

# TBOTE news

The Texas Board of Occupational Therapy Examiners

June 2016

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Previous Newsletters, Forms, and FAQs are on the website: [www.ptot.texas.gov](http://www.ptot.texas.gov).

## Next Board Meeting Date

August 5, 2016  
Austin, TX

## TBOTE BOARD

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## Notes from the Coordinator

### Sunset Review Update:

See page 2 for further information.

### Adopted Rule Changes:

*NOTE: THE ADOPTED RULE CHANGES REFERENCED BELOW ARE NOT IN EFFECT UNTIL 7/1/2016. UNTIL THEN, THE CURRENT RULES ARE IN EFFECT.*

At its May 2016 board meeting, the Board adopted amendments to §362.1, Definitions; Chapter 367, Continuing Education; §370.3, Restoration of a Texas License; Chapter 371, Inactive and Retired Status; §372.1, Provision of Services; §373.1, Supervision of Non-Licensed Personnel; §373.3, Supervision of an Occupational Therapy Assistant; and §376.5, Exemptions to Registration, and adopted new rule §372.2, General Purpose Occupation-Based Instruction. Some of the changes concern telehealth, general purpose occupation-based instruction, and the removal of Type 1 and Type 2 CE designations to be replaced by a new definition of CE for the 30 hours of required CE each renewal period.

An introduction to the adopted rule changes may be found beginning on page 4 of this newsletter.

**Proposed Rule Changes:** There were no proposed rule changes at the May 2016 board meeting.

### Updated Downloadable OT Rules Coming Soon:

Soon after the adoptions go into effect on 7/1/2016, an up-to-date PDF version of the OT rules will be uploaded to the website.

### Adopted Rule Reviews:

The Board and ECPTOTE have completed rule reviews, as required of all agencies every four years. Both the Board and ECPTOTE readopted all rule chapters. An introduction to the adopted rule reviews may be found on page 9 of this newsletter.

## Sunset Review Update

The Texas Sunset Advisory Commission has published its staff report regarding its review of the Executive Council of Physical Therapy and Occupational Therapy Examiners (ECPTOTE), the Texas Board of Occupational Therapy Examiners (TBOTE), and the Texas Board of Physical Therapy Examiners (TBPTE). To read the staff report, in addition to other documents and public comment, visit this link: <https://www.sunset.texas.gov/reviews-and-reports>.

You may formally respond to the report in writing by filling out the [public input form](#). These responses are considered public information, are subject to disclosure under the Public Information Act, and are published on the Sunset website. For further information regarding public input, please visit the [Sunset website](#).

**Public Hearing.** A public hearing regarding the review of ECPTOTE, TBOTE, and TBPTE has been scheduled for June 23, 2016. Please check the [Sunset website](#) for further meeting information.

### **Overview of the Sunset Process**

#### **Phase 1:**

**Sunset Staff Review.** As required during the Sunset Process, ECPTOTE, TBOTE, and TBPTE submitted a Self-Evaluation Report (SER). The Sunset staff next gathered information related to the SER and other topics from ECPTOTE, TBOTE, and TBPTE, in addition to other sources such as professional associations. The Sunset staff also took input from the public.

At the conclusion of this phase, the Sunset Staff published its staff report.

*Below appear several of the key recommendations from the report. Please note that these are recommendations only, not rule or Act changes. To read the full report, [click this link](#).*

- *1.1 Discontinue the registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.*
- *2.2 Provide clear statutory authority for licensure by endorsement.*
- *2.3 Clarify that occupational therapy assistants licensed in other states may practice in this state temporarily under the same conditions as occupational therapists.*
- *3.2 Remove the boards' authority to delegate to other entities the responsibility of approving continuing education and continuing competence while clarifying their authority to preapprove course providers.*
- *3.3 Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.*
- *3.6 Direct the OT board to adopt rules to specify the types of criminal activities that may result in denial, suspension, or revocation of a license.*
- *4.1 Continue the executive council, PT board, and OT board for 12 years.*

**Note: The following has been excerpted and adapted from the [Sunset Commission's FAQ page](#).**

**Phase 2: This is the current phase of the Sunset process.**

**Sunset Commission Deliberation.** After publication of the staff report, the Sunset Commission conducts a public hearing on each agency under review. All information presented at the public hearing is reviewed by Sunset staff and posted to Sunset's website. At the public hearing:

- Sunset staff present the report and recommendations;
- the agency formally responds to the staff recommendations; and
- members of the public and other interested parties comment on the report as well as the agency's overall operations and policies.

The Sunset Commission meets at a later date (typically about a month after the public hearing) to decide and vote on each staff recommendation, including whether to continue or abolish the agency. The Commission may modify the staff recommendations or add new recommendations based on testimony received at the hearing. Sunset staff updates the original staff report to include these decisions.

**Phase 3: Legislative Action.** Sunset staff works with legislative attorneys to draft the Commission's final decisions on each agency into a bill that goes through the regular legislative process. Generally, the Legislature must pass the agency's Sunset bill for it to continue to operate.

*For further information regarding how to participate in the Sunset process, please see the link below.*  
<https://www.sunset.texas.gov/how-sunset-works/how-participate>

## General Introduction to Adopted Rule Changes Effective 7/1/2016

At its May 2016 board meeting, the Board adopted the following changes.

Amendments to:

- §362.1, Definitions
- Chapter 367, Continuing Education
- §370.3, Restoration of a Texas License
- Chapter 371, Inactive and Retired Status
- §372.1, Provision of Services
- §373.1, Supervision of Non-Licensed Personnel
- §373.3, Supervision of an Occupational Therapy Assistant
- §376.5, Exemptions to Registration

New Rule:

- §372.2, General Purpose Occupation-Based Instruction.

The ADOPTED CHANGES take effect on July 1, 2016, at which time, they will supersede the rule sections of the same number in the current rules and add the new rule. UNTIL JULY 1, 2016, THE CURRENT RULES ARE IN EFFECT. [Click this link](#) to read the current rules.

To read the text of the amendments and new rule as originally proposed and published in the March 18, 2016 issue of the Texas Register, [click this link](#) and select the “Proposed/Adopted” tab. Please note that §362.1, §372.2, and §373.3 were adopted with changes to the text as originally proposed and published. Please see the introductions below regarding the changes.

Notice of the adoptions will be published in the June 3, 2016 issue of the [Texas Register](#). Rule sections that were adopted with changes will also be republished in the issue.

*The introductions that follow represent a general overview. Please read the amendments and new rule for further information.*

### **Introduction to Adoptions**

#### **§362.1. Definitions.**

The Board has adopted an amendment to §362.1 with changes to the proposed text. The amendment will not be in effect until July 1, 2016.

The change is to replace in the previously proposed definition for telehealth, §362.1(39), the word “or” with a slash in the phrase “electronic information or communications technologies” so the phrase is instead “electronic information/communications technologies.”

The amendment will add a definition for telehealth and contains related revisions to other definitions in the section. Amendments to §372.1, concerning provision of services, and §373.1, concerning supervision of non-licensed personnel, have also been adopted regarding the inclusion in the Board Rules of telehealth as a mode of occupational therapy service delivery. The definitions in §362.1 for “direct contact” and “first available examination” have also been removed. In addition, the definitions have been renumbered when necessary so that they appear in alphabetical order; general clarifications, cleanups, and grammatical revisions have been made to the section, as well.

## **Chapter 367, Continuing Education**

The Board has adopted amendments to §§367.1 - 367.3 without changes to the proposed text. The amendments will not be in effect until July 1, 2016.

The amendments will remove the Type 1 and Type 2 continuing education designations and the requirement that licensees earn a minimum of fifteen contact hours of continuing education in Type 2 activities. The amendments instead will require that all of the required 30 hours of continuing education taken for license renewal fit the new definition for continuing education, defined in the amendment to §367.1 as professional development activities that are directly relevant to the profession of occupational therapy.

The amendments to §367.2 will also add the NBCOT Navigator™ activities of Case Simulations, Balloon Match Games, Mini Practice Quizzes, and the PICO Game as acceptable continuing education activities. In addition, the amendments will allow for grant writing, general cooking classes, and geriatric anthology to be taken for continuing education if meeting the requirements for continuing education in Chapter 367. The amendments will add first aid as an unacceptable activity that may not be completed for continuing education.

The amendments include further clarifications and cleanups, as well.

### **§370.3. Restoration of a Texas License.**

The Board has adopted an amendment to §370.3 without changes to the proposed text. The amendment will not be in effect until July 1, 2016.

The amendment will, in addition to clarifying restoration requirements in general, remove the requirement that an individual whose license has been expired two or more years must also complete forty-five hours of continuing education if choosing the method of restoration requiring that the individual take and pass the NBCOT exam for licensure purposes only. The amendment also removes from a provision related to expedited services for military service members, military veterans, and military spouses the requirement that to be eligible for such services, the individual must have within the five years preceding the restoration application date held a license in Texas. The amendment, in addition, clarifies that restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration. Any reference to Type 2 Continuing Education has also been removed as part of the amendment in accordance with adopted amendments to §§367.1 - 367.3. The amendment includes further cleanups, as well.

## **Chapter 371, Inactive and Retired Status**

The Board has adopted amendments to §371.1 and §371.2 without changes to the proposed text. The amendments will not be in effect until July 1, 2016.

The amendments to §371.1 will clarify requirements regarding inactive status and specifies that inactive status fees for an occupational therapist or occupational therapy assistant license are

nonrefundable. The amendments will specify that if the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3, concerning restoration of a Texas license, an amendment to which has also been adopted, and notice of such submitted to the *Texas Register*. The amendments to §371.1 will also add the provision that licensees on inactive status are subject to the audit of continuing education as described in §367.3, concerning continuing education audit.

The amendments to §371.2 will clarify requirements regarding retired status and specify that retired status fees for an occupational therapist or occupational therapy assistant license are nonrefundable. The amendments will also add the provision that licensees on retired status may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. (A licensee with a retired status license may only provide services under very specific circumstances as described in §371.2.) Any reference to Type 2 continuing education has also been removed as part of the proposal in accordance with adopted amendments to §§367.1 - 367.3.

The amendments include further clarifications and cleanups, as well.

#### **§372.1. Provision of Services.**

The Board has adopted an amendment to §372.1 without changes to the proposed text. The amendment will not be in effect until July 1, 2016.

The amendment includes clarifications regarding the provision of services and will add telehealth as a mode of occupational therapy service delivery.

The amendment will add language specifying that the occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person. The amendment will also add the provision that the initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth. The amendment will add language allowing for the evaluation for a non-medical condition and for the intervention for a medical or non-medical condition to be provided via telehealth. The amendment will, furthermore, add the provision that devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, and therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications and that the occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.

The amendment to §372.1, in addition, clarifies that occupational therapists may provide consultation or monitored services, or screen or evaluate the client to determine the need for occupational therapy services without a referral and that a screening, consultation, or monitored services may be performed by an occupational therapy practitioner. The amendment, in addition, clarifies that an occupational therapist must exercise professional judgment to determine cessation or continuation of intervention without a receipt of the written referral. The amendment contains further cleanups and grammatical revisions, as well.

### **§372.2. General Purpose Occupation-Based Instruction.**

The Board has adopted new rule §372.2 with changes to the proposed text. The rule section will not be in effect until July 1, 2016.

The first change is to remove from §372.2(b) the sentence “However, if a participant requires individualized occupational therapy services, a referral must be made to an occupational therapist for the provision of occupational therapy services in accordance with §372.1 of this title (relating to Provision of Services)” and to replace it with “If a participant requires individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services)” to clarify that individualized occupational therapy services may only be provided according to the provisions of §372.1, concerning provision of services.

The second change is to add as §372.2(d) the provision “When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA’s initiating instruction.” This provision was originally published as §373.3(b)(4) in the previously proposed amendment to §373.3, concerning supervision of an occupational therapy assistant, in the March 18, 2016 issue of the *Texas Register* (41 TexReg 2144). During the adoption of §373.3, this provision was removed from the amendment as it was added to §372.2 upon the latter section’s adoption.

The new rule will specify that occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes and that these services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. The rule will add that if a participant requires individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services). The new rule will require that supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3, concerning supervision of an occupational therapy assistant and that when general purpose occupation-based instruction is being provided pursuant to §372.2, the occupational therapist must approve the curricular goals/program prior to the occupational therapy assistant’s initiating instruction. Amendments to §373.3 and to §376.5, concerning exemptions to registration, with regard to facilities registered with the Board, have also been adopted by the Board with regard to proposed new §372.2.

### **§373.1. Supervision of Non-Licensed Personnel.**

### **§373.3. Supervision of an Occupational Therapy Assistant.**

The Texas Board of Occupational Therapy Examiners has adopted amendments to §373.1 and §373.3 without changes to the proposed text of §373.1 and with changes to the proposed text to §373.3. The amendments will not be in effect until July 1, 2016.

The first change is to replace in §373.3(b)(2)(F)(ii) the word “or” in the phrase “electronic information or communications technologies” with a slash so the phrase reads “electronic information/communications technologies.” The second change is to remove provision §373.3(b)(4). This provision was added to §372.2, concerning general purpose occupation-based instruction, upon its adoption.

The amendment to §373.1 will clarify the supervision requirements for non-licensed personnel in general and with regard to the use of non-licensed personnel during the provision of occupational therapy services via telehealth. The proposed amendment to §373.3 will clarify the supervision requirements for occupational therapy assistants in general and with regard to their supervision when providing general purpose occupation-based instruction. The proposed amendments include cleanups and grammatical revisions, as well.

The amendment to §373.1 will remove language that close personal supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. The amendment will add language that supervision for occupational therapy aides as defined by the Practice Act, §454.002, concerning definitions, is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client. The amendment will also add the provision that supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight.

The amendment to §373.3 includes language adding that up to half of the required interactive supervision hours for an occupational therapy assistant may be completed via visual and auditory, synchronous, real time, interactive electronic information/communications technologies. The amendment also includes revisions to the required supervision hours for occupational therapy assistants, adding a category pertaining to those working twenty or fewer hours during a given month. With regard to the requirement that the occupational therapy assistant must include the name of a supervising occupational therapist in each intervention note, language has been added in the amendment that this requirement is not applicable to instruction provided pursuant to §372.2, concerning general purpose occupation-based instruction.

#### **§376.5. Exemptions to Registration.**

The Board has adopted an amendment to §376.5 without changes to the proposed text. The amendment will not be in effect until July 1, 2016.

The amendment will add language specifying that if a facility only offers services pursuant to adopted new rule §372.2, concerning general purpose occupation-based instruction, then the facility is exempted from the requirement to register the facility with the Board. An amendment to §373.3, concerning supervision of an occupational therapy assistant, has also been adopted with regard to new §372.2, and notice of such has been submitted for publication in the *Texas Register*.



## Adopted Rule Reviews by TBOTE and ECPTOTE

According to §2001.39 of the Texas Government Code, an agency is required to review and consider for re-adoption each of its rules every four years and to assess whether the reasons for initially adopting the rules continue to exist.

Notice of the rule review adoptions will be published in the June 3, 2016 issue of the [Texas Register](#).

### **TBOTE:**

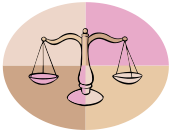
The Board adopts the review of the following: Chapter 361 - Chapter 364; Chapter 367 - Chapter 376. (These are all of the chapters in the Board Rules.) The proposed notice of intent to review rules was published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1980).

The Board finds that the rules in the chapters are needed and reflect current legal and policy considerations and procedures of the Board. The reasons for initially adopting the rules continue to exist and the Board, therefore, re-adopts the chapters.

### **ECPTOTE:**

ECPTOTE adopts the review of Chapter 651, concerning fees. The proposed notice of intent to review rules was published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2179).

ECPTOTE found that the rules in Chapter 651 are needed and reflect current legal and policy considerations and ECPTOTE procedures. The reasons for initially adopting the rules continue to exist and ECPTOTE, therefore, re-adopts Chapter 651.



**OT BOARD FORMAL DISCIPLINARY ACTIONS TAKEN**

**MAY 6, 2016 BOARD MEETING:**

- (1) Jaime Primm, COTA #211051 (Hot Springs, AR)** – failed to properly renew her license to practice; lacked sufficient number or type of hours required for license renewal. Violation of Section 454.301 of the Act and chapter 367 of the board rules. ***Board Order required thirty (30) hours of community service.***
- (2) Julie Ann Crawford, COTA #210963 (Corpus Christi)** – failed to properly renew her license to practice; lacked sufficient number or type of hours required for license renewal. Violation of Section 454.301 of the Act and chapter 367 of the board rules. ***Board Order required thirty (30) hours of community service.***
- (3) Patricia Rodriguez, COTA #210937 (San Antonio)** – failed to properly renew her license to practice; lacked sufficient number or type of hours required for license renewal. Violation of Section 454.301 of the Act and chapter 367 of the board rules. ***Board Order required thirty (30) hours of community service.***
- (4) Omar Santos, COTA #209691 (Amarillo)** – failed to properly renew his license to practice; lacked sufficient number or type of hours required for license renewal. Violation of Section 454.301 of the Act and chapter 367 of the board rules. ***Board Order suspended his license to practice for thirty (30) days.***
- (5) Harold Albin, OTR #102297 (Granbury)** – practiced in a detrimental manner by using drugs to an extent that affected his professional competence; resulting in a failed drug test and termination of his employment. Violation of Section 454.301 of the Act and chapter 374 of the board rules. ***Board Order suspended his license to practice for thirty (30) days.***
- (6) Cathy White, OTR #104941 (Mt. Pleasant)** – practiced in a detrimental manner by inaccurately documenting treatment rendered. Violation of Section 454.301 of the Act and chapter 374 of the board rules. ***Board Order suspended her license to practice for forty-five (45) days.***
- (7) Robert Palomo, COTA #209238 (Corpus Christi)** – practiced in a detrimental manner by inaccurately documenting treatments rendered. Violation of Section 454.301 of the Act and chapter 374 of the board rules. ***Board Order suspended his license to practice for ninety (90) days.***
- (8) Roger Pence, COTA #211045 (Arlington)** – allegedly practiced in a detrimental manner by inaccurately documenting treatments rendered. Violation of Section 454.301 of the Act and chapter 374 of the board rules. ***Board Order accepted the surrender of the license to practice in lieu of any further board action.***