

ENROLLED ACT NO. 60, SENATE

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING  
2016 BUDGET SESSION

AN ACT relating to professions and occupations; amending the Occupational Therapy Practice Act; adding and amending definitions; defining unprofessional conduct; amending the scope of practice; amending licensure and temporary licensure standards; amending standards for reentry into the profession; amending provisions related to foreign license applicants; amending continuing education requirements; specifying who must hold a license; specifying the role of unlicensed persons; repealing archaic provisions; amending board duties and procedures; providing for licensure waiver; repealing criminal penalties; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 33-40-102(a)(ii), (iii)(intro), by creating new subparagraphs (J) through (P), (iv), by creating new paragraphs (v) and (vi) and by renumbering (v) as (vii), 33-40-103(a) and (c), 33-40-104(a)(iii) and (iv)(intro), 33-40-106(a), (b)(i) and (ii), 33-40-107(b) and (c), 33-40-108(a), (c) and by creating a new subsection (d), 33-40-110(a) and by creating a new subsection (f), 33-40-111, 33-40-113(a)(intro), 33-40-114(a), (b), (c)(intro) and (iii) and 33-40-115(c) are amended to read:

**33-40-102. Definitions.**

(a) As used in this act:

(ii) "~~Certified~~ Occupational therapy assistant" or "OTA" means a person licensed under this act to assist in the practice of occupational therapy, ~~under this act,~~ and who works under the supervision of ~~a registered~~ an occupational therapist to perform tasks requiring occupational therapy professional knowledge or judgment;

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(iii) "~~Occupational therapy" is the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities or the aging process in order to maximize independence, prevent disability and maintain health. The practice encompasses evaluation, treatment and consultation. Specific occupational therapy services include but are not limited to the following services provided individually, in groups or through social systems~~ means:

(J) The therapeutic use of occupations including everyday life activities with individuals, groups, populations or organizations to support participation, performance and function in roles and situations in home, school, workplace, community and other settings;

(K) The provision of services for habilitation, rehabilitation and the promotion of health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction;

(M) Addressing the physical, cognitive, psychosocial, sensory-perceptual and other aspects of performance in a variety of contexts and environments to support engagement in occupations, contexts and environments that affect physical and mental health, well-being and quality of life;

(N) Performing the tasks of occupational therapy through personal interaction or appropriate use of

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telecommunication services and other communication technologies;

(O) Performing the tasks of an occupational therapist or occupational therapy assistant commensurate with his education, training and experience;

(P) The practice of occupational therapy which includes:

(I) The evaluation of factors affecting activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure and social participation;

(II) The use of methods or approaches to direct the process of interventions; and

(III) The use of interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure and social participation.

(iv) "~~Registered~~ Occupational therapist" means a person licensed to practice occupational therapy under this act;

(v) "Occupational therapy telehealth" means the provision of occupational therapy services across a distance, using telecommunications technology for the evaluation, intervention or consultation without requiring the occupational therapist and recipient to be physically located in the same place;

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(vi) "Unprofessional conduct" means:

(A) Committing any act involving a patient or which adversely relates to the practice of occupational therapy which results in a felony or misdemeanor conviction. A plea of guilty, nolo contendere or similar plea shall be considered a conviction;

(B) Violating professional sexual boundaries by soliciting, encouraging, threatening, forcing or engaging in any sexual act or relationship with a patient, regardless of consent. A consensual sexual act or relationship shall not be deemed unprofessional conduct if the patient licensee relationship is terminated prior to the sexual act or relationship or if the sexual act or relationship occurs prior to any patient licensee relationship. The treatment of a spouse or significant other where the relationship is in place prior to the beginning of any patient licensee relationship shall not be unprofessional conduct if treatment is conducted without third party compensation;

(C) Sexual harassment of a patient or staff member;

(D) Suffering from an active substance abuse disorder that affects the occupational therapist's ability to perform as an occupational therapist;

(E) Denial of a license to practice occupational therapy or any disciplinary action against a licensee by any other state, the District of Columbia, territory or country for an action constituting unprofessional conduct in Wyoming;

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(F) Failure to report to the board known or reasonably suspected violations of the laws and regulations governing the practice of occupational therapy in Wyoming;

(G) Submission of false information to the board;

(H) Failure to notify the board within thirty (30) days of a malpractice final judgement or settlement involving the occupational therapist;

(J) Aiding or abetting the practice of occupational therapy in violation of W.S. 33-40-103 by any person not licensed to practice in Wyoming;

(K) Submission of false or materially misleading billing information;

(M) Using any term other than "occupational therapist, registered," "occupational therapist," "OT," "certified occupational therapist," "COTA," "occupational therapy assistant" or "OTA" to reflect licensure;

(N) Employing, either directly or indirectly, any licensee under suspension or revocation, except as may be authorized by the board, or any person not licensed to practice occupational therapy to perform any task requiring licensure except that an unlicensed person may be employed to perform tasks under supervision not requiring occupational therapy professional knowledge or judgement;

(O) Accepting payment for any part of professional services delivered as a volunteer;

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

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

(R) Violating any provision of this act.

~~(v)~~ (vii) "This act" means W.S. 33-40-101 through ~~33-40-117~~ 33-40-115.

**33-40-103. License required.**

(a) ~~Effective on July 1, 1992,~~ No person shall hold himself out as an occupational therapist, ~~registered occupational therapist, occupational therapy assistant or certified~~ an occupational therapy assistant or as being able to practice occupational therapy in Wyoming unless he is licensed under this act. An unlicensed person holding himself out as an occupational therapist or occupational therapist assistant by using additional or modifying words in his title, printed materials, advertisements or otherwise shall be deemed to be holding himself out as an occupational therapist or occupational therapist assistant.

(c) Only an individual may be licensed under this act and no entity, either private or governmental, shall hold itself out as providing occupational therapy to any person unless all individuals providing occupational therapy are licensed under this act.

**33-40-104. Persons and practices not affected.**

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

(iii) Any person engaged in the supervised fieldwork to complete the necessary educational requirements of W.S. ~~33-40-106(a)(iii)~~ 33-40-106;

(iv) Any person performing occupational therapy services or acting as an occupational therapy assistant for no more than ~~forty-five (45)~~ twenty (20) days in a calendar year in association with an occupational therapist for the purpose of educating students or providing continuing education to persons licensed under this act, if:

**33-40-106. Requirements for licensure; continuing education.**

(a) An applicant applying for a license as ~~a registered~~ an occupational therapist or ~~as a certified~~ occupational therapy assistant shall file a specified written application showing to the satisfaction of the board that the applicant:

(i) Has a good reputation for honesty, trustworthiness and competence in all matters relevant to practicing the profession of occupational ~~therapist~~ therapy;

(ii) Has successfully completed the academic requirements in occupational therapy in an approved program that is accredited by the ~~committee on allied health education and accreditation, American Medical Association in collaboration with the American Occupational Therapy Association, Inc.~~ The certified occupational therapy

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~~assistant program shall be approved by the American Occupational Therapy Association, Inc.~~ Association's Accreditation Council for Occupational Therapy Education (ACOTE) or a successor organization as established in rule and approved by the licensure board;

(iii) Has successfully completed a period of supervised fieldwork experience ~~arranged~~ required by the recognized educational institution where the applicant met the academic requirements ~~or by the nationally recognized professional association.~~ For a registered occupational therapist, a minimum of twenty-four (24) weeks of supervised fieldwork experience is required. For a certified occupational therapy assistant, a minimum of eight (8) weeks of supervised fieldwork experience is required described in paragraph (ii) of this subsection; and

(iv) Has passed ~~an~~ a national certification examination as provided in W.S. 33-40-107.

(b) The board may establish continuing education requirements for an active license provided that:

(i) The requirement shall not be more than sixteen (16) contact hours of continuing education per year; and

(ii) Continuing education taken any time in the three (3) years preceding the annual license renewal may be counted toward fulfilling the requirement but it shall not be counted more than once. ~~;~~ and

**33-40-107. Examination for license of occupational therapists and occupational therapy assistants.**



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(b) Each applicant for licensure shall be given a written examination on the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods to determine the applicant's fitness to practice. The board shall designate the examination for ~~registered~~ occupational therapists and the examination for ~~certified~~ occupational therapy assistants and shall establish standards for acceptable performance.

(c) Examination shall be conducted as specified by the board ~~at least twice~~ not less than two (2) times each year.

**33-40-108. Waiver of requirements; temporary licenses.**

(a) The board shall grant a license to any person certified prior to July 1, 1992 as an occupational therapist registered (OTR) or as a certified occupational therapy assistant (COTA) by the American occupational therapy certification board (AOTCB). ~~The board may waive the examination, education, or experience requirements and grant a license to any person certified by the AOTCB after July 1, 1992, if the board determines the requirements for the certification are equivalent to the requirements for licensure in this act.~~

(c) The board may establish provisions for a temporary license so an applicant may ~~work~~ practice occupational therapy without supervision or act as an occupational therapy assistant with supervision during processing of the license application.

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(d) The board may establish provisions for a limited license to practice occupational therapy under supervision or act as an occupational therapy assistant with supervision to applicants who are waiting to take the national certification examination or who are awaiting scores.

**33-40-110. Renewal of license; reentry.**

(a) Any license issued under this act shall be subject to annual renewal as provided by the board, however no late renewal of a license may be granted more than ~~five~~ one (1) year after its expiration.

(f) The board shall establish by rule reentry procedures for the licensure of persons who have previously practiced as an occupational therapist or occupational therapy assistant for not less than one (1) year, but who do not qualify for renewal of their license under subsection (a) of this section. The board's rules may:

(i) Require completion of continuing education not to exceed the cumulative total requirement for a licensed occupational therapist or occupational therapist assistant for three (3) years;

(ii) Require completion of a review course approved by the board which shall not be more than thirty (30) days in duration;

(iii) Require practice under the supervision of a licensed occupational therapist or occupational therapy assistant for a period of not more than two (2) years;

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(iv) For a period of not more than two (2) years or until specified training is received, restrict a person from practicing or practicing without supervision specific areas within the practice of occupational therapy which areas have significantly changed or been added to the practice;

(v) Establish guidelines for the length of time the requirements stated in paragraphs (i) through (iv) of this subsection are imposed based on the length of time a person has not engaged in the practice of occupational therapy, the person's prior experience, the area of practice in which the person intends to engage and other relevant factors.

**33-40-111. Foreign trained applicants; applicants from other states and territories.**

(a) Occupational therapists and occupational therapy assistants trained outside of the United States and its possessions shall satisfy the examination requirements of W.S. ~~33-40-106(a)(iv)~~ 33-40-107. The board shall require these applicants to meet the standards established in W.S. ~~33-40-106(a)(i) through (iii)~~ 33-40-106.

(b) The board shall, to the extent necessary, waive examination, education, and continuing education requirements and grant a license to any applicant who presents proof of current licensure or regulation as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or territory of the United States whose standards for licensure or regulation include passage of the examination required for licensure under this act and who have not been disciplined in the other jurisdiction for unprofessional conduct or a

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similar offense. The board may grant licensure to an applicant who has been disciplined for unprofessional conduct if in the board's judgment the unprofessional conduct was sufficiently minor, has been rectified or is sufficiently in the past so as not to present a risk to the welfare or safety of Wyoming patients.

**33-40-113. Suspension and revocation of license; refusal to renew.**

(a) After the hearing authorized by subsection (b) of this section, the board may deny a license or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions if the licensee or the applicant for a license has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. ~~For purposes of this section, unprofessional conduct includes:~~ Unprofessional conduct shall mean the conduct defined in W.S. 33-40-102(a)(vi).

**33-40-114. Board of occupational therapy practice; established; compensation.**

(a) There is established a board of occupational therapy within the department of administration and information. The board shall consist of five (5) members appointed by the governor, who are residents of Wyoming. Three (3) board members shall be ~~registered~~ occupational therapists who have been engaged in providing occupational therapy services to the public, teaching or research in occupational therapy for at least five (5) years immediately preceding their appointments. One (1) board member shall be ~~a certified~~ an occupational therapy assistant who shall have been engaged in providing

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occupational therapy services to the public, teaching or research in occupational therapy for at least ~~three (3)~~ five (5) years immediately preceding his appointment. ~~A registered~~ An occupational therapist may be appointed to this position if no ~~certified~~ occupational therapy assistant is available and willing to serve. These four (4) members shall at all times be holders of valid licenses under this act. The remaining member shall be a member of the public with an interest in the rights of the consumers of health services.

(b) ~~By July 1, 1991 the governor shall appoint two (2) board members for a term of one (1) year, two (2) board members for a term of two (2) years and one (1) for a term of three (3) years. Appointments made thereafter~~ Appointments to the board of occupational therapy shall be for three (3) year terms. No person shall serve more than two (2) consecutive terms. Terms shall begin on the first day of the fiscal year and end on the last day of the fiscal year or until successors are appointed. ~~, except for the first appointed members who shall serve through the last fiscal day of the year in which they are appointed.~~ Vacancies in the membership of the board shall be filled for the unexpired term by the governor. The governor may remove any board member as provided by W.S. 9-1-202.

(c) The board shall meet ~~during the first month of each fiscal year to select a chairman and for other purposes. At least one (1) additional meeting shall be held before the end of each fiscal year~~ not less than two (2) times during each fiscal year and shall select a chairman at the first meeting. Other meetings may be convened at the call of the chairman or the written request of any two (2) board members. A majority of the members of the board shall constitute a quorum for all purposes. All

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meetings of the board shall be governed in accordance with W.S. 16-4-403. In addition the board may hold closed sessions:

(iii) To consider allegations or investigations of possible unprofessional conduct as defined by W.S. ~~33-40-113~~ 33-40-102(a)(vi).

**33-40-115. Board of occupational therapy practice; powers and duties.**

(c) The board may delegate its authority to issue temporary and limited licenses pursuant to W.S. ~~33-40-108(e) and limited permits pursuant to W.S. 33-40-105~~ 33-40-108 to the executive secretary of the board. The board may limit the delegation or set forth any criteria for exercising the delegation as it deems appropriate.

**Section 2.** W.S. 33-40-102(a)(iii)(A) through (H), 33-40-103(b), 33-40-104(a)(iv)(B), 33-40-105, 33-40-106(b)(iii), 33-40-107(a), 33-40-108(b), 33-40-110(b) through (e), 33-40-113(a)(i) through (vi) and 33-40-114(c)(i) and (ii) are repealed.

ORIGINAL SENATE  
FILE NO. SF0042

ENGROSSED

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**Section 3.** This act is effective July 1, 2016.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk