Article 18D.

Occupational Therapy.

§ 90-270.65. Title.

This Article shall be known as the "North Carolina Occupational Therapy Practice Act." (1983 (Reg. Sess., 1984), c. 1073, s. 1.)

§ 90-270.66. Declaration of purpose.

The North Carolina Occupational Therapy Practice Act is enacted to safeguard the public health, safety and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional services and conduct on the part of occupational therapists and occupational therapy assistants, to provide for the establishment of licensure requirements, and to insure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this Article to provide for the regulation of persons offering occupational therapy services to the public. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 1.)

§ 90-270.67. Definitions.

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

(1a) Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article. (1983 Reg. Sess., 1984), c. 1073, s. 1; 1989, c. 256, s. 1; c. 770, s. 46; 2005-432, s. 2; 2006-226, s. 18.)

§ 90-270.68. Establishment of Board, terms, vacancies, removal, meetings, compensation.

(a) Establishment of Board. – The North Carolina Board of Occupational Therapy is created. The Board shall consist of seven members who are appointed by the Governor and are residents of this State at the time of and during their appointment, as follows:

(1) Three members shall be occupational therapists and one member shall be an occupational therapy assistant. Each of these members shall be licensed to practice in North Carolina and have practiced, taught, or engaged in research in occupational therapy for at least three of the five years immediately preceding appointment to the Board.
(2) One member shall be a physician in good standing with the North Carolina Medical Board and licensed by and registered with the North Carolina Medical Board to practice medicine in this State.
(3) One member shall represent the public at large and shall be a person who is not a health care provider licensed under this Chapter or the spouse of a licensed health care provider.
(4) One member shall be a counselor, educator, or school-based professional certified or licensed under North Carolina law who is employed in the North Carolina public school system and is not an occupational therapist or an occupational therapy assistant.

The occupational therapist members and the occupational therapy assistant member shall be nominated by the North Carolina Occupational Therapy Association, Inc., following the use of a procedure made available to all occupational therapists and occupational therapy assistants licensed and residing in North Carolina. In soliciting nominations and compiling its list, the Association shall give consideration to geographic distribution, clinical specialty, and other factors that will promote representation of all aspects of occupational therapy practice. The records of the nomination procedures shall be filed with the Board and made available for a period of six months following nomination for reasonable inspection by any licensed practitioner of occupational therapy.

The physician member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina Medical Society. The counselor, educator, or school-based professional member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina School Counselors Association.

(b) Terms. – Members of the Board shall serve four-year staggered terms. No member shall serve more than two consecutive four-year terms, unless a member is appointed to fill a vacancy for an unexpired term, then that member may complete the unexpired term and serve one additional four-year term.

(c) Vacancies. – In the event a member of the Board cannot complete a term of office, the vacancy shall be filled by appointment by the Governor, in accordance with the procedures set forth in this section, for the remainder of the unexpired term. Vacancies shall be filled by the Governor within 45 days of receipt of the nominations from the North Carolina Occupational Therapy Association, Inc., or, in the case of public members, within 45 days of the receipt of notice of vacancy.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from participating in Board business until the charges are resolved.

(e) Meetings. – Each year the Board shall meet and designate a chairperson, a vice-chairperson, and a secretary-treasurer from among its members. The Board may hold additional meetings upon call of the chairperson or any two board members. A majority of the Board membership shall constitute a quorum.

(f) Compensation. – Members of the Board shall receive no compensation for their services, but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1989, c. 256, s. 2; 2005-432, s. 3.)

§ 90-270.69. Powers and duties of the Board.

The Board shall have the following powers and duties:

(1) Establish and determine the qualifications and fitness of applicants for licensure to practice occupational therapy in this State.

(2) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(2a) Communicate disciplinary actions to relevant State and federal authorities and to other state occupational therapy licensing authorities.

(3) Issue and renew, and deny, suspend, revoke or refuse to issue or renew any license under this Article.

(4) Adopt, amend, or repeal any reasonable rules or regulations necessary to carry out the purposes of this Article, including but not limited to rules establishing ethical standards of practice.

(5) Employ professional, clerical, investigative or special personnel necessary to carry out the provisions of this Article, and purchase or rent office space, equipment and supplies.

(6) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(7) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises under this Article.

(8) Establish reasonable fees for applications, initial and renewal licenses, and other services provided by the Board.

(9) Submit an annual report to the Governor and General Assembly of all its official actions during the preceding year, together with any recommendations and findings regarding improvement of the profession of occupational therapy.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules and regulations established by the Board.

(11) Conduct a training program as needed for new Board members designed to familiarize new members with their duties. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1987, c. 827, ss. 1, 77; 2005-432, s. 4; 2008-187, s. 40(a).)

§ 90-270.70. Requirements for licensure.

(a) Any individual who desires to be licensed as an occupational therapist or occupational therapy assistant shall file a written application with the Board on forms provided by the Board, showing to the satisfaction of the Board that the applicant:

(1) Is of good moral character; and

(2) Has passed an examination approved by the Board as provided in this Article.

Applicants for licensure as an occupational therapist must also have successfully completed an accredited occupational therapy educational curriculum and the required supervised fieldwork as determined by the Board. Applicants for licensure as an occupational therapy assistant must also

have successfully completed an accredited occupational therapy assistant educational curriculum and the required supervised fieldwork as determined by the Board.

(b) Occupational therapists who are trained outside of the United States and its territories shall satisfy the examination and educational requirements as stated in subsection (a) of this section. The Board shall require these applicants to meet examination eligibility requirements as established by the credentialing body recognized by the Board before taking the examination. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 5.)

§ 90-270.71: Repealed by Session Laws 2005-432, s. 6, effective September 22, 2005.

§ 90-270.72. Exemption from requirements.

The Board may exempt an applicant from certain licensure requirements if the applicant presents proof satisfactory to the Board of current licensure as an occupational therapist or occupational therapy assistant in another state or the District of Columbia, Puerto Rico, or Guam, provided the other jurisdiction's licensure standards are considered by the Board to be substantially equivalent to or higher than those prescribed in this Article. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 7.)

§ 90-270.73. Issuance of license.

(a) The Board shall issue a license to any individual who meets the requirements of this Article upon payment of the license fee prescribed in G.S. 90-270.77.

(b) Any individual licensed as an occupational therapist under this Article may use the words "occupational therapist" and may use the letters "O.T." or "O.T./L." in connection with his or her name or place of business.

(c) Any individual licensed as an occupational therapy assistant under this Article may use the words "occupational therapy assistant" and may use the letters "O.T.A." or "O.T.A./L." in connection with his or her name or place of business.

(d) Repealed by Session Laws 2008-187, s. 40(b), effective August 7, 2008. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 8; 2008-187, s. 40(b).)

§ 90-270.74: Expired.

§ 90-270.75. Renewal of license.

(a) Licenses issued under this Article shall be subject to annual renewal upon completion of continuing education and competency requirements as may be required by the Board, upon the payment of a renewal fee specified under G.S. 90-270.77 and in compliance with this Article, and shall expire unless renewed in the manner prescribed by the Board. The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with G.S. 90-270.77, but no such late renewal may be granted more than five years after a license expires.

(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 to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended until the license is reinstated. If a license revoked on disciplinary grounds is reinstated, the licensee shall pay the renewal fee and any late fee that may be applicable. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1989, c. 256, s. 3; 2005-432, s. 10.)

§ 90-270.76. Suspension, revocation and refusal to renew license.

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

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

(2) Engaging in unprofessional conduct pursuant to rules established by the Board or violating the Code of Ethics adopted and published by the Board.

(3) Having been convicted of or pleaded guilty or nolo contendere to a crime involving moral turpitude or any crime which indicates that the occupational therapist or occupational therapy assistant is unfit or incompetent to practice occupational therapy or that the occupational therapist or occupational therapy assistant has deceived or defrauded the public.

(4) Engaging in any act or practice violative of any of the provisions of this Article or any rule or regulation adopted by the Board or aiding, abetting or assisting any person in such a violation.

(5) Committing an act or acts of malpractice, gross negligence or incompetence in the practice of occupational therapy.

(6) Practicing as a licensed occupational therapist or occupational therapy assistant without a current license.

(7) Engaging in conduct that could result in harm or injury to the public.

(8) Having an occupational therapy license revoked or suspended or other disciplinary action taken whether in this State or another jurisdiction.

(9) Being unfit or incompetent to practice occupational therapy by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

(b) The denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the Board after a hearing held in accordance with G.S. Chapter 150B and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1987, c. 827, s. 1; 2005-432, s. 11.)

§ 90-270.77. Fees.

The Board shall adopt and publish, in the manner established by its rules and regulations, fees reasonably necessary to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed ten dollars ($10.00).

(2) For issuance of an initial license, a fee not to exceed one hundred dollars ($100.00).

(3) For the renewal of a license, a fee not to exceed fifty dollars ($50.00).

(4) For the late renewal of a license, a fee not to exceed fifty dollars ($50.00).

(5) Expired.

(6) For copies of Board rules and licensure standards, charges not to exceed the actual cost of printing and mailing. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 12.)

§ 90-270.78. False representation of license prohibited.

(a) It is unlawful for any person who is not licensed in accordance with this Article or whose license has been suspended, revoked or not renewed by the Board to:

(1) Engage in the practice of occupational therapy.

(2) Orally, in writing, in print or by sign, or in any other manner, directly or by implication, represent that he or she is engaging in occupational therapy.

(3) Use in connection with his or her name or place of business the words "occupational therapist" or "occupational therapy assistant", or the letters "O.T.", "O.T./L.", "O.T.A.", or "O.T.A./L.", or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational therapist, or occupational therapy assistant.

(b) Any person who resides in another state or foreign country and who, by use of electronic or other medium, performs any of the acts described as the practice of occupational therapy pursuant to this Article, but is not licensed pursuant to this Article, shall be regarded as practicing occupational therapy without a North Carolina license and is subject to the provisions of this Article and appropriate regulation by the Board. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 13; 2008-187, s. 40(c); 2009-570, s. 11.)

§ 90-270.79. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor. Each act of such unlawful practice shall constitute a distinct and separate offense. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1993, c. 539, s. 648; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-270.80. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action. (1983 (Reg. Sess., 1984), c. 1073, s. 1.)

§ 90-270.80A. Civil penalties, disciplinary costs.

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Article and rules adopted by the Board.

(d) Costs. – The Board may assess the costs of disciplinary actions against any person found to be in violation of this Article or rules adopted by the Board. (2005-432, s. 14.)

§ 90-270.81. Persons and practices not affected.

Nothing in this Article shall be construed to prevent or restrict:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State from performing work incidental to the practice of that profession or occupation as long as the person does not represent himself or herself as an occupational therapist or occupational therapy assistant.

(2) Any person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if he or she provides occupational therapy solely under the direction or control of the organization by which he or she is employed.

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if the activities and services constitute a part of a supervised course of study and if the person is designated by a title which clearly indicates his or her status as a student or trainee.

(4) Any person fulfilling the supervised fieldwork experience required for licensure under this Article if the person is designated by a title, which clearly indicates his or her status as a student or trainee.

(5) Occupational therapists or occupational therapy assistants licensed in other jurisdictions who are consulting, teaching, or participating in special occupational therapy education projects, demonstrations or courses in this State, provided their evaluation and treatment of patients is minimal.

(6) The practice of occupational therapy by an occupational therapist or occupational therapy assistant licensed in another jurisdiction who comes into this State, whether in person or by use of any electronic or other medium, on an irregular basis, to consult with a North Carolina licensed occupational therapist or occupational therapy assistant or to consult with faculty at an academic facility about education and training. This shall not apply to occupational therapists or occupational therapy assistants residing in a neighboring state and regularly practicing in this State. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 15.)