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CHAPTER 36.

 OCCUPATIONAL THERAPISTS

**SECTION 40‑36‑5.** Application of chapter; conflict of laws.

Unless otherwise provided for in this chapter, Article 1, Chapter 1 applies to occupational therapists and occupational therapy assistants regulated or administered, or both, by the Department of Labor, Licensing and Regulation. If there is a conflict between this chapter and Article 1, Chapter 1, Title 40, the provisions of this chapter control.

**SECTION 40‑36‑10.** Board of Occupational Therapy; creation and purpose; membership.

(A) There is created the South Carolina Board of Occupational Therapy under the administration of the Department of Labor, Licensing and Regulation. The purpose of this board is to protect the public through the regulation of professionals who identify, assess, and provide treatment for individuals threatened by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological or social disability, through the administration and enforcement of this chapter and regulations promulgated under this chapter.

(B) The board consists of seven members to be appointed by the Governor with the advice and consent of the Senate. Five members must be occupational therapists with a minimum of three years’ experience; one member must be an occupational therapy assistant with a minimum of one year’s experience; and one member must be a lay member. All of the therapists and therapy assistant members must hold active and valid licenses in this State. Nominations for appointment to the board may be made to the Governor by an individual, group, or association. From a list of all licensed occupational therapists and occupational therapy assistants, the South Carolina Occupational Therapy Association may submit recommendations to the Governor of at least two names for each vacancy on the board to be filled by these licensees. Members shall serve terms of three years and until their successors are appointed and qualify. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term. The Governor may remove a member of the board as provided for in Section 1‑3‑240.

**SECTION 40‑36‑20.** Definitions.

As used in this chapter:

(1) “ACOTE” means the Accreditation Council for Occupational Therapy Education.

(2) “AOTA” means the American Occupational Therapy Association.

(3) “Board” means the South Carolina Board of Occupational Therapy.

(4) “Direct supervision” means personal, daily supervision, and specific delineation of tasks and responsibilities by an occupational therapist and includes the responsibility for personally reviewing and interpreting the results of a supervisee on a daily basis.

(5) “NBCOT” means the National Board for Certification in Occupational Therapy.

(6) “Occupational therapist” means a person licensed to practice occupational therapy.

(7) “Occupational therapy” means the functional evaluation and treatment of individuals whose ability to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological or social disability. The treatment utilizes occupational, namely goal‑oriented activities, to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual. Specific occupational therapy techniques include, but are not limited to, activities of daily living (ADL), the fabrication and application of splints, sensory‑motor activities, the use of specifically designed crafts, guidance in the selection and use of adaptive equipment, exercises to enhance functional performance, prevocational evaluation and treatment and consultation concerning adaption of physical environments for the handicapped. These techniques are applied in the treatment of individual patients or clients, in groups, or through social systems.

(8) “Occupational therapy aide” means a person who has received on‑the‑job training in occupational therapy and is employed in an occupational therapy setting under the direct on‑site supervision of a licensed occupational therapist or licensed occupational therapy assistant.

(9) “Occupational therapy assistant” means a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist.

(10) “On‑site” means the same premises while direct client treatment is being performed.

(11) “Student” means a person who is enrolled in an educational program approved by ACOTE or other AOTA endorsed accrediting body for occupational therapy.

(12) “Supervision” means personal and direct involvement of an occupational therapist in a supervisee’s professional experience which includes evaluation of the supervisee’s performance with respect to each client treated by the supervisee.

**SECTION 40‑36‑30.** Required licenses; practice while license suspended or revoked; penalty.

No person may practice occupational therapy or may practice as an occupational therapy assistant without a license issued in accordance with this chapter. A person whose license has been suspended or revoked, who uses in connection with his name the words or letters “Occupational Therapist”, “Licensed Occupational Therapist”, “Occupational Therapist Registered”, “Occupational Therapist Registered/Licensed”, “O.T.”, “L.O.T.”, “O.T.R.”, “O.T.R./L.”, or “Occupational Therapy Assistant”, “Certified Occupational Therapy Assistant”, “Certified Occupational Therapy Assistant/Licensed”, “O.T.A.”, “L.O.T.A.”, “C.O.T.A.”, “C.O.T.A./L.”, or any other letters, words, or insignia indicating that he is an occupational therapist or occupational therapy assistant, or who in any way, orally or in writing or in print or by sign directly or by implication, represents himself as an occupational therapist or occupational therapy assistant is deemed to be practicing occupational therapy or practicing as an occupational therapy assistant without being registered by the board and is guilty of a misdemeanor and, upon conviction for each offense, must be fined not less than one hundred dollars or more than five hundred dollars or be imprisoned for not less than thirty days or more than ninety days, or both. Each day’s violation constitutes a separate offense.

**SECTION 40‑36‑50.** Administrative and fiscal activities of board to be provided by Department of Labor, Licensing and Regulation; establishment of fees.

(A) The Department of Labor, Licensing and Regulation shall provide all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board in accordance with Section 40‑1‑50.

(B) The board shall establish fees in regulation.

(C) The board may direct applicants to pay an examination fee directly to a third party who has contracted to administer the examination.

(D) All fees are nonrefundable and may be prorated to comply with biennial licensure.

**SECTION 40‑36‑60.** Adoption of rules and regulations; seal.

The board may adopt rules governing its proceedings as provided for in Section 40‑1‑60 and may adopt an official seal bearing the words “South Carolina Board of Occupational Therapy”. The board shall promulgate regulations necessary to carry out the provisions of this chapter including, but not limited to, promulgating in regulation a code of ethics.

**SECTION 40‑36‑70.** Board regulation of licensing and discipline; additional powers and duties.

The board shall regulate the issuance of licenses and temporary licenses and shall discipline occupational therapists or occupational therapy assistants in any manner authorized by this chapter or Article 1, Chapter 1. In addition, the board has those powers and duties provided for in this chapter and as set forth in Section 40‑1‑70.

**SECTION 40‑36‑80.** Investigation of complaints and violations.

The Department of Labor, Licensing and Regulation on behalf of the board shall investigate complaints and violations of this chapter as provided for in Section 40‑1‑80.

**SECTION 40‑36‑90.** Investigation results; presentation to board; procedures for hearing.

The results of an investigation must be presented to the board, and any subsequent hearing must be conducted in accordance with Section 40‑1‑90.

**SECTION 40‑36‑100.** Restraining orders and other equitable relief.

In addition to other remedies provided for in this chapter or Article 1, Chapter 1, the board in accordance with Section 40‑1‑100 may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter.

**SECTION 40‑36‑110.** Refusal to grant licenses; suspensions, revocations, or other restrictions; grounds.

In addition to other grounds provided in Section 40‑1‑110, the board, after notice and a hearing conducted in accordance with the Administrative Procedures Act, may restrict or refuse to grant a license to an applicant or may refuse to renew the license of a licensed person or may suspend, revoke, or otherwise restrict the license of a licensed person who:

(1) has been convicted of violating federal, state, or local laws relating to occupational therapy;

(2) violates a provision of this chapter or a regulation promulgated pursuant to this chapter or an order issued by the board;

(3) fraudulently or deceptively attempts to use, obtain, alter, sell, or barter a license or temporary license;

(4) has participated in the fraudulent procurement or renewal of a license or temporary license for himself or another person or has allowed another person to use the license;

(5) has committed fraud or deceit in the practice of occupational therapy including, but not limited to:

(a) misrepresenting an educational degree, training, credentials, or competence;

(b) using or promotion or causing the use of a misleading, deceiving, improbable, or untruthful advertising matter or promotional literature;

(c) wilfully making or filing a false report or record in the practice of occupational therapy;

(6) has committed an act of dishonest, immoral, or unprofessional conduct while engaging in the practice of occupational therapy including, but not limited to:

(a) engaging in illegal, incompetent, or negligent practice;

(b) providing services to a person who reasonably cannot be expected to benefit from the services;

(7) has been convicted or plead guilty or nolo contendere to a felony or crime involving moral turpitude or a violation of a federal, state, or local alcohol or drug law, whether or not an appeal or other proceeding is pending to have the conviction or plea set aside; or

(8) has been disciplined by a licensing or disciplinary authority of a state, country, or nationally recognized professional organization or convicted or disciplined by a court of a state or country for an act that would be grounds for disciplinary action under this section.

**SECTION 40‑36‑115.** Jurisdiction of the board.

The board has jurisdiction over the actions of licensees and former licensees as provided for in Section 40‑1‑115.

**SECTION 40‑36‑120.** Board authority to impose fines in addition to other sanctions; disciplinary actions.

In addition to the sanctions the board may impose pursuant to this chapter, the board may impose a fine up to two thousand dollars for each violation of a provision of this chapter, not to exceed ten thousand dollars. The board also may take disciplinary action against a person as provided for in Section 40‑1‑120.

**SECTION 40‑36‑130.** Grounds for denial of license may be same as for disciplinary action.

As provided for in Section 40‑1‑130, the board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

**SECTION 40‑36‑140.** Denial of license based on prior criminal record.

A license may be denied based on a person’s prior criminal record only as provided for in Section 40‑1‑140.

**SECTION 40‑36‑150.** Voluntary surrender of license by licensee being investigated.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40‑1‑150.

**SECTION 40‑36‑160.** Appeal.

A person aggrieved by a final action of the board may seek review of the decision in accordance with Section 40‑1‑160.

**SECTION 40‑36‑170.** Costs of investigation and prosecution; authority to require payment by violator.

A person found in violation of this chapter or regulations promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

**SECTION 40‑36‑180.** Collection and enforcement provisions for costs and fines.

All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180.

**SECTION 40‑36‑190.** Confidentiality of proceedings and communications.

Investigations and proceedings conducted under this chapter are confidential, and all communications are privileged as provided for in Section 40‑1‑190.

**SECTION 40‑36‑200.** Violations of chapter; submission of false information to board; penalty.

A person who practices or offers to practice as an occupational therapist or as an occupational therapy assistant in this State in violation of this chapter or who knowingly submits false information to the board for the purpose of obtaining a license or who violates any other provision of this chapter is guilty of a misdemeanor and, upon conviction for each offense, must be fined not more than fifty thousand dollars or be imprisoned not more than one year, or both.

**SECTION 40‑36‑210.** Petition by department for injunctive relief.

The department, on behalf of the board and in accordance with Section 40‑1‑120, may petition an administrative law judge, in the name of the State, for injunctive relief against a person violating this chapter.

**SECTION 40‑36‑230.** Applications for licensure as occupational therapist or assistant; license requirements.

(A) An applicant for licensure as an occupational therapist shall file a written application on forms provided by the board showing to the satisfaction of the board that the applicant:

(1) has graduated from an occupational therapy educational program approved by ACOTE or other AOTA endorsed accrediting body for occupational therapy or other educational program which the board considers to be substantially equivalent;

(2) has completed successfully a minimum of six months of supervised field work experience at an educational institution approved by the educational institution where the applicant met the academic requirements;

(3) has passed a board‑approved certification exam for the occupational therapist; and

(4) is in good standing with NBCOT or other board‑approved certification program.

(B) An applicant for licensure as an occupational therapy assistant shall file a written application on a form approved by the board showing to the satisfaction of the board that the applicant:

(1) has graduated from an occupational therapy assistant educational program approved by ACOTE or other AOTA endorsed accrediting body for occupational therapy or other educational program which the board considers to be substantially equivalent;

(2) has completed successfully a minimum of two months of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where the applicant met the academic requirements;

(3) has passed a board‑approved certification exam for the occupational therapy assistant; and

(4) is in good standing with NBCOT or other board‑approved certification program.

**SECTION 40‑36‑240.** Notarized application form; fee; exam scores; out‑of‑state applicant requirements; time period for completion of process.

(A) An applicant for licensure must submit a completed notarized application form, the required fee in the form of a check or money order, and an acceptable legal document indicating any name changes, if applicable.

(B) An applicant applying for licensure by examination must comply with subsection (A) and must have reported or sent directly to the board:

(1) examination scores from a board‑approved testing service; or

(2) verification of current certification status from NBCOT or other board‑approved certification program if it has been six months or longer since the applicant passed the NBCOT or other board‑approved certification program exam.

(C) An applicant who is a graduate of an occupational therapy educational program approved by ACOTE or other AOTA endorsed accrediting body for occupational therapy and who has applied for the next scheduled board‑approved certification examination following graduation must comply with subsections (A) and (B) and must have sent directly to the board confirmation of examination registration and eligibility to examine from NBCOT or other board‑approved certification program.

(D) An applicant licensed in another state applying for license by endorsement must comply with subsection (A) and must have sent directly to the board:

(1) verification of all current permanent licenses in other states from each state;

(2) verification of current certification status from NBCOT or other board‑approved certification program.

(E) If the requirements of this section have not been completed within one year, the application and credentials must be brought up to date and resubmitted with payment of the required fee.

(F) An occupational therapist and an occupational therapy assistant shall pass a written examination approved by the board for license to practice in this State except as otherwise provided for in this chapter. The examination must be administered under the auspices of a recognized professional testing service approved by the board. The testing service shall recommend a passing score on the examination for the board’s approval. The board shall adopt a passing score for each administration of the examination. An examinee who fails to pass may retake the examination at the next examination date upon making new application for examination and payment of the examination fee.

**SECTION 40‑36‑250.** Licensure without examination.

The board may license without examination a person who holds a current and valid license as an occupational therapist or as an occupational therapy assistant in another state if:

(1) the licensure requirements for that state are at least substantially equivalent to the licensing standards required in this chapter;

(2) the applicant currently is certified by and in good standing with NBCOT or other board‑approved certification program;

(3) the applicant has submitted all applicable fees.

**SECTION 40‑36‑260.** Time period licenses are valid; renewals, fees, and penalties; continuing education requirements; inactive status; reactivation.

(A) All licenses are valid for a period of time not to exceed two years, and it is the licensee’s responsibility to renew the license on March fifteenth whether or not a notice is received. An occupational therapist or an occupational therapy assistant who first becomes licensed after December fourteenth in any year is not required to renew until March fifteenth of the year following the next year.

(B) A licensed occupational therapist and a licensed occupational therapy assistant before March sixteenth in every other year shall apply to the board for license renewal and pay the renewal fee provided for in regulation.

(C) As a condition of license renewal, a licensee must complete satisfactorily sixteen hours of continuing education per biennium as defined in regulation and must submit proof of completion on a form approved by the board and must be certified and in good standing with NBCOT or other board‑approved certification program.

(D) Notwithstanding subsection (H), if a person’s license lapses because the person did not satisfy the continuing education and certification requirements of subsection (C), the person must comply with subsection (C) before the board may renew the license.

(E) If a person does not renew a license by March fifteenth or if a license renewal application is not postmarked before March sixteenth, the board may charge a late renewal penalty as established in regulation if renewed before April sixteenth. If a person fails to renew a license and if a license renewal application is not postmarked before April sixteenth, the person’s license automatically lapses as of April sixteenth. A person who fails to renew a license or who fails to submit a license renewal application postmarked before March sixteenth and who practices as an occupational therapist or occupational therapy assistant after March fifteenth is deemed to be practicing without a license and is subject to the penalties provided for in this chapter.

(F) A licensee who does not wish to renew an active license may select inactive status on the renewal form and return the form to the board. A licensee whose license is placed on inactive status may not practice occupational therapy while the license is inactive.

(G) An occupational therapist or occupational therapy assistant whose license has been inactive for fewer than three years may reactivate the license by applying to the board, submitting proof of completion of eight hours of continuing education for each year the license has been inactive, and paying the reactivation fee provided for in regulation.

An occupational therapist or occupational therapy assistant whose license has been inactive for three years or more shall complete, as provided for in regulation:

(1) supervised contact hours;

(2) additional education; and

(3) if necessary, an examination.

An occupational therapist or occupational therapy assistant whose license has been inactive for fewer than three years and who has active status outside of this State may reinstate the license by submitting proof of completion of eight hours of continuing education for each year the license has lapsed, official verification of all current licenses, and the reactivation fee provided for in regulation.

An occupational therapist or occupational therapy assistant whose license has been inactive for three years or more and who has active status outside of this State may reinstate the license by submitting evidence satisfactory to the board of not less than one thousand hours of out‑of‑state employment within the last year, official verification of all current licenses, and the reactivation fee provided for in regulation.

(H) To reactivate a lapsed license, the occupational therapist or occupational therapy assistant must comply with the requirements for reactivating an inactive license as provided for in subsection (G).

**SECTION 40‑36‑270.** Certificate of licensure; temporary licenses; restrictions; renewals; notification of name and address changes.

(A) The board shall license as an occupational therapist or an occupational therapy assistant an applicant who proves to the satisfaction of the board fitness for licensure under the provisions of this chapter. The board shall issue to each licensee a certificate of licensure which is prima facie evidence that the person to whom it is issued has the right to represent himself or herself as a licensed occupational therapist or a licensed occupational therapy assistant subject to the provisions of this chapter.

(B) A temporary license may be granted to a person who has completed an educational program approved by ACOTE or other AOTA endorsed accrediting body for occupational therapy and who has applied to take the next scheduled board‑approved certification examination following graduation or who has taken the examination and has not received the examination results. A temporary license authorizes the temporary licensee to practice occupational therapy under the direct supervision of a licensed occupational therapist, and the temporary license is valid until the date on which the results of the next qualifying examination are received by the board. The applicant shall submit to the board a completed supervisory form for each place of employment. Temporary licenses may be renewed once in the discretion of the board, upon good cause shown.

The board may issue a temporary license to a licensee whose occupational therapist or occupational therapy assistant license has been inactive or lapsed for three years or more and who has applied to reactivate the license. The temporary license is valid for one year from the date of issue, may not be renewed, and authorizes the temporary licensee to work under the on‑site supervision of an occupational therapist licensed in this State in order to obtain the minimum number of contact hours required to reactivate the license. The licensee shall submit to the board a completed supervisory form for each place of employment. The fees for a temporary license must be established in regulation.

(C) An applicant who is not actively engaged in the profession may be required to:

(1) complete a certain number of hours of CEU’s; and/or

(2) have supervised practice specified by the board; and/or

(3) pass a written examination approved by the board.

(D) A licensee shall notify the board of a change in name or mailing address within thirty days and, when requesting a name change on a license, shall submit legal documentation indicating the name change.

**SECTION 40‑36‑280.** Persons excepted from application of chapter.

This chapter does not apply to a person:

(1) employed as an occupational therapist or occupational therapy assistant by an agency of the federal government if occupational therapy is provided solely under the direction or control of the federal government agency;

(2) who is enrolled in a course of study leading to a degree or certificate in occupational therapy in a program approved by the board if the occupational therapy activities and services constitute a part of a supervised course of study and if the person is designated by a title which clearly indicates a student or trainee status including “Occupational Therapy Student”, “Occupational Therapy Assistant Student”, “O.T.S.”, “O.T.A.S.”, or other designation approved by the board;

(3) fulfilling the supervised field work experience requirements of Section 40‑36‑230.

(4) licensed in this State by any other law and this chapter does not prohibit the person from engaging in the profession or occupation for which the person is licensed.

**SECTION 40‑36‑290.** Responsibilities and duties of occupational therapists; records; discharge notes.

(A) An occupational therapist:

(1) has the ultimate responsibility for occupational therapy treatment outcomes and for all occupational therapy services performed under the therapist’s supervision;

(2) at a minimum, shall provide supervision as required by this chapter;

(3) shall communicate regularly with a supervisee regarding assignments, plan of care, and any changes in the client’s status and shall document this communication;

(4) shall reevaluate a client where therapy has been significantly interrupted before reassigning an occupational therapy assistant to the case;

(5) only shall assign to a supervisee those duties and responsibilities for which the supervisee has been trained specifically and for which the supervisee is qualified to perform;

(6) must be accessible to supervisee each working day;

(7) shall perform the initial evaluation of and establish the treatment plan for each client;

(8) shall make a consultation/reassessment visit every seven treatments or thirty days, whichever comes first.

(B) An occupational therapist is responsible for the occupational therapy record of a client. The occupational therapy record shall consist of:

(1) the initial evaluation including a written report signed and dated by the occupational therapist performing the evaluation;

(2) a plan of care, including:

(a) treatment to be rendered;

(b) frequency and duration of treatment;

(c) measurable goals.

Progress notes must be signed and dated by the person rendering treatment. When progress notes are written by an occupational therapy student or an occupational therapy assistant student or examination candidate, the notes are to be countersigned and dated by the occupational therapist or occupational therapy assistant who is providing supervision.

A discharge note containing a statement of the client’s status at the last treatment session must be written, signed, and dated by the occupational therapist or occupational therapy assistant rendering services. In the case of the occupational therapy assistant, the occupational therapist must co‑sign and consult on all discharge notes.

**SECTION 40‑36‑300.** Responsibilities and duties of occupational therapy assistants and aides; restrictions.

(A) An occupational therapy assistant only shall assist in the practice of occupational therapy under the supervision of a licensed occupational therapist and shall:

(1) only accept those duties and responsibilities for which the assistant has been specifically trained and is qualified to perform;

(2) consult with the supervising occupational therapist every seven treatments or thirty days, whichever is first, for each client;

(3) inform the occupational therapist of any changes in a client that may require reevaluation or change in treatment;

(4) contribute to a client evaluation by gathering data, administering structured tests, and reporting observations but may not evaluate a client independently or initiate treatment before a licensed occupational therapist’s evaluation.

(B) An occupational therapy aide may perform duties associated with nontreatment aspects of occupational therapy including, but not limited to, transporting clients, preparing treatment areas, attending to the personal needs of clients during treatment sessions, and clerical or housekeeping activities under the direct on‑site supervision of a licensed occupational therapist or licensed occupational therapy assistant. When performing these duties, the occupational therapy aide must be clearly identified by using “O.T./Aide” or another designation approved by the board;

(C) An occupational therapy aide may not:

(1) perform an activity or task which requires licensure under this chapter;

(2) perform an activity or task which requires the exercise of the professional judgment of an occupational therapist; or

(3) develop or model client treatment plans or discharge plans.

(D) An occupational therapy student may perform duties or functions commensurate with the student’s training and experience under the direct on‑site supervision of a licensed occupational therapist.

**SECTION 40‑36‑310.** Severability.

If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.