, and assure that the occupational therapy assistant, limited permit holder, student or aide do not function autonomously.

(c) The level of supervision for all personnel is determined by the supervising occupational therapist whose responsibility it is to ensure that the amount, degree, and pattern of supervision are consistent with the knowledge, skill and ability of the person being supervised.

(d) Occupational therapy assistants may supervise:

- (1) Level I occupational therapy students;
- (2) Level I and Level II occupational therapy assistant students; and
- (3) Aides providing non-client related tasks.

(e) The supervising occupational therapist shall determine that the occupational therapy practitioner possesses a current license or permit to practice occupational therapy prior to allowing the person to provide occupational therapy services.

#### **§ 4182. Treatments Performed by Occupational Therapy Assistants**

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

- (1) the clinical complexity of the patient/client;
- (2) skill level of the occupational therapy assistant in the treatment technique; and
- (3) whether continual reassessment of the patient/client status is needed during treatment.

This rule shall not preclude the occupational therapy assistant from responding to acute changes in the client's condition that warrant immediate action. The occupational therapy assistant shall inform the supervising occupational therapist immediately of the acute changes in the patient's/client's condition and the action taken.

(b) The supervising occupational therapist shall assume responsibility for the following activities regardless of the setting in which the services are provided:

- (1) Interpretation of referrals or prescriptions for occupational therapy services.
- (2) Interpretation and analysis for evaluation purposes.

(A) The occupational therapy assistant may contribute to the evaluation process by gathering data, administering standardized tests and reporting observations. The occupational therapy assistant may not evaluate independently or initiate treatment before the supervising occupational therapist performs an assessment/evaluation.

(3) Development, interpretation, implementation, and modifications of the treatment plan and the discharge plan.

(A) The supervising occupational therapist shall be responsible for delegating the appropriate interventions to the occupational therapy assistant.

(B) The occupational therapy assistant may contribute to the preparation, implementation and documentation of the treatment and discharge summary.

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

(a) Consistent with Code section 2570.4, subdivisions (b) and (c), a Level II student may, at the discretion of the supervising occupational therapy practitioner, be assigned duties or functions commensurate with his or her education and training.

(b) All documented client-related services by the limited permit holder or student shall be reviewed and cosigned by the supervising occupational therapist.

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

#### **§ 4184. Delegation of Tasks to Aides**

(a) The primary function of an aide in an occupational therapy setting is to perform routine tasks related to occupational therapy services. Non-client related tasks may be delegated to an aide when the supervising occupational therapy practitioner has determined that the person has been appropriately trained and has supportive documentation for the performance of the services.

(b) Client related tasks that may be delegated to an aide include specifically selected routine aspects of an intervention session. In addition to the requirements of Code section 2570.2, subdivisions (a) and (b), the following factors must be present when an occupational therapist delegates a selected aspect of an intervention to an aide:

(1) The outcome anticipated for the aspects of the intervention session being delegated is predictable.

(2) The situation of the client and the environment is stable and will not require that judgment or adaptations be made by the aide.

(3) The client has demonstrated previous performance ability in executing the task.

(4) The aide has demonstrated competence in the task, routine and process.

(c) The supervising occupational therapist shall not delegate to an aide the following tasks:

(1) Performance of occupational therapy evaluative procedures;

(2) Initiation, planning, adjustment, or modification of treatment procedures.

(3) Acting on behalf of the occupational therapist in any matter related to occupational therapy treatment that requires decision making.

#### **§ 4187. Occupational Therapy Assistants Serving in Administrative Positions**

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