

## EXPLANATION OF MODEL PRACTICE ACT

### Article I. General Provisions

#### 1.01 Title

The title and brief description should conform to state requirements and should actually precede Article I.

#### 1.02 Short Title

This section states the title of the Act. It is called a practice act because it will provide for regulation of the practice of occupational therapy. Some states and some other professions use only Short Title, though they may call it Title.

#### 1.03 Legislative Intent and Purpose

The purpose of a licensure law is to protect the public from unqualified practitioners, ensure a high degree of professional conduct on the part of licensees, and assure a certain level of quality services from licensees.

#### 1.04 Definitions

It is necessary to define certain terms which will be used in the Act. The definition of occupational therapy practice is particularly important as it becomes the legal definition of occupational therapy and articulates the scope of practice within the state, and parts or all of it may be incorporated into other laws. In May 2004, the Representative Assembly adopted a new definition of occupational therapy practice recommended for use in any proposed licensure bill.

The definition of "Aide" is adapted from official documents of the Association. It is recommended that states also adopt AOTA's *Model State Regulation for Supervision, Roles, and Responsibilities During the Delivery of Occupational Therapy Services*.

The term "Board" may need to be modified if the form of regulation in a particular state requires an Advisory Council or Advisory Committee.

### Article II. Board of Occupational Therapy

#### 2.01 Board Created

This section establishes the Licensure Board and vests it with the authority to implement and enforce the licensure law.

#### 2.02 Board Composition

In keeping with current trends with regulatory boards and recommendations by organizations such as the Citizen Advocacy Center, the Model Practice Act recommends two public members. In addition, it is recommended that one member be an occupational therapy assistant. With a five-member board, the remaining members would be occupational therapists.

#### 2.03 Qualifications

This section specifies the qualifications for Board members. Public members must be residents of the state for the past five years and willing to learn about and develop contacts with other organizations in the state that have an interest in health care. OT and OTA members must also be residents as well as licensees in the state for five years and have been involved in the provision of OT services, teaching, research or consultation for five years, including the three years immediately prior to appointment.

To avoid potential conflicts of interest, members of the Board must not be current officers, board members or employees of state OT associations or other organizations that advocate for the interests of persons licensed under this Act.

#### 2.04 Appointments

The Board is appointed by the Governor from a list of names submitted by the State Occupational Therapy Association and from nominations from other interested organizations or persons in the state.

#### 2.05 Terms

Three or four year terms are common for boards. Initial appointments should be for staggered terms so that the entire board does not turn over at the same time. For an initial five-member board, that may mean two members are appointed for three-year terms, two members are appointed for two years, and one member is appointed for one year.

Terms may begin on January 1, or whatever is customary in that state. Terms are generally limited to two consecutive terms.

#### 2.06 Vacancies

Generally the power to fill vacancies for unexpired terms is granted to the Governor, though at least one state reserves that power for the Board. In either case, recommendations should come from the state association or other interested parties in the state.

#### 2.07 Removal of Board Members

This section identifies that the Governor or the Board may remove a member. In some states, only the Governor will have this power.

#### 2.08 Compensation of Board Members

Board members are not compensated for their services, but may receive reimbursement for travel and other related expenses.

#### 2.09 Administrative Provisions

Administrative provisions may be covered in other applicable state statutes or regulations and should conform to prevailing state practice.

#### 2.10 Meetings

This section describes the frequency of meetings, how they are convened, what constitutes a quorum, and how meetings are conducted. The state's Administrative Procedures Act or comparable statute may cover procedures for meetings in detail.

It is suggested that Boards meet at least quarterly. In large states where travel is an additional burden, Boards may want to consider alternative methods of meeting such as conference calls, teleconferencing, or secure on-line methods for some of their meetings.

#### 2.11 Powers and Duties

This section describes the powers and duties of the Board which enable them to administer and enforce the provisions of the Act. Powers and duties may be further defined in regulation and must be consistent with the state's Administrative Procedures Act or comparable statute.

#### 2.12 Training of New Members

Training of new members is an additional role of the Board and may be delegated to administrative staff. Boards may choose to hold this annually or as new members are appointed to the Board. Boards may want to add more detail about specific training topics to this section or to regulation.

## **Article III. Licensing**

### 3.01 Unlawful Practice

This section prohibits persons from practicing or assisting in the practice of occupational therapy without a license. It also prohibits unlicensed persons and any occupational therapist or occupational therapy assistant whose license has been suspended or revoked from using words or designations that imply that the person is an occupational therapist or occupational therapy assistant.

### 3.02 Exemptions

This section identifies persons and practices that are not affected by this Act.

- Persons engaging in the profession for which they are licensed, e.g., physicians, nurses, physical therapists
- Occupational therapy students
- Occupational therapists or occupational therapy assistants who are authorized to practice in another jurisdiction if they practice in this state for the purpose of educating, consulting, or training if preapproved by the Board.

### 3.03 Requirements for Licensure

This section describes the requirements for licensure of occupational therapists and occupational therapy assistants and is consistent with requirements for entry-level certification by NBCOT.

### 3.04 Examination

This section declares that all applicants for licensure must pass an examination. The Board has the power to approve the credentialing body that administers the examination.

### 3.05 License Endorsement

The Board may grant a license to persons who are licensed in another state with licensure requirements at least as stringent as the requirements for licensure in this Act.

### 3.06 Limited Permit

This section provides for a limited permit that allows recent graduates to practice during the period in which they are waiting to take the examination or waiting for the results to be made available. The limited permit expires when the person is notified that he or she did not pass the examination.

### 3.07 Temporary License

This section provides for a temporary license for persons applying for licensure by endorsement. If temporary licenses are less complicated to process, this will allow applicants to accept employment and practice with a shorter waiting period until the Board has approved the license by endorsement. In some states, the Board Administrator, under authority of the Board, processes the Temporary License after review of required documents.

### 3.08 Issuance of License

This section stipulates that the Board must issue a license to anyone who meets the requirements.

### 3.09 Renewal of License

This section provides for licenses to be renewed every one or two years (or as is customary in the state). It also allows for the Board to require completion of continuing competence activities, provide for the late renewal of a license, grant inactive status, grant a grace period of 30 days in which to renew expired licenses, and revoke a license on disciplinary grounds. To maintain licensure and avoid a late renewal fee, a suspended license can be renewed, but the licensee may not practice while the license is suspended.

### 3.10 Internationally Educated Applicants

This section refers to occupational therapists trained outside the United States. The requirements are consistent with NBCOT's policy on qualifying internationally trained graduates to sit for the certification examination.

### 3.11 Fees

Types of fees are listed in this section, but not amounts. This is done so that the Board can establish the exact amounts by regulation. Regulations can be changed more easily than laws. This allows the Board greater flexibility to adjust fees when economic conditions mandate it. This is especially important in states where the Boards are required to be self-supporting. If, in a given year, the Board collects fees in excess of its needs, it could lower the fees or use the excess funds for continuing education or some other purpose.

## **IV. Disciplinary Action**

### 4.01 Grounds for Disciplinary Action

This section outlines examples of unprofessional conduct that are grounds for disciplinary action. States may prefer to outline the specific grounds for action in regulation. The state's Administrative Procedures Act or comparable statute may also indicate how this section should be handled. States may also adopt a code of ethics or AOTA's Code of Ethics, and may define violation of this as unprofessional conduct and grounds for disciplinary action.

### 4.02 Complaints

This section describes how complaints against licensees are filed and handled. The state's Administrative Procedures Act or comparable statute may have specific provisions that must be followed.

### 4.03 Due Process

This section allows for hearings before the Board imposes disciplinary action. The state's Administrative Procedures Act or comparable statute may have specific provisions that must be followed.

### 4.04 Investigation

This section outlines procedures for conducting an investigation. The state's Administrative Procedures Act or comparable statute may have specific provisions that must be followed.

### 4.05 Penalties

This section outlines the disciplinary actions that the Board may impose. The state's Administrative Procedures Act or comparable statute may have specific provisions that must be followed.

### 4.06 Injunction

This section gives the Board the power to apply for injunctive relief from a court to stop illegal and harmful acts quickly until a complete investigation can take place. The state's Administrative Procedures Act or comparable statute may have specific provisions that must be followed.

## **Article V. Other**

### 5.01 Severability

The purpose of this section is to prevent the entire Act from being declared void because one or more sections are found to be unconstitutional. Only the part or parts found to be unconstitutional would be severed.

### 5.02 Effective Date

The number of days may need to be changed to comply with state requirements. Section 3.01 takes effect 90 days after the enactment date because the Board needs additional time to issue licenses.