

PROPOSED REGULATION OF THE BOARD OF OCCUPATIONAL THERAPY

LCB File No. R017-14

PROPOSED NEW AND REVISED REGULATIONS

NAC 640A Occupational Therapy New Sections

Sec 1. *Advertisement defined (NRS 629.076). “Advertisement” means any printed, electronic or oral communication or statement that names an occupational therapist or occupational therapy assistant in relation to the practice, profession or institution in which the occupational therapist or occupational therapy assistant is employed, volunteers or otherwise provides health care services. The term includes, without limitation, any business card, letterhead, patient brochure, pamphlet, newsletter, telephone directory, electronic mail, Internet website, physician database, audio or video transmission, direct patient solicitation, billboard and any other communication or statement used in the course of business.*

Sec 2. *Deceptive or Misleading Information defined.(NRS629.076) “Deceptive or misleading information” means any information that falsely describes or misrepresents the fees to be charged or the profession, skills, training, expertise, education, specialty certification or licensure of an occupational therapist or occupational therapy assistant.*

Sec 3. *Telepractice defined. (NRS 640A.110) “Telepractice” means the application of telecommunication technology to deliver occupational therapy services at a distance for assessment, intervention, monitoring or consultation. Telepractice includes the terms telehealth, telemedicine or telerehabilitation when used separately or together.*

Sec 4. *Use of telepractice in occupational therapy services (NRS 640A.110)
When occupational therapy services are provided by telepractice, an occupational therapist or occupational therapy assistant must:*

- 1. Be knowledgeable and competent in the technologies utilized in the provision of telepractice services;*
- 2. Ensure services are appropriate for delivery by telepractice;*
- 3. Provide services comparable to services delivered face-to-face;*
- 4. Document services provided by telepractice in the clients’ record; and*
- 5. Comply with all laws, rules and regulations governing licensure regardless of the state where the occupational therapist, occupational therapy assistant or client resides;*
- 6. Comply with all laws, rules and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client are maintained.*

Sec 5. *Advertisements; display of licensure information; name tags (NRS 629.076)*

1. An advertisement for occupational therapy services that names an occupational therapist or occupational therapy assistant must identify the type of license held by the licensee and must not contain any deceptive or misleading information.

2. If an advertisement for occupational therapy services is in writing, the information concerning licensure must be prominently displayed in the advertisement.

3. A licensee shall wear a name tag which states “licensed occupational therapist” or “licensed occupational therapy assistant” during the course of providing occupational therapy services other than sterile procedures in a health care facility.

4. As used in this section, “name tag” includes any means by which the practitioners can be identified by name and profession including but not limited to:

- (a) embroidery on uniforms;*
- (b) placards affixed to the clothing; or*
- (c) disposable name badges.*

4. Except when providing occupational therapy services in a licensed medical facility or hospital, a licensee shall state his or her specific licensure to all current and prospective patients; including a written patient disclosure statement that is conspicuously displayed in the office where occupational therapy services are provided and which clearly identifies the licensee by name and type of license held.

Sec 6. *Citations; administrative fines; practice under expired license (NRS 640A.230)*

1. The Board may issue administrative citations and fines to persons who practice occupational therapy under an expired license. Citations and fines are in addition to any other penalties or actions the Board may take for unlicensed practice.

2. The following administrative fines are established for practice under an expired license:

- (a) Less than 31 days \$ 50.00 minimum*
- (b) 31 days or more \$ 200.00 minimum \$ 5,000 maximum*

Sec 7. *Practice under an expired license; waiver of administrative fine for extenuating circumstances (NRS 640A.230)*

1. The Board may waive an administrative fine assessed for practice under an expired license if:

- (a) It is the first violation of practicing under an expired license;*
- (b) The license has been expired for less than 31 days;*
- (c) Failure to renew the license is due to extenuating circumstances; and.*
- (d) The person submits a written request and evidence satisfactory to the Board of the extenuating circumstances.*

2. Extenuating circumstances include, without limitation, illness, injury, and family hardship.

Revisions to Regulations

Sec 8. NAC 640A.050 Expiration, *renewal* and *late renewal* of license. (NRS 640A.110, 640A.180)

1. A license issued by the Board expires on a date to be established by the Board.
2. In addition to the requirements of NAC 640A.030, to renew an active license, a person must provide proof of the completion of any applicable continuing education requirements.
3. *A late renewal of an active license will be accepted up to 30 days from date of expiration. In addition to the requirements for renewal, a late renewal fee will be assessed.*

Sec 9. NAC 640A.230 Scope of services with and without referral of patient by licensed provider of health care. (NRS 640A.110)

1. An occupational therapist may practice occupational therapy on a patient for specific medical conditions if the patient has been referred to the occupational therapist by a provider of health care licensed to practice in this state.
2. An occupational therapist may, without referral, provide occupational therapy services, including, without limitation, evaluation, planning and implementing a program of intervention, monitoring services and consultation for a person whose ability to perform the tasks of daily living is impaired by:
 - (a) Developmental deficiencies;
 - (b) The aging process;
 - (c) Environmental deprivation;
 - (d) Sensory impairment;
 - (e) Psychological or social dysfunction; or
 - (f) Other conditions.
3. An occupational therapist may provide the occupational therapy services listed in subsection 2 in a nonmedical setting, including, without limitation, a residential setting, an educational setting, a vocational setting, a recreational setting, ~~for~~ a center that provides for the care of adults or children during the day, *or a telepractice setting*.
4. As used in this section:
 - (a) "Consultation" includes working with providers of health care and other persons involved in the care of a patient to provide advice and services.
 - (b) "Monitoring services" includes those services which are characterized by regular contact at least once per month to:
 - (1) Check or regulate adaptive and positioning equipment to ensure its proper use; or
 - (2) Assess the level of skills of a patient, including, without limitation, the adaptive skills of the patient.
 - (c) "Specific medical conditions" includes those conditions of acute trauma, infection, disease, aging or postsurgical status where custom requires the involvement of a provider of health care.

Sec 10. NAC 640A.250 Practice by occupational therapy assistant or provisional licensee. (NRS 640A.110, 640A.230)

1. An occupational therapy assistant or a provisional licensee shall not practice occupational therapy without the general supervision of an occupational therapist. Immediate physical presence or constant presence on the premises where the occupational therapy assistant or

provisional licensee is practicing is not required of the supervising occupational therapist. To provide satisfactory general supervision, the occupational therapist shall:

(a) Provide an initial program of intervention, and any subsequent changes to the initial program, for patients assigned to the occupational therapy assistant or provisional licensee.

(b) Not less than 1 hour for each 40 hours of work performed by the occupational therapy assistant or provisional licensee and, in any event, not less than 1 hour each month, engage in:

(1) Clinical observation of the occupational therapy assistant or provisional licensee; or

(2) Direct communication with the occupational therapy assistant or provisional licensee.

The mode and frequency of that communication is dependent upon the setting for the practice of the occupational therapy assistant or provisional licensee. Direct communication may consist of, without limitation:

(I) Direct or joint treatment of a patient;

(II) Personal supervision of the occupational therapy assistant or provisional licensee while providing services;

(III) Conversation, in person or by telephone;

(IV) Exchange of written comments;

(V) Review of patient records; or

(VI) Conferences, or other face-to-face meetings.

(c) Establish the caseload of the occupational therapy assistant or provisional licensee based on the competency of the occupational therapy assistant or provisional licensee as determined by the supervising occupational therapist.

(d) Review written documentation prepared by the occupational therapy assistant or provisional licensee during the course of treatment of a patient. The completion of this review by the occupational therapist may be evidenced by:

(1) Preparation of a separate progress note; or

(2) The occupational therapist signing and dating the document prepared by the occupational therapy assistant or provisional licensee.

2. The supervising occupational therapist and the occupational therapy assistant or provisional licensee shall jointly:

(a) Document, in a manner other than the mere signing of service records prepared by another person, the supervision required pursuant to this section by preparing, without limitation:

(1) Daily or weekly treatment or intervention schedules;

(2) Logs of supervision, which must include, without limitation, the time and date of supervision, the type of supervision provided and the subject matter covered during the supervision; and

(3) Patient records.

(b) Ensure that each record regarding a patient treated by the occupational therapy assistant or provisional licensee is signed, dated and reviewed at least monthly by the occupational therapy assistant or provisional licensee and the supervising occupational therapist. In reviewing the record, the occupational therapist and the occupational therapy assistant or provisional licensee shall verify, without limitation:

(1) The accuracy of the record; and

(2) That there is continuity in the services received by the patient pursuant to the program of intervention.

3. An occupational therapy assistant or provisional licensee may assist a supervising occupational therapist ~~to~~:

(a) Prepare and disseminate any written or oral reports, including, without limitation, the final evaluation and discharge summary of a patient; and

(b) Unless the treatment is terminated by a patient or his or her provider of health care, determine when to terminate treatment; *and*

(c) Delegate duties to an occupational therapy aide or technician.

4. An occupational therapy assistant or provisional licensee shall document all treatment provided to a patient by the occupational therapy assistant or provisional licensee.

5. A supervising occupational therapist shall not delegate responsibilities to an occupational therapy assistant or provisional licensee which are beyond the scope of the training of the occupational therapy assistant or provisional licensee.

6. The provisions of this section do not prohibit an occupational therapy assistant or provisional licensee from responding to acute changes in a patient's condition that warrant immediate assistance or treatment.

7. As used in this section, "sign" means to inscribe by handwriting or electronic means one's name, initials or license number.

Sec 11. NAC 640A.275 Supervision of occupational therapy aide or technician:

~~["Directly supervise" interpreted. (NRS 640A.110, 640A.230) As used in NRS 640A.230, the Board interprets]~~

A licensed occupational therapist or occupational therapy assistant shall directly supervise the work of any person who assists him or her as an aide or technician.

The term "directly supervise" ~~to~~ means supervision of an occupational therapy aide or technician by a licensed occupational therapist *or occupational therapy assistant* who:

1. Is physically present on the premises at all times when the aide or technician is working with patients;
2. Provides personal instruction to the aide or technician on a regular basis;
3. Personally evaluates the work of the aide or technician on a regular basis; and
4. Sets forth detailed statements of the duties and responsibilities of the aide or technician.

Sec 12. NAC 640A.310 Advertising. (NRS 640A.110) A licensee shall not advertise treatment by the use of occupational therapy or equipment used in the practice of occupational therapy in such a manner that the advertising:

1. ~~Contains a testimonial or endorsement by another person;~~
2. Implies that the occupational therapist has skill which is superior to that of another occupational therapist;
3. Holds the occupational therapist out as a specialist unless the licensee is certified as a specialist by an organization recognized by the Board;
4. Makes any false claim about the efficacy or value of the treatment the licensee administers; or
5. Is false, deceptive or misleading in regard to the *services to be provided*, fee which is charged or the terms of any credit for the treatment administered.

Sec 13. NAC 640A.340 Complaints against licensees. (NRS 640A.110)

1. Any person who believes that another person licensed by the Board has violated a provision of this chapter or chapter 640A of NRS may file a complaint with the Board on a form provided by the Board.
2. The Board may, on its own, initiate a complaint against a person licensed by the Board.
3. A complaint must, without limitation:
 - (a) Identify one or more grounds for disciplinary action; *and*
 - (b) Contain a statement of facts in sufficient detail to enable the Board to understand the allegations. ~~;~~ *and*
 - ~~(c) Be signed by the person making the complaint.~~
4. The Executive Director of the Board, in consultation with legal counsel, shall review each complaint and decide if the complaint merits an investigation.
5. The Executive Director of the Board shall bring before the Board any complaint found to have merit.
6. For any proceedings regarding a complaint filed against an occupational therapy assistant, the Board may require that the occupational therapy assistant be accompanied by any occupational therapist who signed, dated or reviewed a record regarding a patient related to the complaint.

Sec 14. NAC 640A.350 Acts constituting unprofessional conduct. (NRS 640A.110, 640A.200) In addition to those acts specified in subsection 4 of NRS 640A.200, the following acts, among others, constitute “unprofessional conduct”:

1. Engaging in the practice of occupational therapy when unable to do so with reasonable skill and safety to patients because of the licensee’s use of alcohol or any controlled substance, or because of any mental or physical condition or illness suffered by the licensee;
2. Being guilty of negligence in the performance of occupational therapy;
3. Allowing another person to use the license issued to the licensee;
4. Failing to report or otherwise concealing information related to a violation of this chapter or NRS 640A.200 which could result in harm to the public health and welfare;
5. Intentionally making or filing a false or misleading report;
6. Failing to file a report which is required by law or a third person or intentionally obstructing or attempting to obstruct another person from filing such a report;
7. Intentionally harassing, abusing or intimidating a patient, employer, employee, colleague or other person, either physically or verbally, including, but not limited to, sexual harassment, abuse or intimidation;
8. Failing to notify the Board of disciplinary action imposed upon the licensee or applicant for licensure by a regulatory authority in another jurisdiction in which the licensee or applicant currently holds or held a license;
9. Divulging, without the consent of the patient, information gained within the context of the professional relationship with the patient, unless otherwise required by law;
10. Failing to obtain the informed consent of a patient before engaging in scientific research involving the patient;
11. Violating a provision of the *Occupational Therapy Code of Ethics* or the *Standards of Practice for Occupational Therapy*, adopted by reference in NAC 640A.205;
12. Referring or appearing to refer a patient to a third person to receive a fee or other consideration from the third person;

13. Recommending or prescribing therapeutic devices or modalities sold by a third person to receive a fee or other consideration from the third person;
14. **Advertising in a manner** that tends to deceive or mislead the public, *or contains deceptive or misleading information.*
15. Making false statements, providing false information or omitting pertinent information in connection with an application for licensure or renewal of a license;
16. Misrepresenting or falsifying credentials, including, but not limited to, those relating to education, training, experience and areas of competency;
17. Practicing or offering to practice beyond the scope authorized by law; or
18. Performing professional services which the occupational therapist knows he or she is not competent to perform.

Sec 15. NAC 640A.160 Fees. (NRS 640A.110, 640A.190) The *Board shall charge the* following fees *which may not exceed* ~~are established~~:

1. For an **occupational therapist**:
 - (a) ~~Initial~~ Active license \$250
 - (b) Renewal of an active license..... 175
 - (c) A temporary or provisional license..... 150
 - (d) Renewal of a temporary or provisional license..... 100
 - (e) Convert a temporary or provisional license to an active license..... 100
 - (f) Reinstatement of an expired license..... 200
 - (g) Renewal of an inactive license..... 100
 - (h) Convert an inactive license to an active license..... 75
2. For an **occupational therapy assistant**:
 - (a) ~~Initial~~ Active license..... \$175
 - (b) Renewal of an active license..... 125
 - (c) A temporary or provisional license..... 100
 - (d) Renewal of a temporary or provisional license..... 75
 - (e) Convert a temporary or provisional license to an active license..... 75
 - (f) Reinstatement of an expired license..... 125
 - (g) Renewal of an inactive license..... 75
 - (h) Convert an inactive license to an active license..... 50
3. General:
 - ~~(a) Change of name on a license..... \$50~~
 - ~~(b) Duplicate of a lost license or license card..... 50~~
 - (c) Processing of an initial license *application*..... 150
 - (d) Late fee for renewal of a license..... 125
 - (e) Verification of a license..... 25
 - (f) Returned check processing..... 25