
Colorado Revised Statutes

Title 12 Professions and Occupations

Article 40.5 Occupational Therapy Practice Act

Effective July 1, 2008

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12-40.5-101. Short title.

This article shall be known and may be cited as the "Occupational Therapy Practice Act".

12-40.5-102. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares that:

(a) Occupational therapy services are provided for the purpose of promoting 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;

(b) Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life;

(c) This act is necessary to:

(I) Safeguard the public health, safety, and welfare; and

(II) Protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this act to regulate persons who are representing themselves as occupational therapists and who are performing services that constitute occupational therapy.

12-40.5-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Activities of daily living" means activities that are oriented toward taking care of one's own body, such as bathing, showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, personal hygiene and grooming, sexual activity, sleep, rest, and toilet hygiene.

(2) "Aide" means a person who is not registered by the director and who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function only under the guidance, responsibility, and supervision of a registered occupational therapist. The aide shall perform only specifically selected tasks for which the aide has been trained and has demonstrated competence to the registered occupational therapist or occupational therapy assistant.

(3) "Department" means the department of regulatory agencies.

(4) "Director" means the director of the division of registrations.

(5) "Division" means the division of registrations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(6) "Instrumental activities of daily living" means activities that are oriented toward interacting with the environment and that may be complex. These activities are generally optional in nature and may be delegated to another person. "Instrumental activities of daily living" include care of others, care of pets, child-rearing, communication device use, community mobility, financial management, health management and maintenance, home establishment and management, meal preparation and cleanup, safety procedures and emergency responses, and shopping.

(7) "Low vision rehabilitation services" means the evaluation, diagnosis, management, and care of the low vision patient, including low vision rehabilitation therapy, education, and interdisciplinary consultation.

(8) "Occupational therapist" means a person registered to practice occupational therapy under this article.

(9) "Occupational therapy" means the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. The practice of occupational therapy includes:

(a) Methods or strategies selected to direct the process of interventions such as:

(I) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;

(II) Compensation, modification, or adaptation of an activity or environment to enhance performance;

(III) Maintenance and enhancement of capabilities without which performance of everyday life activities would decline;

(IV) Promotion of health and wellness to enable or enhance performance in everyday life activities; and

(V) Prevention of barriers to performance, including disability prevention;

(b) Evaluation of factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

(I) Client factors, including body functions such as neuromuscular, sensory, visual, perceptual, and cognitive functions, and body structures such as cardiovascular, digestive, integumentary, and genitourinary systems;

(II) Habits, routines, roles, and behavior patterns;

(III) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance; and

(IV) Performance skills, including motor, process, and communication and interaction skills;

(c) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

(I) Therapeutic use of occupations, exercises, and activities;

(II) Training in self-care, self-management, home management, and community and work reintegration;

(III) Development, remediation, or compensation of physical, cognitive, neuromuscular, and sensory functions and behavioral skills;

(IV) Therapeutic use of self, including a person's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(V) Education and training of individuals, including family members, caregivers, and others;

(VI) Care coordination, case management, and transition services;

(VII) Consultative services to groups, programs, organizations, or communities;

(VIII) Modification of environments such as home, work, school, or community and adaptation of processes, including the application of ergonomic principles;

(IX) Assessment, design, fabrication, application, fitting, and training in assistive technology; adaptive devices, excluding glasses, contact lenses, or other prescriptive devices to correct vision unless prescribed by an optometrist; and orthotic devices and training in the use of prosthetic devices;

(X) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(XI) Driver rehabilitation and community mobility;

(XII) Management of feeding, eating, and swallowing to enable eating and feeding performance; and

(XIII) Application of physical agent modalities and therapeutic procedures such as wound management; techniques to enhance sensory, perceptual, and cognitive processing; and manual techniques to enhance performance skills.

(10) "Occupational therapy assistant" means a person who has successfully completed an occupational therapy assistant program approved by the department to assist in the practice of occupational therapy under the supervision of an occupational therapist.

(11) "Registrant" means an occupational therapist registered pursuant to this article.

(12) "Supervision" means the giving of aid, directions, and instructions that are adequate to ensure the safety and welfare of clients during the provision of occupational

therapy by the occupational therapist designated as the supervisor. Responsible direction and supervision by the occupational therapist shall include consideration of factors such as level of skill, the establishment of service competency, experience, work setting demands, the complexity and stability of the client population, and other factors. Supervision is a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services and the occupational therapist is legally accountable for occupational therapy services provided by the occupational therapy assistant and the aide.

(13) "Vision therapy services" means the assessment, diagnosis, treatment, and management of a patient with vision therapy, visual training, visual rehabilitation, orthoptics, or eye exercises.

12-40.5-104. Use of titles restricted.

Only a person registered as an occupational therapist may use the titles "occupational therapist registered", "registered occupational therapist", "occupational therapist", or "doctorate of occupational therapy" or use the abbreviation "O.T.", "O.T.D.", or "O.T.R.", or any other generally accepted terms, letters, or figures that indicate that the person is an occupational therapist.

12-40.5-105. Registration required.

Except as otherwise provided in this article, a person shall not practice occupational therapy or represent himself or herself as being able to practice occupational therapy in this state without possessing a valid registration issued by the director in accordance with this article and any rules adopted under this article.

12-40.5-106. Registration - application - qualifications - rules.

(1) **Educational and experiential requirements.** Every applicant for a registration as an occupational therapist shall have:

(a) Successfully completed the academic requirements of an educational program for occupational therapists that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another such program accredited thereby and approved by the director.

(b) Successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in paragraph (a) of this subsection (1). The minimum period of fieldwork experience for an occupational therapist is twenty-four weeks of supervised fieldwork experience or satisfaction of any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation.

(2) **Application.** (a) When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for examination and registration upon payment of a fee in an amount determined by the director. A person who fails an

examination may apply for reexamination upon payment of a fee in an amount determined by the director.

(b) The application shall be in the form and manner designated by the director.

(3) **Examination.** Each applicant shall pass a nationally recognized examination approved by the director. The examination shall measure the minimum level of competence necessary for consumer protection. The director may contract for assistance in creating and administering the examination.

(4) **Registration.** When an applicant has fulfilled the requirements of subsections (1) to (3) of this section, the director shall issue a registration to the applicant; except that the director may deny a registration if the applicant has committed any act that would be grounds for disciplinary action under section 12-40.5-110.

(5) **Registration by endorsement.** (a) An applicant for registration by endorsement shall file an application and pay a fee as prescribed by the director and shall hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required for registration by subsection (1) of this section.

(b) An applicant for registration shall submit with the application verification that the applicant has actively practiced for a period of time determined by rules of the director or otherwise maintained continued competency as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (5), the director shall review the application and make a determination of the applicant's qualification to be registered by endorsement.

(d) The director may deny the registration if the applicant has committed an act that would be grounds for disciplinary action under section 12-40.5-110.

(6) **Registration renewal.** (a) A registrant shall be required to renew the registration issued under this article according to a schedule of renewal dates established by the director. The registrant shall submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

(b) Registrations shall be renewed or reinstated in accordance with the schedule established by the director, and such renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a registrant fails to renew his or her registration pursuant to the schedule established by the director, the registration shall expire. Any person whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

(7) **Fees.** All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S.

12-40.5-107. Supervision of occupational therapy assistants.

An occupational therapy assistant may practice only under the supervision of an occupational therapist who is registered to practice occupational therapy in this state. The occupational therapist is responsible for occupational therapy evaluation, appropriate reassessment, treatment planning, and interventions based on standard professional guidelines. Supervision of an occupational therapy assistant by an occupational therapist is a shared responsibility. The supervising occupational therapist and the supervised occupational therapy assistant have legal and ethical responsibility for ongoing management of supervision, including providing, requesting, giving, or obtaining supervision. The frequency, level, and nature of supervision shall be determined by the supervising occupational therapist with input from the occupational therapy assistant, and shall be based on a variety of factors, including the clients' required level of care, the treatment plan, and the experience and pertinent skills of the occupational therapy assistant.

12-40.5-108. Scope of article - exclusions.

(1) This article shall not prevent or restrict the practice, services, or activities of:

(a) A person licensed or otherwise regulated in this state by any other law from engaging in his or her profession or occupation as defined in the article under which he or she is licensed;

(b) A person pursuing a course of study leading to a degree in occupational therapy at an educational institution with an accredited occupational therapy program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision;

(c) A person fulfilling the supervised fieldwork experience requirements of section 12-40.5-106 (1) if the experience constitutes a part of the experience necessary to meet the requirement of section 12-40.5-106 (1) and the person acts under appropriate supervision; or

(d) The practice of occupational therapy in this state by any legally qualified occupational therapist from another state or country when providing services on behalf of a temporarily absent occupational therapist registered in this state, so long as the unregistered occupational therapist is acting in accordance with rules established by the director. The unregistered practice shall not be of more than four weeks' duration, and no person shall be authorized by the director to undertake such practice more than once in any twelve-month period.

12-40.5-109. Limitations on authority.

Nothing in this article shall be construed to authorize an occupational therapist to engage in the practice of medicine, as defined in section 12-36-106; physical therapy, as defined in article 41 of this title; vision therapy services or low vision rehabilitation services, except under the referral, prescription, supervision, or comanagement of an

ophthalmologist or optometrist; or any other form of healing except as authorized by this article.

12-40.5-110. Grounds for discipline - disciplinary proceedings - judicial review.

(1) The director may take disciplinary action against a registrant if the director finds that the registrant has represented himself or herself as a registered occupational therapist after the expiration, suspension, or revocation of his or her registration.

(2) The director may revoke, suspend, deny, or refuse to renew a registration, or issue a cease-and-desist order to a registrant in accordance with this section upon proof that the registrant:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this paragraph (a):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S.

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) Has falsified information in an application or has attempted to obtain or has obtained a registration by fraud, deception, or misrepresentation;

(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102, C.R.S., or other drugs having similar effects; except that the director has the discretion not to discipline the registrant if he or she is participating in good faith in a program to end such use or abuse that the director has approved;

(d) Has a physical or mental condition or disability that renders the registrant unable to provide occupational therapy services with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(e) Has violated this article or aided or abetted or knowingly permitted any person to violate this article, a rule adopted under this article, or any lawful order of the director;

(f) Had a license or registration suspended or revoked for actions that are a violation of this act;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or committed an act specified in section 12-40.5-111. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by section 24-5-101, C.R.S.

(h) Has fraudulently obtained, furnished, or sold any occupational therapy diploma, certificate, registration, renewal of registration, or record or aided or abetted such act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or registration required to practice occupational therapy in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-40.5-114; or

(k) Has otherwise violated any provision of this article or lawful order or rule of the director.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a registrant when the director has reasonable grounds to believe that the registrant has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee or registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) No later than thirty days following the date of the director's action, an occupational therapist disciplined under this section shall be notified by the director, by a certified letter to the most recent address provided to the director by the occupational therapist, of the action taken, the specific charges giving rise to the action, and the occupational therapist's right to request a hearing on the action taken.

(b) Within thirty days after notification is sent by the director, the occupational therapist may file a written request with the director for a hearing on the action taken. Upon receipt of the request the director shall grant a hearing to the occupational therapist. If the occupational therapist fails to file a written request for a hearing within thirty days, the action of the director shall be final on that date.

(c) Failure of the occupational therapist to appear at the hearing without good cause shall be deemed a withdrawal of his or her request for a hearing, and the director's action

shall be final on that date. Failure, without good cause, of the director to appear at the hearing shall be deemed cause to dismiss the proceeding.

(7) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) In accordance with article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (7) is authorized to administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or registrant to comply with a subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. If the person or registrant fails to obey the order of the court, the person or registrant may be held in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director.

(8) (a) The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that otherwise might result by reason of the participation.

(9) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(10) An employer of an occupational therapist shall report to the director any disciplinary action taken against the occupational therapist or the resignation of the occupational therapist in lieu of disciplinary action for conduct that violates this article.

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(12) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (12), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(13) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (13) shall be notified promptly by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The notice may be served on the person against whom the order has been issued by personal service, by first-class, postage prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) shall constitute notice of the order to the person.

(c) (I) The hearing on an order to show cause shall be held no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (13). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing be held later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (13) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (13) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing the person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (13), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(14) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an unregistered act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(15) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(16) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (9) of this section.

12-40.5-111. Unauthorized practice - penalties.

A person who practices or offers or attempts to practice occupational therapy without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense. For the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

12-40.5-112. Rule-making authority.

The director shall promulgate rules as necessary for the administration of this article.

12-40.5-113. Severability.

If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without the invalid provision.

12-40.5-114. Mental and physical examination of registrants.

(1) If the director has reasonable cause to believe that a registrant is unable to practice with reasonable skill and safety, the director may order the registrant to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Except where due to circumstances beyond the registrant's control, if the registrant fails or refuses to undergo a mental or physical examination, the director may suspend the registrant's registration until the director has made a determination of the registrant's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) An order requiring a registrant to undergo a mental or physical examination shall contain the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the grounds that they are privileged communication.

(3) The registrant may submit to the director testimony or examination reports from a physician chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from practicing with reasonable skill and safety. The testimony and reports submitted by the registrant may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

12-40.5-115. Repeal of article - review of functions.

This article is repealed, effective July 1, 2013. Prior to such repeal, the director's powers, duties, and functions under this article shall be reviewed as provided in section 24-34-104, C.R.S.