CHAPTER 43-40
OCCUPATIONAL THERAPISTS

43-40-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the board of occupational therapy practice.
2. "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.
3. "Occupational therapy aide" means an unlicensed person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant in accordance with rules adopted by the board.
4. "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy, under this chapter, who works under the supervision of an occupational therapist.
5. "Occupational therapy practice" means the use of occupation and purposeful activity or intervention designed to achieve functional outcomes that promote health, prevent injury or disability, and which develop, improve, sustain, or restore the highest possible level of independence of any individual who has an injury, illness, cognitive impairment, psychosocial dysfunction, mental illness, developmental or learning disability, physical disability or other disorder or condition, and occupational therapy education. Occupational therapy encompasses evaluation, treatment, consultation, research, and education. Occupational therapy practice includes evaluation by skilled observation, administration, and interpretation of standardized and nonstandardized tests and measurements. The occupational therapy practitioner designs and implements interventions directed toward developing, improving, sustaining, and restoring sensorimotor, neuromuscular, emotional, cognitive, or psychosocial performance components. Interventions include activities that contribute to optimal occupational performance including self-care; daily living skills; skills essential for productivity, functional communication and mobility; positioning; social integration; cognitive mechanisms; enhancing play and leisure skills; and the design, provision, and training in the use of assistive technology, devices, orthotics, or prosthetics or environmental adaptations to accommodate for loss of occupational performance. Therapy may be provided individually or in groups to prevent secondary conditions, promote community integration, and support the individual's health and well-being within the social and cultural contexts of the individual's natural environment.
6. "Occupational therapy student" is a person enrolled in an accredited occupational therapy education program.

43-40-02. License required - Title - Abbreviation.

A person may not practice occupational therapy or hold out as an occupational therapist, or as being able to practice occupational therapy, or to render occupational therapy services in this state unless that person is licensed under this chapter. Only individuals may be licensed under this chapter. An individual licensed under this chapter as an occupational therapist may use the title "occupational therapist" and the abbreviation "OT/L" or other designation approved by the board. An individual licensed under this chapter as an occupational therapy assistant may use the title "occupational therapy assistant" and the abbreviation "OTA/L" or other designation approved by the board. No other individual may use these names or abbreviations.

43-40-03. Persons and practices not affected by chapter.

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

1. Services by a person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is an occupational therapist or occupational therapy assistant.

2. Any person employed as an occupational therapist or occupational therapy assistant by the United States or any agency of it, if the person provides occupational therapy solely under the direction or control of the organization by which employed.
3. Any person performing occupational therapy consultation, continuing education, inservice, or preservice training in this state, if these services are performed for no more than thirty days in a calendar year, if:
   a. The person is licensed or registered under the law of another state which has regulatory requirements at least as stringent as the requirements of this chapter; or
   b. The person meets the requirements for certification as an occupational therapist registered or a certified occupational therapy assistant, established by a national occupational therapy certifying agency approved by the board.

43-40-03.1. Occupational therapy students - Occupational therapy aides.

1. A person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program may perform occupational therapy services if the services are a part of the student's supervised course of study, provided that the student is designated by a title that clearly indicates the student's status as a student or trainee.
2. Occupational therapy aides may assist in the practice of occupational therapy only under the direct supervision of an occupational therapist or occupational therapy assistant and in accordance with rules adopted by the board.

43-40-04. Board of occupational therapy practice - Appointment - Meetings.

1. There is established a board of occupational therapy practice. The board shall consist of five members appointed by the governor, all of whom must be residents of this state. The occupational therapy practitioners appointed must have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least three years immediately preceding their appointments. Three board members must be licensed occupational therapists. One member must be a licensed occupational therapy assistant. One member must represent the public with an interest in the rights of the consumers of health services.
2. Appointments must be for three-year terms, but no person may be appointed to serve more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed.
3. If a vacancy in one of the positions exists, the governor shall appoint, as soon as practicable, a person to the unexpired term.
4. The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting must be held before the end of each calendar year. Other meetings may be convened at the call of the chairman or the written request of any two board members.
5. Members of the board may receive no compensation for their services, but are entitled to reasonable travel and other expenses incurred in the execution of their powers and duties, as set by the board.

43-40-05. Board powers, duties, and authority.

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications, and approve the examinations for licensure under this chapter. The board shall keep any records and minutes as are necessary to carry out its functions. The board may:

1. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.
2. Adopt rules pursuant to chapter 28-32, relating to professional conduct to carry out the policy of this chapter, including rules relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in this state.

43-40-06. Board administrative authority and requirements.

1. The board may employ an executive secretary and other officers and employees it deems necessary.
2. The board shall adopt a seal by which it authenticates its proceedings.
3. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.
4. The executive secretary shall pay upon approval of the board all appropriate expenses incurred by the board in the administration of this chapter.

43-40-07. Fees.

The board shall prescribe by rule the fee for application for examination, the initial license fee, the renewal of license fee, the late renewal fee, and the limited permit fee. These fees must be set in such an amount as to reimburse the board, to the extent feasible, for the cost of the services rendered.

43-40-08. Requirements for licensure.

An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application provided by the board, demonstrating to the satisfaction of the board that the applicant:

1. Is competent.
2. Will adhere to the code of ethics adopted by the board.
3. Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the board.
   a. The occupational therapy educational program must be accredited by a national occupational therapy accrediting agency approved by the board.
   b. The occupational therapy assistant educational program must be accredited by a national occupational therapy accrediting agency approved by the board.
4. Has successfully completed a period of supervised fieldwork experience required by the accredited educational institution where the applicant met the academic requirements required by a national occupational therapy accrediting agency approved by the board.
5. Has passed an examination approved by the board.

43-40-09. Occupational therapy assistant licensure as occupational therapist.

Repealed by S.L. 1999, ch. 394, § 16.

43-40-10. Internationally trained applicants.

Internationally trained occupational therapists and occupational therapy assistants shall satisfy requirements equivalent to those contained in section 43-40-08.

43-40-11. Application for examination or licensure - Denial.

1. A person satisfying the requirements of section 43-40-08 may apply for examination in the manner the board prescribes. The application must be accompanied by the nonrefundable fee prescribed under section 43-40-07.
2. The board shall approve an examination for occupational therapists and an examination for occupational therapy assistants and establish standards for acceptable performance.
3. The board shall notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice must state the reasons for rejection and explain the right to a hearing under chapter 28-32. A hearing must be requested within thirty days.

43-40-12. Waiver of requirements for licensure.

The board may waive the examination, education, or experience requirements and grant a license to any applicant who presents proof of current licensure or registration as an

occupational therapist or occupational therapy assistant in another state which requires standards for licensure or registration considered by the board to be equivalent to the requirements for licensure of this chapter.

43-40-13. Limited permit - Expiration - Renewal.

1. The board may grant a limited permit to a person who has completed the education and experience requirements of this chapter. A limited permit allows the person to practice occupational therapy under supervision of a North Dakota licensed occupational therapist. A limited permit is valid until the results of the examination taken by the person are available to the board and the board decides to issue or deny a license to the person.
2. The holder of a limited permit must take the next available examination. The permit expires if the holder fails to take the next available examination.
3. A limited permit may be renewed one time if the person has failed the examination or, with good cause as determined by the board, failed to take the next examination.

43-40-14. Issuance of license.

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

43-40-15. Renewal of license.

1. Any license issued under this chapter is subject to biennial renewal and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but late renewal of a license may not be granted more than three years after its expiration.
2. The board may establish additional requirements for license renewal which provide evidence of continuing competency.

43-40-16. Suspension and revocation of license - Refusal to renew.

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license or may impose probationary conditions if the licensee or applicant for license has been found guilty of unprofessional conduct. Unprofessional conduct includes:
   a. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.
   b. Being guilty of unprofessional conduct as defined by the rules adopted by the board, or violating any code of ethics adopted by the board.
   c. Being convicted of an offense, as defined by section 12.1-01-04, that the board determines has a direct bearing upon a person's ability to serve the public as an occupational therapist or an occupational therapy assistant or, following conviction of any offense, if the board determines that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
   d. Violating any lawful order or rule rendered or adopted by the board.
   e. Violating this chapter or the rules promulgated by the board.
   f. A pattern of inappropriate practice as an occupational therapist or occupational therapy assistant.
   g. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of occupational therapy.
   h. Sexual abuse, misconduct, or exploitation related to the licensee's practice of occupational therapy.
   i. Gross negligence in the practice of occupational therapy.
2. A refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license may be ordered by the board after a hearing under chapter 28-32. An application for reinstatement may be made to the board one year from the date of the

revocation of a license. The board may accept or reject an application for reinstatement, and may hold a hearing to consider such reinstatement.

43-40-16.1. Complaints - Investigations.

1. A person may file a written complaint with the board setting forth the specific charges upon which the complaint is made. Upon receiving a complaint, the board shall notify the licensee of the complaint and request a written response from the licensee. A licensee who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of records when reasonably requested by the board.
2. After review of the complaint, the licensee's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines there is a reasonable basis to believe the allegations are true and the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall notify the complaining party and the licensee in writing.

43-40-16.2. Costs of prosecution - Disciplinary proceedings.

The board may impose a fee against any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative action resulting in disciplinary action, including the cost of investigation, the amount paid for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses. When applicable, a license may be suspended until the costs are paid to the board.

43-40-17. Occupational therapist - Consultation and evaluation - Order from physician.

Repealed by S.L. 2003, ch. 375, § 2.

43-40-18. Penalty - Injunction.

Any person who violates section 43-40-02 is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter.