

**PROPOSED REGULATION OF THE
BOARD OF OCCUPATIONAL THERAPY**

LCB File No. R017-14

March 4, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1, 2, 5, 7, 10, 11 and 13, NRS 640A.110; §§3, 8 and 9, NRS 640A.110 and 640A.230; §4, NRS 640A.110 and 640A.180; §6, NRS 640A.110 and 640A.190; §12, 640A.110 and 640A.200.

A REGULATION relating to occupational therapy; defining the term “name tag” for the purpose of complying with certain laws requiring a health care professional to communicate certain information; establishing the amounts of certain administrative fines; revising certain provisions relating to the practice of occupational therapy; and providing other matters properly relating thereto.

Section 1. Chapter 640A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *For the purposes of complying with paragraph (c) of subsection 1 of NRS 629.076, a licensee shall wear a name tag which states “licensed occupational therapist” or “licensed occupational therapy assistant,” as applicable.*

2. As used in this section, “name tag” means a temporary or permanent identification tag, label, badge or other device that is displayed on the person of a licensee for the purpose of identifying the licensee’s name and professional licensure or certification. The term includes, without limitation:

- (a) A placard affixed to clothing;*
- (b) A disposable name badge; and*
- (c) Embroidery on a uniform.*

Sec. 3. 1. *Except as otherwise provided by subsection 2, the Board will assess against a person practicing occupational therapy whose license has expired an administrative fine of:*

(a) Not less than \$50 if the period of expiration of the license is 30 days or less.

(b) Not less than \$200 and not more than \$5,000 if the period of expiration of the license is more than 30 days.

2. *The Board may waive an administrative fine assessed pursuant to subsection 1:*

(a) For the first offense.

(b) If the period of expiration of the license is 30 days or less.

(c) Upon a finding of good cause by the Board. A person seeking waiver of an administrative fine on the grounds prescribed by this paragraph shall submit a written request to the Board which must include proof satisfactory to the Board that good cause exists for the Board to waive the administrative fine. As used in this paragraph, "good cause" includes, without limitation, circumstances under which a person suffers from an illness or disability, suffers an injury or experiences a family hardship.

Sec. 4. NAC 640A.030 is hereby amended to read as follows:

640A.030 1. In order to receive, renew, reinstate or convert the status of, as applicable, any type of license issued by the Board, an applicant must complete an application to be provided by the Board.

2. An application must be accompanied by payment of the appropriate fee or fees, which may be prorated by the Board if the initial period of the license will be shorter than usual for that license.

3. An application submitted to the Board must be notarized if so required.

4. An application must be submitted to the Board by the applicable date, if any.

5. If an applicant is required to provide an official transcript from an educational program that is accredited by an agency approved by the Board or from an educational program in another country, the applicant must ensure that:

(a) A sealed, official transcript is attached to his or her application; or

(b) A sealed, official transcript is sent directly from his or her educational program to the Board.

6. If an applicant is required to provide proof of certification as an occupational therapist registered or a certified occupational therapy assistant, the applicant must ensure that proof of certification is sent directly to the Board by the agency who certified the applicant.

7. If an applicant is required to provide proof of a license obtained in another state, territory or country, the applicant must ensure that:

(a) A copy of the license is attached to his or her application; and

(b) Additional proof of such a license is sent directly by an official governmental entity to the Board for:

(1) Any such license presently held; and

(2) Any such license held within 5 years of the submission of the application.

8. If an applicant is required to provide proof of employment and supervision by an occupational therapist in this State, the applicant must ensure that proof of such employment and supervision is sent directly to the Board, on a form to be provided by the Board, by the applicable date, if any.

9. If an applicant is required to complete continuing education, the applicant must provide proof of completion of continuing education to the Board.

10. The Board will not accept an application for the renewal of a license if the application is submitted more than 30 days after the date on which the license expired.

Sec. 5. NAC 640A.120 is hereby amended to read as follows:

640A.120 ~~11.~~ If an occupational therapist or an occupational therapy assistant changes his or her name after his or her license is issued, he or she must submit, within 30 days after the change, proof satisfactory to the Board that his or her name was legally changed. Proof consists of a copy of a marriage certificate or court decree.

~~12. The Board will issue a new license in the case of a name change upon payment of the appropriate fee.~~

~~3. An occupational therapist or occupational therapy assistant who has lost his or her license may request in writing from the Board a duplicate license. The Board will issue a duplicate license upon payment of the appropriate fee.~~

Sec. 6. NAC 640A.160 is hereby amended to read as follows:

640A.160 The *Board will charge and collect the* following fees : ~~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
(e) Processing of an initial license <i>application</i>	150
(d) (b) Late fee for renewal of a license	125
(e) (c) Verification of a license.....	25
(f) (d) Returned check processing	25

Sec. 7. NAC 640A.205 is hereby amended to read as follows:

640A.205 1. The Board hereby adopts by reference:

(a) The *Occupational Therapy Code of Ethics and Ethics Standards* approved by the representative assembly of the American Occupational Therapy Association or its successor organization; and

(b) The *Standards of Practice for Occupational Therapy* approved by the representative assembly of the American Occupational Therapy Association or its successor organization.

2. A copy of the *Occupational Therapy Code of Ethics [and Ethics Standards](#)* or the *Standards of Practice for Occupational Therapy* may be obtained, free of charge, from the Board by written request.

Sec. 8. NAC 640A.250 is hereby amended to read as follows:

640A.250 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~~ *in*:

(a) ~~Prepare~~ *Preparing* and ~~disseminate~~ *disseminating* 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~~ *determining* when to terminate treatment ~~to~~ *;* *and*

(c) Delegating 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. 9. NAC 640A.270 is hereby amended to read as follows:

640A.270 1. A person may assist a licensed occupational therapist as an occupational therapy aide or technician. Such an occupational therapy aide or technician is not required to be licensed pursuant to the provisions of chapter 640A of NRS or possess the professional or advanced training in basic anatomical, biological, psychological or social sciences which are required for the practice of occupational therapy.

2. Except as otherwise provided in subsection 3, a licensed occupational therapist may delegate duties to an occupational therapy aide or technician if he or she determines, before delegating a duty, that the aide or technician possesses the necessary knowledge, competence, training and skills to perform the duty. The duties which may be delegated to an occupational therapy aide or technician include, ~~but are not limited to,~~ *without limitation*, the:

- (a) Routine maintenance of a department;
- (b) Transportation of a patient;
- (c) Preparation of a work area for a therapy session with a patient;
- (d) Preparation of treatment equipment for a therapy session with a patient;
- (e) Attendance to the personal needs of a patient during treatment;
- (f) Assistance in the construction of adaptive equipment and splints;
- (g) Performance of clerical, secretarial and administrative duties; and
- (h) Monitoring a patient for safety purposes while the patient is performing an activity, including, without limitation, the practice of repetitive skills.

3. A licensed occupational therapist may not delegate a duty to an occupational therapy aide or technician if the duty requires the aide or technician to make independent evaluations, assessments or recommendations. The duties which may not be delegated to an aide or technician include, ~~but are not limited to,~~ *without limitation*, the:

- (a) Interpretation of the record of a patient referred to an occupational therapist;
- (b) Interpretation of prescriptions for a patient;
- (c) Development, planning, adjustment or modification of procedures for the treatment of a patient;
- (d) Recordation of the treatment or progress of a patient;
- (e) Duties described in subsection 3 of NAC 640A.265; and
- (f) Performance of any duty which requires the aide or technician to act independently or without the supervision of a licensed occupational therapist during a therapy session with a patient.

4. An occupational therapist who delegates a duty to an aide or technician:

- (a) ~~Shall directly supervise the aide or technician in accordance with the provisions of NAC 640A.275;~~
- ~~(b)~~ Is professionally responsible for the duty performed by the aide or technician; and
- ~~(e)~~ (b) Shall note in the record of a patient any duties performed by the aide or technician.

Sec. 10. NAC 640A.310 is hereby amended to read as follows:

640A.310 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.~~ 2. Holds the occupational therapist out as a specialist unless the licensee is certified as a specialist by an organization recognized by the Board;

~~{4.}~~ 3. Makes any false claim about the efficacy or value of the treatment the licensee administers; or

~~{5.}~~ 4. Is false, deceptive or misleading in regard to the *services to be provided, the* fee which is charged or the terms of any credit for the treatment administered.

Sec. 11. NAC 640A.340 is hereby amended to read as follows:

640A.340 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. 12. NAC 640A.350 is hereby amended to read as follows:

640A.350 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,~~ ***without limitation,*** 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 and Ethics Standards* 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 advertising 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,~~ *without limitation,* 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. 13. NAC 640A.275 is hereby repealed.

TEXT OF REPEALED SECTION

NAC 640A.275 (NRS 640A.110, 640A.230) As used in NRS 640A.230, the Board interprets the term “directly supervise” to mean supervision of an occupational therapy aide or technician by a licensed occupational therapist 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.