

CHAPTER 457G
OCCUPATIONAL THERAPY PRACTICE

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Note

Licensing surcharge upon issuance of a new license and at each license renewal period; cessation. L 2014, c 209, §9.

" **§457G-1 Definitions.** As used in this chapter unless the context otherwise requires:

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Foreign-trained person" means a person who has completed an educational program or course of study in occupational therapy in an institution located outside the United States.

"Occupational therapist" means a person who engages in the practice of occupational therapy in this State.

"Occupational therapy assistant" means a person who engages in the practice of occupational therapy under the supervision of and in partnership with an occupational therapist. [L 2001, c 198, pt of §1; am L 2003, c 97, §5; am L 2014, c 209, §3]

Note

Former §457G-1 renumbered as §457G-1.5.

" **[§457G-1.2] Occupational therapy program.** There is established an occupational therapy program within the department to be administered by the director. [L 2014, c 209, pt of §2]

" **[§457G-1.3] Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the powers and duties to:

- (1) Grant, deny, renew, refuse to renew, restore, terminate, reinstate, condition, restrict, suspend, or revoke a license issued pursuant to this chapter;
- (2) Grant permission to a person to practice occupational therapy and to use the title of "licensed occupational therapist" or a description indicating that the person is a licensed occupational therapist in this State;
- (3) Grant permission to a person to practice as an occupational therapy assistant and to use the title "licensed occupational therapy assistant" or a description indicating that the person is a licensed occupational therapy assistant in this State;

- (4) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out the purposes of this chapter;
- (5) Administer, coordinate, and enforce this chapter;
- (6) Discipline a licensed occupational therapist or licensed occupational therapy assistant on grounds specified by this chapter or chapter 436B or for any violation of rules adopted by the director pursuant to this chapter;
- (7) Refuse to license a person for failure to meet the licensing requirements in this chapter or for any reason specified by this chapter as grounds to discipline an occupational therapist or occupational therapy assistant; and
- (8) Appoint an advisory committee composed of practicing occupational therapists and occupational therapy assistants to assist with the implementation of this chapter. [L 2014, c 209, pt of §2]

" **§457G-1.4 License required.** (a) Except as specifically provided in this chapter, no person shall engage in the practice of occupational therapy or use the title "licensed occupational therapist" or "occupational therapist" without a valid license to practice occupational therapy issued pursuant to this chapter.

(b) Except as specifically provided in this chapter, no person shall engage in the practice of occupational therapy as an occupational therapy assistant or use the title "licensed occupational therapy assistant" or "occupational therapy assistant" unless:

- (1) The practice is performed under the supervision of and in partnership with a person who is an occupational therapist licensed to practice occupational therapy in the State; and
- (2) The person possesses a valid license issued pursuant to this chapter to practice occupational therapy as an occupational therapy assistant.

(c) Any person who violates this section shall be subject to a fine of not more than \$1,000 per violation. [L 2014, c 209, pt of §2; am L 2015, c 35, §17]

" **§457G-1.5 Practice of occupational therapy.** (a) The practice of occupational therapy is the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. It includes:

- (1) Evaluation of factors affecting activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, including:
 - (A) Client factors, including body functions, such as neuromusculoskeletal, sensory-perceptual, visual, mental, cognitive, and pain factors; body structures, such as cardiovascular, digestive, nervous, integumentary, genitourinary systems, and structures related to movement, values, beliefs, and spirituality;
 - (B) Habits, routines, roles, rituals, and behavior patterns;
 - (C) Occupational and social environments, cultural, personal, temporal, and virtual contexts and activity demands that affect performance; and
 - (D) Performance skills, including motor and praxis, sensory-perceptual, emotional regulation, cognitive, communication, and social skills;
- (2) Methods or approaches selected to direct the process of interventions, including:
 - (A) Establishment, remediation, or restoration of a skill or ability that has not yet developed, is impaired, or is in decline;
 - (B) Compensation, modification, or adaptation of activity or environment to enhance performance or prevent injuries, disorders, or other conditions;
 - (C) Retention and enhancement of skills or abilities without which performance in everyday life activities would decline;
 - (D) Promotion of health and wellness, including the use of self-management strategies, to enable or enhance performance in everyday life activities; and
 - (E) Prevention of barriers to performance and participation, including injury and disability prevention; and
- (3) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation, including:
 - (A) Therapeutic use of occupations, exercises, and activities;
 - (B) Training in self-care, self-management, health management and maintenance, home management,

- community reintegration, work reintegration, school activities, and work performance;
- (C) Development, remediation, or compensation of neuromusculoskeletal, sensory-perceptual, visual, mental, and cognitive functions; pain tolerance and management; and behavioral skills;
 - (D) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process;
 - (E) Education and training of individuals, including family members, caregivers, groups, populations, and others;
 - (F) Care coordination, case management, and transition services;
 - (G) Consultative services to groups, programs, organizations, or communities;
 - (H) Modification of environments, such as home, work, school, or community, and adaptation of processes, including the application of ergonomic principles;
 - (I) Assessment, design, fabrication, application, fitting, and training in seating and positioning; assistive technology; adaptive devices; orthotic devices; and training in the use of prosthetic devices;
 - (J) Assessment, recommendation, and training in techniques to enhance functional mobility, including management of wheelchairs and other mobility devices;
 - (K) Low vision rehabilitation;
 - (L) Driver rehabilitation and community mobility;
 - (M) Management of feeding, eating, and swallowing to enable eating and feeding performance;
 - (N) Application of physical agent modalities and use of a range of specific therapeutic procedures, such as wound care management, interventions to enhance sensory-perceptual and cognitive processing, and manual therapy, to enhance performance skills; and
 - (O) Facilitating the occupational performance of groups, populations, or organizations through the modification of environments and the adaptation of processes.

(b) No person shall engage in the practice of occupational therapy gratuitously or for pay, offer to practice occupational therapy, offer occupational therapy, or represent, advertise, or announce, either publicly or privately, that the person is an

occupational therapist, unless the person is appropriately licensed under this chapter.

(c) No person shall use, in connection with the person's name or business, the words "occupational therapist licensed", "registered occupational therapist", "licensed occupational therapist", "occupational therapist", or "doctor of occupational therapy", or the letters "OT", "OTR", "OTD", "OT/L", "OTR/L", or "OTD/L", or any other words, letters, abbreviations, or insignia indicating or implying that the person is an occupational therapist unless the person is appropriately licensed as an occupational therapist under this chapter.

(d) Effective January 1, 2017, except as otherwise provided in this chapter, no person shall engage in the practice of occupational therapy or represent the person's self as able to practice as an occupational therapy assistant in the State unless:

- (1) The practice is done under the supervision of and in partnership with an occupational therapist who is licensed to practice occupational therapy in the State; and
- (2) The person possesses a valid license issued pursuant to this chapter to practice occupational therapy as an occupational therapy assistant.

(e) No person shall use the title "occupational therapy assistant licensed", "licensed occupational therapy assistant", the letters "OTA/L" or "COTA/L", or any other words, letters, abbreviations, or insignia indicating or implying that the person is an occupational therapy assistant unless that person is appropriately licensed as an occupational therapy assistant under this chapter. [L 1978, c 146, pt of §1; gen ch 1985; am L 1998, c 100, §2; am L 2001, c 198, §2; am L 2003, c 97, §3; am L 2014, c 209, §4]

Note

This section was renumbered from §457G-1.

" **§457G-2 Qualifications of occupational therapists.** (a) To qualify for licensure in this State, occupational therapists shall have completed the educational requirements and supervised field work experience required for certification by the National Board for Certification in Occupational Therapy and shall have passed a national certification examination administered by that association.

(b) In the case of foreign-trained persons, the applicant for an occupational therapy license shall have completed the National Board for Certification in Occupational Therapy

eligibility determination process for occupational therapists and shall have passed a national certification examination administered by the National Board for Certification in Occupational Therapy. [L 1978, c 146, pt of §1; am L 1998, c 35, §1 as superseded by c 97, §§2, 4; am L 2001, c 198, §3; am L 2003, c 97, §4; am L 2014, c 209, §5]

" **§457G-2.5 REPEALED.** L 2003, c 97, §6.

" **[\$457G-2.6] Qualifications of occupational therapy assistants.** (a) Effective January 1, 2017, occupational therapy assistants shall be licensed pursuant to this chapter.

(b) To qualify for licensure in this State, occupational therapy assistants shall have completed the educational requirements and supervised field work required for certification by the National Board for Certification in Occupational Therapy and shall have passed a national certification examination administered by the National Board for Certification in Occupational Therapy.

(c) In the case of foreign-trained persons, the applicant for an occupational therapy assistant license shall have completed the National Board for Certification in Occupational Therapy eligibility determination process for occupational therapy assistants and shall have passed a national certification examination administered by the National Board for Certification in Occupational Therapy. [L 2014, c 209, pt of §2]

" **[\$457G-2.7] Supervision of occupational therapy assistants; partnership with occupational therapists.** (a) An occupational therapy assistant may practice occupational therapy only under the supervision of, and in partnership with, an occupational therapist who is licensed to practice occupational therapy in the State. The occupational therapist shall be responsible for occupational therapy evaluation, appropriate reassessment, treatment planning, interventions, and discharge from occupational therapy based on standard professional guidelines. The supervising occupational therapist and the supervised occupational therapy assistant shall have legal and ethical responsibility for ongoing management of supervision, including providing, requesting, giving, or obtaining supervision.

(b) The supervising occupational therapist shall:

- (1) Determine the frequency, level, and nature of supervision with input from the occupational therapy assistant; and
- (2) Base the supervision determination on a variety of factors, including the clients' required level of

care, treatment plan, and experience and pertinent skills of the occupational therapy assistant.

(c) The supervising occupational therapist shall supervise the occupational therapy assistant to ensure that the occupational therapy assistant:

- (1) Does not initiate or alter a treatment program without prior evaluation by and approval of the supervising occupational therapist;
- (2) Obtains prior approval of the supervising occupational therapist before making adjustments to a specific treatment procedure; and
- (3) Does not interpret data beyond the scope of the occupational therapy assistant's education and training. [L 2014, c 209, pt of §2]

" **[\$457G-3] Injunction.** The attorney general or the director of the office of consumer protection may bring proceedings to enjoin any violation of this chapter. [L 1978, c 146, pt of §1]

" **[\$457G-4] Civil penalty.** Any person violating any provisions of this chapter shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the director of the office of consumer protection on behalf of the State. [L 1978, c 146, pt of §1]

" **[\$457G-5] Exemptions.** (a) Nothing in this chapter shall be construed to prohibit any person from acting within the scope of a license issued to that person under any other law; provided that the person shall not claim to be an occupational therapist or occupational therapy assistant, or claim to be performing occupational therapy, unless the person is also licensed under this chapter.

(b) Nothing in this chapter shall be construed to prohibit students in an educational program for occupational therapists or occupational therapy assistants from participating in activities that are conducted as part of the educational program and are under the guidance and supervision of a licensed occupational therapist.

(c) Nothing in this chapter shall be construed to prohibit a person licensed as an occupational therapist in another state or foreign country from practicing occupational therapy in this State if the person is part of an educational demonstration or instructional program or seminar sponsored by an educational institution, hospital, medical care program, the Occupational Therapy Association of Hawaii, or any other similar person or

group, for the duration of the program or seminar and confined to the purpose of the program or seminar.

(d) Nothing in this chapter shall be construed to prohibit an occupational therapist who is practicing in the United States armed services, United States Public Health Service, or Department of Veterans Affairs pursuant to federal regulations for state licensure of health care providers from practicing as an occupational therapist; provided that if the person, while federally employed as an occupational therapist, engages in the practice of occupational therapy outside the course and scope of the person's federal employment, the person shall be required to obtain a license in accordance with this chapter. [L 2014, c 209, pt of §2]

" **[§457G-6] Biennial renewal; failure to renew; restoration, inactive license; conversion from registration.**

(a) The biennial renewal fee shall be paid to the department on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee on or before this date shall constitute a forfeiture of the license. A forfeited license may be restored upon written application within one year from the date of forfeiture and the payment of the delinquent fee plus an amount equal to fifty per cent of the delinquent fee.

(b) Upon written application by the licensee, the director may place the licensee's active license on inactive status. During the inactive period, a licensee shall not engage in the practice of occupational therapy. The license may be reactivated at any time by the licensee by submitting a written application to the director and payment of the renewal and any other applicable fees. A licensee's inactive status shall not deprive the director of the director's authority to institute or continue any disciplinary or enforcement action against the licensee.

(c) Effective with the December 31, 2014, renewal period, each active occupational therapist registration shall be converted to an active occupational therapist license by operation of law. The conversion from registration to licensure shall not:

- (1) Affect any prior discipline, limitation, or condition imposed by the director on an occupational therapist's registration;
- (2) Limit the director's authority over any registrant; or
- (3) Affect any pending investigation or administrative proceeding.

(d) Effective January 1, 2015, the director shall treat any application pending for an occupational therapist

registration as an application for licensure, and the application shall be subject to the requirements established by the director in accordance with this chapter. [L 2014, c 209, pt of §2]

" **[§457G-7] License revocation or suspension; reinstatement; probation.** (a) In addition to any other actions authorized by law, any license issued under this chapter may be revoked or suspended by the director at any time for any cause authorized by law, including but not limited to the following:

- (1) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (2) Wilfully betraying patient confidentiality;
- (3) Making an untruthful and improbable statement in advertising one's practice or business;
- (4) False, fraudulent, or deceptive advertising;
- (5) Being habituated to the excessive use of drugs or alcohol or being or having been addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (6) Practicing occupational therapy while the ability to practice is impaired by alcohol, drugs, or mental instability;
- (7) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to practice occupational therapy;
- (8) Professional misconduct, gross negligence, or manifest incapacity in the practice of occupational therapy;
- (9) Conduct or practice contrary to recognized standards of ethics for the practice of occupational therapy in the United States; or
- (10) Violation of this chapter, chapter 436B, or any rule or order of the director.

(b) To reinstate a suspended license, or to grant licensure to an applicant whose license was previously revoked, the director may require further education or training or require proof of competence in performance.

(c) In lieu of revoking or suspending a license, the director may place the licensee on probation, the terms of which may require observation of the licensee by a licensed occupational therapist.

(d) Any licensee or applicant who violates this section may be fined not more than \$1,000 per violation in addition to any other fine or fee imposed. [L 2014, c 209, pt of §2]