

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 24-050)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to amend OT 1.01 , 2.01, 2.03 (2) (e), 4.03 (2), (3) (f) and (g), and (4) (d), 5.02 (3), (4), (5), (6), (8), (9), (12), and (15) and create 1.02 (6g), (6r), (14e), (11m), (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), 227.11 (2) (a) (intro.), 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 227.11 (2) (a) (intro.), Stats., provides that “each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation...”

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: Wisconsin Administrative Code Section OT 2.03

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 who holds a compact privilege under subch. XII 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 has applied, but is not yet a member state of the Occupational Therapy Licensure Compact.

Iowa: Iowa is a member state of the Occupational Therapy Licensure Compact. 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 has applied, but is not yet a member state of the Occupational Therapy Licensure Compact.

Minnesota: Minnesota is a member state of the Occupational Therapy Licensure Compact. Minnesota Statutory requirements for Occupational Therapy include issuing compact privileges and practice of Occupational Therapy under a compact privilege [2024 Minnesota Statutes Section 148.645]

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), and 448.965, and 448.9875 (3), 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 under subchapter VII of chapter 448, Stats., or a person holding a compact privilege granted by the board, who is competent to coordinate, direct, and inspect the practice of another person engaged in or assisting in the practice of occupational therapy. This definition does not apply to a person holding a temporary license issued under ch. OT 2.

SECTION 3. OT 2.01 and 2.03 (2) (e) are amended to read:

OT 2.01 Authority and Purpose. The rules in this chapter are adopted by the board under the authority of ss. 15.085 (5) (b), 227.11 (2) ~~and~~ 448.965 and 448.9875 (3), Stats., to govern the licensure and regulation of occupational therapists and occupational therapy assistants.

2.03 (2) (e) Has not practiced occupational therapy for a period of 5 years prior to application, unless the applicant has graduated from a school of occupational therapy within that period. Practice for the purposes of this paragraph includes direct client treatment and education, occupational therapy instruction in an occupational therapy academic program recognized by the board, occupational therapy research, and service in administrative positions for healthcare ~~providers~~ entities or governmental bodies with responsibility relating to occupational therapy.

SECTION 4. OT 2.09 is created to read:

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

- (1)** Complete the compact application process .
- (2)** The fee specified in s. 448.987 (3) (c), Stats.
- (3)** Successfully pass the examinations 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 5. 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 6. OT 4.03 (2), (3)(f) and (g), and (4) (d) are amended to read:

OT 4.03 (2) REFERRALS. Referrals may be accepted from advanced practice nurses, chiropractors, dentists, optometrists, physical therapists, physicians, physician assistants, podiatrists, psychologists, or other health care ~~professionals~~ providers.

- (3) (f)** Evaluation results shall be communicated to the referring health care ~~professional~~ provider, if any, and to the appropriate persons in the facility and community.

- (g) If the results of the evaluation indicate areas that require intervention by other health care ~~professionals~~ providers, the individual shall be appropriately referred or an appropriate consultation shall be requested.
- (4) (d) In developing the program, the occupational therapist alone or in collaboration with the occupational therapy assistant shall also collaborate as appropriate, with the individual, family, other health care ~~professionals~~ providers and community resources; shall select the media, methods, environment, and personnel needed to accomplish the goals; and shall determine the frequency and duration of occupational therapy interventions provided.

SECTION 7. 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 8. 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)

This Proposed Order of the Occupational Therapists Affiliated Credentialing Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chairperson
Occupational Therapists Affiliated
Credentialing Board