

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1467
(Representatives Svedjan, Nelson, Keiser, Carlisle)
(Senators Kilzer, Kinnoin)

AN ACT to create and enact three new sections to chapter 43-40 of the North Dakota Century Code, relating to complaints and investigations against occupational therapists and occupational therapy assistants and the board of occupational therapy practice recovering costs of prosecution; to amend and reenact sections 43-40-01, 43-40-02, 43-40-03, 43-40-04, 43-40-08, 43-40-10, 43-40-11, 43-40-12, 43-40-13, 43-40-15, 43-40-16, and 43-40-18 of the North Dakota Century Code, relating to licensing and practice of occupational therapists; to repeal section 43-40-09 of the North Dakota Century Code, relating to licensing occupational therapy assistants; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-40-01 of the North Dakota Century Code is amended and reenacted as follows:

43-40-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. ~~"Association" means the North Dakota occupational therapy association.~~
2. "Board" means the board of occupational therapy practice.
3. ~~2.~~ "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.
4. ~~3.~~ "Occupational therapist 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. ~~4.~~ "Occupational therapy practice" means the use of occupation and purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences, or the aging process in order to maximize independence, prevent disability, and maintain health 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. The Occupational therapy encompasses evaluation, treatment, and consultation, research, and education. Specific occupational Occupational therapy services include teaching 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; developing perceptual motor skills and sensory integrative functioning; developing skills essential for productivity, functional communication and mobility; positioning; social integration; cognitive mechanisms; enhancing play skills and prevocational and leisure capacities; designing, fabricating, or applying selected orthotic and prosthetic devices or selective

~~adaptive equipment; using specifically designed crafts and exercises to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and adapting environments for the handicapped 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. The therapy~~ Therapy may be provided individually, or in groups, or through social systems 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- 5. "Occupational therapy aide" means a an unlicensed person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant ~~and whose activities require an understanding of occupational therapy but do not require professional or advance training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy in accordance with rules adopted by the board.~~
6. "Occupational therapy student" is a person enrolled in an accredited occupational therapy education program.

SECTION 2. AMENDMENT. Section 43-40-02 of the North Dakota Century Code is amended and reenacted as follows:

43-40-02. License required - Title - Abbreviation. A person may not practice occupational therapy or hold oneself 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 "~~O.T.R.," "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 "~~C.O.T.A.," "OTA/L" or other designation approved by the board.~~ No other individual may use these names or abbreviations.

SECTION 3. AMENDMENT. Section 43-40-03 of the North Dakota Century Code is amended and reenacted as follows:

43-40-03. Persons and practices not affected by chapter. This chapter does not prevent or restrict the practice, services, or activities of:

1. ~~Any person licensed in this state to engage in the profession or occupation for which licensed.~~ 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 pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if the person is designated by a title which clearly indicates that person's status as a student or trainee.~~
4. ~~Any person fulfilling the supervised fieldwork experience requirements of subsection 3 of section 43-40-08, if the experience constitutes a part of the experience necessary to meet the requirement of that section.~~
5. Any person performing occupational therapy services consultation, continuing education, inservice, or pre-service training in this state, if these services are performed for no more than ~~ninety~~ thirty days in a calendar year ~~in association with an occupational therapist licensed under this chapter, if:~~

- a. The person is licensed or registered under the law of another state which has ~~licensure~~ 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 (~~O.T.R.~~) or a certified occupational therapy assistant (~~C.O.T.A.~~), established by ~~the American~~ a national occupational therapy association certifying agency approved by the board.
6. ~~Any person employed as an occupational therapy aide.~~

SECTION 4. AMENDMENT. Section 43-40-04 of the North Dakota Century Code is amended and reenacted as follows:

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, ~~four of whom must be appointed from a list of names submitted by the North Dakota occupational therapy association,~~ all of whom must be residents of this state ~~at the time of their appointment.~~ The persons occupational therapy practitioners ~~appointed from the list submitted by the association~~ 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 ~~an~~ a licensed occupational therapy assistant. ~~The members of the first board need not be licensed for appointment to the board but they must fulfill the requirements for licensure under this chapter.~~ One member must represent the public with an interest in the rights of the consumers of health services.
2. ~~The governor, prior to September 1, 1983, shall appoint two board members for a term of one year, two for a term of two years, and one for a term of three years. Appointments made thereafter 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, except for the first appointed 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.~~
3. ~~Prior to August 1, 1983, and annually thereafter, the association may submit at least three and not more than five names for each of the five board positions under subsection 2. If a vacancy in one of the positions exists, the association may recommend, as soon as practical, at least two and not more than three persons to fill that vacancy. The governor shall appoint, as soon as practical, one of these persons to fill the unexpired term. If the association does not provide a recommendation, 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. ~~All meetings of the board are open to the public, except that the board may hold closed sessions to approve examinations, or upon request of an applicant who fails an examination, to prepare a response indicating any reason for the applicant's failure.~~
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.

SECTION 5. AMENDMENT. Section 43-40-08 of the North Dakota Century Code is amended and reenacted as follows:

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, ~~showing~~ demonstrating to the satisfaction of the board that the applicant:

1. ~~Is of good moral character~~ 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 the committee on allied health education and accreditation/American medical association in collaboration with the American occupational therapy association~~ a national occupational therapy accrediting agency approved by the board.
 - b. ~~The occupational therapy assistant educational program must be approved~~ accredited by the American occupational therapy association a national occupational therapy accrediting agency approved by the board.
- ~~3.~~ 4. Has successfully completed a period of supervised fieldwork experience ~~arranged~~ required by the ~~recognized~~ accredited educational institution where the applicant met the academic requirements required by the ~~nationally recognized professional association~~ a national occupational therapy accrediting agency approved by the board.
 - a. ~~For an occupational therapist, a minimum of six months of supervised fieldwork experience is required.~~
 - b. ~~For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.~~
4. 5. Has passed an examination as provided for in section 43-40-10 approved by the board.

SECTION 6. AMENDMENT. Section 43-40-10 of the North Dakota Century Code is amended and reenacted as follows:

43-40-10. Foreign-trained Internationally trained applicants. ~~Foreign-trained Internationally trained~~ occupational therapists and occupational therapy assistants shall satisfy the ~~examination requirements of subsection 4 of section 43-40-08.~~ Foreign-trained applicants shall furnish to the board proof of good moral character and completion of educational and supervised fieldwork requirements substantially equal equivalent to those contained in section 43-40-08 before taking the examination.

SECTION 7. AMENDMENT. Section 43-40-11 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~Only a~~ A person satisfying the requirements of ~~subsections 1 through 3~~ 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. ~~A person who fails an examination may apply for reexamination upon payment of the prescribed fee.~~
2. ~~Each applicant for licensure must be examined by written examination as established by the American occupational therapy association to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and such other subjects as the board may require to determine the applicant's fitness to practice. The board shall approve an examination for occupational therapists and an examination for occupational therapy assistants and establish standards for acceptable performance.~~

- ~~3. Applicants for licensure must be examined at a time and place and under such supervision as the board may require. Examinations must be given at least twice each year at such places as the board may determine. The board shall give reasonable public notice of the examination times and places.~~
- ~~4. Applicants may obtain their examination scores and may review their papers in accordance with any rules established by the board. 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.~~

SECTION 8. AMENDMENT. Section 43-40-12 of the North Dakota Century Code is amended and reenacted as follows:

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

- ~~1. The board shall grant a license to any person certified prior to July 1, 1983, as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American occupational therapy association. The board may waive the examination, education, or experience requirements and grant a license to any person certified by the American occupational therapy association after July 1, 1983, if the board determines the requirements for such certification are equivalent to the requirements for licensure in this chapter.~~
2. 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.

SECTION 9. AMENDMENT. Section 43-40-13 of the North Dakota Century Code is amended and reenacted as follows:

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. This A limited permit allows the person to practice occupational therapy in association with under supervision of a North Dakota licensed occupational therapist. This A limited permit is valid until the person is issued a license under section 43-40-14 or 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. This~~
- ~~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.~~

SECTION 10. AMENDMENT. Section 43-40-15 of the North Dakota Century Code is amended and reenacted as follows:

43-40-15. Renewal of license.

1. Any license issued under this chapter is subject to annual renewal and expires unless renewed in the manner prescribed by the rules of the board, ~~upon the payment of a renewal fee.~~ The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than ~~five~~ three years after its expiration.
2. ~~Upon request, the board shall grant inactive status to a licensee who:~~

- a. ~~Does not practice as an occupational therapist or an occupational therapy assistant;~~
- b. ~~Does not hold oneself out as an occupational therapist or an occupational therapy assistant; and~~
- e. ~~Maintains any continuing competency requirements established by the board.~~

The board may establish additional requirements for license renewal which provide evidence of continuing competency.

SECTION 11. AMENDMENT. Section 43-40-16 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~which has endangered or is likely to endanger the health, welfare, or safety of the public.~~ 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 ~~American occupational therapy association~~ 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, 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 ~~denial,~~ refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license may be ordered by the board after a hearing ~~in the manner provided by rules adopted by the board~~ 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.

SECTION 12. AMENDMENT. Section 43-40-18 of the North Dakota Century Code is amended and reenacted as follows:

43-40-18. Penalty - Injunction. Any person who violates section 43-40-02 and subsection 1 of section 43-40-16 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.

SECTION 13. A new section to chapter 43-40 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 14. A new section to chapter 43-40 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 15. A new section to chapter 43-40 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 16. REPEAL. Section 43-40-09 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1467.

House Vote: Yeas 93 Nays 0 Absent 5

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State