

## CHAPTER 14

## (HB 261)

AN ACT relating to the practice of occupational therapy.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 319A.010 is amended to read as follows:

As used in this chapter:

- (1) "Board" means the Kentucky *Board of Licensure for Occupational Therapy*~~[Board]~~ appointed by the Governor;
- (2) *"Practice of occupational therapy" means the therapeutic use of purposeful and meaningful occupations (goal-directed activities) to evaluate and treat individuals who have a disease or disorder, impairment, activity limitation, or participation restriction that interferes with their ability to function independently in daily life roles, and to promote health and wellness. Occupational therapy intervention may include:*
  - (a) *Remediation or restoration, through goal-directed activities, of those performance abilities that are limited due to impairment in biological, physiological, or neurological processes;*
  - (b) *Adaptation of task, process, or the environment or the teaching of compensatory techniques to enhance performance;*
  - (c) *Disability prevention methods and techniques that facilitate the development or safe application of performance skills; and*
  - (d) *Health promotion strategies and practices that enhance performance abilities*~~["Occupational therapy" means the use of goal directed activities with individuals who are limited by physical limitations due to injury or illness, psychiatric and emotional disorders, developmental or learning disabilities, poverty and cultural differences or the aging process, in order to maximize independence, prevent disability and maintain health. The practice encompasses evaluation, treatment and consultation. Occupational therapy services include: teaching daily living skills; developing perceptual-motor skills and sensory integrative functioning; developing play skills and prevocational and leisure capacities; designing, fabricating, or applying selective orthotic and prosthetic devices or selective adaptive equipment; using specifically designed crafts and therapeutic activities to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; using and administering certain modalities, specifically hot and cold water, hot packs and cold packs, neutral warmth, quick icing, and paraffin to the hand; and consulting in the adaptation of the environment for individuals with disabilities. These services shall be provided individually, in groups, or through medical, health, educational and social systems. The practice of occupational therapy shall not include gait training; the use or application of electromodalities; accessory joint mobilizations; assessment of integrity and pathology of muscle, soft tissue and joint capsule; and postural or biomechanical analysis; fluidotherapy, diathermy (shortwave, microwave or infrared), ultrasound or whirlpools];~~
- (3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter;

- (4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the supervision of an occupational therapist;
- (5) "~~Occupational therapy~~ Aide" means a person *who is not licensed by the board who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function under the guidance and responsibility of a licensed occupational therapist and is supervised by an occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competence. The aide shall comply with supervision requirements developed by the board that are consistent with prevailing professional standards;*~~who assists in the practice of occupational therapy under the direct supervision of a licensed occupational therapist or occupational therapy assistant and who is required to have an understanding of occupational therapy but is not required to have professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy; and~~
- (6) "*Occupational therapy services*" include, but are not limited to:
- (a) *Evaluating, developing, improving, sustaining, or restoring skills in basic and instrumental activities of daily living (BADLs and IADLs), work or productive activities, and play and leisure activities;*
  - (b) *Evaluating, developing, remediating, or restoring components of performance as they relate to sensorimotor, cognitive, or psychosocial aspects;*
  - (c) *Designing, fabricating, applying, and training in the use of assistive technology or orthotic devices and training in the use of prosthetic devices for functional mobility and activities of daily living;*
  - (d) *Adapting environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;*
  - (e) *Applying superficial physical agent modalities as an adjunct to or in preparation for engagement in occupations;*
  - (f) *Applying deep physical agent modalities as an adjunct to or in preparation for engagement in occupations, in accordance with Section 5 of this Act;*
  - (g) *Evaluating and providing intervention in collaboration with the client, family, caregiver, or others;*
  - (h) *Educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions; and*
  - (i) *Consulting with groups, programs, organizations, or communities to provide population-based services;*
- (7) "Person" means any individual, partnership, or unincorporated organization, or corporation;
- (8) "*Deep physical agent modalities*" means any device that uses sound waves or agents which supply or induce an electric current through the body, which make the body a part of the circuit, including iontophoresis units with a physician's prescription, ultrasound, transcutaneous electrical nerve stimulation units and functional electrical stimulation, or microcurrent devices; and

- (9) *"Superficial physical agent modalities" means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices.*

Section 2. KRS 319A.020 is amended to read as follows:

- (1) There is hereby created the Kentucky **Board of Licensure for Occupational Therapy**~~Board~~ which shall consist of seven (7) members to be appointed by the Governor. **Four (4)**~~Five (5)~~ members shall be licensed occupational therapists with at least five (5) years' experience; one (1) member shall be a **licensed**~~certified~~ occupational therapy assistant with~~[-]~~ at least five (5) years' experience in the practice of occupational therapy; and **two (2) members shall be members of the public with an interest in the rights of consumers of health services**~~[one (1) member shall be a consumer]~~.
- (2) *Appointments for the occupational therapists and occupational therapy assistant positions may be made from recommendations submitted to the Governor by the Kentucky Occupational Therapy Association.*

Section 3. KRS 319A.040 is amended to read as follows:

The board shall meet at least annually and may meet at such other times as **necessary to complete the business required**~~[its bylaws provide]~~. A majority of the members of the board shall constitute a quorum for the transaction of business. **Annually**~~[At its initial meeting]~~ the board shall elect from its membership a chairman, a vice chairman and a secretary to serve for one (1) year terms.~~[The board shall have the power to adopt bylaws and rules of procedure necessary to perform its duties.]~~

Section 4. KRS 319A.070 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure.
- (2) The board may issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter.
- (3) The board may:
- (a) Promulgate administrative regulations, pursuant to KRS Chapter 13A, relating to professional conduct to carry out the provisions of this chapter, including, but not limited to, administrative regulations relating to professional licensure and holding a license to practice occupational therapy **or assist in the practice of occupational therapy** in the Commonwealth;
  - (b) Conduct administrative hearings in accordance with KRS Chapter 13B;
  - (c) Evaluate the qualifications and authorize the issuance of licenses to qualified occupational therapists and occupational therapy assistants;
  - (d) Issue and renew licenses **based on evidence of initial and continued competence of persons subject to this chapter**;
  - (e) Suspend or revoke licenses;
  - (f) Require the continuing professional education of persons subject to this chapter;
  - (g) Keep a record of its proceedings and a register of all persons licensed as occupational therapists or occupational therapy assistants. The register shall show the name of every licensee, the licensee's last known place of business and last known place of residence,

and the date and number of the license of each licensed occupational therapist or occupational therapy assistant. The board shall, during the month of January of every year, compile and make available a list of licensed occupational therapists and occupational therapy assistants authorized to practice in the Commonwealth. Any citizen of the Commonwealth may obtain a copy of the list upon application to the board and payment of an amount to be fixed by the board, which shall not exceed its cost;

- (h) Make an annual report to the *Governor and the* General Assembly which shall contain an account of duties performed, actions taken, and appropriate recommendations;~~{ and }~~
- (i) *Institute and maintain actions to restrain or enjoin any violation of this chapter and administrative regulations notwithstanding the existence or pursuit of other civil or criminal penalties;*
- (j) *Approve an examination for occupational therapists and occupational therapy assistants and establish standards for acceptable performance;*
- (k) *Seek an injunction in Franklin Circuit Court against any individual who practices occupational therapy in the Commonwealth without a license; and*
- (l) *Promulgate administrative regulations to define appropriate supervision of assistants, aides, and unlicensed personnel that are delivering occupational therapy services*~~[In a contested case, subpoena witnesses, designated documents, papers, books, accounts, letters, photographs, objects, or other tangible things. All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the chairman. All official records of the board or affidavits certifying the content of such records shall be prima facie evidence of all matters required to be kept therein].~~

Section 5. KRS 319A.080 is amended to read as follows:

- (1) It shall be unlawful for any person to practice occupational therapy, *assist in the practice of occupational therapy*, or render services designated as occupational therapy in the Commonwealth of Kentucky, unless licensed under the provisions of this chapter.
- (2) The licensure of occupational therapists and occupational therapy assistants shall extend only to individuals. A license shall not be issued to a partnership, unincorporated association, corporation, or similar business organization.
- (3) *It shall be unlawful for a person to act or represent himself or herself as an occupational therapist or occupational therapy assistant,*~~[A person shall not]~~ use the title "occupational therapist" or "*occupational therapy assistant*," *or use the letters OT or OTA or any abbreviation or acronym that would imply licensing under this chapter,*~~[a title set forth in this chapter as it relates to the practice of occupational therapy]~~ unless *the*~~[such]~~ person is licensed and is in good standing in accordance with the requirements of this chapter. A person, health care institution, health care service, health plan, or other *entity*~~[institution]~~ holding itself out to the public as providing occupational therapy services shall not use *the*~~[such a]~~ title unless the occupational therapy services are provided by a person licensed under this chapter.

- (4) (a) *It shall be unlawful for a person licensed under this chapter to utilize occupational therapy interventions involving deep physical agent modalities, unless the following requirements are met:*
1. *The person is an occupational therapist licensed under this chapter who has successfully completed a minimum of thirty-six (36) hours of training or instruction that meets the requirements specified in administrative regulations promulgated by the board, as well as five (5) treatments under supervision;*
  2. *The person is an occupational therapist licensed under this chapter who has successfully completed the certified hand therapist examination approved by the Hand Therapy Certification Commission, and who has successfully completed a minimum of twelve (12) hours of training or instruction that meets the requirements specified in administrative regulations promulgated by the board, as well as five (5) treatments under supervision; or*
  3. *The person is an occupational therapy assistant licensed under this chapter who has successfully completed a minimum of seventy-two (72) hours of training or instruction that meets the requirements specified in administrative regulations promulgated by the board, as well as five (5) treatments under supervision.*
- (b) *The board shall promulgate administrative regulations setting forth content guidelines for the training and instruction required in this subsection. Guidelines shall be based on policies and positions adopted by the American Occupational Therapy Association.*

Section 6. KRS 319A.090 is amended to read as follows:

- (1) The provisions of this chapter shall not be construed as preventing or restricting the practices, services, or activities of:
- (a)~~{(1)}~~ A person licensed in accordance with the provisions of another law of the Commonwealth from engaging in the profession or occupation for which licensed;
  - (b)~~{(2)}~~ A person employed as an occupational therapist or an occupational therapy assistant by the United States government, provided that person provides occupational therapy solely under the direction or control of the organization by which the person is employed;
  - (c)~~{(3)}~~ A person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, provided the activities and services are part of a supervised course of study and the person is designated by a title which clearly indicates the status of student or trainee and not licensed occupational therapist *or occupational therapy assistant*;
  - (d)~~{(4)}~~ A person fulfilling the supervised fieldwork experience requirements of this chapter, provided such activities and services constitute a part of the experience necessary to meet the requirements of that program;
  - (e)~~{(5)}~~ Any person performing occupational therapy services in the Commonwealth, if these services are performed for no more than sixty (60) days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

- 1.~~{(a)}~~ The person is licensed under the law of another state which has licensure requirements at least as stringent as the requirements of this chapter; or
- 2.~~{(b)}~~ The person meets the requirements for **current** certification as an occupational therapist~~{registered}~~ or **an**~~{a-certified}~~ occupational therapy assistant, as established by the **National Board for Certification in Occupational Therapy or its equivalent**; or~~{American Occupational Therapy Association; and}~~
- ~~{(f)}~~~~{(6)}~~ Any person employed as an occupational therapy aide.
- (2) **Occupational therapy services shall not include gait training, spinal or pelvic adjustment or manipulation, and the use of deep physical agent modalities, except as provided in Section 5 of this Act.**
- (3) **Occupational therapy services shall also not include independent diagnostic evaluation for the determination of visually related rehabilitative treatment plans or the testing and prescription of optical, electronic or assistive technology low vision devices. Occupational therapists may only provide low vision or visual therapy services, as defined in administrative regulation, under the direct supervision of an optometrist, ophthalmologist, or physician, or by written prescription from an optometrist, ophthalmologist, or physician. These services shall be provided in accordance with a written evaluation and clinical treatment plan from an optometrist, ophthalmologist, or physician. The board shall promulgate administrative regulations pursuant to this subsection in collaboration with the Kentucky Board of Optometric Examiners.**

Section 7. KRS 319A.110 is amended to read as follows:

- (1) An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on a form provided by the board, showing to the satisfaction of the board that ~~the~~~~{such}~~ person:
- (a) Is of good moral character; and
- (b) Has successfully completed the academic requirements of an educational program in occupational therapy **or for occupational therapy assistants accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education or its equivalent**~~{recognized by the board}~~.
- ~~{(2)}~~ ~~{The occupational therapy educational program shall be accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the American Occupational Therapy Association, and shall be approved by the American Occupational Therapy Association.}~~
- ~~{(3)}~~ An applicant shall submit to the board evidence of successful completion of a period of supervised fieldwork experience arranged by the recognized educational institution where the applicant met the academic requirements~~{or by the American Occupational Therapy Association}~~. To be considered for licensure, the following minimum amount of supervised fieldwork experience shall have been completed:
- (a) **The equivalent of twenty-four (24) weeks**~~{Six (6) months}~~ for an occupational therapist; and
- (b) **The equivalent of sixteen (16) weeks**~~{Two (2) months}~~ for an occupational therapy assistant.

~~(3)(4)~~ An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination as provided for in KRS 319A.120.

Section 8. KRS 319A.120 is amended to read as follows:

~~{(1)}~~ Individuals applying for licensure~~[, except as provided in KRS 319A.140,]~~ shall be required to pass a written *or computer-based* examination approved by the board, which is designed to test the knowledge and experience necessary to the safe, effective, and professional practice of occupational therapy in Kentucky. The examination shall test the applicant's knowledge of the basic and clinical sciences related to the occupational therapy *theory, research, practice, ethics, and professional behavior*~~[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 occupational therapy assistants and establish standards for acceptable performance.]~~

~~(2)~~ Applicants for licensure shall be examined at a time and place determined by the board. The examination shall be given at least twice a year. The board shall notify applicants by mail of the time and place of scheduled examinations.

~~(3)~~ Individuals applying for licensure shall remit an examination fee, to be determined by the board, prior to admission to take the written examination, using forms provided by the board. A person who fails an examination may apply for reexamination to the board accompanied by the prescribed fee.

~~(4)~~ Applicants for licensure may obtain their examination scores and may review but not copy or remove from the premises of the board their own graded examination papers in accordance with such rules and regulations as the board may establish pursuant to KRS Chapter 13A.]

Section 9. KRS 319A.140 is amended to read as follows:

On the payment to the board of fees required by this chapter and on submission of a written application on forms provided by the board, the board shall issue a license to:

(1) A person~~[paying the fee and filing an application within one (1) year from July 15, 1986,]~~ who presents evidence satisfactory to the board *of being a registered occupational therapist*~~[that the applicant was an occupational therapist registered]~~ or a certified occupational therapy assistant through the *National Board for Certification in Occupational Therapy, or its equivalent, and who has met the academic and fieldwork requirements of Section 7 of this Act and the examination requirement of Section 8 of this Act; or*~~[certification of the American Occupational Therapy Association prior to July 15, 1986; and]~~

(2) A person~~[paying the fee and filing an application]~~ who presents evidence satisfactory to the board of being *currently* licensed, certified, or registered as an occupational therapist or occupational therapy assistant by another state, territory of the United States, or the District of Columbia,~~[or of being a certified occupational therapist or certified occupational therapy assistant through the American Occupational Therapy Association and of residing in or practicing in another state or territory of the United States or the District of Columbia]~~ where the requirements for licensure, registration, or certification are~~[substantially]~~ equal to *or greater than* the requirements set forth in this chapter.

Section 10. KRS 319A.160 is amended to read as follows:

- (1) Licenses issued under this chapter shall be subject to annual renewal and shall expire unless renewed upon the payment of a renewal fee in the manner prescribed by the rules of the board.
- (2) The board may set a required number of continuing education units for license renewal.
- (3) *At least thirty (30) days before the renewal date, the board shall mail an application for renewal to every person to whom a license was issued during the current licensure period.*
- (4) *A sixty (60) day grace period shall be allowed during which time licenses may be renewed on payment of a late renewal fee as set forth in administrative regulations promulgated by the board.*
- (5) 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 such renewal of a license may be granted more than five (5) years after its expiration.
- (6) *Licenses not renewed in a timely manner or by the end of the grace period shall be considered expired. Expired licenses may be restored in accordance with the requirements set forth by the board in administrative regulation. A person who fails to restore his license within five (5) years after its expiration may not restore it, and it shall not be restored, reissued, or reinstated thereafter. The person may apply for and obtain a new license if current requirements of this chapter are met.*
- (7) *Any person practicing occupational therapy after the license has expired shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the provisions of this chapter.*
- (8)~~(2)~~ A suspended license is subject to expiration and may be *restored*~~renewed~~ as provided in this section, but *restoration*~~such renewal~~ shall not entitle the licensee, while the license remains suspended and until it is reinstated, 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.
- (9) ~~[[~~ A license revoked on disciplinary grounds is *subject to expiration and may not be renewed. If the license is subsequently* reinstated, the licensee, as a condition of reinstatement shall pay *a reinstatement fee*, the renewal fee, and any late fee that may be applicable.
- (10) *Upon petition to the board, licensees may be granted inactive license status for a period of time not to exceed three (3) years. Licensees shall not practice occupational therapy or assist in the practice of occupational therapy while under inactive status. Inactive licensees may apply for an active license after paying a fee provided for by administrative regulation of the board.*
- (11) *Each occupational therapist and occupational therapy assistant licensed under this chapter shall notify the board in writing of any change in the person's name, home or office address, or employment within thirty (30) days after the change has taken place.*

Section 11. KRS 319A.170 is amended to read as follows:

Fees shall be collected and determined by the board for the following:

- (1) Initial license fee (nonrefundable):
  - (a) Registered occupational therapist, not to exceed fifty dollars (\$50);~~and~~



- (b) Certified occupational therapy assistant, not to exceed thirty-five dollars (\$35); *and*
- (c) *Certification for use of deep physical agent modalities, not to exceed twenty-five dollars (\$25);*
- (2) Renewal of license fees, not to exceed fifty dollars (\$50); and
- (3) Late renewal fees, not to exceed seventy-five dollars (\$75).

Section 12. KRS 319A.180 is amended to read as follows:

Foreign-trained occupational therapists ~~and occupational therapy assistants~~ who apply to be licensed by the board shall~~, before examination,~~ furnish proof of good moral character and shall present proof indicating the completion of educational requirements ~~substantially~~ equal to *or greater than* those contained in KRS 319A.110 *and examination requirements of Section 8 of this Act.*

Section 13. KRS 319A.190 is amended to read as follows:

- (1) The board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions where the licensee or applicant for licensure has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct shall include:
  - (a) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
  - (b) Unprofessional conduct as defined by administrative regulations promulgated by the board, or violating the code of ethics promulgated by the board;
  - (c) Being convicted of a felony in any court if the *act or* acts for which he was convicted are found by the board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of a *licensed*~~registered~~ occupational therapist or *licensed*~~certified~~ occupational therapy assistant;
  - (d) Violating any lawful order or administrative regulation rendered or promulgated by the board; or
  - (e) Violating any provision of this chapter.
- (2) A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license may be ordered by the board in a decision made after *an administrative*~~a~~ hearing conducted in accordance with KRS Chapter 13B *and administrative regulations promulgated by the board.*~~One (1) year from the date of the revocation of a license, application may be made to the board for reinstatement.~~ The board shall have discretion to accept or reject an application for reinstatement *following an administrative hearing conducted in accordance with KRS Chapter 13B*~~, but shall be required to hold a hearing to consider the reinstatement.~~
- (3) *The surrender of a license shall not serve to deprive the board of jurisdiction to proceed with disciplinary actions under this chapter.*

Section 14. KRS 319A.990 is amended to read as follows:

Any person violating any provision of this chapter shall be fined not less than one hundred dollars (\$100) nor more than *one thousand*~~five hundred~~ dollars (*\$1,000*)~~(\$500)~~, or imprisoned ~~in the county jail~~ for not more than six (6) months, or both.

Section 15. The following KRS section is repealed:

319A.130 Requirements for licensure.

**Approved March 01, 2002**