

Clearinghouse Rule 24-050

STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OCCUPATIONAL THERAPISTS
OCCUPATIONAL THERAPISTS : AFFILIATED CREDENTIALING
AFFILIATED CREDENTIALING : BOARD
BOARD : ADOPTING RULES
 : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to amend OT 1.01 (1), 2.02 (9), 5.02 (3), (4), (5), (6), (8), (9), (12), and (15) and create 1.02 (6g), (6r), (14e), (14m), (14s), (27), 2.09 and 3.03 (3) (Note), relating to implementation of the Occupational Therapy Licensure Compact.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Subchapter XII of ch. 448, Stats.

Statutory authority: Sections 15.085 (5) (b) and 448.9875 (3), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides that each affiliated credentialing board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 448.9875 (3), Stats., provides that “[t]he examining board may, by rule, require an individual seeking a compact privilege to meet a jurisprudence requirement in accordance with s. 448.987 (4) (a) 9., if such a requirement is imposed by the examining board under s. 448.964 in order to obtain a license under s. 448.963.”

Related statute or rule: None.

Plain language analysis:

The Occupational Therapists Affiliated Credentialing Board conducted a comprehensive evaluation of its rules to implement the Occupational Therapy Licensure Compact to ensure clarity and consistency with applicable Wisconsin statutes. The following updates were made:

- Created definitions of “occupational therapist,” “occupational therapist assistant,” and “occupational therapy.”
- Created definitions of “compact,” “compact privilege,” and identify the requirements for obtaining a compact privilege, including a requirement that an individual seeking a compact privilege successfully complete a jurisprudence examination.
- Created a definition of a “health care provider” to include an occupational therapist or an occupational therapy assistant licensed under ch. 448 holds a compact privilege under subch. XI of ch. 448.
- Amended the definition of “supervisor” to specify it includes a person holding an occupational therapist compact privilege granted by the Board but does not include a person holding a temporary license.
- Amended the unprofessional conduct requirements in s. OT 5.02 to also apply to those licensed under compact privileges as needed.

Summary of, and comparison with, existing or proposed federal regulation: None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A.

Comparison with rules in adjacent states:

Illinois: Illinois is not a member state of the Occupational Therapy Licensure Compact.

Iowa: Iowa is a member state of the Occupational Therapy Licensure Compact and is actively issuing compact privileges. Rules of the Iowa Board of Physical and Occupational Therapy address issuing a compact privilege and the practice of occupational therapy under a compact privilege [645 Iowa Administrative Code Section 200.3].

Michigan: Michigan is not a member state of the Occupational Therapy Licensure Compact.

Minnesota: Minnesota is not a member state of the Occupational Therapy Licensure Compact.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing subch. XII of ch. 448, Stats., which ratifies the Occupational Therapy Licensure Compact, and conducting a comprehensive evaluation and update of the Occupational Therapy Examining Board’s rules to implement the Compact.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rule was posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on September 17, 2024, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OT 1.01 is amended to read:

OT 1.01 The rules in this chapter are adopted by the occupational therapists affiliated credentialing board pursuant to the authority of ss. 15.08 (5) (b), 227.11 (2), 448.965, and subch. XII of ch. 448, Stats., to govern the license and regulation of occupational therapists and occupational therapy assistants.

SECTION 2. OT 1.02 (6g), (6r), (11m), (14e), (14m), (14s) and (27) are created to read:

OT 1.02 (6g) “Compact” means the occupational therapy licensure compact under s. 448.987, Stats.

(6r) “Compact privilege” has the meaning given in s. 448.987 (2) (d), Stats.

(11m) “Health care provider” has the meaning given in s. 155.01 (7), Stats.

(14e) “Occupational therapist” has the meaning given in s. 448.96 (4), Stats.

(14m) “Occupational therapy assistant” has the meaning given in s. 448.96 (6), Stats.

(14s) “Occupational therapy compact commission” or “commission” has the meaning given in s. 448.987 (2) (s), Stats.

(27) “Supervisor” means a person holding a regular license as an occupational therapist, or an occupational therapist with compact privilege granted by the board, who is competent to coordinate, direct, and inspect the accomplishments of another occupational therapist or occupational therapy assistant. This definition does not apply to a person holding a temporary license issued under ch. OT 2.

SECTION 3. OT 2.09 is created to read:

OT 2.09 Compact privilege requirements. Each person applying for a compact privilege shall submit to the board all of the following:

- (1) A completed application form provided by the board.
- (2) The fee specified in s. 448.9875 (3) (c), Stats.
- (3) Evidence of successful completion of the examination specified in s. OT 2.03 (1).

Note: Application instructions for compact privilege may be obtained from the Department of Safety and Professional Services’ website at <http://dsps.wi.gov>.

SECTION 4. OT 3.03 (Note) is created to read:

OT 3.03 (3) (Note) Application instructions for renewal may be obtained from the Department of Safety and Professional Services’ website at <http://dsps.wi.gov>.

SECTION 5. OT 5.02 (3), (4), (5), (6), (8), (9), (12), and (15) are amended to read:

- (3) Knowingly making or presenting or causing to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other item in connection with any application for license or compact privilege.
- (4) Practicing fraud, forgery, deception, collusion, or conspiracy in connection with any examination for license or compact privilege.
- (5) Giving, selling, buying, bartering, or attempting to give, sell, buy, or barter any license or compact privilege.
- (6) Engaging or attempting to engage in practice under any license or compact privilege under any given name or surname other than that under which originally licensed, ~~or~~ registered, or granted compact privilege to practice in this or any other state
- (8) Practicing or attempting to practice under any license or compact privilege when unable to do so with reasonable skill and safety to clients.
- (9) Practicing or attempting to practice under any license or compact privilege beyond the scope of that license or compact privilege.
- (12) Knowingly making any false statement, written or oral, in practicing under any license or compact privilege, with fraudulent intent; or obtaining or attempting to obtain any professional fee or compensation of any form by fraud or deceit.

- (15) Having a license, compact privilege, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice occupational therapy, which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by an agency of the federal government including the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.

SECTION 6. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
