WEST VIRGINIA CODE CHAPTER 30 ARTICLE 28

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§30-28-1. Short title.

This article is known and may be cited as the "West Virginia Occupational Therapy Practice Act."

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§30-28-2. Applicable law.

The practices licensed under the provisions of this article and the West Virginia Board of Occupational Therapy are subject to the provisions of article one of this chapter, the provisions of this article, and any rules promulgated hereunder.

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§30-28-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Association" means the West Virginia Occupational Therapy Association.

"Board" means the West Virginia Board of Occupational Therapy.

"Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company, or other entity doing business in the State of West Virginia.

"Client-related tasks" means tasks which are related to treatment and which, when performed by an occupational therapy aide, must be performed under direct supervision, including routine transfers, routine care of a patient's personal needs during the course of treatment, execution of an established routine activity or exercise, and assisting the supervising occupational therapist or occupational therapy assistant as directed during the course of treatment.

"Compact privilege" means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.

"Direct supervision" means the actual physical presence of a licensed supervising occupational therapist or licensed occupational therapy assistant, and the specific delineation of tasks and responsibilities for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the limited permit holder, occupational therapy student, or aide. Direct supervision includes direct close supervision and direct continuous supervision.

"Direct close supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is in the building and has daily direct contact at the site of work.

"Direct continuous supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is physically present and in direct line of sight of the occupational therapy student or aide.

"General supervision" means initial direction and periodic inspection of the activities of a licensed occupational therapist assistant by the supervising licensed occupational therapist, but does not necessarily require constant physical presence on the premises while the activities are performed.

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"License" means a valid and current license issued by the board under the provisions of this article.

"Nonclient-related tasks" means tasks which are not related to treatment and do not require independent clinical reasoning, including clerical and maintenance activities, housekeeping, preparation of the work area or equipment, transporting patients, and ordering supplies, and which, when performed by an occupational therapy aide, must be performed under general supervision.

"Occupational therapist" means a person licensed by the board under the provisions of this article to engage in the practice of occupational therapy.

"Occupational therapy assistant" means a person licensed by the board under the provisions of this article to assist in the practice of occupational therapy under the general supervision of an occupational therapist.

"Occupational therapy aide" means a person who may provide nonclient-related tasks under general supervision, or specifically delegated client-related tasks, subject to the conditions set forth in subsection (f), section four of this article, under direct supervision of an occupational therapist or an occupational therapy assistant, in accordance with the provisions of this article.

"The practice of occupational therapy" means the therapeutic use of everyday life activities or occupations to address the physical, cognitive, psychosocial, sensory, and other aspects of performance of individuals or groups of individuals, including those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction, to promote health, wellness and participation in roles and situations in home, school, workplace, community, and other settings.

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§30-28-4. Scope of practice; license and supervision requirements.

(a) The scope of practice of occupational therapy includes, but is not limited to:

(1) Methods or strategies selected to direct the process of interventions such as:

(A) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;

(B) Compensation, modification, or adaptation of activity or environment to enhance performance;

(C) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline;

(D) Health promotion and wellness to enable or enhance performance in everyday life activities; and

(E) Prevention of barriers to performance, including disability prevention.

(2) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure and social participation, including:

(A) Client factors, including body functions and body structures;

(B) Habits, routines, roles and behavior patterns;

(C) Cultural, physical, environmental, social and spiritual contexts and activity that affect performance; and

(D) Performance skills, including motor, process and communication/interaction skills.

(3) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure and social participation, including:

(A) Therapeutic use of occupations and preparatory, adjunctive and functional activities;

(B) Training in self-care, self-management home management and community/work reintegration;

(C) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions, visual, vestibular and behavioral skills;

(D) Therapeutic use of self, including one’s personality, insights, perceptions and judgments, as part of the therapeutic process;

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(E) Education and training of individuals, including family members, care givers and others;

(F) Care coordination, case management and transition services;

(G) Consultative services to groups, programs, organizations or communities;

(H) Modification of environments (home, work, school or community) and adaptation of processes, including the application of ergonomic principles;

(I) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, orthotic devices and training in the use of prosthetic devices to enhance occupational performance;

(J) Assessment, recommendation and training in techniques to enhance functional mobility, including wheelchair management;

(K) Community mobility and reentry;

(L) Management of feeding, eating and swallowing to enable eating and feeding performance; and

(M) Application of physical agent modalities, and use of a range of specific therapeutic procedures and techniques to enhance occupational performance skills. Use of physical agent modalities by occupational therapy assistants must be consistent with their education (e.g. superficial thermal and mechanical modalities) and used under the general supervision of an occupational therapist. The use of deep thermal or electrical modalities may only be performed by the occupational therapy assistant under the direct supervision of an occupational therapist, until the board shall promulgate rules as well as establish competency standards for the use of the modalities.

(b) No person may engage in the practice of occupational therapy or present herself or himself as an occupational therapist or occupational therapy assistant in this state, or use the words "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant," or "occupational therapy aide," or the letters "O.T.," "L.O.T.," "O.T.R.," "O.T.A.," "L.O.T.A.," "C.O.T.A.," or any other words, letters, abbreviations or insignia indicating or implying that he or she is an occupational therapist or occupational therapy assistant, unless he or she holds a valid, current license issued in accordance with the provisions of this article, which has not expired, been suspended or revoked.

(c) No business entity may advertise or otherwise offer to provide or convey the impression that it is providing occupational therapy unless an individual holding a current valid license or permit under this article renders the occupational therapy services to which reference is made.

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(d) An occupational therapy assistant may assist in the practice of occupational therapy under the general supervision of an occupational therapist.

(e) An occupational therapist or an occupational therapy assistant may delegate nonclient-related tasks to an occupational therapy aide only under the following conditions:

(1) The occupational therapy aide functions under the general supervision of either the occupational therapist or the occupational therapy assistant who is under the general supervision of the occupational therapist; and

(2) The occupational therapy aide provides only tasks for which he or she has been trained and has demonstrated competence.

(f) An occupation therapist or an occupational therapy assistant may delegate specifically selected client-related tasks to an occupational therapy aide only under the following conditions:

(1) The occupational therapy aide functions under the direct continuous supervision of either the occupational therapist or the occupational therapy assistant that is under the general supervision of the occupational therapist;

(2) The occupational therapy aide provides only tasks for which he or she has been trained and has demonstrated competence;

(3) The outcome anticipated for the delegated task is predictable;

(4) The client and the environment are stable and will not require judgment, interpretation or adaptation by the occupational therapy aide; and

(5) The supervising occupational therapist is responsible for the tasks delegated to the occupational therapy aide.

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§30-28-4a. West Virginia Board of Occupational Therapy criminal history record checks.

(a) The West Virginia Board of Occupational Therapy is authorized to require state and national criminal history record checks for the purpose of issuing compact privileges. The West Virginia Board of Occupational Therapy shall require an applicant, including occupational therapists and occupational therapy assistants, as a condition of eligibility for compact privilege, to submit to a state and national criminal history record check as set forth in this section.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a compact privilege.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of §29B-1-1 *et seq*. of this code.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(f) The board may propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq*. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2026.

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§30-28-5. West Virginia Board of Occupational Therapy.

(a) The West Virginia Board of Occupational Therapy is continued with the following five members appointed by the Governor by and with the advice and consent of the Senate:

(1) Three licensed occupational therapists;

(2) One licensed occupational therapy assistant; and

(3) One citizen member, who is not licensed under the provisions of this article.

(b) The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services to the public, teaching, consulting or conducting research in occupational therapy for at least three years immediately preceding their appointments.

(c) No board member may serve as an officer of the West Virginia Occupational Therapy Association concurrently with his or her service on the board.

(d) The members of the board in office on December 31, 2008, shall, unless sooner removed, continue to serve until their respective terms expire or their successors have been appointed and qualified.

(e) The term shall be for three years commencing on January 1. A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and qualified.

(f) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than three years immediately preceding the appointment.

(g) Each member of the board must be a resident of this state during the appointment term.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson who serves at the will

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of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

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§30-28-6. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by legislative rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings and conduct hearings;

(2) Establish requirements for licenses and permits;

(3) Establish procedures for submitting, approving and rejecting applications for licenses and permits;

(4) Determine the qualifications of any applicant for a license or permit;

(5) Propose rules for legislative approval relating to professional conduct and ethical standards of practice;

(6) Communicate disciplinary actions to relevant state and federal authorities, the National Board for Certification in Occupational Therapy (NBCOT), the American Occupational Therapy Association (AOTA) and other applicable authorities when public safety is at risk;

(7) Maintain an office and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce the provisions of this article including, but not limited to, the executive secretary;

(8) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(9) Conduct disciplinary hearings of persons regulated by the board;

(10) Determine disciplinary action and issue orders;

(11) Institute appropriate legal action for the enforcement of the provisions of this article;

(12) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(13) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(14) Establish by legislative rule the continuing education and competency requirements for licensees;

(15) Issue, renew, combine, deny, suspend, revoke or reinstate licenses and permits;

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(16) Establish a fee schedule;

(17) Take all other actions necessary and proper to effectuate the purposes of this article; and

(18) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

(c) The board may:

(1) Approve and contract with third parties to administer the examinations required under the provisions of this article;

(2) Sue and be sued in its official name as an agency of this state; and

(3) Confer with the Attorney General or his or her assistants in connection with legal matters and questions.

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§30-28-7. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and permits;

(2) Designate third parties to establish educational requirements and to prepare and/or administer examinations and reexaminations;

(3) Procedures for the issuance and renewal of a license, temporary license and limited permit;

(4) A fee schedule;

(5) Continuing education and competency requirements for licensees;

(6) Establishment of competency standards;

(7) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee or permittee;

(8) Requirements for reinstatement of revoked licenses; and

(9) Any other rules necessary to effectuate the provisions of this article.

(b) The board is authorized to promulgate emergency rules in accordance with section fifteen, article three, chapter twenty-nine-a of this code to establish competency standards for advance treatment techniques as set forth in subdivision six, subsection (a) of this section.

(c) All rules in effect on the effective date of this article shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

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§30-28-8. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the state Treasury designated the "West Virginia Board of Occupational Therapy", which is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the state Treasury.

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§30-28-8a. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer occupational therapist license for occupational therapists retired or retiring from the active practice of occupational therapy who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer occupational therapist license shall be issued by the West Virginia Board of Occupational Therapy to occupational therapists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the occupational therapist's acknowledgment that:

(1) The occupational therapist's practice under the special volunteer occupational therapist license will be exclusively devoted to providing occupational therapy care to needy and indigent persons in West Virginia;

(2) The occupational therapist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any occupational therapy services rendered under the special volunteer occupational therapist license;

(3) The occupational therapist will supply any supporting documentation that the board may reasonably require; and

(4) The occupational therapist agrees to continue to participate in continuing education as required by the board for a special volunteer occupational therapists license.

(b) Any person engaged in the active practice of occupational therapy in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the occupational therapist's office or the clinical setting.

(c) Any occupational therapist who renders any occupational therapy service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer occupational therapist license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the occupational

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therapy service at the clinic unless the act or omission was the result of the occupational therapist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the occupational therapist and the clinic pursuant to which the occupational therapist will provide voluntary uncompensated occupational therapy services under the control of the clinic to patients of the clinic before the rendering of any services by the occupational therapist at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than $1 million per occurrence.

(d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an occupational therapist rendering voluntary occupational therapy services at or for the clinic under a special volunteer occupational therapist license authorized under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section eight of this article and in the legislative rules promulgated thereunder, excepting the fee requirements of subsection (a), section eleven of this article and of the legislative rules promulgated by the board relating to fees.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer occupational therapist license to any occupational therapist whose occupational therapist license is or has been subject to any disciplinary action or to any occupational therapist who has surrendered an occupational therapist license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her occupational therapist license, or who has elected to place an occupational therapist license in inactive status in lieu of having a complaint initiated or other action taken against his or her occupational therapist license, or who has been denied an occupational therapist license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any occupational therapist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an occupational therapist who holds a special volunteer occupational therapist license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

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§30-28-9. Persons and practices not affected.

This article does not prevent or restrict the practice, services or activities of:

(1) Any person licensed under any other law of this state performing services within the authorized scope of practice for which he or she is licensed;

(2) Any person pursuing a course of study leading to a degree in Occupational Therapy from an accredited educational program if the person acts under the supervision of a clinical supervisor or instructor of the accredited education program and is designated by a title which clearly indicates his or her status as a student; or

(3) Any person fulfilling the supervised fieldwork experience requirements of section ten of this article.

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§30-28-10. Qualifications of applicants for license.

To be eligible for a license to engage in the practice of occupational therapy, the applicant must:

(1) Be of good moral character;

(2) Have successfully completed the academic requirements of an educational program for Occupational Therapists or Occupational Therapy Assistants that is accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE) or its predecessor organizations;

(3) Have successfully completed a period of supervised fieldwork experience required by the recognized educational institution where he or she met the academic requirements;

(4) Have passed an examination approved by the board;

(5) Have filed an application on forms provided by the board; and

(6) Have paid the applicable fee.

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§30-28-11. Examination.

(a) A person who has met the requirements of subsections (1), (2) and (3), section ten of this article, may make application for examination.

(b) Each applicant for licensure shall be examined by written or computerized examination to test his or her knowledge of the basic and clinical sciences relating to occupational therapy, and occupational therapy theory and practice, including the professional skills and judgment of the applicant in the utilization of occupational therapy techniques and methods, and other subjects the board may require to determine the fitness for practice of the applicant. The examination may be administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT) or another nationally recognized credentialing body as approved by the board.

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§30-28-12. Licensees from other jurisdictions; internationally educated applicants.

(a) The board may issue a license to practice to any applicant who presents proof of current licensure as an occupational therapist or an occupational therapy assistant in another jurisdiction which requires standards for licensure considered by the board or by a board-approved credentialing agency to be equivalent to the requirements for licensure in this state and who meets the requirements of section ten of this article.

(b) The board may grant a license to an applicant who was educated outside of the United States or its territories in an educational program whose standards are determined by the board or by a board-approved credentialing agency to be equivalent to the standards required for licensure in this state and who meets the requirements of section ten of this article.

(c) In its discretion, the board may examine a person by a written, oral or skills test for licensing under this section, and may enter into agreements for reciprocal licensing with other jurisdictions having substantially similar requirements for licensure.

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§30-28-13. Issuance of a license, limited permit and temporary license.

(a) The board shall issue a license to any person who meets the requirements of this article upon payment of the license fee prescribed.

(b) The board may issue a limited permit to persons who have completed the education and fieldwork experience requirements of this article. The holder of a limited permit may practice occupational therapy only under the direct close supervision of an occupational therapist who holds a current license in this state. A limited permit is not renewable, and is valid for ninety days: Provided, That the limited permit expires immediately if the holder receives notification of a failing score on the examination.

(c) The board may issue a temporary license to an occupational therapist or an occupational therapy assistant who is licensed and in good standing in a jurisdiction whose standards are determined by the board or by a board-approved credentialing agency to be equivalent to the standards required for licensure in this state and who has submitted an application and the required fee. The holder of a temporary license may practice occupational therapy only in accordance with the provisions of this article. A temporary license is nonrenewable and is valid for thirty days.(d) The board shall prescribe the form of licenses. The licensee shall conspicuously display the license or a copy of the license at his or her principal place of employment. The licensee shall produce the original license upon the request of the board.

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§30-28-14. Renewal of license; renewal of lapsed license; suspension, revocation and refusal to renew; reinstatement of revoked license.

(a) Licenses may be renewed biennially upon documentation of required continuing education and payment of a renewal fee.

(b) A license which has lapsed may be renewed within one year of its expiration date in the manner set by the board. After the expiration of one year, a license may be renewed only by complying with the requirements relating to the issuance of an original license.

(c) The board may suspend, revoke or refuse to renew a license for any reason which would justify the denial of an original application for licensure.

(d) The board may consider the reinstatement of a license which has been revoked upon a showing that the applicant can resume practicing with reasonable skill and safety.

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§30-28-15. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.

[Repealed].

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§30-28-16. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall, upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated any provision of subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated any provision of this subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license of, impose probationary conditions upon or take disciplinary action against, any licensee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

(4) A violation of a lawful order or legislative rule of the board;

(5) Providing substandard care as an Occupation Therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to a patient is established;

(6) Providing substandard care as an Occupational Therapy Assistant, including exceeding the authority to perform components of intervention selected and delegated by the

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supervising Occupational Therapist regardless of whether actual injury to a patient is established;

(7) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills or abilities to perform those responsibilities;

(8) Failing to provide appropriate supervision to an Occupational Therapy Assistant or Aide in accordance with this article and legislative rules of the board;

(9) Practicing as an Occupational Therapist or Occupational Therapy Assistant when competent services to recipients may not be provided due to the therapist's own physical or mental impairment;

(10) Having had an Occupational Therapist or Occupational Therapy Assistant license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked or suspended by the proper authorities of another jurisdiction;

(11) Engaging in sexual misconduct. For the purposes of this subdivision, sexual misconduct includes:

(A) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person; or

(B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients;

(12) Aiding or abetting a person who is not licensed as an Occupational Therapist or Occupational Therapy Assistant in this state and who directly or indirectly performs activities requiring a license;

(13) Abandoning or neglecting a patient or client under and in need of immediate professional care without making reasonable arrangements for the continuation of care; or

(14) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, effective July 15, 2009, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

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(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time; or

(7) Other disciplinary action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

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§30-28-17. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, the administrative law judge shall prepare a proposed written order at the conclusion of a hearing containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee or permittee has violated any provision of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

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§30-28-18. Judicial review.

Any licensee or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

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§30-28-19. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee or permittee has committed a criminal offense under this article, the board may bring the information to the attention of an appropriate law-enforcement official.

(b) Effective July 15, 2009, a person violating a provision of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than $500 nor more than $1,000 or confined in jail not more than six months, or both fined and confined.

WV Legislature

§30-28-20. Single act evidence of practice.

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

WV Legislature

§30-28-21. Effective dates of certain provisions.

The provisions of this article as amended and reenacted during the regular session of 2009, except for the provisions of sections seven, sixteen and nineteen, are effective as of July 1, 2009.

WV Legislature