WEST VIRGINIA CODE: §30-28A-8

§30-28A-8. Establishment of the Occupational Therapy Compact Commission.

(a) The compact member states hereby create and establish a joint public agency known as the Occupational Therapy Compact Commission.

(1) The commission is an instrumentality of the compact states.

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(b) *Membership, voting, and meetings*. —

(1) Each member state shall have, and be limited to, one delegate selected by that member state's licensing board.

(2) The delegate shall be either:

(A) A current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

(B) An administrator of the licensing board.

(3) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(4) The member state board shall fill any vacancy occurring in the commission within 90 days.

(5) Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(6) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(7) The commission shall establish by rule a term of office for delegates.

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(c) The commission shall have the following power and duties:

(1) Establish a code of ethics for the commission;

(2) Establish the fiscal year of the commission;

(3) Establish bylaws;

(4) Maintain its financial records in accordance with the bylaws;

(5) Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(6) Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;

(7) Bring and prosecute legal proceedings or actions in the name of the commission: *Provided*, That the standing of any state occupational therapy licensing board to sue or be sued under applicable law shall not be affected;

(8) Purchase and maintain insurance and bonds;

(9) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

(10) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(11) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same: *Provided*, That at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(12) Lease, purchase, accept appropriate gifts, or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed: *Provided*, That at all times the commission shall avoid any appearance of impropriety;

(13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(14) Establish a budget and make expenditures;

(15) Borrow money;

(16) Appoint committees, including standing committees composed of members, state

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regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(17) Provide and receive information from, and cooperate with, law-enforcement agencies;

(18) Establish and elect an executive committee; and

(19) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of occupational therapy licensure and practice.

(d) *The executive committee*. —

The executive committee shall have the power to act on behalf of the commission according to the terms of this compact.

(1) The executive committee shall be composed of nine members:

(A) Seven voting members who are elected by the commission from the current membership of the commission;

(B) One ex-officio, nonvoting member from a recognized national occupational therapy professional association; and

(C) One ex-officio, nonvoting member from a recognized national occupational therapy certification organization.

(2) The ex-officio members will be selected by their respective organizations.

(3) The commission may remove any member of the executive committee as provided in bylaws.

(4) The executive committee shall meet at least annually.

(5) The executive committee shall have the following duties and responsibilities:

(A) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privileges;

(B) Ensure compact administration services are appropriately provided, contractual or otherwise;

(C) Prepare and recommend the budget;

(D) Maintain financial records on behalf of the commission;

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(E) Monitor compact compliance of member states and provide compliance reports to the commission;

(F) Establish additional committees as necessary; and

(G) Perform other duties as provided in rules or bylaws.

(e) *Meetings of the commission*. —

(1) All meetings shall be open to the public, and public notice of the meetings shall be given in the same manner as required under the rulemaking provisions set forth in §30-28A-10 of this code.

(2) The commission or the executive committee or other committees of the commission may convene in a closed, non-public meeting if the commission or executive committee or other committees of the commission must discuss:

(A) Non-compliance of a member state with its obligations under the compact;

(B) The employment, compensation, discipline or other matters, practice or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;

(C) Current, threatened, or reasonably anticipated litigation;

(D) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(E) Accusing any person of a crime or formally censuring any person;

(F) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(G) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(H) Disclosure of investigative records compiled for law enforcement purposes;

(I) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(J) Matters specifically exempted from disclosure by federal or member state statute.

(3) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

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(4) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(f) *Financing of the commission*. —

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the commission each year for which revenue is not provided by other sources. This aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(4) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member state, except by and with the authority of the member state.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(g) *Qualified immunity, defense, and indemnification*. —

(1) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claims for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred withing the scope of commission employment, duties, or responsibilities: *Provided*, That nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

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(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*, That nothing herein shall be construed to prohibit that person from retaining his or her own counsel: *Provided, however*, That the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*, That the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

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