

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 89

An Act to amend and reenact §§ 54.1-2900, 54.1-2956.1, 54.1-2956.4, and 54.1-2956.5 of the Code of Virginia, relating to licensing and regulation of occupational therapists and occupational therapy assistants.

[S 134]

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2900, 54.1-2956.1, 54.1-2956.4, and 54.1-2956.5 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Acupuncturist" means individuals approved by the Board to practice acupuncture. This is limited to "licensed acupuncturist" which means an individual other than a doctor of medicine, osteopathy, chiropractic or podiatry who has successfully completed the requirements for licensure established by the Board (approved titles are limited to: Licensed Acupuncturist, Lic.Ac., and L.Ac.).

"Auricular acupuncture" means the subcutaneous insertion of sterile, disposable acupuncture needles in predetermined, bilateral locations in the outer ear when used exclusively and specifically in the context of a chemical dependency treatment program.

"Board" means the Board of Medicine.

"Healing arts" means the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

"Medical malpractice judgment" means any final order of any court entering judgment against a licensee of the Board that arises out of any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

"Medical malpractice settlement" means any written agreement and release entered into by or on behalf of a licensee of the Board in response to a written claim for money damages that arises out of any personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

"Occupational therapy assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed occupational therapist to assist in the practice of occupational therapy.

"Physician assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed doctor of medicine, osteopathy, or podiatry.

"Practice of acupuncture" means the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. The practice of acupuncture does not include the use of physical therapy, chiropractic, or osteopathic manipulative techniques; the use or prescribing of any drugs, medications, serums or vaccines; or the procedure of auricular acupuncture as exempted in § 54.1-2901 when used in the context of a chemical dependency treatment program for patients eligible for federal, state or local public funds by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.

"Practice of athletic training" means the prevention, recognition, evaluation, and treatment of injuries or conditions related to athletic or recreational activity that requires physical skill and utilizes strength, power, endurance, speed, flexibility, range of motion or agility or a substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition; and subsequent treatment and rehabilitation of such injuries or conditions under the direction of a licensed physical therapist and the patient's physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry, while using heat, light, sound, cold, electricity, exercise or mechanical or other devices.

"Practice of chiropractic" means the adjustment of the 24 movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.

"Practice of medicine or osteopathic medicine" means the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method.

"Practice of occupational therapy" means the evaluation, analysis, assessment, and delivery of education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for individuals who have disabilities.

"Practice of podiatry" means the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation of the foot proximal to the transmetatarsal level through the metatarsal shafts. Amputations proximal to the metatarsal-phalangeal joints may only be performed in a hospital or ambulatory surgery facility accredited by an organization listed in § 54.1-2939. The Board of Medicine shall determine whether a specific type of treatment of the foot and ankle is within the scope of practice of podiatry.

"Practice of radiologic technology" means the application of x-rays to human beings for diagnostic or therapeutic purposes.

"Practice of respiratory care" means the (i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a practitioner of medicine or osteopathic medicine; (ii) transcription and implementation of the written or verbal orders of a practitioner of medicine or osteopathic medicine pertaining to the practice of respiratory care; (iii) observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general physical response exhibit abnormal characteristics; and (iv) implementation of respiratory care procedures, based on observed abnormalities, or appropriate reporting, referral, respiratory care protocols or changes in treatment pursuant to the written or verbal orders by a licensed practitioner of medicine or osteopathic medicine or the initiation of emergency procedures, pursuant to the Board's regulations or as otherwise authorized by law. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate by the Board in accordance with the written or verbal order of a practitioner of medicine or osteopathic medicine, and shall be performed under qualified medical direction.

"Qualified medical direction" means, in the context of the practice of respiratory care, having readily accessible to the respiratory care practitioner a licensed practitioner of medicine or osteopathic medicine who has specialty training or experience in the management of acute and chronic respiratory disorders and who is responsible for the quality, safety, and appropriateness of the respiratory services provided by the respiratory care practitioner.

"Radiologic technologist" means an individual, other than a licensed doctor of medicine, osteopathy, podiatry, or chiropractic, or a dentist licensed pursuant to Chapter 27 (§ 54.1-2700 et seq.) of this title, who (i) performs, may be called upon to perform, or who is licensed to perform a comprehensive scope of diagnostic radiologic procedures employing equipment which emits ionizing radiation and (ii) is delegated or exercises responsibility for the operation of radiation-generating equipment, the shielding of patient and staff from unnecessary radiation, the appropriate exposure of radiographs or other procedures which contribute to any significant extent to the site or dosage of ionizing radiation to which a patient is exposed.

"Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist, dental hygienist or person who is otherwise authorized by the Board of Dentistry under Chapter 27 (§ 54.1-2700 et seq.) of this title and the regulations pursuant thereto, who performs diagnostic radiographic procedures employing equipment which emits ionizing radiation which is limited to specific areas of the human body.

"Respiratory care" means the practice of the allied health profession responsible for the direct and indirect services, including inhalation therapy and respiratory therapy, in the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under qualified medical direction.

§ 54.1-2956.1. Powers of Board concerning occupational therapy.

The Board shall be empowered to take such actions as may be necessary to ensure the competence and integrity of any person who practices occupational therapy or claims to be an occupational therapist or occupational therapy assistant or who holds himself out to the public as an occupational therapist or occupational therapy assistant or who engages in the practice of occupational therapy, and to that end it may license practitioners as occupational therapists or occupational therapy assistants who have met the qualifications established by the Board.

In addition, the Board shall designate in regulation those credentialing organizations from which a person may obtain initial certification as an occupational therapy assistant in order to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof.

§ 54.1-2956.4. Advisory Board of Occupational Therapy; powers.

The Advisory Board shall, under the authority of the Board:

1. Recommend to the Board, for its promulgation into regulation, the criteria for licensure as an

occupational therapist *or an occupational therapy assistant* and the standards of professional conduct for holders of licenses.

2. Assess the qualifications of applicants for licensure and recommend licensure when applicants meet the required criteria. The recommendations of the Advisory Board on licensure of applicants shall be presented to the Board, which shall then issue or deny licenses. Any applicant who is aggrieved by a denial of recommendation on licensure of the Advisory Board may appeal to the Board.

3. ~~Recommend to the Board, for its promulgation into regulation, credentialing organizations to be approved for initial certification of occupational therapy assistants.~~

4. 3. Receive investigative reports of professional misconduct and unlawful acts and recommend sanctions when appropriate. Any recommendation of sanctions shall be presented to the Board, which may then impose sanctions or take such other action as may be warranted by law.

5. 4. Assist in such other matters dealing with occupational therapy as the Board may in its discretion direct.

§ 54.1-2956.5. Unlawful to practice occupational therapy without license.

A. It shall be unlawful for any person not holding a current and valid license from the Board to practice occupational therapy or to claim to be an occupational therapist or to assume the title "Occupational Therapist," "Occupational Therapist, Licensed," "Licensed Occupational Therapist," or any similar term, or to use the designations "O.T." or "O.T.L." or any variation thereof. However, a person who has graduated from a duly accredited educational program in occupational therapy may practice with the title "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has taken and received the results of any examination required by the Board or until ~~one year~~ *six months* from the date of graduation, whichever occurs sooner.

B. ~~In addition, no~~ *It shall be unlawful for any person shall to practice as an occupational therapy assistant as defined in § 54.1-2900 or to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof unless such person has obtained initial certification as an occupational therapy assistant from a credentialing organization approved in regulation by the Board holds a current and valid license from the Board to practice as an occupational therapy assistant. However, a person who has graduated from a duly accredited occupational therapy assistant education program may practice with the title "Occupational Therapy Assistant-License Applicant" or "O.T.A.-Applicant" until he has taken and received the results of any examination required by the Board or until six months from the date of graduation, whichever occurs sooner.*

C. This section shall not be construed to prohibit any person from assisting in the provision of occupational therapy services under the supervision of an occupational therapist pursuant to such requirements as may be imposed by the Board.

2. That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.