

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

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2005 MAY 19 9:48:29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Occupational Therapy TITLE NUMBER: 13

RULE TYPE: Legislative CITE AUTHORITY: WV Code §30-28-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Administrative rules of the Board of Occupational Therapy and Licensure of Occupational Therapist and Occupational Therapy Assistants

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 21, 2005 AT 12:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

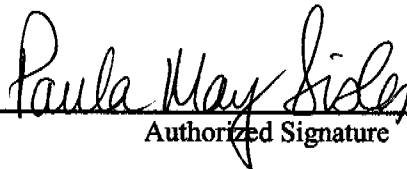
WVBOT

119 South Price Street

Kingwood, WV 26537

www.wvbot.org

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$7.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 13 Series 1

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Occupational Therapy

Address: 119 South Price Street
Kingwood, WV 26537 www.wvbot.org

Phone Number: 304-329-0480 Email: dianaharris@wvbot.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

With these changes and clarifications we are hoping to increase awareness and understanding with licensees in hopes of decreasing disciplinary actions, hearings and fees associated with these cases. The office costs of Unemployment, disciplinary actions, hearings, administration fees, sending mass mailings, phone calls associated with questions on supervision, reciprocity and other expenses we are currently not meeting our budget and requests to "borrow" from next quarter expenditure schedule is happening more frequently. Therefore we are needing to increase fees to meet our budgetary requirements to run the WV BOT efficiently.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$-0-	\$-0-	\$-0-
Personal Services			
Current Expenses	<i>Although the Board is a state entity, its funding is solely generated from fees paid by licensees</i>		
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: Title 13 Series 1

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

We are a self funded Board.

By increasing the fees the estimated increase in revenues is:

Estimated numbers for Renewals: OT/L 350 licensees at \$90.00 = 31,500
OTA/L 350 licensees at \$80.00 = 28,000

Estimated new Licensees: OT/L 36 at \$250.00 = 9,000
OTA/L 60 at \$200.00 = 12,000

*There will be no change
in cost to the state.*

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

[Empty box for memorandum content]

Date: 5-18-05

Signature of Agency Head or Authorized Representative

Paula May Sider



WEST VIRGINIA BOARD OF OCCUPATIONAL THERAPY
119 SOUTH PRICE ST.
KINGWOOD, WEST VIRGINIA 26537
304-329-0480

TO: Secretary of State and the LRMRC

FROM: West Virginia Board of Occupational Therapy

DATE: May 17, 2005

RE: Brief Summary and Circumstances of changes of Title 13

To Whom It May Concern:

The Board of Occupational Therapy is in the process of changing the Title 13 Legislative Rule; Series 1, Administrative Rules of the Board of Occupational Therapy and Licensure of Occupational Therapists and Occupational Therapy Assistants. Below are the changes the Board would like to propose along with the circumstances which require this rule.

- 1.) For the best interest of Licensed Occupational Therapists (OT/L) and Licensed Occupational Therapy Assistants (OTA/L) we would like to better clarify the supervision definitions, §13-2-1. This will eliminate confusion with OT/L, OTA/L and their employers.
- 2.) The Board has had many problems with OT and OTA's that are licensed in another state working in West Virginia. The exemption definitions in §13-1-10 need to be more specific so that OT/L and OTA/L understand that they must have permission from the West Virginia Board of Occupational Therapy before working in West Virginia. There has also been negligence on the OT/L and OTA/L with turning in their paperwork. The Board feels that the best way to eliminate this problem would be to shorten the deadline for paperwork to be turned in.
- 3.) The Board feels that it is necessary to raise the fees for licensure due to the rise in the economy and to pay for the hearing fees, unemployment fees, lawsuits, and lawyer fees that the Board has accrued. The Board has done research with other State Boards of Occupational Therapy and we feel that these new fees are very reasonable.

Thank you for taking the time to look over this information. Feel free to contact the office with any question regarding this rule change.

Sincerely,

A handwritten signature in cursive script that reads "Diana L. Harris".

Diana L. Harris
Executive Secretary

TITLE 13
LEGISLATIVE RULE
BOARD OF OCCUPATIONAL THERAPY

SERIES 1
ADMINISTRATIVE RULES OF THE BOARD
OF OCCUPATIONAL THERAPY AND LICENSURE OF
OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

§13-1-1. General.

- 1.1. Scope. -- This rule relates to W. Va. Code §30-28-1 et seq.
- 1.2. Authority. -- W. Va. Code §30-28-6.
- 1.3. Filing Date. -- ~~April 17, 1998~~
- 1.4. Effective Date. -- ~~July 1, 1998~~

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§13-1-2. Definitions.

As used in this rule:

- 2.1. "Active Practice" means engaging in occupational therapy.
- 2.2. "Association" means the West Virginia Occupational Therapy Association which is separate from the West Virginia Board of Occupational Therapy. (WVBOT).
- 2.3. "Board" means the West Virginia Board of Occupational Therapy.
- 2.4. "Clinician" means a person who actively practices occupational therapy within a clinical setting within the scope of practice set by the WVBOT.
- 2.5. "Consultant" means a person who conducts periodic meetings to review and to provide recommendations and resource information regarding methods of implementation of occupational therapy programs, evaluation of a program in its performance of occupational therapy services and recommendations for improved service.
- 2.6. "Continuing Professional Competence" means a growth in continuing professional competency and educational knowledge of current developments in the practice of occupational therapy and research.
- 2.7. "Direct Supervision" means the actual physical presence of a licensed supervisor and the specific delineation of tasks and responsibilities for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the limited permit holder, occupational therapy student, or aide. The Board has the right to issue Direct Supervision on any licensee under disciplinary actions. It is the responsibility of the licensed supervisor to ensure that the limited permit holder, occupational therapy student, or aide does not perform duties for which he or she is not trained. The supervising licensed occupational therapist or licensed occupational therapy assistant shall be physically present when the limited permit holder, occupational therapy student, or aide is performing the patient or consumer service. An occupational therapist practicing under a limited permit shall be supervised by a licensed occupational therapist.
- 2.7.a. "Continuous supervision" is the direct and continuous supervision that applies to

aides, Occupational Therapy students and licensees under disciplinary actions per WV BOT. This means that the Occupational Therapy supervisor is physically present and in direct line of site of aides, Occupational Therapy students and licensee under disciplinary actions per WV BOT while they are performing delegated client related tasks. Such task must be performed only if the aide has completed specific competency training which has been adequately provided and documented by a supervising therapist.

2.7.b. "Close supervision" means the Occupational Therapy supervisor is in the building and has daily direct contact at the site of work. This applies to limited permit holders.

2.8. "Educator" means a person engaged in the teaching of occupational therapy within an accredited and/or approved educational program of occupational therapy.

2.9. "Examination" means the certification examination administered by the NBCOT.

2.10. "General Supervision" means initial direction, periodic inspection of service delivery, periodic meetings to review the outcome of service delivery, and the personal and direct involvement of the supervisor in the ~~certified~~ licensed occupational therapy assistant's professional experience which includes evaluation of his or her performance. The supervisor need not be present or on the premises at all times where the licensed ~~certified~~ licensed occupational therapy assistant is performing the professional services. General Supervision is demonstrated through co-signatures on all paperwork of the person requiring direct supervision. All paperwork must be signed and dated by the supervising licensed occupational therapist.

2.10.a. Routine supervision applies to licensed occupational therapy assistants, not aides. Direct contact at least every two weeks at the site of work with interim supervision available as needed, such as telephonic, electronic or written communication, this category applies to licensed occupational therapy assistants with more than one year experience.

2.10.b. "General Supervision" means at least monthly direct contact with interim supervision available as needed by telephonic, electronic, or written communication. This applies to licensed occupational therapy assistant with increased skill development and mastery of basic role functions for the delivery of occupational therapy services.

2.11. "In Collaboration With" means a formal working relationship in which there is regular consultation.

2.12. "Informed Consumer" means any person upon whom occupational therapy services are performed and who has been informed as to the professional competence of the individual performing the said services, i.e., a licensed occupational therapist, licensed occupational therapy assistant, occupational therapy aide, occupational therapy student or intern. Upon the consumer's request the licensee shall produce his or her license for the customer's review.

2.13. "License" means a valid and current certificate of registration issued by the West Virginia Board of Occupational Therapy.

2.14. "Limited Permit" means a time limited permit issued to a person upon determination by the Board that all requirements for licensure have been met except for the examination.

2.15. "NBCOT" means the National Board for Certification in Occupational Therapy.

2.16. "Occupational Therapist" means a person licensed to practice occupational therapy and whose license is in good standing.

2.17. "Occupational Therapy" means the evaluation, treatment and aid in diagnosis of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability or the aging process in order to achieve optimum functioning and for prevention and health maintenance. Specific occupational therapy services include, but are not limited to: activities of daily living (ADL); the design, fabrication and application of splints; sensory motor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for the handicapped. These services are provided to individuals or groups through medical, health, educational and social systems and for the maintenance of health through these systems.

2.18. "Occupational Therapy Aide" means a person who assists in the practice of occupational therapy, who works under the direct supervision of a licensed occupational therapist or licensed occupational therapy assistant and whose activities require an understanding of occupational therapy, but do not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy.

2.19. "Occupational Therapy Assistant" means a person licensed to assist in the practice of occupational therapy under the general supervision of the licensed occupational therapist and whose license is in good standing.

2.20. "Periodic Meetings To Review" means the supervising licensed occupational therapist consulting with the licensed occupational therapy assistant to review the outcome of service delivery. The supervising licensed occupational therapist and the licensed occupational therapy assistant shall meet at least monthly or more depending on the type of setting and patient needs.

2.21. "Proof of Current Licensure" means a current certification number as assigned by the NBCOT, or a license number from another state, territory of the United States or the District of Columbia.

2.22. "Referral" means a documented order must be obtained from a licensed physician or surgeon, psychologist or psychiatrist, dentist, osteopathic physician or surgeon, physician assistant or nurse practitioner practicing under a licensed physician, or chiropodist or podiatrist prior to initiating occupational therapy treatment.

§13-1-3. Powers and Duties of the Board.

3.1. The Board shall meet a minimum of two (2) times a year with the first meeting to be held during the month of January in order to elect a Chairperson and Secretary/Treasurer.

3.2. In order for the business of the Board to be legally conducted a majority of the members of the Board shall be present to constitute a quorum.

3.3. The Board may reimburse its Board members for all reasonable and necessary expenses actually incurred in the performance of their duties.

3.4. The Board may also pay its Board members reasonable compensation ~~not to exceed one hundred dollars (\$100.00) per day for days spent in performing Board duties.~~ according to state set fees.

3.5. Board appointments are made in accordance with W. Va. Code §30-28-5.

§13-1-4. Duties of the Chairperson.

4.1. The Board shall elect a Chairperson from its membership.

4.2. The Chairperson shall designate the time and place of meetings on his or her own authority or at the direction of at least three (3) Board members.

4.3. The Chairperson shall preside at all meetings. If the chairperson cannot attend a meeting, the Secretary/Treasurer shall preside at that meeting.

4.4. The Chairperson shall exercise general supervision of the affairs of the Board and shall have the usual powers of the office and such other powers and duties as the Board directs.

4.5. The Chairperson shall prepare an agenda for each meeting.

§13-1-5. Duties of the Secretary/Treasurer.

5.1. The Board shall elect a Secretary/Treasurer from its membership.

5.2. The Secretary/Treasurer shall assist the Chairperson at his or her request, shall preside over all meetings in the absence of the Chairperson and shall assume the responsibilities of the Chairperson in cases of extended illness or long absences from Board meetings. In the event the Secretary/Treasurer assumes the functions of the Chairperson, another member of the Board shall temporarily assume the responsibilities of the Secretary/Treasurer.

5.3. The Secretary/Treasurer shall keep the minutes of the proceedings of the Board's meetings and the records of the Board.

5.4. The Secretary/Treasurer shall be bonded and have custody of all fees received by the Board and is responsible for the transfer of the funds to the State Treasurer. The State Treasurer shall credit moneys to the account of the Board.

5.5. The Secretary/Treasurer, with the advice and consent of the Board, or pursuant to ratification by the Board, is authorized to spend moneys for the necessary expenses of the Board.

5.6. The Secretary/Treasurer shall prepare and submit upon Board approval an annual report to the Governor in accordance with W. Va. Code §30-28-6.

5.7. The Secretary/Treasurer is responsible for the preparation and submission of the annual budget to the Board.

5.8. The Secretary/Treasurer shall maintain an accurate list of licensees with current names, addresses, and dates of birth.

5.9. The Secretary/Treasurer shall maintain a list of accredited and approved occupational therapy educational programs and shall make this list available upon request.

5.10. The Secretary/Treasurer shall notify the members of the Board in writing two (2) weeks prior to a regular meeting regarding the time and place of the meeting. The Secretary/Treasurer shall notify members of special or emergency meetings by telephone and by publication in the West Virginia Register.

§13-1-6. Executive Director or Executive Secretary.

In an effort to assist the Board of Occupational Therapists with the day-to-day functions and

operations, the Board may select a person to fill the position of Executive Director or Executive Secretary.

§13-1-7. Application for Licenses and Limited Permits.

7.1. The Board shall furnish the necessary forms, a copy of the rules pertaining to the licensing of occupational therapists or licensed occupational therapy assistants and any other information or questionnaires as the Board considers desirable to any person requesting in writing an application for a license or limited permit.

7.2. The applicant shall complete the application forms to provide the information necessary to satisfy the Board that all requirements pertaining to W. Va. Code §30-28-1 et seq. are being met. The Board may reject the application of an applicant who fails to provide all relevant information with regard to completing the application and may return the application to the applicant.

7.3. The applicant shall sign his or her application. An application for a limited permit and licensure as an occupational therapy assistant shall be signed by the applicant's supervising practitioner. In the event the applicant is not employed, the application shall be signed by the applicant and sworn by him or her before a notary public.

7.4. The application shall be accompanied by a money order or certified check to cover appropriate fees.

7.5. If any person knowingly furnishes false information in an application, the Board shall deny the applicant a license. If the applicant has already been licensed before the falsification of the information has been made known to the Board, the Board may suspend or revoke the license or limited permit. In addition, a person who knowingly gives false information in making application for an occupational therapy license or limited permit is subject to the penalties provided in W. Va. Code §30-28-17.

7.6. Each applicant for licensure shall be tested by the NBCOT by a written examination unless the applicant is eligible for an exemption as provided for in W. Va. Code §30-28-10.

§13-1-8. Examination Process.

The examination process will be in accordance with regulations set forth by the NBCOT.

§13-1-9. Issuance of Licenses and Limited Permits.

9.1. The Board shall issue a license or limited permit to each applicant in a timely manner upon receipt of a properly completed application and payment of the appropriate fee if the applicant:

9.1.a. Is of good moral character;

9.1.b. Has completed four (4) years of high school education or its equivalent;

9.1.c. Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the Board as described in W. Va. Code §30-28-8;

9.1.d. Has successfully completed a period of supervised field work experience at a recognized educational institution where he or she met the academic requirements as described by W. Va. Code §30-28-8; and

9.1.e. Has passed an examination conducted by the NBCOT as provided in section 8 of this rule.

9.2. The Board shall issue a limited permit to persons within the following eligibility classifications:

9.2.a. To those persons who are occupational therapy assistants or who are graduates of occupational therapy programs recognized by the NBCOT which are located within the United States of America excluding those schools or programs offered within any of the several territories or possessions of the United States and who are registered to take the next qualifying exam.

9.2.a.1. The limited permit for this classification is valid ~~until the date on which the results of the next qualifying examination have been made public.~~ for ninety (90) days from date of issuance of the limited permit.

9.2.b. To those persons who are graduates of academic programs recognized by the Board which are located within either the territories and possessions of the United States or persons who graduated as occupational therapists or occupational therapy assistants from an occupational therapy curriculum of a foreign country and who meet the criterion established by the NBCOT.

9.2.b.1. The limited permit for this classification is valid for ~~one (1) year or until eligibility to sit for the certification exam is withdrawn or the results of the certification exam have been made public.~~ ninety (90) days from the date of issuance of the limited permit.

9.2.b.2. A limited permit within this classification becomes null and void if the holder fails to pass the qualifying examinations. Upon the finding of failure the limited permit holder must stop practicing occupational therapy immediately.

9.3. The occupational therapist who has been issued a limited permit shall practice under the direct supervision of a licensed occupational therapist.

9.4. The occupational therapy assistant who has been issued a limited permit shall practice under the direct supervision of a licensed certified occupational therapy assistant with at least one (1) year of experience or a licensed occupational therapist.

§13-1-10. Exemptions.

10.1. The Board shall waive the examination and grant a license to any person certified prior to July 1, 1978, as an occupational therapist or as a certified occupational therapy assistant by the American Occupational Therapy Association. The Board shall waive the examination and grant a license to any person so certified after the effective date of this rule, if the Board considers the requirements for the certification to be equivalent to the requirements for licensure in this rule.

10.2. The following persons are not required to obtain a license in accordance with the provisions of this rule:

10.2.a. Any person associated with ~~a licensed occupational therapist~~ an occupational therapy student who is the process of completing a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where he or she has met the academic requirements;

10.2.b. Any person not licensed in West Virginia who performs the occupational therapy services for not more than ~~ninety (90)~~ thirty (30) consecutive days in a calendar year, if the person is licensed to practice occupational therapy under the law of another state which has licensure requirements equivalent to West Virginia and if that person meets the requirements for certification as ~~an~~ a licensed occupational therapist (O.T.R.) or a certified licensed occupational therapy assistant (C.O.T.A.) established by the NBCOT. It is the responsibility of each person engaged in occupational therapy to apply for licensure within fifteen (15) days of employment in West Virginia and to complete the forms properly and to pay the required fees. Any information or reminders which the Board may issue are courtesies and shall not diminish the responsibilities of the person engaged in the practice of occupational therapy. Any person

practicing under this rule must have written permission from WV BOT to initiate practice in the state of West Virginia.

§13-1-11. Renewal.

11.1. A licensee shall apply to the Board for renewal of his or her license by December 31 of the current calendar year on forms provided by the Board.

11.2. Applications for late renewal of a license shall be accompanied by the late renewal fee and ~~must be received by the Board before February 1 of the current licensing year.~~ payment for non-renewal years.

11.3. The license renewal sent to the license holder shall be accompanied by two (2) wallet-sized cards, ~~one (1) of which the licensee is to place in the lower left hand corner with his or her license for~~ occupational therapy identification.

§13-1-12. Continuing Competency Requirements for Renewal of License.

12.1. When a licensee applies for the renewal of a license, that licensee shall certify to the Board his or her involvement in continuing professional competency activities in occupational therapy theory and practice and provide documentation to that effect upon the Board's request.

12.2. This section applies to all occupational therapists and occupational therapy assistants seeking to renew their licensure in West Virginia.

12.3. The objectives of the requirements of this section:

12.3.a. Maintenance of professional competency; and

12.3.b. Improvement of professional skills.

12.4. Unit Requirements.

12.4.a. Definition of Contact Hour.

12.4.a.1. "Contact hour" means 1 hour spent in a continuing education activity that meets the requirements of the Board and is approved as outlined in this section. It excludes refreshment breaks, receptions, other social gatherings, and meals that do not include an acceptable educational activity.

12.4.b. Each licensee shall:

12.4.b.1. Certify a minimum of 12 contact hours of continuing competency activities obtained within the 1 year period preceding the application for renewal or reinstatement; and

12.4.b.2. Provide the necessary documentation to the Board upon its request.

12.4.c. Exceptions.

Licensees who have not been licensed for the entire 1 year period preceding license renewal, are not subject to the continuing competency requirements in subdivision 12.4.b. of this rule.

12.4.d. Time Frame.

12.4.d.1. A license to practice occupational therapy is valid for a 1 year period.

12.4.d.2. A licensee may carryover up to 6 excess contact hours from one consecutive

licensure year to another.

12.5. Approval of Continuing Education Programs.

12.5.a. It is the responsibility of the licensee to assure that the selected courses meet his or her individual needs to maintain knowledge of theory and practice in accordance with continuing competency options as outlined in W. Va. Code §13-12-7.

12.5.b. Licensees shall obtain a certificate of completion from providers of continuing education specifying the following information:

12.5.b.1. The dates of completion;

12.5.b.2. The title and location of the course;

12.5.b.3. The name of participant;

12.5.b.4. The name of provider;

12.5.b.5. The number of contact hours; and

12.5.b.6. The signature of the provider.

12.6. Documentation of Continuing Competency Activities.

12.6.a. At the time of licensure renewal, a licensee who has completed the continuing competency requirement shall sign the licensure renewal form attesting to completion of the required contact hours.

12.6.b. A licensee is subject to and shall be prepared for a continuing competency audit by the Board.

12.6.c. A licensee shall retain continuing competency supporting documents for a period of 2 years after the date of renewal for inspection by the Board.

12.6.d. The Board shall audit the continuing competency records of the number of licensees that time and resources allow.

12.6.e. The Board shall notify licensees being audited. The licensee being audited shall submit to the Board a response to the requirement for audit along with an official acknowledgment of successful completion of continuing competency requirements, such as certificates of completion awarded by the approved providers.

12.6.f. The Board may take formal disciplinary action if a licensee submits any false statement regarding continuing competency.

12.6.g. The Board may suspend or revoke the license of any licensee who fails to substantiate contact hours.

12.7. Approved Continuing Competency Options.

12.7.a. Licensees may accrue continuing competency points by their involvement in various types of programs which are recognized by the Board as contributing to the development of professionals and updating competency in occupational therapy theory and practice

12.7.b. A Licensee shall submit official acknowledgment of the successful completion of continuing competency requirements, such as copies of certificates of completion awarded by the

providers of educational courses.

12.7.c. Required Activities:

12.7.c.1. A licensee may accumulate the total of 12 contact hours per renewal period through participation in the activities listed in this section.

12.7.c.2. The board suggests that licensees accumulate points from a broad scope and variety of activities.

12.7.c.3. Workshops, Seminars, Conferences.

12.7.c.3.A. A licensee may obtain credit by attending workshops, seminars, and conferences.

12.7.c.3.B. A licensee may earn 1 hour of continuing competency credit per hour of attendance at an approved workshop, seminar, or conference.

12.7.c.4. University, College, or Vocational Technical Adult Education Courses.

12.7.c.4.A. A licensee may obtain credit by successfully completing university, college, or vocational technical adult education courses related to the practice of occupational therapy.

12.7.c.4.B. A licensee may earn 3 hours of continuing competency credit per university, college, or vocational technical adult education credit hour earned.

12.7.c.5. Educational Telecommunication Network Courses.

12.7.c.5.A. A licensee may obtain credit by providing an outline or abstract of content from the course sponsor.

12.7.c.5.B. A licensee may earn 1 hour of continuing competency credit per hour of education by telecommunication network courses.

12.7.c.6. Videotaped Presentations of Educational Courses, Seminars, Workshops, and Conferences

12.7.c.6.A. A licensee may obtain credit by providing an outline or abstract of content from the course sponsor.

12.7.c.6.B. A licensee may earn 1 hour of continuing competency credit per hour of education by videotaped presentations of educational courses, seminars, workshops, or conferences.

12.7.c.7. In-service Training.

12.7.c.7.A. A licensee may obtain credit by providing an outline or abstract of content from the in-service sponsor.

12.7.c.7.B. A licensee may earn 1 hour of continuing competency credit per hour of education by in-service training.

12.7.c.8. Presentations by licensees of Occupational Therapy Education Programs, Workshops, Seminars, In-service Trainings, Conferences, or Guest Lectures within appropriate curriculums.

12.7.c.8.A. A licensee may obtain credit by making presentations which relate to the practice of occupational therapy to health or education professionals or students, or both.

12.7.c.8.B. A licensee may earn 2 hours of continuing competency credit for each 1 hour presentation to allow for credit for preparatory work. For example, a 1 hour presentation would qualify for 2 hours of continuing competency credit.

12.7.c.8.C. A licensee may not obtain continuing competency credit for subsequent presentations of the same content.

12.7.c.8.D. A licensee may earn up to 3 continuing competency credits for the review of proposals for conferences, workshops, seminars, or educational programs at .5 contact hour for each proposal reviewed and accepted.

12.7.c.9. Publications Published or Accepted for Publication.

12.7.c.9.A. A licensee may earn up to a maximum of 10 hours of continuing competency credit for authorship or editorship or co-authorship or co-editorship of a book relating to occupational therapy.

12.7.c.9.B. A licensee may earn up to a maximum of 5 hours of continuing competency credit for authorship or editorship or review of a chapter in a book or journal article appearing in a professional journal.

12.7.c.9.C. A licensee may earn up to a maximum of 3 hours of continuing competency credit for authorship of an article, book review, or abstract in a weekly periodical or professional newsletter.

12.7.c.9.D. A licensee may earn up to 6 hours of continuing competency credit through the development of other media such as videotapes, slide presentations, etc., that would be promoted for public or professional viewing.

12.7.c.10. Research Projects.

A licensee may earn up to a maximum of 6 hours of continuing competency credit per research project for work as project director, research assistant, principal, or co-investigator of a research project.

12.7.c.11. Quality Assurance or Program Evaluation Studies Completed and Published in a Journal or Newsletter.

A licensee may earn up to a maximum of 4 hours of continuing competency credit per study for quality assurance or program evaluation studies completed and published in a journal or newsletter.

12.7.c.12. Papers and Proposals for Conference Presentations.

A licensee may earn up to 2 hours of continuing competency credit for each accepted paper or proposal for conference presentation.

12.7.c.13. Formal Self-Study.

12.7.c.13.A. A licensee may earn continuing competency credit for completion of formal study packages related to the practice of occupational therapy and shall maintain a certificate of completion provided by the self-study sponsor.

12.7.c.13.B. A licensee may earn credit for completion of the American Occupational Therapy Association self-study series and shall maintain a certification of completion provided by the self-study sponsor.

12.7.c.13.C. A licensee may earn 9 contact hours for completion of each self-study course.

12.7.c.14. Informal Self-Study.

12.7.c.14.A. A licensee may earn continuing competency credit for completion of a combination of other activities and independent learning projects. These projects may include, but not limited to, a combination of reading, observing other therapists, viewing videotape quality assurance or peer review studies, and related professional activities which enhance knowledge and skill in a specific area.

12.7.c.14.B. Credit is earned by maintaining a report of professional self-study. A licensee may earn .5 contact hours for each of these activities not to exceed 3 contact hours in a renewal period. A licensee shall maintain a detailed log of activity including the type, subject, and source of self-study.

12.7.c.15. Clinical Instruction of Occupational Therapy Students and Occupational Therapy Assistant Students.

12.7.c.15.A. A licensee may earn continuing competency credit for participation as a clinical instructor for fieldwork level 1 and level 2 students.

12.7.c.15.B. Only one licensee shall be awarded contact hours per student. The licensee who does the majority of actual supervision is eligible for the credit.

12.7.c.15.C. A licensee may earn 1 contact hour per student for clinical instruction of level 1 occupational therapist student and occupational therapy assistant students. A licensee may not earn more than 3 total contact hours in this category.

12.7.c.15.D. A licensee may earn 4 contact hours per student for clinical instruction of level 2 occupational therapist or occupational therapy assistant students. A licensee may not earn more than 8 total contact hours in this category.

12.8. Recency of Education.

12.8.a. When an applicant has chosen not to practice for any period of time, he or she is still obligated to maintain competency in occupational therapy knowledge, theory, and practice skills.

12.8.b. When an applicant applies for a license, reinstatement of a license, or renewal of a license and meets all requirements for licensure, reinstatement, or renewal, but has not been a practicing clinician within a period of 2 years, the Board shall request verification of the applicant's effort toward maintaining and updating occupational therapy continuing competency.

12.8.c. If the applicant has completed fewer than 24 hours of continuing competency contact hours within the 2 years preceding the application as required by this section, the Board has the sole discretion to determine the sufficiency of these efforts of the applicant and to decide whether additional continuing competency hours are required before granting the applicant a license.

§13-1-13. Responsibilities of the Licensee or Limited Permit Holder.

13.1. It is the responsibility of each licensee or limited permit holder engaged in the practice of

occupational therapy to be familiar with the requirements of the law regulating those activities in West Virginia and with the rules of the Board.

13.2. It is the responsibility of each person engaged in occupational therapy to apply for licensure within thirty (30) days of employment in West Virginia or for a renewal of his or her license within thirty (30) days, to complete the forms properly and to pay the required fees. Any information or reminders which the Board may issue are courtesies and shall not diminish the responsibilities of the person engaged in the practice of occupational therapy.

13.3. Any occupational therapist licensed under the terms of W. Va. Code §30-28-6 may use the words "Occupational Therapist Registered," "Licensed Occupational Therapist," or "Occupational Therapist" or he or she may use the letters "O.T.R.," "L.O.T.," "O.T.," "L/OTR," or "OTR/L" in connection with his or her name or place of business.

13.4. Any Occupational therapy assistant licensed under the requirements of this rule may use the words "Certified Occupational Therapy Assistant," "Licensed Occupational Therapy Assistant," or "Occupational Therapy Assistant" or he or she may use the letters "C.O.T.A.," "L.O.T.A.," "O.T.A.," "L/COTA," or "COTA/L" in connection with his or her name or place of business.

13.5. Any occupational therapist holding a limited permit may use the words "Occupational Therapist" or "Limited Permit Occupational Therapist" or he or she may use the letters "O.T.," "L.P.O.T.," or "O.T./L.P." in connection with his or her name or place of business.

13.6. Any occupational therapy assistant holding a limited permit may use the words "Occupational Therapy Assistant" or "Limited Permit Occupational Therapy Assistant" or he or she may use the letters "O.T.A.," "L.P.O.T.A.," or "O.T.A./L.P." in connection with his or her name or place of business.

§13-1-14. Display of License or Limited Permit.

14.1. Each licensee in this State shall prominently display at his or her principal place of employment his or her license or limited permit to practice occupational therapy and have in his or her possession his or her wallet-sized card.

14.2. A licensee shall exhibit the current licensure and/or renewal registration card when requested by the following:

14.2.a. A Board member;

14.2.b. An employee of the West Virginia Department of Health and Human Services;

14.2.c. Any person upon whom the licensee performs occupational therapy; or

14.2.d. An employer in whose employ the licensee practices or intends to practice occupational therapy.

~~14.3. A photocopy or other facsimile of a license or wallet-sized registration card shall not be accepted as adequate evidence that a person is licensed to practice occupational therapy. Where, for convenience or security, a photocopy or facsimile is displayed, the original document shall be readily available for review. An original photo of the licensee needs to accompany renewal applications when the WV BOT requests.~~

§13-1-15. Duplicate License.

15.1. In requesting a name change, the licensee shall return the current license to the Board with the required fee before the Board will issue a corrected license.

15.2. In requesting a duplicate license due to loss of license, the licensee shall complete a notarized statement substantiating the loss and submit it to the Board with the required fee before the Board will issue a duplicate license.

§13-1-16. Notice of Change of Address, Change of Name.

~~On forms provided by the Board,~~ A licensee or holder of a limited permit shall notify the Board of any change of name or change of mailing address within thirty (30) days of the changed name or address.

§13-1-17. Fees Shall Be Collected and Determined by the Board for the Following (All Fees Are Non-Refundable):

17.1. Initial license fee:

17.1.a. ~~Registered~~ Licensed Occupational Therapist a fee of ~~one hundred ninety dollars (\$190.00)~~ two hundred fifty dollars (\$250.00); and

17.1.b. ~~Certified~~ Licensed Occupational Therapy Assistant a fee of ~~one hundred forty dollars (\$140.00)~~ two hundred dollars (\$200.00).

17.2. Limited Permit fee (Limited Permit fee will be applied to permanent license fee):

17.2.a. Occupational Therapist a fee of ~~one hundred forty dollars (\$140.00)~~ one hundred ninety dollars (\$190.00); and

17.2.b. Occupational Therapy Assistant a fee of ~~ninety dollars (\$90.00)~~ one hundred forty dollars (\$140.00)

17.3. Application packet a fee of ~~fifteen dollars (\$15.00)~~ thirty dollars (\$30.00).

17.4. Renewal fee:

17.4.a. ~~Registered~~ Licensed Occupational Therapist a fee of ~~sixty dollars (\$60.00)~~ ninety dollars (\$90.00); and

17.4.b. ~~Certified~~ Licensed Occupational Therapy Assistant a fee of ~~fifty dollars (\$50.00)~~ eighty dollars (\$80.00).

17.5. Late renewal a fee of ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00)

17.6. Other fees for services shall not exceed the actual cost of the services.

§13-1-18. Suspension, Revocation and Refusal to Renew License or Limited Permit.

18.1. After providing adequate notice and an opportunity for a hearing, the Board may deny, suspend, revoke or refuse to renew or impose probationary conditions upon any licensee or limited permit holder who is guilty of unprofessional conduct which may impair his or her ability to practice occupational therapy or which endangers or is likely to endanger the health, welfare or safety of the public. Unprofessional conduct includes, but is not limited to:

18.1.a. Obtaining a license or limited permit by fraud, misrepresentation or concealment of material facts;

18.1.b. Being convicted of a felony or other crime involving moral turpitude that relates to the

licensee's or permittee's ability to practice occupational therapy or immoral conduct while engaged in the practice of occupational therapy. Conduct rising to the level of immoral would be conduct that would lead, upon trial in any criminal court, state or federal, to the conviction of the accused;

18.1.c. Violating any lawful order or rule or regulation rendered or adopted by the Board;

18.1.d. Engaging in the practice of occupational therapy while in an intoxicated condition or under the influence of narcotics or any other drugs which impair consciousness, judgment or behavior;

18.1.e. Willful falsification, destruction or theft of property or records relating to the practice of occupational therapy or the health of the patient;

18.1.f. Failure to exercise due regard for the safety, the life or health of the patient;

18.1.g. Unauthorized disclosure of information relating to a patient or his or her records;

18.1.h. Discrimination in the practice of occupational therapy against any person for reason of race, religion, creed, color or national origin; or

18.1.i. Violating any provision of W. Va. Code §30-28-1 et seq.

18.2. The denial, refusal to renew, suspension, revocation or imposition of a probationary condition upon a license or limited permit may be ordered by the Board in a decision made after a hearing in the manner provided under Section 18 of this rule. One (1) year from the date of the revocation of a license or limited permit, the former licensee may apply to the Board for reinstatement.

§13-1-19. Hearing Procedures.

19.1. Hearings on any suspension of a license, revocation of a license or denial of an application for a license that is ordered by the Board and that is contested by the applicant or licensee shall be conducted according to W. Va. Code §30-28-14.

19.2. The applicant or licensee may be represented by counsel at the hearing; the Board shall be represented by the Attorney General or his or her assistants.

19.3. The technical rules of evidence may be dispensed with, with respect to hearings conducted by the Board; however, each party has the right to cross-examine any or all witnesses.

19.4. Any concurring or dissenting opinions of the Board members shall be in writing and accompany the Board's final order.

§13-1-20. Procedures For Judicial Review.

20.1. Any person adversely affected by a decision of the Board rendered after a hearing has the right to pursue judicial review as provided by W. Va. Code §29A-5-4.

20.2. The Board shall conduct hearings, shall employ a certified stenographer to record testimony of the hearings and shall keep the transcribed copy of the hearings in the permanent record.

ARTICLE 28.

WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

Sec.		Sec.	
30-28-1.	Short title.	30-28-9.	Examination.
30-28-2.	Declaration of purpose.	30-28-10.	Waiver of requirements for licensure.
30-28-3.	Definitions.	30-28-11.	Issuance of a license.
30-28-4.	License required; treatment by referral only; limitation on practice by assistant.	30-28-12.	Renewal of license.
30-28-5.	West Virginia board of occupational therapy; establishment; terms of office; vacancies; removal of members; meetings; compensation.	30-28-13.	Suspension and revocation of license; refusal to renew.
30-28-6.	Powers and duties of board.	30-28-14.	Procedures for hearing.
30-28-7.	License required; persons and practices not affected.	30-28-15.	Fees.
30-28-8.	Qualifications of applicants for license.	30-28-16.	Judicial review; appeal to supreme court of appeals; legal representation for board.
		30-28-17.	Penalties.
		30-28-18.	Actions to enjoin violations.

Textbooks. — Administrative Law in West Virginia (Neely), § 3.06.

§ 30-28-1. Short title.

This article shall be known and may be cited as the "West Virginia Occupational Therapy Practice Act." (1978, c. 87.)

§ 30-28-2. Declaration of purpose.

The West Virginia Occupational Therapy Practice Act is enacted to safeguard the public health, safety and welfare, and to assure the availability of high quality occupational therapy services to persons in need of such services. It is the purpose of this article to provide for the regulation of persons presenting themselves as an occupational therapist or as an occupational therapy assistant. (1978, c. 87.)

§ 30-28-3. Definitions.

In this article, the following terms shall have the respective meanings provided in this section unless the context clearly requires a different meaning:

(a) "Association" means the West Virginia occupational therapy association.

(b) "Board" means the West Virginia board of occupational therapy.

(c) "License" means a valid and current certificate of registration issued by the West Virginia board of occupational therapy.

(d) "Occupational therapy" means the evaluation, treatment and aid in diagnosis of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability, or the aging process in order to achieve optimum functioning and for prevention and health maintenance. Specific occupational therapy services include, but are not limited to, activities of daily living (ADL); the design, fabrication and application of splints; sensorimotor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for the handicapped. These services are provided to individuals or groups through medical, health, educational and social systems and for the maintenance of health through these systems.

(e) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this article, and whose license is in good standing.

(f) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the general supervision of the licensed occupational therapist, and whose license is in good standing. As contained in this section, the term "general supervision" means initial direction and periodic inspection of the actual activities; however, the supervising licensed occupational therapist need not always be physically present or on the premises when the licensed assistant is performing services.

(g) "Occupational therapy aide" means a person who assists in the practice of occupational therapy, who works under the direct supervision of an occupational therapist and the occupational therapy assistant, and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy. As contained in this section, the term "direct supervision" shall mean the actual physical presence of a licensed occupational therapist or licensed occupational therapy assistant. (1978, c. 87.)

§ 30-28-4. License required; treatment by referral only; limitation on practice by assistant.

(a) No person may present himself as an occupational therapist or occupational therapy assistant in this state unless she or he is licensed in accordance with the provisions of this article. No firm, partnership, association or corporation may advertise or otherwise offer to provide or convey the impression that it is providing occupational therapy unless an individual holding a current valid license or permit under this article is or will at the appropriate time be rendering the occupational therapy services to which reference is made.

(b) A licensed occupational therapist shall not treat persons by occupational therapy or otherwise other than referral by a licensed physician or surgeon, psychologist or psychiatrist, dentist, osteopathic physician or sur-

geon, or chiropracist or podiatrist. A licensed occupational therapy assistant shall not practice occupational therapy other than in accordance with the definitional requirements of an occupational therapy assistant as specified in subdivision (f), section three [§ 30-28-3(f)] of this article. (1978, c. 87.)

§ 30-28-5. West Virginia board of occupational therapy; establishment; terms of office; vacancies; removal of members; meetings; compensation.

(a) There is hereby established the West Virginia board of occupational therapy which shall consist of five members appointed by the governor by and with the advice and consent of the Senate. The members of the board shall be citizens of the United States and residents of this state for at least one year prior to their appointment. Three members shall have been engaged in rendering occupational therapy services to the public by teaching or performing research in occupational therapy for at least three years immediately preceding their appointment or shall have been a registered occupational therapist for at least three years immediately preceding their appointment. One such member so appointed shall have been engaged in rendering occupational therapy services as a registered occupational therapy assistant for at least three years immediately preceding his appointment. Such appointees shall at all times be holders of valid licenses for the practice of occupational therapy in the state. Except for the members of the first board appointed from the list submitted by the association, all of such members shall fulfill the requirements for licensure under this article. One member shall be appointed by the governor to represent the public.

(b) The board shall, within ninety days after the effective date of this article [July 1, 1978], be selected as provided in subsection (a). The members of the first board shall serve the following terms: Two members for a term of one year, two members for a term of two years, and one member for a term of three years. At the expiration of the above terms, board members shall be appointed in the same manner as the initial appointment for a period of three years, but no person shall be appointed to serve more than two consecutive terms.

(c) Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first members who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this section.

(d) When a vacancy occurs on the board, the board shall appoint a member to fill the unexpired term.

(e) The governor, after notice and opportunity for hearing by the board, may remove any member of the board for neglect of duty, incompetence, revocation or suspension of the member's license, or other dishonorable conduct. After such removal, or vacancy due to other reasons, the board shall appoint a successor to the unexpired term. The successor shall meet the qualifications of board members as established in subsection (a) of this section.

(f) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and shall meet during the first month of the calendar year to select a chairman. At least one additional meeting shall be held before the end of the calendar year. Further meetings may be convened at the call of the chairman or on the request of any three board members.

(g) Members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties. Such members may be paid reasonable compensation not to exceed fifty dollars per day for days spent in performance of their duties.

(h) All moneys paid to the board shall be accepted by a person designated by the board and deposited by her/him with the treasurer of the state and credited to an account to be known as the "West Virginia Board of Occupational Therapy." The compensation of and the reimbursement of all reasonable and necessary expenses actually incurred by the members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state's general revenue fund shall be expended for such purpose. (1978, c. 87.)

§ 30-28-6. Powers and duties of board.

(a) The board shall administer, coordinate and enforce the provisions of this article.

(b) The board shall have the responsibility of evaluating the qualifications of applicants for licensure under this article.

(c) The board shall determine that the applicant successfully completed the academic requirements of an educational program in occupational therapy. For an occupational therapist, such a program shall be accredited by the American medical association in collaboration with the American occupational therapy association. For an occupational therapy assistant, such program shall be approved by the American occupational therapy association.

(d) The board shall prepare or approve all examinations of applicants for license at least twice a year, determine the qualifications and authorize the issuance of licenses to qualified occupational therapists and occupational therapy assistants; renew, suspend or revoke licenses in the manner provided.

(e) The board shall appoint representatives or contract with qualified testing services to conduct or supervise examinations and designate time and place for examining applicants.

(f) The board shall establish standards for the continuing professional competence of persons subject to this article.

(g) The board shall establish fees and maintain a register of all persons holding a license and a record of all inspections made.

(h) The board shall conduct such hearings and keep such records and minutes as are necessary to carry out its functions. It shall provide reasonable public notice to the appropriate persons of the time and place of all hearings authorized under this article in such a manner and at such times as it may determine by its rules and regulations.

(i) The board shall adopt rules and regulations relating to professional conduct to carry out the policy of this article including, but not limited to, regulations relating to professional licensure and the establishment of ethical standards of practice. Any such rules and regulations so adopted shall be subject to the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code.

(j) The board may investigate complaints and allegations concerning the violation of provisions of this article and may examine witnesses in connection with these investigations.

(k) The board shall make an annual report to the governor, which report shall contain an account of duties performed, actions taken and appropriate recommendations.

(l) The board is empowered to prescribe and publish reasonable application fees. Such fees shall be commensurate with the cost of fulfilling the duties of the board as defined by this article. (1978, c. 87.)

§ 30-28-7. License required; persons and practices not affected.

(a) No person may hold himself out as an occupational therapist or an occupational therapy assistant in this state unless he is licensed in accordance with the provisions of this article.

(b) Nothing in this article shall be construed as preventing or restricting the practice, services or activities of:

(1) Any person licensed under any other law of this state, including physicians, nurses, clinical psychologists, speech pathologists and audiologists, dentists and physical therapists, from engaging in the profession or occupation for which he is licensed;

(2) Any person employed as an occupational therapist or an occupational therapy assistant by the government of the United States, if such a person provides occupational therapy solely under the direction or control of the organization by which he is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program which is accredited by the American occupational therapy association in collaboration with the American medical association, or in an educational program approved by the American occupational therapy association, and if such person is designated by a title which clearly indicates his status as a student or trainee;

(4) Any person fulfilling the supervised field work experience, if such activities and services constitute a part of the experience necessary to meet the requirements of section eight [§ 30-28-8] of this article;

(5) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than ninety consecutive days a calendar year in association with an occupational therapist licensed under this article, if such person meets the qualification for license under this article, except for the qualifying examination; or

(6) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than one hundred eighty consecutive calendar days in a calendar year and if:

(A) Such a person is licensed under the law of another state which has licensure requirements equivalent to the requirements of this article; or

(B) Such a person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) established by the American occupational therapy association. (1978, c. 87.)

§ 30-28-8. Qualifications of applicants for license.

(a) To be eligible for a license to engage in the practice of occupational therapy, the applicant must:

(1) Be of good moral character;

(2) Have successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, with concentration in biologic or physical science, psychology and sociology, and with education in selected manual skills. For an occupational therapist, such a program shall be accredited by the American medical association in collaboration with the American occupational therapy association. For an occupational therapy assistant, such program shall be approved by the American occupational therapy association;

(3) Have successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where she or he met the academic requirements. For an occupational therapist, a minimum of six months of supervised field work experience is required. For an occupational therapy assistant, a minimum of two months of supervised field work experience is required; and

(4) Have passed an examination conducted by the board as provided in section six [§ 30-28-6] of this article.

(b) An applicant who has practiced as an occupational therapy assistant for four years and has successfully completed the supervised field work experience required in subdivision (3) of subsection (a) may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapist made otherwise applicable under subdivision (2) of subsection (a). (1978, c. 87.)

Cited in *Thorne v. Roush*, 261 S.E.2d 72 (W. Va. 1979).

§ 30-28-9. Examination.

(a) A person applying for licensure shall demonstrate her or his eligibility in accordance with the requirements of section eight (§ 30-28-8) of this article, and shall make application for examination to the board at least thirty days prior to the date of examination upon a form and in such a manner as the board shall prescribe. Such application shall be accompanied by the fee prescribed by section fifteen (§ 30-28-15) of this article, which fee shall not be refunded. A person who fails an examination may make reapplication three times for reexamination accompanied by the prescribed fee.

(b) Each applicant for licensure under this article shall be examined by the board in written examination to test his knowledge of the basic and clinical sciences relating to occupational therapy, and occupational therapy theory and practice, including the professional skills and judgment of the applicant in the utilization of occupational therapy techniques and methods, and such other subjects as the board may deem useful to determine the fitness for practice of the applicant.

(c) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine. Examinations shall be given at least twice each year at such places as designated by the board, and the board shall give reasonable statewide public notice of such examinations in accordance with its rules at least sixty days prior to their administration, and shall notify by mail all applicants for examination of the time and place of their administration.

(d) Applicants may obtain their examination scores and may review their papers in accordance with such rules as the board may establish. (1978, c. 87.)

§ 30-28-10. Waiver of requirements for licensure.

(a) The board shall waive the examination and grant a license to any person certified prior to the effective date of this article [July 1, 1978] as an occupational therapist registered (OTR) or as a certified occupational therapy assistant (COTA) by the American occupational therapy association. The board shall waive the examination and grant a license to any person so certified after the effective date of this article, if the board considers the requirements for such certification to be equivalent to the requirements for licensure in this article.

(b) The board may waive the examination and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or an occupational therapy assistant in another state, the District of Columbia or territory of the United States, which requires standards for licensure considered by the board to be equivalent to the requirements for licensure in this article. (1978, c. 87.)

§ 30-28-11. Issuance of a license.

(a) The board shall issue a license to any person who meets the requirements of this article upon payment of the license fee prescribed.

(b) The board shall issue a limited permit to persons who have completed the education and experience requirements of this article. This permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist who holds a current license in this state and shall be valid until the date on which the results of the next qualifying examination have been made public. This limited permit shall not be renewed if the applicant has failed the examination.

(c) The board shall issue a limited permit to an occupational therapist or an occupational therapy assistant who has graduated from an occupational therapy curriculum of a foreign country or of a territory or possession of the United States. Such program shall be equivalent to academic requirements for graduates of occupational therapy programs in the United States and shall be satisfactory to the board. This permit shall allow the person to practice under the supervision of a licensed occupational therapist. A limited permit shall be valid for one year at which time the holder shall apply to the board for licensure. A limited permit shall become null and void if the holder fails to pass a licensing examination.

(d) Any person who is issued a license as an occupational therapist under the terms of this article may use the words "occupational therapist registered," "licensed occupational therapist," or "occupational therapist," or he may use the letters "O.T.R.," "L.O.T.," or "O.T.," in connection with his name or place of business to denote registration hereunder.

(e) Any person who is issued a license as an occupational therapy assistant under the terms of this article may use the words "occupational therapy assistant," "licensed occupational therapy assistant," or "certified occupational therapy assistant" or may use the letters "O.T.A.," "L.O.T.A.," or "C.O.T.A.," in connection with his name or place of business to denote his registration hereunder.

(f) The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at his principal place of practice, or, in the case of a license to act as an occupational therapy assistant, at his place of employment. (1978, c. 87.)

§ 30-28-12. Renewal of license.

(a) All licenses under this article shall be subject to renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the board upon the payment of a renewal fee. The board may establish additional requirements for license renewal which provide evidence of continued competency. The board may provide for late renewal of a license upon payment of a late renewal fee. Any license which has not been restored within five years following its expiration may not be renewed, restored or reissued

thereafter. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for issuance of a new license.

(b) A suspended license is subject to expiration and may be renewed as provided in this section, but 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 other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable. (1978, c. 87.)

§ 30-28-13. Suspension and revocation of license; refusal to renew.

(a) The board shall, after notice and opportunity for hearing, have the power to deny or refuse to renew, suspend or revoke the license of, or impose probationary conditions upon, any licensee who has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Such unprofessional conduct includes:

(1) Obtaining a license by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct as defined by the rules established by the board;

(4) Violating any lawful order, rule or regulation rendered or adopted by the board; or

(5) Violating any provision of this article.

(b) Such denial, refusal to renew, suspension, revocation or imposition of probationary condition upon a license may be ordered by the board in a decision made after a hearing in the manner provided by the rules adopted by the board. One 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 and shall be required to hold a hearing to consider such reinstatement. (1978, c. 87.)

§ 30-28-14. Procedures for hearing.

(a) Whenever the board shall deny an application for any original or renewal license or any application for a temporary permit or shall suspend or revoke any license or temporary permit it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or temporary permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said copy of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon as to all issues not excluded from the definition of a "contested case" as set forth in article one [§ 29A-1-1 et seq.], chapter twenty-nine-a of this code if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or temporary permit or denying an application for a renewal of license. The board may require the person demanding such hearing to give reasonable security for the costs thereof, and, if such person does not substantially prevail at such hearing, such costs shall be assessed against him and may be collected by a civil action or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set time and place thereof not less than ten nor more than thirty days thereafter. The person demanding the hearing may be granted one continuance as a matter of right and further continuances for good cause shown.

(d) All of the pertinent provisions of article five [§ 29A-5-1 et seq.], chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served within the time and for the fees and shall be enforced, as specified in section one [§ 29A-5-1], article five of chapter twenty-nine-a of this code and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney admitted to practice law in this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three [§ 29A-5-3], article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen [§ 30-28-16] of this article. (1978, c. 87.)

§ 30-28-15. Fees.

The board shall prescribe and publish, in the manner established by its rules, fees in amounts determined by the board for the following purposes:

- (a) Application for examination;
- (b) Initial license fee;
- (c) Renewal of license fee; and
- (d) Late renewal fee.

Such fees shall be commensurate with the cost of fulfilling the duties of the board as defined by this article. (1978, c. 87.)

§ 30-28-16. Judicial review; appeal to supreme court of appeals; legal representation for board.

Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section fourteen [§ 30-28-14] of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four [§ 29A-5-4], article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one [§ 29A-6-1], article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. (1978, c. 87.)

§ 30-28-17. Penalties.

(a) Any person who violates any provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars and not more than five hundred dollars. A license held by any person convicted under this section shall be forfeited and revoked forthwith for one year from the date of such conviction.

(b) It is unlawful for any person who is not registered under this article as an occupational therapist or as an occupational therapy assistant whose registration has been suspended or revoked to use, in connection with his name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant," or "occupational therapy aide," or the letters "O.T.," "L.O.T.," "O.T.R.," "O.T.A.," "L.O.T.A.," "C.O.T.A.," or any other words, letters, abbreviations or insignia indicating or implying that he is an occupational thera-

pist or an occupational therapy assistant, or to show in any way, orally, in writing, in print, or by sign, directly or by implication, or to represent himself as an occupational therapist, occupational therapy assistant or occupational therapy aide. (1978, c. 87.)

§ 30-28-18. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations of any part thereof has occurred, is occurring, or is about to occur, or to the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen [§ 30-28-17] of this article.

Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated hereunder and all orders and final decisions of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation. (1978, c. 87.)