

Regulating the practice and licensure of occupational therapy, creating the State Board of Occupational Therapy Education and Licensure with certain powers and duties and prescribing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Occupational Therapy Practice Act."

Section 2. Declaration of purpose.

It is the purpose of this act to provide for the establishment of standards of education, for the licensure and for the regulation and control of persons engaged in offering occupational therapy services to the general public to safeguard the public health, safety and welfare, protect the public from being harmed by unqualified persons, assure the highest degree of professional care and conduct on the part of occupational therapists and occupational therapy assistants, and assure the availability of occupational therapy services of the highest quality to persons in need of such services.

Section 3. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Board." The State Board of Occupational Therapy Education and Licensure established in accordance with this act.

"Commissioner." The Commissioner of the Bureau of Professional and Occupational Affairs in the Department of State.

"Foreign applicant." Any person seeking licensure under this act whose professional training has taken place outside the United States, its territories, the District of Columbia or Canada.

"Healing arts." The science and skill of diagnosis and treatment of disease or any ailment of the human body.

"Occupational therapist." A person who is licensed to practice occupational therapy pursuant to this act and who offers such services to the public under any title incorporating the words "occupational therapy," "occupational therapist" or any similar title or description of occupational therapy services.

"Occupational therapy." The evaluation of learning and performance skills and the analysis, selection and adaptation of activities for an individual whose abilities to cope with the activities of daily

living, to perform tasks normally performed at a given stage of development and to perform essential vocational tasks which are threatened or impaired by that person's developmental deficiencies, aging process, environmental deprivation or physical, psychological, injury or illness, through specific techniques which include:

- (1) Planning and implementing activity programs to improve sensory and motor functioning at the level of performance normal for the individual's stage of development.
- (2) Teaching skills, behaviors and attitudes crucial to the individual's independent, productive and satisfying social functioning.
- (3) The design, fabrication and application of splints, not to include prosthetic or orthotic devices, and the adaptation of equipment necessary to assist patients in adjusting to a potential or actual impairment and instructing in the use of such devices and equipment.
- (4) Analyzing, selecting and adapting activities to maintain the individual's optimal performance of tasks to prevent disability.

"Occupational therapy assistant." A person licensed to assist in the practice of occupational therapy, under the supervision of an occupational therapist.

"Person." An individual, partnership, unincorporated organization or corporate body.

Section 4. Creation of board, appointment and term of members, officers.

(a) There is hereby created a departmental administrative board to be known as the State Board of Occupational Therapy Education and Licensure which shall be in the Bureau of Professional and Occupational Affairs of the Department of State. It shall consist of seven members, all of whom shall be residents of Pennsylvania and two of whom shall be chosen as representatives of the public interest. The remaining five members shall be occupational therapists licensed to practice in the Commonwealth, except that the first appointments shall be qualified to receive licensure under the terms of this act, provided they have had at least five years working experience in Pennsylvania as occupational therapists immediately preceding appointment. The occupational therapist members of the board should be chosen so they are geographically representative.

(b) The Governor shall appoint the members to serve on the board. The commissioner shall serve as an ex officio member of the board. In appointing persons to fill vacancies in the five board positions designated to be held by licensed occupational therapists, the Governor should select occupational therapists who reside in different regions of the Commonwealth in an effort to provide Statewide representation of occupational therapists. The Pennsylvania Occupational Therapy Association shall submit

a list of names and addresses of qualified occupational therapists willing to serve on the State Board of Occupational Therapy Education and Licensure for the Governor's consideration prior to the making of an appointment to fill such a vacancy.

(c) The term of office of a member shall be three years, except that of the occupational therapist members of the board first appointed, two shall serve terms of three years, two shall serve terms of two years and one shall serve a term of one year. A member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(d) A member of the board shall be eligible for reappointment. A member shall not be appointed to serve more than two consecutive terms. A member shall receive reimbursement for reasonable expenses incurred while engaged in the discharge of official duties, as well as a \$30 per diem allowance.

(e) The board shall meet at least twice a year and may hold additional meetings whenever necessary, subject to the approval of the commissioner, to discharge its duties. The location of the meetings shall be determined by the board, subject to the approval of the commissioner, but shall be within the Commonwealth.

Section 5. Powers and duties of board.

(a) The board shall elect annually from its membership a chairman, a vice chairman and a secretary. It shall be the duty of the board to pass upon the qualifications of applicants for licensure, to insure the conduct of examinations, to issue and renew licenses to occupational therapists or occupational therapy assistants who qualify under this act, and, in proper cases, to suspend or revoke the license of an occupational therapist or occupational therapy assistant. The board shall be authorized and empowered to refuse, revoke or suspend a license of an occupational therapist or occupational therapy assistant pursuant to this act, to conduct investigations, including the power to issue subpoenas, and to hold hearings upon charges or information indicating violation of the provisions of this act or regulations promulgated pursuant thereto. The board shall maintain a record listing the name of every living occupational therapist licensed to practice in this State, the last known place of business, the last known place of residence, and the date and number of the license of the licensee.

(b) The board shall have the power to promulgate and adopt rules and regulations not inconsistent with law as it deems necessary for the performance of its duties and the proper administration of this law. Only in the absence of disapproval shall the board proceed with the adoption of the rule, regulation or amendment in accordance with section 202 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. ((b) repealed in part Dec. 9, 1982, P.L.1023, No.238)

Section 6. License required.

(a) It shall be unlawful one year after the effective date of this act for any person to practice or to indicate an ability to practice occupational therapy unless licensed under the provisions of this act.

(b) The licensure of occupational therapists and occupational therapy assistants shall extend only to individuals. A license shall not be issued to a partnership, unincorporated association, corporation or similar business organization.

(c) A person shall not use the title occupational therapist or a title set forth in this act as it relates to the practice of occupational therapy unless licensed and whose license is in good standing in accordance with the requirements set forth in this act. A person or health care institution, health care service, health plan or other institution holding itself out to the public as providing occupational therapy services shall not use such a title or titles unless the occupational therapy services provided by it are under the supervision of a person licensed under this act.

Section 7. Persons and practices not affected; exceptions.

This act shall not be construed as preventing or restricting the practices, services or activities of:

(1) A person licensed in this State in accordance with the provisions of another law of this Commonwealth from engaging in the profession or occupation for which licensed.

(2) A person meeting the standards established in job descriptions by the Commonwealth for its employees or a person credentialed by the Commonwealth of Pennsylvania or by a national registration or certifying body which requires specific education and training for the practice of its profession, but whose occupation or job-related activities or services based on such education, training or experience may technically be encompassed, in part, by the definition of occupational therapy set forth in this act: Provided, however, That nothing in this paragraph shall permit any person to use the title occupational therapist or occupational therapy assistant or to hold out to the public that they practice occupational therapy unless they meet the requirements of this act and are licensed.

(3) A person employed as an occupational therapist or an occupational therapy assistant by the United States provided that person provides occupational therapy solely under the direction or control of the organization by which the person is employed.

(4) A person pursuing a course of study leading to the degree or certificate in occupational therapy at an accredited or approved educational program provided the activities and services are part

of a supervised course of study and the person is designated by a title which clearly indicates the status of student or trainee and not licensed occupational therapist.

(5) A person fulfilling the supervised fieldwork experience requirements of this act provided such activities and services constitute a part of the experience necessary to meet the requirements of that program.

Section 8. Requirements for licensure.

An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall submit a written application on forms provided by the board evidencing and showing to the satisfaction of the board that he or she:

(1) Is of good moral character.

(2) Has completed the academic requirements of an approved educational program in occupational therapy recognized by the board with the advice and consultation of recognized national accrediting agencies and professional organizations including the American Occupational Therapy Association as follows:

(i) For an occupational therapist, a four-year program, or its equivalent as established by the board.

(ii) For an occupational therapy assistant, a two-year program, or its equivalent as established by the board.

(3) Has successfully completed a period of supervised fieldwork experience at a recognized educational institute or a training program approved by the educational institution where the academic requirements met were as follows:

(i) For an occupational therapist a minimum of six months of supervised fieldwork experience.

(ii) For an occupational therapy assistant, a minimum of two months of supervised fieldwork.

(4) Has passed an examination approved by the board.

Section 9. Temporary licenses.

(a) A temporary license may be granted by the board to a person who has completed the education and experience requirements of this act in the following categories:

(1) A person who has applied for a license under the provisions of section 8 and who is, in the judgment of the board, eligible to take the examination provided for in section 11.

(2) A person who has applied for a license under the provisions of section 8, has failed the required examination provided for in section 11, but has applied for reexamination, provided the temporary license shall expire automatically upon receipt by that person of notice of failure of the reexamination and that the person shall not be eligible for a temporary license for a period of one year from the date of such reexamination.

(3) The issuance by the board of a temporary license shall authorize the practice of occupational therapy or providing services only as an assistant under the direct supervision of an occupational therapist licensed pursuant to this act.

(b) A temporary license may be granted to a person engaged in the performance of occupational therapy services who is a nonresident of this Commonwealth and not licensed under this act, provided the services of the licensee are performed for not longer than a six consecutive month period in a calendar year and are performed in association with an occupational therapist licensed under this act and that one of the following exists:

(1) The person is licensed under the laws of a state, District of Columbia, or territory of the United States which has licensure requirements substantially equal to the requirements of this act.

(2) The person has met the requirements for certification, as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.), established by the American Occupational Therapy Association.

Section 10. Foreign applicants.

Foreign trained occupational therapists and occupational therapy assistants who apply to be licensed by the board shall, before examination, furnish proof of good moral character and shall present proof indicating the completion of educational requirements substantially equal to those contained in section 8. They may be required to have completed, at the board's discretion, not more than one year of the supervised fieldwork experience prescribed by the board prior to taking the examination for licensure.

Section 11. Examination for licensure of occupational

therapists and occupational therapy assistants.

(a) Individuals applying for licensure in accordance with the requirements of sections 8 and 10 shall be required to pass a written examination approved by the board which is designed to test the knowledge and experience necessary to the safe, effective and professional practice of occupational therapy in Pennsylvania. The examination shall test the applicant's knowledge of the basic and clinical sciences relating to

occupational therapy and occupational therapy theory and practice, including the applicant's professional skill and judgment in the utilization of occupational therapy techniques and methods and such other subjects as the board deems useful to determine the applicant's fitness to practice.

(b) Applicants for licensure shall be examined at a time and place determined by the board.

Examinations shall be given at least twice a year. It shall notify applicants by mail of the time and place of scheduled examinations.

(c) Individuals applying for licensure shall remit an examination fee, in accordance with section 17, prior to admission to take the written examination using forms provided by the board. A person who fails an examination may apply for reexamination to the board accompanied by the prescribed fee.

(d) Applicants may obtain their examination scores and may review their papers in accordance with the rules and regulations established by the board. The board may adopt rules and regulations governing the eligibility of applicants who have failed to pass two examinations concerning their admittance to subsequent examinations.

Section 12. Waiver of certain requirements for licensure.

On the payment to the board of fees required by this act and on submission of a written application on forms provided by the board, the board shall issue a license without examination to:

(1) A person paying the fee and filing an application within one year from the effective date of this act who presents evidence satisfactory to the board that, prior to the effective date of this act, the applicant was an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) through the certification of the American Occupational Therapy Association who resided and practiced in the Commonwealth of Pennsylvania on the effective date of this act.

(2) A person paying the fee and filing an application who presents evidence satisfactory to the board of being licensed or registered as an occupational therapist or occupational therapy assistant by another state, territory of the United States or the District of Columbia, or of being a registered occupational therapist or certified occupational therapy assistant through the American Occupational Therapy Association and of residing in or practicing in another state or territory of the United States or the District of Columbia where the requirements for licensure, registration or certification were at the date of his or her licensure, registration or certification substantially equal to the requirements set forth in this act.

Section 13. Issuance of license; use of title.

(a) The board shall issue a license to an individual who has met the requirements of this act upon the payment of the applicable license fee.

(b) An individual who is issued a license as an occupational therapist under the provisions of this act may use the title "occupational therapist" or "licensed occupational therapist," or use the letters "O.T.R./L." or "L./O.T.R." in connection with the title or place of business to denote his or her licensure.

(c) A person who is issued a license as an occupational therapy assistant may use the words "occupational therapy assistant" or "licensed occupational therapy assistant" or he or she may use the letters "C.O.T.A./L." or "L./C.O.T.A." in connection with his or her name or place of business to denote his or her licensure.

Section 14. Practice and referral.

An occupational therapist may enter a case for the purposes of providing indirect services, consultation, evaluating an individual as to the need for services and other occupational therapy services for conditions such as perceptual, cognitive, sensory integration and similar conditions. Implementation of direct occupational therapy to an individual for a specific medical condition shall be based on a referral from a licensed physician, licensed optometrist or a licensed podiatrist. This act shall not be construed as authorization for an occupational therapist or occupational therapy assistant to practice a branch of the healing arts except as described in this act. (14 amended May 18, 2004, P.L.220, No.30)

Section 15. Renewal of license; effect of license suspension or revocation.

(a) A license issued under this act shall be renewed biennially upon payment of the renewal fee prescribed in section 17. It shall expire unless renewed in the manner prescribed by the regulations of the board. The board may provide for the late renewal of a license upon the payment of a late fee. A late renewal of a license shall not be granted more than four years after its expiration. A license shall be renewed after the four-year period only by complying with section 11. The board may establish additional requirements for license renewal designed to assure continued competency of the applying occupational therapist.

(b) A suspended license shall expire at the end of its term and may be renewed as provided in this section. The renewal shall not authorize the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity in violation of the order or judgment by which the license was suspended. Whenever a license revoked on disciplinary grounds is reinstated the licensee, as a condition of reinstatement, shall pay a renewal fee and any late fee that may be applicable.

Section 16. Refusal, suspension or revocation of license;

refusal to renew; penalties; injunctive relief.

(a) The board shall refuse to issue a license to a person and, after notice and hearing in accordance with law, may suspend or revoke a license or refuse to renew a license, or may impose probationary conditions, where the licensee or applicant for license is guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Unprofessional conduct shall include the following:

(1) Obtaining a license by means of fraud, misrepresentation or concealment of material facts.

(2) Being guilty of unprofessional conduct as defined by a rule established by the board or violating a code of ethics adopted by the board.

(3) Being convicted of or pleading guilty or nolo contendere to a crime which is found by the board to have a direct bearing on whether the person should be entrusted to serve the public as an occupational therapist or occupational therapy assistant.

(b) Actions of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with the provisions of Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(c) A person who violates a provision of this act is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment for not less than 30 days nor more than 90 days, or by both such fine and imprisonment and for each additional offense that person shall be subject to either a fine of not less than \$500 or imprisonment of not less than six months, at the discretion of the court. Fines collected under the provisions of this act shall be paid into the State Treasury for the use of the Commonwealth.

(d) The Attorney General may, on behalf of the board, apply for injunctive relief in any court of competent jurisdiction to enjoin a person from committing an act in violation of this act. The injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in this act.

(e) Any person who is licensed by the board or who is an applicant for examination for licensure by the board, against whom are preferred any of the charges for causing the revocation or suspension of the license shall be cited by the board and shall have a hearing before the board or by a hearing examiner as determined by the board.

Section 17. Fees.

(a) The board shall determine all fees necessary to the administration of this act.

(b) Fees shall be collected by the board through the Bureau of Professional and Occupational Affairs and shall be paid into the Professional Licensure Augmentation Account established pursuant to and for use in accordance with the act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act."

Section 18. Appropriation.

The sum of \$75,000, or as much thereof as may be necessary, is hereby appropriated from the Professional Licensure Augmentation Account within the General Fund to the Bureau of Professional and Occupational Affairs, in the Department of State for the establishment and operation of the State Board of Occupational Therapy Education and Licensure.

Section 19. Applicability of act.

The provisions of this act shall not be construed to limit, include or affect the practice of physical therapy, professional nursing, optometry, psychology, podiatry, chiropractic, prosthetics, orthotics or any practice currently licensed in Pennsylvania pertaining to the healing arts.

Section 20. Effective date.

This act shall take effect in 90 days.