

NORTH CAROLINA BOARD OF OCCUPATIONAL THERAPY DISCIPLINARY ACTION POLICY AND PROCEDURE

The "North Carolina Occupational Therapy Practice Act" authorizes the Board to conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under the Act, and to issue and renew, and deny, suspend, revoke or refuse to issue or renew any license under this Act.

The law was enacted to safeguard the public health, safety and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional services and conduct on the part of occupational therapists and occupational therapy assistants, to provide for the establishment of licensure requirements, and to insure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this Article to provide for the regulation of persons offering occupational therapy services to the public.

I. ENFORCEMENT

The enforcement process consists of six (6) steps:

1. **Intake**: The Administrator of the Board will receive and acknowledge complaints, open a confidential file and initiate complaint tracking. If the complaint is verbal, the person will be informed that the complaint must be in writing.
2. **Assessment**: The Administrator will give the file to the Board's legal counsel. The legal counsel will screen complaints, determine the type of response appropriate for the complaint and determine jurisdiction.
3. **Investigation**:
 - a. If the facts do not clearly indicate a Practice Act violation, and the complaint can be handled without an investigation, the legal counsel, after consultation with the Chair of the Board, will seek written compliance with the Board's request to cease conduct that could result in a Practice Act violation.
 - b. If the facts clearly indicate a Practice Act violation, the legal counsel, after consultation with the Chair, will commence an investigation. The legal counsel may utilize additional personnel such as licensees, law enforcement officials, or other technical personnel that may be required in a particular case. If a Board member is utilized in the investigation, care must be taken to observe due process by separating
 - (1) investigation
 - (2) prosecution
 - (3) hearings
 - (4) final decision-making.

No Board member shall participate in more than one of these four steps in the enforcement process.

c. The legal counsel shall prepare a confidential report of each investigation for the Board's review.

4. **Formal and Informal Hearings:**

- a. An informal meeting may be scheduled with legal counsel.
- b. If the matter cannot be resolved informally, then a formal hearing will be held.
- c. Members of the Board shall not make ex parte communication with parties to a hearing.

5. **Final Orders:** As soon as possible, but at least within sixty (60) days, the Board will issue its final decision in writing specifying the date on which it will take effect. The Board will serve one copy of the decision on each party to the hearing.

6. **Compliance:** The Chair of the Board will cause a follow-up inquiry to determine that the orders of the Board are being obeyed.

II. CONDUCT THAT MAY REQUIRE ENFORCEMENT

The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

- (1) writing a check given to the Board in payment of required fees which is returned unpaid;
- (2) allowing an unlicensed occupational therapist or occupational therapy assistant to practice under the licensee's supervision or control;
- (3) making any false statement or giving any false information in connection with an application for a license or renewal of a license or any investigation by the Board or the Board's designee;
- (4) committing a crime the circumstances of which relate to the occupational therapy profession;
- (5) violating any federal or state statute or rule which relates to the occupational therapy profession;
- (6) practicing occupational therapy while the licensee's ability to practice was impaired by alcohol or other drugs or a physical or mental disability or disease;
- (7) engaging in sexual misconduct. For the purposes of this Paragraph, sexual misconduct includes:
 - (A) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person;
 - (B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients;
- (8) obtaining or attempting to obtain payment by fraud or deceit;
- (9) violating any Order of the Board;
- (10) failing to properly make the disclosures required by 21 NCAC 38 .0305;

- (11) abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of care;
- (12) recording or communicating false or misleading data, measurements or notes regarding a patient;
- (13) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (14) practicing or offering to practice beyond the scope permitted by law;
- (15) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (16) performing, without supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional;
- (17) harassing, abusing, or intimidating a patient either physically or verbally;
- (18) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (19) promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party;
- (20) delegating professional responsibilities to a person when the licensee delegating the responsibilities knows or has reason to know that the person is not qualified by training, by experience, or by licensure to perform the responsibilities;
- (21) billing or charging for services or treatments not performed; or
- (22) making treatment recommendations based on the extent of third party benefits instead of the patient's condition.

III. DISCIPLINARY SANCTIONS

The following type of disciplinary sanctions may, among others, be utilized by the Board:

- a. **Assessment of Civil Penalty.**
- b. **Denial of Application:** Refusal to license the applicant.
- c. **Injunction:** A court action prohibiting or compelling conduct by a licensee.
- d. **Letter of Admonishment.** An expression of displeasure. The mildest form of administrative action. This formal expression of disapproval will be retained in the licensee's file but shall not be publicly announced. It is not published, but is released upon request.
- e. **Letter of Reprimand:** A public expression of disapproval. Specific conditions may be imposed on an individual's license.
- f. **Probation:** A period of time where certain restrictions or conditions are imposed on a license. Continued licensure is subject to fulfillment of specified conditions.
- g. **Refusal of License Renewal:** A refusal to reinstate or renew a license.
- h. **Revocation of License:** An involuntary termination of a license.
- i. **Suspension of License:** A condition of probation. Loss of licensure for a certain duration of time after which the individual may be required to reapply for licensure or remain on probation.

The Board may request information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a licensee performs professional services, on possible chemical abuse, or incompetent or unethical behavior.

The Board will provide notice of sanction taken by it to THE NATIONAL PRACTITIONER DATA BANK, THE HEALTHCARE INTEGRITY AND PROTECTION DATA BANK, THE NATIONAL CLEARINGHOUSE ON LICENSURE, ENFORCEMENT AND REGULATION (CLEAR), and THE NATIONAL BOARD FOR CERTIFICATION IN OCCUPATIONAL THERAPY (NBCOT) and other public entities as necessary to ensure that other state boards and enforcement authorities receive the names of licensees disciplined.