

Regulatory Analysis Florida		This space for use by IRRC <div style="text-align: center; font-size: 1.2em;">RECEIVED</div> <div style="text-align: center;">2000 JUL 28 AM 11:45</div> <div style="text-align: center; font-size: 0.8em;">REVIEW COMMISSION</div> <div style="text-align: right; margin-top: 10px;"> </div>
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Board of Occupational Therapy Education and Licensure		IRRC Number: 2136
(2) I.D. Number (Governor's Office Use) 16A-674		
(3) Short Title General Revisions		
(4) PA Code Cite 49 Pa. Code §§42.1-42.47	(5) Agency Contacts & Telephone Numbers Primary Contact: Herbert Abramson, Esquire, Counsel, State Board of Occupational Therapy Education and Licensure (717) 783-7200 Secondary Contact: Joyce McKeever, Esquire, Deputy Chief Counsel, Department of State (717) 783-7200	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> <input type="checkbox"/> By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>This rulemaking eliminates provisions which are outdated or have been rendered invalid, standardizes language, and adopts the most recent code of ethics in the profession. Especially noteworthy changes include (1) Proposed § 42.19 which would require licensees to notify the Board of name or address changes; (2) Proposed § 42.24 which would replace the current code of ethics with the latest version adopted by the American Occupational Therapy Association; (3) Proposed § 42.31(1) which would add sexual harassment or abuse to the definition of unprofessional conduct; and (4) the proposed deletion of §§ 42.32 and 42.33 (pertaining to the complaint process and formal hearings) because they are similar to regulations of the State Board of Medicine which had been declared invalid by the Pennsylvania Supreme Court.</p>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <p>The Board has authority to adopt regulations not inconsistent with the law as it deems necessary for the performance of its duties and the proper administration of the law under Section 5(b) of the Occupational Therapy Practice Act ("Act"), Act of June 15, 1982, P.L. 502, <u>as amended</u>, 63 P.S. §1505(b). Additionally, Section 6(a)(2) of the Act, 63 P.S. §1516(a)(2), anticipates that the Board will adopt a code of ethics in that this provision authorizes the Board to take disciplinary action against a licensee for violating a code of ethics adopted by the Board.</p>		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by any federal or state law or court order, or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This rulemaking clarifies regulations for both licensees and the public and eliminates outdated provisions or provisions rendered invalid by court decisions. The revisions will help licensees to understand their obligation to inform the Board of their current address and name. The public will be better protected and licensees will benefit from the explicit addition of sexual abuse and harassment to the kinds of conduct that may be considered unprofessional. Both licensees and the public will have the benefit of being able to find the most current code of ethics of the profession in the regulations of the Board.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Absent these regulations both the public and licensees would find the regulations partially outdated, less clear, and containing provisions which have been rendered invalid by court decisions.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The 6,719 licensed occupational therapists and 3370 licensed occupational therapy assistants will benefit from clearer, more up to date regulations. The general public will benefit by knowing that occupational therapists are obligated to conform to clearly enunciated ethical standards and not intimidate, harass, or or abuse a patient sexually.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effects are anticipated.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All licensed occupational therapists and assistants will be required to comply with this regulation. Board records show 10,089 persons hold occupational therapy and occupational therapy assistant licenses, and all of those licenses are active.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In drafting and promulgating the regulation the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the profession, educational institutions, and interested individuals. A list of the organizations and entities is attached.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no savings to the regulated community associated with compliance. Some licensees will bear a small additional cost because of the requirement that they inform the board in writing of changes in name or address within ten days of the change. At the present time many licensees immediately inform the Board of changes in name and address. Those who might otherwise have waited for the renewal might expend the cost of a postage stamp in keeping the Board informed. Licensees with access to fax machines and e-mail will have a smaller cost.

The regulations do not impose new legal, accounting or consulting procedures.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments would not be affected by this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

No costs or savings or legal, accounting or consulting activities are anticipated in connection with the implementation of this regulation.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	N/A	N/A	N/A	

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There should be no adverse effects associated with compliance of this regulation. The cost to licensees of providing written notice of change of name and address is de minimis compared to the benefit of being assured that they will receive mailings from the Board, including notice of renewals.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered. This rulemaking generally revises and updates existing regulations. The Board did not consider a non-regulatory alternative to the provision requiring licensees to apprise the Board of name and address changes because the Board wanted to establish the requirement as a binding norm.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Because the proposal generally only amends an existing regulatory scheme, the Board did not consider an alternative regulatory scheme.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The amendments do not affect any matter that might impact on Pennsylvania's competitiveness and are not expected to put Pennsylvania at a competitive disadvantage with other states. The amendments will generally update and clarify existing regulations.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The amendments will not affect regulations of other agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board has not scheduled public hearings or informational meetings. The Board already solicited input from major professional associations representing licensees (see Item 16), and is willing to hear input from interested parties at any of its regularly scheduled meetings.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendments will require licensees to notify the Board in writing of changes in name and address. No specific form will be required.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has perceived no special needs of any subset of its licensees for whom special provisions should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The amendments will be effective on publication of the final form regulation in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Board conducts ongoing review of its regulations to evaluate their continued efficacy.

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2136

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(DEPUTY ATTORNEY GENERAL)

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State Board of Occupational Therapy
Education and Licensure
(AGENCY)

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DOCUMENT/FISCAL NOTE NO. 16A-674

JUL 11 2000

DATE OF APPROVAL

DATE OF ADOPTION:

BY: [Signature]
Hanna Gruen

6/19/00
DATE OF APPROVAL

(Deputy General Counsel
(Chief Counsel,
Independent Agency
(Strike inapplicable
title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if
applicable. No Attorney
General approval or
objection within 30 day
after submission.

NOTICE OF PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE
49 PA. CODE, CHAPTER 42
GENERAL REVISIONS

PREAMBLE

The State Board of Occupational Therapy Education and Licensure (Board) proposes general revisions to its regulations governing occupational therapists and occupational therapy assistants at 49 Pa. Code, §§ 42.1-42.47, as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication of final form regulations in the Pennsylvania Bulletin.

B. Statutory Authority

The Board is authorized to promulgate and adopt regulations not inconsistent with law as it deems necessary for the performance of its duties and the proper administration of its enabling statute under section 5(b) of the Occupational Therapy Practice Act (Act) (63 P.S. § 1505(b)). Section 6(a)(2) of the Act (63 P.S. § 1516(a)(2)) anticipates that the Board will adopt a code of ethics in that this provision authorizes the Board to take disciplinary action against a licensee for violating a code of ethics adopted by the Board.

C. Background and Purpose

The proposed amendments result from the Board's systematic review of its regulations in accordance with the principles and requirements of Executive Order 1996-1 of February 6, 1996. The Executive Order directs executive agencies to evaluate existing regulations and amend and repeal regulations as necessary to comply with the order. In accordance with the Executive Order a draft of this proposal was sent on May 18, 1999, to 21 agencies, associations, and individuals who have been identified as interested parties or who have expressed an interest in this proposed rulemaking. The Board received comments as a result of this mailing and reviewed them at its meeting of June 19, 1999. The Board made a number of changes to the draft proposal as a result of the comments.

The Board seeks in these revisions to eliminate provisions which are outdated or have been rendered invalid, to standardize

and simplify language in provisions that maintain their validity, and to adopt the most recent code of ethics in the profession.

D. Description of Amendments

These revisions would make editorial changes to 12 sections (42.3, 42.11, 42.12, 42.14, 42.15, 42.21, 42.31, 42.42-42.45, and 42.47), make substantive changes to two sections (42.1 and 42.24), delete three sections (42.18, 42.32, and 42.33), and add one new section (42.19). Throughout the proposed rulemaking the phrase 'currently licensed occupational therapist or currently licensed occupational therapy assistant' is replaced with 'licensee.' This is the only change proposed for sections 42.42-42.47.

§42.1. Definitions

The proposed rulemaking would replace the definition of "AOTCB" with "NBCOT," National Board for Certification in Occupational Therapy, Inc. NBCOT is the current name of the national certifying agency which prepares the certifying examination and screens examination candidates to determine that they have met educational and fieldwork requirements. Throughout this proposed rulemaking "AOTCB" is replaced with "NBCOT".

The definitions section would also be amended to include definitions of "service recipient" and "surrogate." These terms are used in the 1994 revisions to the Occupational Therapy Code of Ethics which the Board proposes to adopt at § 42.24.

§42.3. Meetings of the Board

The proposed rulemaking would delete § 42.3(a) which relates to the frequency of Board meetings. This subsection paraphrases the first sentence in Section 4(e) of the Act (63 P.S. § 1504(e)) which requires the Board to meet at least twice a year and authorizes the Board to hold additional meetings whenever necessary. Section 42.3(a) is not serving a useful purpose in the Board's regulations. It neither interprets the Act nor reflects the actual frequency of Board meetings. The Board has been meeting approximately six times a year for more than a decade.

§42.14. Foreign-trained applicants.

The proposed rulemaking would make three changes to this section. As already indicated above, "AOTCB" is replaced with "NBCOT." Second, here and throughout the proposal, the word "trained" is replaced with "educated." The Board makes this change to avoid confusion. NBCOT uses the word "educated" in all information and instructions that it provides to persons who received their instruction in occupational therapy outside of the United States, its territories, and Canada and seek a NBCOT credentials evaluation. The term educated is equivalent to the term training used in Section 3 of the Act. (63 P.S. §§ 1503 and 1510) Moreover, the Board believes that the word "educated" is consistent with the professional nature of the preparation of occupational therapists and assistants.

Third, the Board proposes to delete § 42.14(a)(3). The credentialing evaluation performed by NBCOT assures that the applicant has completed a period of supervised fieldwork that meets the requirements of Section 8(3) of the Act (63 P.S. § 1508(3)) and is at least equivalent to the minimum fieldwork required for applicants educated in the United States under § 42.13(3). NBCOT requires at least 1,000 hours of fieldwork in order to establish eligibility to take the certification examination. Therefore, Section 42.14(a)(3) is unnecessary and potentially confusing.

§42.18. Licensure requirement

The Board proposes to delete this section as it duplicates the substance of Section 6(a) of the Act (63 P.S. § 1506(a)) without adding anything to assist in understanding that section and does not contain subsections (b) and (c) of Section 6 of the Act.

§42.19. Licensee's change of name or address; service of process and legal papers.

The proposed rulemaking would add this new section which is intended to put licensees on notice that they are responsible for notifying the Board in writing of changes in name and address and that they will bear the responsibility for any consequences if they do not tell the Board of changes. The proposed rulemaking further puts licensees on notice that their most recent name and address on file with the Board will be deemed their official name and address for the purpose of service of process and other legal papers. It is consistent with law governing service of process that if a document is sent to a licensee's last known address on file with the Board, that constitutes reasonable service. Kobylski v.

Commonwealth, Milk Marketing Board, 516 A.2d 75 (Pa. Cmwlth. 1986).

§42.24. Code of Ethics

The current code of ethics was promulgated by the American Occupational Therapy Association in 1988. AOTA is a nationwide professional association for occupational therapists and occupational therapy assistants. In promulgating its code of ethics AOTA seeks to promote and maintain high standards of behavior in occupational therapy.¹ AOTA revised its code in July 1994.² The proposed rulemaking updates the Board's code so that it will reflect the AOTA revised code. The Board proposes to adopt this code because it both reflects the Board's own view of ethical practice and will keep Pennsylvania's ethical standards consistent with the national standard. While much of the content of the proposed code is contained in the 1988 version, the proposed code contains a number of noteworthy changes. First, the proposed code contains six core principles rather than four. The principles include concern for the well-being of the recipients of services, respect for the rights of recipients of services, maintenance of high standards of competence, compliance with relevant law and regulations, provision of accurate information about occupational therapy services, and fair and discreet treatment of colleagues.

Several of the new provisions are noteworthy. The revised code requires licensees to provide services in an equitable manner for all individuals. (Principle 1.A.) This simple statement replaces a list of ten prohibited bases for discrimination found in the current Principle (1)(i).

The revised code explicitly prohibits a licensee from maintaining a relationship which exploits the recipient of services sexually, physically, emotionally, financially, socially or in any other manner. (Principle 1.B.) The same provision of the revised code directs licensees to avoid relationships or activities that interfere with professional judgment and objectivity. The current code requires a licensee to maintain a professional and goal-directed relationship with the recipient of services (Principle

¹See, www.aota.org., Practice and Ethics, Occupational Therapy Code of Ethics.

²"Occupational Therapy Code of Ethics," American Journal of Occupational Therapy, 48(11), 1037-1038.

(1)(v)) and to take all reasonable precautions to avoid harm to the recipient of services (Principle (1)(7)).

The revised code requires a licensee to "collaborate" with recipients of services in determining goals and priorities and to fully inform the recipients of services about the nature, risks and potential outcomes of any intervention. (Principles 2.A and 2.B) The current code requires a licensee to "include" the recipient of services in the treatment planning process and to fully inform him or her of the nature and potential outcome of treatment and to respect his or her right to refuse treatment. (Principles (1)(iv) and (1)(ii)) The revised code has a separate provision requiring a licensee to respect an individual's right to refuse services or involvement in research. (Principle 2.D)

The revised code requires a licensee to obtain "written informed consent" from subjects involved in research activities. (Principle 2.C) The current code requires a licensee to secure "the informed consent of potential subjects of education or research activities." (Principle (1)(iii))

The revised code requires a licensee to "protect the confidential nature of information gained from educational, practice, research and investigational activities." (Principle 2.E) The current code requires a licensee, except as otherwise required by law, to "protect the confidential nature of information gained from educational, practice and investigational activities unless sharing the information could reasonably be deemed necessary to protect an identifiable third party from harm." (Principle (1)(vi))

The revised code requires licensees to "use procedures that conform to the standards of acceptable and prevailing occupational therapy practice." (Principle 3.A) The current code requires the licensee to "function within the parameters of the licensee's competence and the standards of the profession." (Principle (2)(i))

§42.31. Unprofessional Conduct

The Board proposes to amend §42.31(1) to include among the enumerated examples of unprofessional conduct sexually harassing, abusing, or intimidating a patient. While sexually harassing or abusing a patient is universally condemned by the various health care professions, the Board believes that an explicit statement

linking sexual misconduct with unprofessional conduct will be useful to inform licensees that such conduct is incompatible with the professionalism expected of occupational therapists and assistants.

§§42.32 and 42.33. Complaint process and formal hearings

The Board proposes to delete these regulations. They are similar to the regulations of the State Board of Medicine which the Pennsylvania Supreme Court declared invalid in Lyness v. State Board of Medicine, 529 Pa. 535, 605 A.2d 1024 (1992). The Board does not believe that substitute regulations are necessary. The Board's procedures are adequately governed by (1) Section 16(b) of the Act which requires that actions of the Board be taken subject to the right of notice, hearing and adjudication and the right of appeal in accordance with the provisions of Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure) and (2) the General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1 et seq., which the Board has adopted by regulation at 49 Pa. Code § 42.2 (relating to applicability of general rules).

E. Fiscal Impact and Paperwork Requirement

The proposed rulemaking should not have any fiscal impact on the Commonwealth, its subdivisions, the regulated community, or the residents of the Commonwealth. It is unlikely that the proposed rulemaking will impose additional paperwork on anyone. The revised code of ethics requires a licensee to obtain "written informed consent" from subjects involved in research activities. It is likely that those engaged in research activities already do this.

F. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989, P.L. 73, No. 19 (71 P.S. §§745.1-745.15), the Board submitted a copy of this proposed regulation on July, 28, 2000 to the Independent Regulatory Review Commission and to the Chairman of

the House Committee on Professional Licensure and to the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the regulation, the Board has provided the Committees and the Commission with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed amendments, it will notify the Board within ten days of the close of the Committees' review period. The notification shall specify that regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of the objections prior to final publication of the regulation by the Board, the General Assembly and the Governor.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulation to Herbert Abramson, Counsel, State Board of Occupational Therapy, P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649 ~~within~~ **thirty (30) days** following publication for the proposed regulation in the Pennsylvania Bulletin. Please reference (16A-674) General Revisions when submitting comments.

ANNEX A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND
LICENSURE

GENERAL PROVISIONS

§42.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

AOTA - American Occupational Therapy Association.

[AOTCB - American Occupational Therapy Certification Board.]

* * * * *

Certification - Recognition by the [AOTCB] NBCOT that an individual is a registered occupational therapist or a certified occupational therapy assistant.

* * * * *

Licensure examination - The Certification Examination for Occupational Therapist, Registered, or the Certification Examination for Occupational Therapy Assistant prepared and administered by the [AOTCB] NBCOT.

NBCOT - National Board for Certification in Occupational Therapy, Inc.

Service recipient - The patient or client who directly receives care or services from the licensee.

Surrogate - The spouse, parent(s) and/or guardian(s) of the service recipient.

§42.3. Meetings of the Board.

[(a) The Board will meet at least twice each year, and may hold special meetings with the approval of the Commissioner whenever necessary to discharge its duties.]

* * * * *

LICENSURE

\$42.11. Licensure examination.

(a) The licensure examinations will be scheduled at least twice each year at times and places designated by the [AOTCB] NBCOT.

(b) The applicant shall apply to [AOTCB] NBCOT for admission to the licensure examination and shall pay the required fee at the direction of [AOTCB] NBCOT.

(c) The applicant is responsible for directing that [AOTCB] NBCOT send the applicant's examination results and other information requested to the Board.

(d) The passing score shall be that established by the [AOTCB] NBCOT for each administration of the licensure examination.

* * * * *

\$42.12. Waiver of licensure examination.

An applicant may be licensed without examination who presents one of the following to the Board:

* * * * *

(2) Satisfactory evidence that the applicant has successfully completed the [AOTCB] NBCOT Certification Examination and is currently certified by [AOTCB] NBCOT as a registered occupational therapist or an occupational therapy assistant.

* * * * *

\$42.14. Foreign-[trained]educated applicants.

(a) To apply for licensure, the foreign-[trained]educated applicant shall, before examination, submit evidence satisfactory to the Board, on forms provided by the Board, that the applicant meets the following requirements:

* * * * *

(2) Has completed educational requirements substantially equal to §42.13(2) (relating to application for licensure). The Board will accept a credentials evaluation done by the [Division of Credentialing of AOTA] NBCOT as proof that the foreign-[trained]educated applicant has completed the educational requirements.

[(3) Has completed up to 1 year of supervised fieldwork experience, as prescribed by the Board. The Board will accept supervised fieldwork experience approved by the World Federation of Occupational Therapists.]

(b) The foreign-[trained]educated applicant may be licensed by the Board, if he has complied with subsection (a) and has met one of the following criteria:

* * * * *

§42.15. Application for temporary license.

* * * * *

(c) The Board may also issue a temporary license to an applicant who:

* * * * *

(3) Submits evidence to the Board that the applicant is either licensed under the laws of the District of Columbia or of a state or territory of the United States which has licensure requirements substantially equal to the requirements of the act or has met the requirements for certification, as an occupational therapist registered or a certified occupational therapy assistant, established by [AOTCB] NBCOT.

* * * * *

§42.18. (Reserved) [Licensure requirement.]

Only individuals who are occupational therapists or occupational therapy assistants licensed by the Board may practice or represent themselves as able to practice occupational therapy in this Commonwealth. Except as provided in section 7 of the act (63 P.S. §1507), it is unlawful for unlicensed individuals to practice or represent themselves as able to practice occupational therapy.]

§42.19. Licensee's change of name or address; service of process and legal papers.

(a) A licensee's name and address on file with the Board shall be deemed the licensee's official name and address for the purpose of service of process and other legal papers.

(b) A licensee's name on file with the Board shall be the name that appears on the license unless that name is legally changed, in which case the licensee shall report the change and the reason for the change to the Board in writing within ten days of the change.

(c) A licensee who changes an address on file with the Board shall notify the Board in writing within ten days. Licensees who do not comply with this subsection shall bear full responsibility for failure to receive correspondence from the Board, including biennial renewal notification.

MINIMUM STANDARDS OF PRACTICE

§42.21. Delegation of duties to aides and other unlicensed personnel.

(a) A current[ly licensed occupational therapist or a currently licensed occupational therapy assistant] licensee may delegate to aides and other unlicensed personnel duties associated

with non-treatment aspects of occupational therapy services if the following conditions are met:

* * * * *

§42.24. Code of Ethics.

Purpose. The Board adopts the following Code of Ethics to establish and maintain a high standard of integrity and dignity in the profession and to protect the public against unprofessional conduct on the part of [occupational therapists and occupational therapy assistants]licensees. The Code of Ethics is adapted with permission from the "Occupational Therapy Code of Ethics" of the American Occupational Therapy Association (revised [April 1988]July 1994).

[(1) *Principle 1. Beneficence/autonomy.* A licensee shall demonstrate a concern for the welfare and dignity of the recipients of services, including patients/clients and subjects involved in education and research activities.

(i) A licensee shall provide services without discriminating on the basis of race, creed, national origin, sex, age, handicap, disease, social status, financial status or religious affiliation.

(ii) A licensee shall inform patients/clients of the nature and potential outcomes of treatment and shall respect the right of potential patients/clients to refuse treatment.

(iii) A licensee shall secure the informed consent of potential subjects of education or research activities and shall respect their right to withdraw from participation.

(iv) A licensee shall include patients/clients in the treatment planning process.

(v) A licensee shall maintain professional and goal-directed relationships with patients/clients and with subjects involved in education or research activities.

(vi) Except as otherwise required by law, a licensee shall protect the confidential nature of information gained from educational, practice and investigational activities

unless sharing the information could reasonably be deemed necessary to protect an identifiable third party from harm.

(vii) A licensee shall take all reasonable precautions to avoid harm to patients/clients and to subjects involved in education or research activities, or detriment to their property.

(2) *Principle 2. Competence.* A licensee shall actively maintain high standards of professional competence.

(i) A licensee shall function within the parameters of the licensee's competence and the standards of the profession.

(ii) A licensee shall refer patients/clients to other service providers or consult with other service providers when additional knowledge and expertise is required.

(iii) A licensee shall accurately record and report information related to occupational therapy services provided to patients/clients.

(iv) A licensee shall require those whom the licensee supervises in the provision of occupational therapy services to adhere to this Code of Ethics.

(3) *Principle 3. Public information.* A licensee shall provide accurate information about occupational therapy services.

(i) A licensee shall accurately represent the licensee's competence and training.

(ii) A licensee may not use or participate in the use of a form of communication that contains a false, misleading, or deceptive statement or claim.

(4) *Principle 4. Professional relationships.* A licensee shall function with discretion and integrity in relations with colleagues and other professionals.

(i) A licensee shall report illegal, incompetent or unethical practice by colleagues or other professionals to the appropriate authority.

(ii) Except as otherwise required by law, a licensee may

not disclose confidential information when participating in reviews of peers, programs or systems.

(iii) A licensee who employs or supervises colleagues shall provide appropriate supervision as described in §§42.22 and 42.23 (relating to supervision of occupational therapy assistants; and supervision of applicants with temporary licenses).]

Principle 1. Licensees shall demonstrate a concern for the well-being of the recipients of their services. (beneficence).

- A. Licensees shall provide services in an equitable manner for all individuals.
- B. Licensees shall maintain relationships that do not exploit the recipient of services sexually, physically, emotionally, financially, socially or in any other manner. Licensees shall avoid those relationships or activities that interfere with professional judgment and objectivity.
- C. Licensees shall take all reasonable precautions to avoid harm to the recipient of services or to his or her property.

Principle 2. Licensees shall respect the rights of the recipients of their services. (autonomy, privacy, confidentiality)

- A. Licensees shall collaborate with service recipients and/or their surrogate(s) in determining goals and priorities throughout the intervention process.
- B. Licensees shall fully inform the service recipients and/or their surrogates of the nature, potential risks and outcomes of any interventions.
- C. Licensees shall obtain written informed consent from subjects involved in research activities indicating they have been fully advised of the potential risks and outcomes.

- D. Licensees shall respect the individual's right to refuse professional services or involvement in research or educational activities.
- E. Licensees shall protect the confidential nature of information gained from educational, practice, research and investigational activities.

Principle 3. Licensees shall achieve and continually maintain high standards of competence. (duties)

- A. Licensees shall use procedures that conform to the standards of acceptable and prevailing occupational therapy practice.
- B. Licensees shall take responsibility for maintaining competence by participating in professional development and education activities.
- C. Licensees shall perform their duties on the basis of accurate and current information.
- D. Licensees shall protect service recipients by ensuring that duties assumed by or assigned to other licensees are commensurate with their qualifications and experience.
- E. Licensees shall provide appropriate supervision to individuals for whom the licensees have supervisory responsibility.
- F. Licensees shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required.

Principle 4. Licensees shall comply with laws and regulations governing practice of occupational therapy in the Commonwealth. (justice)

- A. Licensees shall understand and abide by applicable local, state and federal laws.
- B. Licensees shall inform employers, employees, and colleagues about those laws and regulations that apply to

the profession of occupational therapy.

- C. Licensees shall require those they supervise in occupational therapy related activities to adhere to the Board's regulations.
- D. Licensees shall accurately record and report all information related to professional activities.

Principle 5. Licensees shall provide accurate information about occupational therapy services. (veracity)

- A. Licensees shall accurately represent their qualifications, education, experience, training and competence.
- B. Licensees shall disclose any affiliations that may pose a conflict of interest.
- C. Licensees shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive or unfair statements or claims.

Principle 6. Licensees shall treat colleagues and other professionals with fairness, discretion and integrity. (fidelity, veracity)

- A. Licensees shall safeguard confidential information about colleagues and staff members.
- B. Licensees shall accurately represent the qualifications, views, contributions and findings of colleagues.
- C. Licensees shall report any breaches of the Board's law and regulations to the Board.

DISCIPLINARY PROCEEDINGS

§42.31. Unprofessional conduct.

[An occupational therapist]A licensee who engages in unprofessional conduct is subject to disciplinary action under section 16 of the act (63 P.S. §1516). Unprofessional conduct includes, but is not limited to, the following:

(1) Harassing, abusing or intimidating a patient[, either] physically, [or] verbally[.] or sexually.

* * * * *

\$42.32. (Reserved). [Complaint process.]

(a) A person, firm, corporation or public office may submit a written complaint to the complaints officer of the Bureau of Professional and Occupational Affairs charging a licensee with a violation under section 16(a) of the act (63 P.S. §1516) or unprofessional conduct as set forth in §42.31 (relating to unprofessional conduct) specifying the grounds.

(b) The complaints officer will forward the complaint to the Board prosecutor who, together with consultants or investigators who may be required, will make a preliminary determination as to whether the complaint merits consideration. If the complaint on its face establishes a violation of the act, the Board prosecutor will order a reasonable inquiry or investigation that the prosecutor deems necessary to determine the truth and validity of the allegations.

(c) The Board prosecutor will provide reports to the Board at its regular meetings on the number, nature, procedure and handling of complaints received and will give to the Board a recommendation for the disposition of a complaint. The prosecutor's recommendations to the Board and information, documents, records and other materials obtained during the course of an investigation will be considered confidential unless admitted as evidence during the course of a formal disciplinary hearing, except that information and documents classified under statute as public information or public documents will be made available for public inspection.

(d) After consideration of the prosecutor's recommendation, the Board will authorize the disposition of the complaint. If the Board authorizes dismissal, the complainant will be so notified in writing. If the Board authorizes the prosecutor to proceed with a formal hearing, the Board will determine whether the hearing will be held before Board members or a Board member, or before a designated hearing examiner.

(e) At any stage of the handling of a complaint, the Board prosecutor may request authorization from the Board to enter into

negotiations with the respondent or his counsel to facilitate the disposition of a case by a stipulation and consent agreement. If the Board approves the stipulation and consent agreement, it will then issue an order adopting the terms and conditions, subject to approval as to legality by the Office of General Counsel. Unless the stipulation and consent agreement is accepted by the Board and an order issued, the agreement and the terms of the agreement will be confidential. Admissions made by a respondent in a stipulation and consent agreement or during the course of the negotiations may not be used against him in a formal disciplinary proceeding if a prehearing settlement cannot be reached.

(f) Prior to the approval of a stipulation and consent agreement, the Board may hold an informal conference, which will be confidential and not open to the public, to review the suggested disposition. Admissions made by a respondent at the informal conference before the Board will not be used against him in formal disciplinary proceedings. The Board prosecutor may introduce evidence other than the respondent's admissions to prove factual matters disclosed during the informal conference or in the course of negotiating a stipulation and consent agreement.

(g) Prior to authorization of a formal hearing, the Board prosecutor may arrange an investigatory conference to gather factual data and to facilitate an eventual hearing. This conference will be confidential and will not be open to the public. The Board counsel and the consultant or investigator assigned to the case will be required to be present. The board prosecutor will give timely notice of the conference to the licensee involved. The notice will include a statement of the nature of the issues to be discussed and will inform the licensee that he has the right to be represented by counsel at the conference. Statements made at the conference may not be introduced at a hearing on the merits without the consent of all parties to the hearing. Complaints may be resolved at a conference through an agreed order only if the order is ratified by the Board and approved as to legality by the Office of General Counsel. The Board will authorize the Board counsel to set a formal hearing in the matter, either before the Board or a designated hearing examiner, if it determines, based upon the Board prosecutor's summary of fact and law, that such hearing is warranted.

(h) Subsections (e)-(g) supplement 1 Pa. Code §§35.111-35.116 (relating to prehearing conferences).]

§42.33. (Reserved). [Formal hearings.]

(a) The Board will issue the administrative complaint and rule to show cause prepared by the prosecutor to the respondent, notifying him of the following:

- (1) The factual allegations and the charges filed against him.
- (2) The time and place of the hearing.
- (3) The right to be represented by counsel.
- (4) The right to appear personally.
- (5) The right to cross-examine witnesses testifying against him.
- (6) The right to call witnesses in his own behalf.
- (7) The right to review and object to documentary evidence produced against him.
- (8) The procedure to be followed in requesting a continuance.

(b) A verbatim transcript of the proceeding will be made.

(c) The time of the hearing will be fixed by the Board or the designated hearing examiner as soon as convenient, but not earlier than 20 days after service of the administrative complaint and rule to show cause upon the respondent. The Board or the designated hearing examiner will issue subpoenas for the respondent only upon a showing by the respondent that a necessary witness will not appear unless subpoenaed. The Board will look to the courts of the Commonwealth to enforce its subpoenas.

(d) Within a reasonable time after holding the hearing, under 2 Pa.C.S. §§501-508 and 701-704 (relating to Administrative Agency Law), the Board will prepare a written adjudication of the decision reached, supported with findings of fact and conclusions of law. An order disposing of the case will be transmitted to the parties of record. The Board will retain copies of the adjudication and order and items offered into evidence and considered in reaching a decision.

(e) Formal disciplinary proceedings will be open to the public.

(f) Subsections (a)-(d) supplement 1 Pa. Code §§35.121-35.133 (relating to hearing and transcript).]

CHILD ABUSE REPORTING REQUIREMENTS

§42.42. Suspected child abuse - mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. §6311 (relating to persons required to report suspected child abuse), [occupational therapists or occupational therapist assistants]licensees who, in the course of the employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [Occupational therapists or occupational therapist assistants]Licensees who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the [occupational therapist or occupational therapist assistant]licensee, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

* * * * *

§42.43. Photographs, medical tests and X-rays of child subject to

report.

A[n occupational therapist or occupational therapist assistant] licensee may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical test on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§42.44. Suspected death as a result of child abuse - mandated reporting requirement.

A[n occupational therapist or occupational therapist assistant] licensee who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§42.45. Immunity from liability.

Under 23 Pa.C.S. §6318 (relating to immunity from liability), a[n occupational therapist or occupational therapist assistant] licensee who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the [occupational therapist's or occupational therapist assistant] licensee's actions. For the purpose of any civil or criminal proceeding, the good faith of the [occupational therapist or occupational therapist assistant] licensee shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a[n occupational therapist's or occupational therapist assistant] licensee's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an

instance of suspected child abuse or the taking of photographs.

* * * * *

§42.47. Noncompliance.

(a) *Disciplinary action.* A[n occupational therapist or occupational therapist assistant] licensee who willfully fails to comply with the reporting requirements in §§42.42-42.44 (relating to suspected child abuse - mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse - mandated reporting requirement) will be subject to disciplinary action under section 16 of the act (63 P.S. §1516).

(b) *Criminal penalties.* Under 23 Pa.C.S. §6319 (relating to penalties for failure to report), a[n occupational therapist or occupational therapist assistant] licensee who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3658

July 28, 2000

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Rulemaking of the State Board of Occupational Therapy
General Revisions: 16A-674

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Occupational Therapy pertaining to general revisions.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,


Hanna Gruen, Chairperson
State Board of Occupational Therapy

HG:HA:eco
Enclosure

c: John T. Henderson, Jr., Chief Counsel
Department of State
Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Bureau of Professional and Occupational Affairs
Herbert Abramson, Counsel
State Board of Occupational Therapy
State Board of Occupational Therapy



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3658

July 28, 2000

The Honorable Clarence D. Bell, Chairman
Consumer Protection and Professional Licensure Committee
SENATE OF PENNSYLVANIA
20 Main Capitol, East Wing
Harrisburg, Pennsylvania 17120

Re: Proposed Rulemaking of the State Board of Occupational Therapy
General Revisions: 16A-674

Dear Senator Bell:

Enclosed are five copies of a proposed rulemaking package of the State Board of Occupational Therapy pertaining to general revisions.

The Board will be pleased to provide whatever information the Committee may require during the course of its review of this rulemaking.

Sincerely,

Hanna Gruen, Chairperson
State Board of Occupational Therapy

HG:HA:eco
Enclosure

c: John T. Henderson, Jr., Chief Counsel
Department of State
Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
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Herbert Abramson, Senior Counsel in Charge
Bureau of Professional and Occupational Affairs
Herbert Abramson, Counsel
State Board of Occupational Therapy
State Board of Occupational Therapy



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3658

July 28, 2000

The Honorable Lisa M. Boscola, Minority Chairperson
Consumer Protection and Professional Licensure Committee
SENATE OF PENNSYLVANIA
183 Main Capitol
Harrisburg, Pennsylvania 17120

Re: Proposed Rulemaking of the State Board of Occupational Therapy
General Revisions: 16A-674

Dear Senator Boscola:

Enclosed is a copy of a proposed rulemaking package of the State Board of Occupational Therapy pertaining to general revisions.

The Board will be pleased to provide whatever information the Committee may require during the course of its review of the rulemaking.

Sincerely,

Hanna Gruen, Chairperson
State Board of Occupational Therapy

HG:HA:eco

Enclosure

c: John T. Henderson, Jr., Chief Counsel
Department of State
Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Bureau of Professional and Occupational Affairs
Herbert Abramson, Counsel
State Board of Occupational Therapy
State Board of Occupational Therapy



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3658

July 28, 2000

The Honorable Mario J. Civera, Jr., Chairman
Professional Licensure Committee
PENNSYLVANIA HOUSE OF REPRESENTATIVES
315-D Main Capitol
Harrisburg, Pennsylvania 17120

Re: Proposed Rulemaking of the State Board of Occupational Therapy
General Revisions: 16A-674

Dear Representative Civera:

Enclosed is a copy of a proposed rulemaking package of the State Board of Occupational Therapy pertaining to general revisions.

The Board will be pleased to provide whatever information the Committee may require during the course of its review of the rulemaking.

Sincerely,


Hanna Gruen, Chairperson
State Board of Occupational Therapy

HG:HA:eco

Enclosure

c: John T. Henderson, Jr., Chief Counsel
Department of State
Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Bureau of Professional and Occupational Affairs
Herbert Abramson, Counsel
State Board of Occupational Therapy
State Board of Occupational Therapy



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OCCUPATIONAL THERAPY

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3658

July 28, 2000

The Honorable William W. Rieger, Minority Chairman
Professional Licensure Committee
PENNSYLVANIA HOUSE OF REPRESENTATIVES
327-C Main Capitol
Harrisburg, Pennsylvania 17120

Re: Proposed Rulemaking of the State Board of Occupational Therapy
General Revisions: 16A-674

Dear Representative Rieger:

Enclosed is a copy of a proposed rulemaking package of the State Board of Occupational Therapy pertaining to general revisions.

The Board will be pleased to provide whatever information the Committee may require during the course of its review of the rulemaking.

Sincerely,

Hanna Gruen, Chairperson
State Board of Occupational Therapy

HG:HA:eco

Enclosure

c: John T. Henderson, Jr., Chief Counsel
Department of State
Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Bureau of Professional and Occupational Affairs
Herbert Abramson, Counsel
State Board of Occupational Therapy
State Board of Occupational Therapy

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

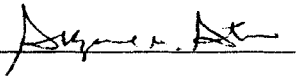
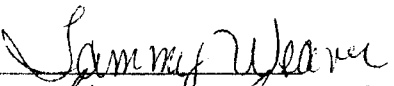
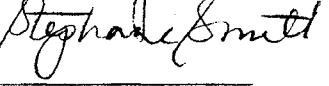
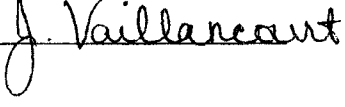
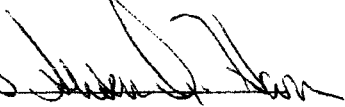
RECEIVED

I.D. NUMBER: 16A-674 2000 JUL 28 AM 11:45
SUBJECT: State Board of Occupational Therapy Education & Licensure - General Revisions ...
AGENCY: DEPARTMENT OF STATE REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/28/00		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
7/28/00		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
7/28/00		
7/28/00		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
7/28/00		LEGISLATIVE REFERENCE BUREAU

July 17, 2000