

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1616

H.P. 1151

House of Representatives, March 20, 1997

An Act to Amend the Laws Regulating Occupational Therapy Practice.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative FULLER of Manchester.
Cosponsored by Representative FARNSWORTH of Portland.

Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 32 MRSA §2271**, as enacted by PL 1983, c. 746, §2, is
4 amended to read:

6 **§2271. Declaration of purpose**

8 In order to safeguard the public health, safety and welfare,
10 to protect the public from incompetent and unauthorized persons;
12 to assure the highest degree of professional conduct on the part
14 of occupational therapists and certified occupational therapy
16 assistants; and to assure the availability of occupational
therapy services of high quality to persons in need of those
services, it is the purpose of this chapter to provide for the
regulation of persons offering occupational therapy services.

18 **Sec. 2. 32 MRSA §2272**, as corrected by RR 1993, c. 1, §87, is
repealed and the following enacted in its place:

20 **§2272. Definitions**

22 As used in this chapter, unless the context otherwise
24 indicates, the following terms have the following meanings.

26 1. ACOTE. "ACOTE" means the Accreditation Council for
28 Occupational Therapy Education, a nationally recognized
accrediting agency for professional programs in the field of
occupational therapy.

30 2. AOTA. "AOTA" means the American Occupational Therapy
32 Association.

34 3. Board. "Board" means the Board of Occupational Therapy
Practice established under this chapter.

36 4. Certification examination. "Certification examination"
38 means the certification examination for a registered occupational
therapist or the certification examination for certified
40 occupational therapy assistant, both of which are administered by
NBCOT.

42 5. Certified occupational therapy assistant. "Certified
44 occupational therapy assistant" means an individual who is
certified in good standing with the National Board for
46 Certification in Occupational Therapy and who is permitted to use
the designation "COTA," which is a registered trademark
48 signifying NBCOT certification. Certified occupational therapy
assistants licensed to practice occupational therapy under this
50 chapter in the State, under the supervision of an occupational
therapist, OTR/L, are permitted to use the designation COTA/L.

2 6. Commissioner. "Commissioner" means the Commissioner of
Professional and Financial Regulation.

4 7. Department. "Department" means the Department of
6 Professional and Financial Regulation.

8 8. Developing programs. "Developing programs" means
10 programs that submitted a letter of intent to seek accreditation
by ACOTE prior to December 1, 1994.

12 9. Level II fieldwork. "Level II fieldwork" means the
14 experience required to prepare occupational therapy and
16 occupation therapy assistant students to carry out professional
responsibilities under appropriate supervision and professional
role modeling.

18 A minimum of 6 months, or 940 hours, of level II fieldwork is
20 required for occupational therapy educational programs.

22 A minimum of 12 weeks, or 440 hours, of level II fieldwork is
24 required for occupational therapy assistant educational programs.

26 10. NBCOT. "NBCOT" means the National Board for
28 Certification in Occupational Therapy, formerly the AOTCB, or
American Occupational Therapy Certification Board.

30 11. Occupational therapist. "Occupational therapist" means
32 an individual who is certified in good standing with the National
34 Board for Certification in Occupational Therapy and who is
permitted to use the designation OTR, which is a registered
trademark signifying NBCOT certification. Occupational
therapists licensed to practice occupational therapy in the State
under this chapter are permitted to use the designation "OTR/L."

36 12. Occupational therapy. "Occupational therapy" means the
38 assessment, planning and implementation of a program of
40 purposeful activities to develop or maintain adaptive skills
42 necessary to achieve the maximal physical and mental functioning
44 of the individual in the individual's daily pursuits. The
46 practice of "occupational therapy" includes, but is not limited
to, assessment and treatment of individuals whose abilities to
cope with the tasks of living are threatened or impaired by
developmental deficits, the aging process, learning disabilities,
poverty and cultural differences, physical injury or disease,
psychological and social disabilities or anticipated dysfunction,
using:

2 A. Treatment techniques such as task-oriented activities to
3 prevent or correct physical or emotional deficits or to
4 minimize the disabling effect of these deficits in the life
5 of the individual;

6 B. Assessment techniques such as assessment of cognitive
7 and sensory motor abilities, assessment of the development
8 of self-care activities and capacity for independence,
9 assessment of the physical capacity for prevocational and
10 work tasks, assessment of play and leisure performance and
11 appraisal of living areas for the disabled; and

12 C. Specific occupational therapy techniques such as daily
13 living skill activities, the fabrication and application of
14 splinting devices, sensory motor activities, the use of
15 specifically designed manual and creative activities,
16 guidance in the selection and use of adaptive equipment,
17 specific exercises to enhance functional performance and
18 treatment techniques for physical capabilities for work
19 activities.

20 The techniques may be applied in the treatment of individuals or
21 groups.

22 13. Person. "Person" means any individual, partnership,
23 unincorporated organization or corporation.

24 14. Supervision of COTA. "Supervision of COTA" means
25 initial directions and periodic inspection of the service
26 delivery and provision of relevant in-service training. The
27 supervising licensed occupational therapist shall determine the
28 frequency and nature of the supervision to be provided based on
29 the clients' required level of care and the COTA's caseload,
30 experience and competency.

31 15. Supervision of temporary licensees. "Supervision of
32 temporary licensees" includes initial and periodic inspection or
33 written assessments, written treatment plans, patient notes and
34 periodic evaluation of performance. The reviews and evaluations
35 must be conducted in person by a licensed occupational therapist.

36 Sec. 3. 32 MRSA §2276, as amended by PL 1987, c. 597, §4, is
37 further amended to read:

38 §2276. License required

39 1. License required. No person may practice, or hold
40 himself out as authorized to practice occupational therapy, as an
41 occupational therapist or certified occupational therapist in
42 this State or use the words "occupational therapist" or
43 any other words that imply that the person is an occupational
44 therapist or certified occupational therapist.

2 "~~certified occupational therapy assistant~~" or the letters "~~O.T.~~"
3 "~~C.O.T.A.~~" or other words or letters to indicate that the person
4 using the words or letters is a licensed occupational therapist
5 or ~~certified occupational therapy assistant~~, unless he is
6 licensed in accordance with this chapter.

7 1-A. License required. A person may not practice, or
8 profess to be authorized to practice occupational therapy, as an
9 occupational therapist or certified occupational therapist in
10 this State or use the words "occupational therapist," "Registered
11 Occupational Therapist," "occupational therapy assistant" or
12 "certified occupational therapy assistant" or the letters "O.T."
13 "O.T.A." "C.O.T.A." or other words or letters to indicate that
14 the person using the words or letters is a licensed occupational
15 therapist or certified occupational therapy assistant, or which
16 may misrepresent to the public that the person has received
17 formalized training in the field of occupational therapy, unless
18 that person is licensed in accordance with this chapter.

19 This subsection is not intended to prohibit occupational therapy
20 students and occupational therapy assistant students completing
21 fieldwork from using the letters "O.T.S." and "O.T.A.S."
22 respectively.

23 2. Individual license. Only an individual may be licensed
24 under this chapter.

25 3. Penalty; injunction. A person who violates the
26 provisions of this section or ~~any lawful order or rule of the~~
27 board is guilty of a Class E crime.

28 The State may bring an action in Superior Court to enjoin
29 any person from violating this chapter, regardless of whether
30 proceedings have been or may be instituted in the Administrative
31 Court or whether criminal proceedings have been or may be
32 instituted.

33 Sec. 4. 32 MRSA §2277, as amended by PL 1991, c. 509, §§10
34 and 11, is further amended to read:

35 **§2277. Persons and practices exempt**

36 Nothing in this chapter may be construed as preventing or
37 restricting the practice, services or activities of:

38 1. Licensed persons. Any person licensed in this State by
39 any other law from engaging in the profession or occupation for
40 which he the person is licensed;
41

2 **2. Students or trainees.** Any person pursuing a supervised
4 course of study leading to a degree or certificate in
6 occupational therapy at a developing or an accredited or approved
8 educational program, if the person is designated by a title which
10 that clearly indicates that person's status as a student or
12 trainee, or. At the discretion of the supervising occupational
14 therapist, the student or trainee may be assigned duties or
16 functions commensurate with the student's or trainee's education
18 and training.

20 Occupational therapy students and occupational therapy assistant
22 students completing fieldwork may use the letters "O.T.S." and
24 "O.T.A.S." respectively.

26 ~~3. ---Supervised--fieldworkers,---Any--person--fulfilling--the~~
28 ~~supervised--fieldwork--experience--requirements--of--section--2279,~~
30 ~~subsection--4,--if--the--experience--constitutes--a--part--of--the~~
32 ~~experience--necessary--to--meet--the--requirement--of--that--subsection.~~

34 **Sec. 5. 32 MRSA §2278,** as amended by PL 1991, c. 509, §12, is
36 repealed and the following enacted in its place:

38 **§2278. Temporary license**

40 A temporary license may be granted to a person who has
42 completed the education and level II fieldwork requirements of
44 this chapter and who has also received NBCOT approval to sit for
46 the appropriate certification examination. This temporary
48 license allows the holder to practice occupational therapy under
the supervision of a licensed occupational therapist. Temporary
licensees shall take the first available national examination for
which they become eligible.

A temporary license is valid until the results of the
national examination are made available to the board. If the
person has passed the national examination, a license must be
issued under sections 2279 and 2280-A. The temporary license of
a person who has failed the examination may not be renewed.

If, for a legitimate reason, a person holding a temporary
license does not take the first available national examination
for which the person becomes eligible, the person must submit a
letter to the board explaining the circumstances. After review,
the board, at its discretion, may renew the person's temporary
license once to allow the person to sit for the next scheduled
national examination.

A temporary license may not be renewed more than once.

2 Foreign trained applicants must receive approval to sit for
the examination from NBCOT in order to be eligible for a
temporary license.

4
6 Sec. 6. 32 MRSA §2279, as amended by PL 1991, c. 509, §13, is
further amended to read:

8 **§2279. Requirements for licensure**

10 An applicant applying for a license as an a certified
occupational therapist or as an occupational therapy assistant
12 shall must file a written application provided by the board,
showing to the satisfaction of the board that he the applicant
14 meets the following requirements.

16 1. **Residence.** An applicant need not be a resident of this
State.

18 ~~2. Character. An applicant shall have demonstrated ethical~~
20 ~~practice.~~

22 2-A. Character references. An applicant must submit 2
completed character reference forms acceptable to the board.

24 3. **Education.** An applicant shall must present evidence
satisfactory to the board of having successfully completed the
26 academic and fieldwork requirements of an educational program in
occupational therapy ~~recognized by the board~~ or occupational
28 therapy assisting.

30 A. The occupational therapy or occupational therapy
32 assisting educational program must be accredited by the
Committee ~~on Allied Health Education and Accreditation~~ of
34 the ~~American Medical Association~~ in collaboration with the
American Occupational Therapy Certification Board ACOTE.

36 B. ~~The occupational therapy assistant educational program~~
38 ~~must be approved by the American Occupational Therapy~~
Certification Board.

40 4. ~~Experience. An applicant shall submit to the board~~
42 ~~evidence of having successfully completed a period of supervised~~
fieldwork ~~experience arranged by the recognized educational~~
44 ~~institution where he met the academic requirements or by the~~
nationally recognized professional association.

46 A. ~~For an occupational therapist, a minimum of 6 months of~~
48 ~~supervised fieldwork experience is required.~~

2 ~~B. -- For an occupational therapy assistant, a minimum of 2~~
~~months of supervised fieldwork experience is required.~~

4 **5. Examination.** An applicant for licensure as an
6 occupational therapist or as an occupational therapy assistant
shall must pass an examination as provided for in section 2280
2280-A.

8 **6. Licensure.** An applicant may be licensed as an
10 occupational therapist if he the applicant has practiced as an
occupational therapy assistant for 4 years, has completed the
12 level II fieldwork requirements of subsection 4, paragraph A, for
an occupational therapist before January 1, 1988, and has passed
14 the examination for occupational therapists.

16 **7. Certification.** An applicant must submit a verification
of certification form from NBCOT. The form must be completed and
18 signed by NBCOT. An applicant applying within 3 months of having
taken the certification examination who has the examination
20 scores sent directly to the board is exempt from this requirement.

22 **8. Fee.** An Applicant must pay an application fee and
24 license fee.

Sec. 7. 32 MRSA §2280, as amended by PL 1991, c. 509, §14, is
26 repealed.

28 **Sec. 8. 32 MRSA §2280-A** is enacted to read:

30 **§2280-A. National examination for licensure of occupational**
32 **therapists and occupational therapy assistants**

34 The certification examination of NBCOT for the occupational
therapist or occupational therapy assistant satisfies examination
requirements of the board.

36 The certification examination for the occupational therapy
38 assistant may be waived for any person who was certified as an
occupational therapy assistant by the American Occupational
40 Therapy Association prior to June 1977.

42 **Sec. 9. 32 MRSA §2281,** as amended by PL 1991, c. 509, §15, is
44 further amended to read:

46 **§2281. Waiver of requirements for licensure**

48 The board shall grant a license to any person who, prior to
July 25, 1984, has successfully completed an examination
administered by the Psychological Corporation under contract with

2 the American Occupational Therapy Certification Board if that
3 person meets the requirements of section 2279, subsections 1, 2,
4 2-A and 3 and-4.

6 **Sec. 10. 32 MRSA §2283, sub-§1**, as enacted by PL 1983, c. 746,
7 §2, is amended to read:

8 **1. Biennial renewal.** Any license issued under this chapter
9 shall-be is subject to biennial renewal and shall-expire expires
10 upon the stated expiration date, unless renewed in the manner
11 prescribed by the rules of the board, ~~upon-the~~ including payment
12 of a renewal fee. Licenses may be renewed reinstated up to 90
13 days after the date of expiration upon payment of a late fee of
14 \$10 in addition to the renewal fee. The 90-day period is for
15 expediting the reinstatement process only. It does not extend
16 the licensure period. Any person who submits an application for
17 renewal reinstatement more than 90 days after the license ~~renewal~~
18 expiration date shall-be is subject to all requirements governing
19 new applicants under this chapter, except that the board may in
20 its discretion, giving due consideration to the protection of the
21 public, waive examination if that ~~renewal~~ reinstatement
22 application is made within 2 years from the date of that
23 expiration.

24 **Sec. 11. 32 MRSA §2284**, as enacted by PL 1983, c. 746, §2, is
25 repealed and the following enacted in its place:

28 **§2284. Foreign-trained applicants**

30 Foreign-trained applicants are subject to the provisions of
31 this section.

32 **1. Approval.** Applicants must receive approval for their
33 educational programs, supervised fieldwork and English language
34 proficiency, based on standards set by NBCOT.

35 **2. Character references.** Applicants must submit 2
36 completed character reference forms acceptable to the board.

37 **3. Examination.** Applicants for licensure as occupational
38 therapists or occupational therapy assistants must pass an
39 examination as provided for in section 2280-A.

40 **4. Certification.** Applicants, except those applying within
41 3 months of having taken the certification examination who have
42 their examination scores sent directly to the board, must submit
43 a verification of certification form, provided by either the
44 board or NBCOT. All forms must be completed and signed by NBCOT.

2 5. Fee. Applicants must pay application and license fees
according to this chapter.

4 6. Temporary license. Foreign-trained applicants must
receive approval to sit for the examination from NBCOT in order
6 to be eligible for a temporary license.

8 **Sec. 13. 32 MRSA §2285, sub-§2,** as enacted by PL 1983, c. 746,
§2, is amended to read:

10 **2. Disposal of fees.** All fees received by the board shall
12 must be paid to the Treasurer of State to be used for carrying
out this chapter. Any balance of fees shall may not lapse but
14 shall must be carried forward as a continuing account to be
expended for the same purposes in the following fiscal years.
16 All fees are nonrefundable.

18 **Sec. 14. 32 MRSA §2286, sub-§2, ¶B,** as enacted by PL 1983, c.
746, §2, is amended to read:

20 B. Unprofessional conduct. A licensee shall ~~be deemed to~~
22 have has engaged in unprofessional conduct if he the
licensee violates any standard of professional behavior
24 ~~which has been established in the practice for which the~~
licensee is licensed as defined by the Occupational Therapy
26 Code of Ethics, as adopted by AOTA;

28

30

SUMMARY

32 This bill incorporates the change of name of the national
agency that certifies and tests occupational therapists and
34 occupational therapy assistants; incorporates the name change of
the agency that accredits occupational therapy educational
36 programs and changes related information, including definitions;
corrects minor language inconsistencies to improve clarity;
38 clarifies the law as it relates to temporary licensees; removes
obsolete information regarding examination of occupational
40 therapists; clarifies the requirements for foreign-trained
therapists to become licensed; and incorporates minor technical
42 changes affected by changes to the national agency for
certification of therapists.

44