

1 **OCCUPATIONAL THERAPISTS AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gene Davis**

5 House Sponsor: Carol Spackman Moss

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Occupational Therapy Practice Act and related provisions.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms, including the "practice of occupational therapy";
- 13 ▶ modifies the qualifications for an individual to get a license as an occupational
14 therapist or as an occupational therapy assistant;
- 15 ▶ modifies the supervision requirements of an occupational therapist when
16 supervising an occupational therapy assistant;
- 17 ▶ modifies who may engage in the practice of occupational therapy without a license;
- 18 ▶ describes what is unlawful and unprofessional conduct under the act;
- 19 ▶ extends the sunset date of the Occupational Therapy Practice Act; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **58-42a-102**, as last amended by Laws of Utah 2005, Chapter 71

28 **58-42a-201**, as enacted by Laws of Utah 1994, Chapter 240

29 **58-42a-302**, as last amended by Laws of Utah 2009, Chapter 183

- 30 **58-42a-303**, as enacted by Laws of Utah 1994, Chapter 240
- 31 **58-42a-304**, as enacted by Laws of Utah 1994, Chapter 240
- 32 **58-42a-305**, as enacted by Laws of Utah 1994, Chapter 240
- 33 **58-42a-306**, as enacted by Laws of Utah 1994, Chapter 240
- 34 **63I-1-258**, as last amended by Laws of Utah 2014, Chapters 25, 72, and 181

35 ENACTS:

- 36 **58-42A-103**, Utah Code Annotated 1953
- 37 **58-42a-303.5**, Utah Code Annotated 1953
- 38 **58-42a-502**, Utah Code Annotated 1953

39 REPEALS AND REENACTS:

- 40 **58-42a-501**, as enacted by Laws of Utah 1994, Chapter 240

42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **58-42a-102** is amended to read:

44 **58-42a-102. Definitions.**

45 In addition to the definitions in Section **58-1-102**, as used in this chapter:

46 ~~[(1) "Assessment" means the use of skilled observation or evaluation by administering~~
 47 ~~and interpreting standardized or nonstandardized tests and measurements to identify areas for~~
 48 ~~occupational therapy services.]~~

49 ~~[(2)]~~ (1) "Board" means the ~~[Occupational Therapy]~~ Board of Occupational Therapy
 50 created in Section **58-42a-201**.

51 ~~[(3) "Certified occupational therapy assistant" or "COTA" means a person certified as a~~
 52 ~~certified occupational therapy assistant by the National Board for Certification in Occupational~~
 53 ~~Therapy.]~~

54 (2) (a) "Individual treatment plan" means a written record composed for each client by
 55 a person licensed under this chapter to engage in the practice of occupational therapy.

56 ~~[(4)]~~ (b) "Individual treatment plan" includes:

57 ~~[(a)]~~ (i) planning and directing specific exercises and programs to improve sensory

58 integration and motor functioning at the level of performance neurologically appropriate for the
59 individual's stage of development;

60 ~~[(b)]~~ (ii) establishing a program of instruction to teach a ~~[patient in]~~ client skills,
61 behaviors, and attitudes necessary for the ~~[patient's]~~ client's independent productive, emotional,
62 and social functioning;

63 ~~[(c)]~~ (iii) analyzing, selecting, and adapting functional exercises to achieve and
64 maintain the ~~[patient's]~~ client's optimal functioning in activities of daily living ~~[tasks]~~ and to
65 prevent further disability; and

66 ~~[(d)]~~ (iv) planning and directing specific programs to evaluate and enhance perceptual,
67 motor, and cognitive skills.

68 ~~[(5)]~~ (3) "Occupational therapist" ~~[or "OT"]~~ means a person licensed ~~[in the state]~~
69 under this chapter to practice occupational therapy.

70 ~~[(6) "Occupational therapist registered" or "OTR" means a person certified as an~~
71 ~~occupational therapist registered by the National Board for Certification in Occupational~~
72 ~~Therapy.]~~

73 ~~[(7) "Occupational therapy" means the use of purposeful activity or occupational~~
74 ~~therapy interventions to develop or restore the highest possible level of independence of an~~
75 ~~individual who is limited by a physical injury or illness, a dysfunctional condition, a cognitive~~
76 ~~impairment, a psychosocial dysfunction, a mental illness, a developmental or learning~~
77 ~~disability, or an adverse environmental condition.]~~

78 (4) "Occupational therapy aide" means a person who is not licensed under this chapter
79 but who provides supportive services under the supervision of an occupational therapist or
80 occupational therapy assistant.

81 ~~[(8)]~~ (5) "Occupational therapy assistant" ~~[or "OTA"]~~ means a person licensed ~~[in the~~
82 ~~state]~~ under this chapter to practice occupational therapy under the supervision of an
83 occupational therapist as ~~[set forth]~~ described in ~~[Section]~~ Sections 58-42a-305 and
84 58-42a-306.

85 ~~[(9) "Occupational therapy services" include:]~~

86 ~~[(a) assessing, treating, educating, or consulting with an individual, family, or other~~
87 ~~persons;]~~

88 ~~[(b) developing, improving, or restoring an individual's daily living skills, work~~
89 ~~readiness, work performance, play skills, or leisure capacities, or enhancing an individual's~~
90 ~~educational performance skills;]~~

91 ~~[(c) developing, improving, or restoring an individual's sensory-motor, oral-motor,~~
92 ~~perceptual, or neuromuscular functioning, or the individual's range of motion;]~~

93 ~~[(d) developing, improving, or restoring the individual's emotional, motivational,~~
94 ~~cognitive, or psychosocial components of performance;]~~

95 ~~[(e) assessing the need for and recommending, developing, adapting, designing, or~~
96 ~~fabricating splints or assistive technology devices for individuals;]~~

97 ~~[(f) training individuals in the use of rehabilitative or assistive technology devices such~~
98 ~~as selected orthotic or prosthetic devices;]~~

99 ~~[(g) applying physical agent modalities as an adjunct to or in preparation for purposeful~~
100 ~~activity;]~~

101 ~~[(h) applying the use of ergonomic principles; and]~~

102 ~~[(i) adapting or modifying environments and processes to enhance or promote the~~
103 ~~functional performance, health, and wellness of individuals.]~~

104 ~~[(10) "Practice of occupational therapy" means rendering or offering to render~~
105 ~~occupational therapy services to individuals, groups, agencies, organizations, industries, or the~~
106 ~~public.]~~

107 (6) (a) "Practice of occupational therapy" means the therapeutic use of everyday life
108 activities with an individual:

109 (i) that has or is at risk of developing an illness, injury, disease, disorder, condition,
110 impairment, disability, activity limitation, or participation restriction; and

111 (ii) to develop or restore the individual's ability to engage in everyday life activities by
112 addressing physical, cognitive, psychosocial, sensory, or other aspects of the individual's
113 performance.

- 114 (b) "Practice of occupational therapy" includes:
115 (i) establishing, remediating, or restoring an undeveloped or impaired skill or ability of
116 an individual;
117 (ii) modifying or adapting an activity or environment to enhance an individual's
118 performance;
119 (iii) maintaining and improving an individual's capabilities to avoid declining
120 performance in everyday life activities;
121 (iv) promoting health and wellness to develop or improve an individual's performance
122 in everyday life activities;
123 (v) performance-barrier prevention for an individual, including disability prevention;
124 (vi) evaluating factors that affect an individual's activities of daily living in
125 educational, work, play, leisure, and social situations, including:
126 (A) body functions and structures;
127 (B) habits, routines, roles, and behavioral patterns;
128 (C) cultural, physical, environmental, social, virtual, and spiritual contexts and activity
129 demands that affect performance; and
130 (D) motor, process, communication, interaction, and other performance skills;
131 (vii) providing interventions and procedures to promote or enhance an individual's
132 safety and performance in activities of daily living in educational, work, and social situations,
133 including:
134 (A) the therapeutic use of occupations and exercises;
135 (B) training in self-care, self-management, home-management, and community and
136 work reintegration;
137 (C) the development, remediation, or compensation of behavioral skills and physical,
138 cognitive, neuromuscular, and sensory functions;
139 (D) the education and training of an individual's family members and caregivers;
140 (E) care coordination, case management, and transition services;
141 (F) providing consulting services to groups, programs, organizations, or communities,

142 (G) modifying the environment and adapting processes, including the application of
143 ergonomic principles;

144 (H) assessing, designing, fabricating, applying, fitting, and providing training in
145 assistive technology, adaptive devices, orthotic devices, and prosthetic devices;

146 (I) assessing, recommending, and training an individual in techniques to enhance
147 functional mobility, including wheelchair management;

148 (J) driver rehabilitation and community mobility;

149 (K) enhancing eating and feeding performance; and

150 (L) applying physical agent modalities, managing wound care, and using manual
151 therapy techniques to enhance an individual's performance skills, if the occupational therapist
152 has received the necessary training as determined by division rule in collaboration with the
153 board.

154 (7) "Unlawful conduct" means the same as that term is defined in Sections [58-1-501](#)
155 and [58-42a-501](#).

156 ~~[(H)]~~ (8) "Unprofessional conduct" ~~[is as defined in Section [58-42a-501](#)]~~ means the
157 same as that term is defined in Sections [58-1-501](#) and [58-42a-502](#).

158 Section 2. Section **58-42A-103** is enacted to read:

159 **58-42A-103. Rulemaking.**

160 When exercising rulemaking authority under this chapter, the division shall comply
161 with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

162 Section 3. Section **58-42a-201** is amended to read:

163 **58-42a-201. Board.**

164 (1) There is created the [~~Occupational Therapy Licensing~~] Board of Occupational
165 Therapy consisting of three licensed occupational therapists, one licensed occupational therapy
166 assistant, and one member of the general public.

167 (2) The board shall be appointed and serve in accordance with Section [58-1-201](#).

168 (3) The duties and responsibilities of the board shall be in accordance with Sections
169 [58-1-202](#) and [58-1-203](#) [~~, and in addition, the~~].

170 (4) The board shall~~[:(a)]~~ designate one of its members on a permanent or rotating basis
171 to:

172 (a) assist the division in reviewing complaints concerning the unlawful or
173 unprofessional practice of ~~[occupational therapy]~~ a licensee; and ~~[to]~~

174 (b) advise the division ~~[with respect to]~~ in its investigation of these complaints~~[-and]~~.

175 ~~[(b) disqualify any member of the board from participating as a member of the board in
176 its capacity as a presiding officer in any administrative procedure in which that member has
177 reviewed the complaint or advised the division.]~~

178 (5) A board member who has, under Subsection (4), reviewed a complaint or advised
179 in its investigation may not participate with the board while the board serves as a presiding
180 officer of an administrative proceeding concerning the complaint.

181 Section 4. Section **58-42a-302** is amended to read:

182 **58-42a-302. Qualifications for licensure.**

183 (1) ~~[All applicants]~~ An applicant for licensure as an occupational therapist shall:

184 (a) submit an application in a form as prescribed by the division;

185 (b) pay a fee as determined by the department under Section [63J-1-504](#);

186 (c) be of good moral character as it relates to the functions and responsibilities of the
187 practice of occupational therapy;

188 (d) graduate with a ~~[bachelors]~~ bachelor's or graduate degree ~~[in]~~ for the practice of
189 occupational therapy from ~~[a]~~ an education program accredited by the ~~[Accreditation Council~~
190 for Occupational Therapy Education; and] American Occupational Therapy Association's
191 Accreditation Council for Occupational Therapy Education, a predecessor organization, or an
192 equivalent organization as determined by division rule;

193 (e) ~~[be certified by the National Board for Certification in Occupational Therapy as an~~
194 occupational therapist registered.] if applying for licensure on or after July 1, 2015, complete a
195 minimum of 24 weeks of supervised fieldwork experience; and

196 (f) pass an examination approved by the division in consultation with the board and
197 administered by the National Board for Certification in Occupational Therapy, or by another

198 nationally recognized credentialing body as approved by division rule, to demonstrate
199 knowledge of the practice, skills, theory, and professional ethics related to occupational
200 therapy.

201 (2) All applicants for licensure as an occupational ~~[therapist]~~ therapy assistant shall:

202 (a) submit an application in a form as prescribed by the division;

203 (b) pay a fee as determined by the department under Section [63J-1-504](#);

204 (c) be of good moral character as it relates to the functions and responsibilities of the
205 practice of occupational therapy;

206 ~~(d) [graduate with a two-year associate degree in occupational therapy from a program~~
207 ~~accredited by the Accreditation Council for Occupational Therapy Education; and]~~ graduate
208 from an educational program for the practice of occupational therapy as an occupational
209 therapy assistant that is accredited by the American Occupational Therapy Association's
210 Accreditation Council for Occupational Therapy Education, a predecessor organization, or an
211 equivalent organization as determined by division rule;

212 ~~[(e) be certified by the National Board for Certification in Occupational Therapy as a~~
213 ~~certified occupational therapist assistant.]~~

214 (e) if applying for licensure on or after July 1, 2015, complete a minimum of 16 weeks
215 of supervised fieldwork experience; and

216 (f) pass an examination approved by the division in consultation with the board and
217 administered by the National Board for Certification in Occupational Therapy, or by another
218 nationally recognized credentialing body as approved by division rule, to demonstrate
219 knowledge of the practice, skills, theory, and professional ethics related to occupational
220 therapy.

221 (3) Notwithstanding the other requirements of this section, the division may issue a
222 license as an occupational therapist or as an occupational therapy assistant to an applicant who:

223 (a) meets the requirements of receiving a license by endorsement under Section
224 [58-1-302](#); or

225 (b) has been licensed in a state, district, or territory of the United States, or in a foreign

226 country, where the education, experience, or examination requirements are not substantially
227 equal to the requirements of this state, if the applicant passes the applicable examination
228 described in Subsection (1)(f) or (2)(f).

229 Section 5. Section **58-42a-303** is amended to read:

230 **58-42a-303. Term of license -- Expiration -- Renewal.**

231 (1) The division shall issue each license under this chapter in accordance with a
232 two-year renewal cycle established by division rule.

233 (2) The division may by rule extend or shorten a renewal period by as much as one year
234 to stagger the renewal cycles it administers.

235 ~~[(2)]~~ (3) Each license automatically expires on the expiration date shown on the license
236 unless the licensee renews it in accordance with Section **58-1-308**.

237 Section 6. Section **58-42a-303.5** is enacted to read:

238 **58-42a-303.5. Continuing education.**

239 (1) As a condition for renewal of a license under this chapter, a licensee shall complete
240 24 hours of qualified continuing professional education, in accordance with standards defined
241 by division rule in collaboration with the board, during each two-year licensure cycle.

242 (2) If a renewal cycle is extended or shortened under Subsection (1), the continuing
243 education hours required for license renewal under this section shall be increased or decreased
244 proportionally.

245 Section 7. Section **58-42a-304** is amended to read:

246 **58-42a-304. Exemptions from licensure.**

247 In addition to the exemptions from licensure in Section **58-1-307**, ~~[a person who~~
248 ~~performs activities that are repetitive and routine in nature and that do not require specific~~
249 ~~skills or knowledge may engage in acts or practices included within the definition of the~~
250 ~~practice of occupational therapy under general supervision of an occupational therapist as~~
251 ~~defined by rule, without being licensed under this chapter.] the following may engage in the~~
252 stated limited acts or practices without being licensed under this chapter:

253 (1) a person licensed in the state who is engaging in the practice of the person's

254 profession or occupation as defined in statute under which the person is licensed;
255 (2) a person pursuing a course of study leading to a degree for the practice of
256 occupational therapy at an accredited education program, if that person is acting under
257 appropriate supervision and is designated by a title that clearly indicates the person's status as a
258 student; and

259 (3) a person fulfilling the supervised fieldwork experience requirements for licensure
260 described in Section 58-42a-302, if the person is acting under appropriate supervision and is
261 designated by a title that clearly indicates the person is performing supervised fieldwork
262 experience to qualify for a license under this chapter.

263 Section 8. Section **58-42a-305** is amended to read:

264 **58-42a-305. Limitation upon occupational therapy services provided by an**
265 **occupational therapy assistant and an occupational therapy aide.**

266 (1) An occupational [~~therapist~~] therapy assistant [~~shall~~]:
267 (a) may only perform occupational therapy services under the supervision of an
268 occupational therapist as [~~set forth~~] described in Section 58-42a-306[-];
269 [~~(2) (a) An occupational therapist assistant~~]
270 (b) may not write an individual treatment plan [~~or~~];
271 (c) may not approve or cosign modifications to [a] an individual treatment plan[-]; and
272 [~~(b) An occupational therapist assistant~~] (d) may contribute to and maintain [a] an
273 individual treatment plan.

274 (2) An occupational therapy aide:
275 (a) may only perform occupational therapy services under the direct supervision of an
276 occupational therapist or an occupational therapy assistant;
277 (b) may not write, modify, contribute, or maintain an individual treatment plan; and
278 (c) may only perform tasks that are repetitive and routine for which the aide has been
279 trained and has demonstrated competence.

280 Section 9. Section **58-42a-306** is amended to read:

281 **58-42a-306. Supervision requirements.**

282 ~~[The supervising]~~ An occupational therapist who is supervising an occupational therapy
 283 assistant shall [perform the following functions]:

284 (1) write or contribute to an individual treatment plan before referring a client to a
 285 supervised occupational therapy assistant for treatment;

286 (2) approve and cosign on all modifications to the individual treatment plan;

287 ~~[(3) perform an assessment of the patient before referring the patient to a supervised~~
 288 ~~occupational therapist assistant for treatment;]~~

289 ~~[(4)]~~ (3) meet face to face with the supervised occupational ~~[therapist]~~ therapy assistant
 290 as often as necessary but at least once every two weeks in person or by video conference, and at
 291 least one time every month in person, to adequately provide consultation, advice, training, and
 292 direction to the occupational therapy assistant;

293 ~~[(5)]~~ (4) meet with each ~~[patient]~~ client who has been referred to a supervised
 294 occupational ~~[therapist]~~ therapy assistant at least once each month, ~~[unless otherwise approved~~
 295 ~~by the division in collaboration with the board;]~~ to further assess the patient, evaluate the
 296 treatment, and modify the individual's treatment plan, except that if the interval of client care
 297 occurs one time per month or less, the occupational therapist shall meet with the client at least
 298 once every four visits;

299 ~~[(6)]~~ (5) ~~[limit supervision to not]~~ supervise no more than two full-time occupational
 300 ~~[therapist]~~ therapy assistants at one time, or four part-time occupational therapy assistants if the
 301 combined work hours of the assistants do not exceed 40 hours per week, unless otherwise
 302 approved by the division in collaboration with the board; [and]

303 ~~[(7)]~~ (6) remain responsible for ~~[patient]~~ client treatment provided by the occupational
 304 ~~[therapist]~~ therapy assistant[-]; and

305 (7) fulfill any other supervisory responsibilities as determined by division rule.

306 Section 10. Section **58-42a-501** is repealed and reenacted to read:

307 **Part 5. Unlawful and Unprofessional Conduct**

308 **58-42a-501. Unlawful conduct.**

309 "Unlawful conduct," as defined in Section **58-1-501** and as may be further defined by

310 division rule, includes:

311 (1) engaging or offering to engage in the practice of occupational therapy unless
312 licensed under this chapter or exempted from licensure under Section 58-1-307 or 58-42a-304;

313 (2) using the title occupational therapist or occupational therapy assistant unless
314 licensed under this chapter;

315 (3) employing or aiding and abetting an unqualified or unlicensed person to engage or
316 offer to engage in the practice of occupational therapy unless the person is exempted from
317 licensure under Section 58-1-307 or 58-42a-304; and

318 (4) obtaining a license under this chapter by means of fraud, misrepresentation, or
319 concealment of a material fact.

320 Section 11. Section **58-42a-502** is enacted to read:

321 **58-42a-502. Unprofessional conduct.**

322 "Unprofessional conduct," as defined in Section 58-1-501 and as may be further defined
323 by division rule, includes:

324 (1) being convicted of a crime in any court except for minor offenses;

325 (2) violating a lawful order, rule, or regulation adopted by the division in consultation
326 with the board;

327 (3) providing substandard care as an occupational therapist due to a deliberate or
328 negligent act or failure to act regardless of whether actual injury to the client is established;

329 (4) providing substandard care as an occupational therapy assistant, including
330 exceeding the authority to perform components of intervention selected and delegated by the
331 supervising occupational therapist, regardless of whether actual injury to the client is
332 established;

333 (5) knowingly delegating responsibilities related to the practice of occupational therapy
334 to an individual, including an occupational therapy aide, who does not have the knowledge,
335 skills, or abilities to perform those responsibilities;

336 (6) failing to provide appropriate supervision in accordance with this chapter to an
337 occupational therapy assistant or occupational therapy aide;

338 (7) practicing as an occupational therapist or occupational therapy assistant when
339 physical or mental impairment of the occupational therapist or occupational therapy assistant
340 prevents the provision of competent services to clients;

341 (8) having had an occupational therapist, occupational therapy assistant, or equivalent
342 license or application refused, revoked, suspended, or other disciplinary action taken in another
343 state, United States territory, or country;

344 (9) engaging in sexual misconduct, including:

345 (a) engaging in or soliciting a sexual relationship with a client;

346 (b) making a sexual advance, requesting a sexual favor, or engaging in physical contact
347 of a sexual nature with a client; and

348 (c) engaging in verbal or physical conduct of a sexual nature in the presence of a client;
349 and

350 (10) abandoning or neglecting a client in need of immediate professional care without
351 making reasonable arrangements for the continuation of care.

352 Section 12. Section **63I-1-258** is amended to read:

353 **63I-1-258. Repeal dates, Title 58.**

354 (1) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is
355 repealed July 1, 2016.

356 (2) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.

357 (3) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2018.

358 (4) Section [58-37-4.3](#) is repealed July 1, 2016.

359 (5) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.

360 (6) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is
361 repealed July 1, 2019.

362 (7) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1,
363 ~~[2015]~~ 2025.

364 (8) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July
365 1, 2023.

- 366 (9) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2024.
- 367 (10) Section 58-69-302.5 is repealed on July 1, 2015.
- 368 (11) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.