WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED
Committee Substitute for
SENATE BILL NO. 242

(By Mr. [Signature]
and Mr. Jones)

PASSED March 15, 1978
In Effect July 1, 1978

No. 242
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-eight, relating to establishing the West Virginia occupational therapy practice act; short title; declaration of purpose; definitions; license required; West Virginia board of occupational therapy; powers and duties of board; persons and practices not affected; qualifications of applicants; examination; waiver of requirements for licensure; issuance of license; renewal of license; suspension and revocation of license; procedures for hearing; judicial review; penalties; and actions to enjoin violations.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-eight, to read as follows:

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

§30-28-1. Short title.

1 This article shall be known and may be cited as the “West Virginia Occupational Therapy Practice Act.”

§30-28-2. Declaration of purpose.

1 The West Virginia occupational therapy practice act is enacted to safeguard the public health, safety and
welfare, and to assure the availability of high quality
occupational therapy services to persons in need of such
services. It is the purpose of this article to provide for
the regulation of persons presenting themselves as an
occupational therapist or as an occupational therapy
assistant.


1 In this article, the following terms shall have the
2 respective meanings provided in this section unless the
3 context clearly requires a different meaning:
4 (a) "Association" means the West Virginia occupa-
5 tional therapy association.
6 (b) "Board" means the West Virginia board of occu-
7 pational therapy.
8 (c) "License" means a valid and current certificate of
9 registration issued by the West Virginia board of occu-
10 pational therapy.
11 (d) "Occupational therapy" means the evaluation,
treatment, and aid in diagnosis of problems interfering
with functional performance in persons impaired by
physical illness or injury, emotional disorder, congenital
or developmental disability, or the aging process in order
to achieve optimum functioning and for prevention and
health maintenance. Specific occupational therapy ser-
18 vices include, but are not limited to, activities of daily
living (ADL); the design, fabrication, and application
of splints; sensorimotor activities; the use of specifically
designed crafts; guidance in the selection and use of
adaptive equipment; therapeutic activities to enhance
functional performance; prevocational evaluation and
training; and consultation concerning the adaption of
physical environments for the handicapped. These ser-
19 vices are provided to individuals or groups through medi-
cal, health, educational and social systems and for the
maintenance of health through these systems.
20 (e) "Occupational therapist" means a person licensed
to practice occupational therapy as defined in this article,
and whose license is in good standing.
(f) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the general supervision of the licensed occupational therapist, and whose license is in good standing. As contained in this section, the term "general supervision" means initial direction and periodic inspection of the actual activities; however, the supervising licensed occupational therapist need not always be physically present or on the premises when the licensed assistant is performing services.

(g) "Occupational therapy aide" means a person who assists in the practice of occupational therapy, who works under the direct supervision of an occupational therapist and the occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy. As contained in this section, the term "direct supervision" shall mean the actual physical presence of a licensed occupational therapist or licensed occupational therapy assistant.

§30-28-4. License required.

(a) No person may present himself as an occupational therapist or occupational therapy assistant in this state unless she or he is licensed in accordance with the provisions of this article. No firm, partnership, association or corporation 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 is or will at the appropriate time be rendering the occupational therapy services to which reference is made.

(b) A licensed occupational therapist shall not treat persons by occupational therapy or otherwise other than referral by a licensed physician or surgeon, psychologist or psychiatrist, dentist, osteopathic physician or surgeon, or chiropodist or podiatrist. A licensed occupational
therapy assistant shall not practice occupational therapy other than in accordance with the definitional requirements of an occupational therapy assistant as specified in subdivision (f), section three of this article.

§30-28-5. West Virginia board of occupational therapy; establishment; terms of office; vacancies; removal of members; meetings; compensation.

(a) There is hereby established the West Virginia board of occupational therapy which shall consist of five members appointed by the governor by and with the advice and consent of the Senate. The members of the board shall be citizens of the United States and residents of this state for at least one year prior to their appointment. Three members shall have been engaged in rendering occupational therapy services to the public by teaching or performing research in occupational therapy for at least three years immediately preceding their appointment or shall have been a registered occupational therapist for at least three years immediately preceding their appointment. One such member so appointed shall have been engaged in rendering occupational therapy services as a registered occupational therapy assistant for at least three years immediately preceding his appointment. Such appointees shall at all times be holders of valid licenses for the practice of occupational therapy in the state. Except for the members of the first board appointed from the list submitted by the association, all of such members shall fulfill the requirements for licensure under this article. One member shall be appointed by the governor to represent the public.

(b) The board shall, within ninety days after the effective date of this article, be selected as provided in subsection (a). The members of the first board shall serve the following terms: Two members for a term of one year, two members for a term of two years, and one member for a term of three years. At the expiration of the above terms, board members shall be appointed in the same manner as the initial appointment for a
period of three years, but no person shall be appointed to serve more than two consecutive terms.

(c) Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first members who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this section.

(d) When a vacancy occurs on the board, the board shall appoint a member to fill the unexpired term.

(e) The governor, after notice and opportunity for hearing by the board, may remove any member of the board for neglect of duty, incompetence, revocation or suspension of the member’s license, or other dishonorable conduct. After such removal, or vacancy due to other reasons, the board shall appoint a successor to the unexpired term. The successor shall meet the qualifications of board members as established in subsection (a) of this section.

(f) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and shall meet during the first month of the calendar year to select a chairman. At least one additional meeting shall be held before the end of the calendar year. Further meetings may be convened at the call of the chairman or on the request of any three board members.

(g) Members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties. Such members may be paid reasonable compensation not to exceed fifty dollars per day for days spent in performance of their duties.

(h) All moneys paid to the board shall be accepted by a person designated by the board and deposited by her/him with the treasurer of the state and credited to an account to be known as the “West Virginia Board of Occupational Therapy.” The compensation of and the reimbursement of all reasonable and necessary ex-
penses actually incurred by the members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state's general revenue fund shall be expended for such purpose.

§30-28-6. Powers and duties of board.

1. (a) The board shall administer, coordinate, and enforce the provisions of this article.

2. (b) The board shall have the responsibility of evaluating the qualifications of applicants for licensure under this article.

3. (c) The board shall determine that the applicant successfully completed the academic requirements of an educational program in occupational therapy. For an occupational therapist, such a program shall be accredited by the American medical association in collaboration with the American occupational therapy association. For an occupational therapy assistant, such program shall be approved by the American occupational therapy association.

4. (d) The board shall prepare or approve all examinations of applicants for license at least twice a year, determine the qualifications and authorize the issuance of licenses to qualified occupational therapists and occupational therapy assistants; renew, suspend, or revoke licenses in the manner provided.

5. (e) The board shall appoint representatives or contract with qualified testing services to conduct or supervise examinations and designate time and place for examining applicants.

6. (f) The board shall establish standards for the continuing professional competence of persons subject to this article.

7. (g) The board shall establish fees and maintain a register of all persons holding a license and a record of all inspections made.

8. (h) The board shall conduct such hearings and keep
such records and minutes as are necessary to carry out its functions. It shall provide reasonable public notice to the appropriate persons of the time and place of all hearings authorized under this article in such a manner and at such times as it may determine by its rules and regulations.

(i) The board shall adopt rules and regulations relating to professional conduct to carry out the policy of this article, including but not limited to regulations relating to professional licensure and the establishment of ethical standards of practice. Any such rules and regulations so adopted shall be subject to the provisions of chapter twenty-nine-a of this code.

(j) The board may investigate complaints and allegations concerning the violation of provisions of this article and may examine witnesses in connection with these investigations.

(k) The board shall make an annual report to the governor which report shall contain an account of duties performed, actions taken and appropriate recommendations.

(l) The board is empowered to prescribe and publish reasonable application fees. Such fees shall be commensurate with the cost of fulfilling the duties of the board as defined by this article.

§30-28-7. License required; persons and practices not affected.

1 (a) No person may hold himself out as an occupational therapist or an occupational therapy assistant in this state unless he is licensed in accordance with the provisions of this article.

(b) Nothing in this article shall be construed as preventing or restricting the practice, services or activities of:

1 (1) Any person licensed under any other law of this state, including physicians, nurses, clinical psychologists, speech pathologists and audiologists, dentists, and physical
Any person employed as an occupational therapist or an occupational therapy assistant by the government of the United States, if such a person provides occupational therapy solely under the direction or control of the organization by which he is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program which is accredited by the American occupational therapy association in collaboration with the American medical association, or in an educational program approved by the American occupational therapy association, and if such person is designated by a title which clearly indicates his status as a student or trainee;

(4) Any person fulfilling the supervised field work experience, if such activities and services constitute a part of the experience necessary to meet the requirements of section eight of this article;

(5) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than ninety consecutive days a calendar year in association with an occupational therapist licensed under this article, if such person meets the qualification for license under this article, except for the qualifying examination; or

(6) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than one hundred eighty consecutive calendar days in a calendar year and if:

(A) Such a person is licensed under the law of another state which has licensure requirements equivalent to the requirements of this article; or

(B) Such a person meets the requirements for certification as an occupational therapist registered (OTR) or
a certified occupational therapy assistant (COTA) established by the American occupational therapy association.

§30-28-8. Qualifications of applicants for license.

(a) 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 in occupational therapy recognized by the board, with concentration in biologic or physical science, psychology and sociology, and with education in selected manual skills. For an occupational therapist, such a program shall be accredited by the American medical association in collaboration with the American occupational therapy association. For an occupational therapy assistant, such program shall be approved by the American occupational therapy association;

(3) Have successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where she or he met the academic requirements. For an occupational therapist, a minimum of six months of supervised field work experience is required. For an occupational therapy assistant, a minimum of two months of supervised field work experience is required; and

(4) Have passed an examination conducted by the board as provided in section six of this article.

(b) An applicant who has practiced as an occupational therapy assistant for four years and has successfully completed the supervised field work experience required in subdivision (3) of subsection (a) may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists made otherwise applicable under subdivision (2) of subsection (a).


(a) A person applying for licensure shall demonstrate
her or his eligibility in accordance with the requirements of section eight of this article, and shall make application for examination to the board at least thirty days prior to the date of examination, upon a form and in such a manner as the board shall prescribe. Such application shall be accompanied by the fee prescribed by section fifteen of this article, which fee shall not be refunded. A person who fails an examination may make reapplication three times for reexamination accompanied by the prescribed fee.

(b) Each applicant for licensure under this article shall be examined by the board in written examination to test his 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 such other subjects as the board may deem useful to determine the fitness for practice of the applicant.

(c) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine. Examinations shall be given at least twice each year at such places as designated by the board, and the board shall give reasonable statewide public notice of such examinations in accordance with its rules at least sixty days prior to their administration, and shall notify by mail all applicants for examination of the time and place of their administration.

(d) Applicants may obtain their examination scores and may review their papers in accordance with such rules as the board may establish.

§30-28-10. Waiver of requirements for licensure.

(a) The board shall waive the examination and grant a license to any person certified prior to the effective date of this article as an occupational therapist registered (OTR) or as a certified occupational therapy assistant (COTA) by the American occupational therapy association. The board shall waive the examination and
grant a license to any person so certified after the effective date of this article, if the board considers the requirements for such certification to be equivalent to the requirements for licensure in this article.

(b) The board may waive the examination and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or an occupational therapy assistant in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure in this article.

§30-28-11. Issuance of a 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 shall issue a limited permit to persons who have completed the education and experience requirements of this article. This permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist who holds a current license in this state and shall be valid until the date on which the results of the next qualifying examination have been made public. This limited permit shall not be renewed if the applicant has failed the examination.

(c) The board shall issue a limited permit to an occupational therapist or an occupational therapy assistant who has graduated from an occupational therapy curriculum of a foreign country or of a territory or possession of the United States. Such program shall be equivalent to academic requirements for graduates of occupational therapy programs in the United States and shall be satisfactory to the board. This permit shall allow the person to practice under the supervision of a licensed occupational therapist. A limited permit shall be valid for one year at which time the holder shall apply to the board for licensure. A limited permit
shall become null and void if the holder fails to pass a licensing examination.

(d) Any person who is issued a license as an occupational therapist under the terms of this article may use the words “occupational therapist registered,” “licensed occupational therapist,” or “occupational therapist,” or he may use the letters “O.T.R.,” “L.O.T.,” or “O.T.,” in connection with his name or place of business to denote registration hereunder.

(e) Any person who is issued a license as an occupational therapy assistant under the terms of this article may use the words “occupational therapy assistant,” “licensed occupational therapy assistant,” or “certified occupational therapy assistant” or may use the letters “O.T.A.,” “L.O.T.A.,” or “C.O.T.A.,” in connection with his name or place of business to denote his registration hereunder.

(f) The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at his principal place of practice, or, in the case of a license to act as an occupational therapy assistant, at his place of employment.

§30-28-12. Renewal of license.

(a) All licenses under this article shall be subject to renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the board upon the payment of a renewal fee. The board may establish additional requirements for license renewal which provide evidence of continued competency. The board may provide for late renewal of a license upon payment of a late renewal fee. Any license which has not been restored within five years following its expiration may not be renewed, restored or reissued thereafter. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for issuance of a new license.

(b) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee, while the license
remains suspended and until it is reinstated, to engage in the licensed activity or in other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable.

§30-28-13. Suspension and revocation of license; refusal to renew.

(a) The board shall, after notice and opportunity for hearing, have the power to deny or refuse to renew, suspend or revoke the license of, or impose probationary conditions upon any licensee who has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes:

1. Obtaining a license 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 the rules established by the board;
4. Violating any lawful order, rule, or regulation rendered or adopted by the board; or
5. Violating any provision of this article.

(b) Such denial, refusal to renew, suspension, revocation or imposition of probationary condition upon a license may be ordered by the board in a decision made after a hearing in the manner provided by the rules adopted by the board. One year from the date of the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and shall be required to hold a hearing to consider such reinstatement.


(a) Whenever the board shall deny an application for any original or renewal license or any application for a
temporary permit or shall suspend or revoke any license
or temporary permit it shall make and enter an order
to that effect and serve a copy thereof on the applicant
or licensee, as the case may be, by certified mail, return
receipt requested. Such order shall state the grounds for
the action taken and shall require that any license or
temporary permit suspended or revoked thereby shall be
returned to the board by the holder within twenty days
after receipt of said copy of said order.

(b) Any person adversely affected by any such order
shall be entitled to a hearing thereon as to all issues not
excluded from the definition of a "contested case" as set
forth in article one, chapter twenty-nine-a of this code if,
within twenty days after receipt of a copy thereof, he
files with the board a written demand for such hearing.
A demand for hearing shall operate automatically to
stay or suspend the execution of any order suspending or
revoking a license or temporary permit or denying an
application for a renewal of license. The board may re-
quire the person demanding such hearing to give reason-
able security for the costs thereof, and, if such person
does not substantially prevail at such hearing, such costs
shall be assessed against him and may be collected by a
civil action or other proper remedy.

(c) Upon receipt of a written demand for such hear-
ing, the board shall set time and place thereof not less
than ten nor more than thirty days thereafter. The
person demanding the hearing may be granted one con-
tinuance as a matter of right and further continuances
for good cause shown.

(d) All of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures in
connection with and following such hearing, with like
effect as if the provisions of said article five were set
forth in this subsection.

(e) Any such hearing shall be conducted by a quorum
of the board. For the purpose of conducting any such
hearing any member of the board may issue subpoenas
and subpoenas duces tecum which shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of chapter twenty-nine-a of this code and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney admitted to practice law in this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article.


The board shall prescribe, and publish in the manner established by its rules, fees in amounts determined by the board for the following purposes:

(a) Application for examination;

(b) Initial license fee;

(c) Renewal of license fee; and

(d) Late renewal fee.
Such fees shall be commensurate with the cost of fulfilling the duties of the board as defined by this article.

§30-28-16. Judicial review; appeal to supreme court of appeals; legal representation for board.

Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section fourteen of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§30-28-17. Penalties.

(a) Any person who violates any provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars and not more than five hundred dollars. A license held by any person convicted under this section shall be forfeited and revoked forthwith for one year from the date of such conviction.

(b) It is unlawful for any person who is not registered under this article as an occupational therapist or as an occupational therapy assistant whose registration has been suspended or revoked to use, in connection with his name or place of business, the words “occupational therapist,” “licensed occupational thera-
§30-28-18. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations of any part thereof has occurred, is occurring, or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen of this article.

Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated hereunder and all orders and final decisions of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any applica-
tion permitted by the provisions of this section shall be final unless reversed, vacated, or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1978.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 24th day of March, 1978.

Governor