S T A T E O F N E W Y O R K

S. 4538--A A. 7790--A

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

April 24, 2009

IN SENATE -- Introduced by Sens. LAVALLE, OPPENHEIMER, ADDABBO, DIAZ, KRUEGER, MORAHAN, ONORATO, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. CANESTRARI, SCHROEDER, RUSSELL, KOON -- Multi-Sponsored by -- M. of A. CAMARA, CROUCH, DESTITO, DINOWITZ, WEISENBERG -- read once and referred to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the profession of occupational therapy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 156 of title 8 of the education law, as added by chapter 779 of the laws of 1975, section 7901 as amended by chapter 146 of the laws of 1993, section 7903 as amended by chapter 326 of the laws of 1977, subdivision 2 of section 7904 as amended by chapter 161 of the laws of 1978, subdivision 8 of section 7904, subdivision 4 of section 7905 and subdivision 6 of section 7906 as amended by chapter 62 of the laws of 1989, paragraph (a) of subdivision 1 of section 7905 as amended by chapter 396 of the laws of 1977 and subdivision 2 of section 7905 as amended by chapter 173 of the laws of 1992, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD07948-04-0

ARTICLE 156
OCCUPATIONAL THERAPY

Section 7900. Introduction.
7901. Definition.
7902. Practice of occupational therapy and use of title "occupational therapist".
7902-A. DEFINITION OF OCCUPATIONAL THERAPY ASSISTANT AND USE OF THE TITLE "OCCUPATIONAL THERAPY ASSISTANT."
7902-B. SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS.
7903. State board for occupational therapy.
7904. Requirements for a professional license AS AN OCCUPATIONAL THERAPIST.
7904-A. REQUIREMENTS FOR A LICENSE AS AN OCCUPATIONAL THERAPY ASSISTANT.
7905. Limited permits.
7906. Exempt persons.
7907. Special conditions.

S 7900. Introduction. This article applies to the profession of occupational therapy. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

S 7901. Definition. The practice of the profession of occupational therapy is defined as the functional evaluation of the client [and], the planning and utilization of a program of purposeful activities [to], THE DEVELOPMENT AND UTILIZATION OF A TREATMENT PROGRAM, AND/OR CONSULTATION WITH THE CLIENT, FAMILY, CAREGIVER OR ORGANIZATION IN ORDER TO RESTORE, develop or maintain adaptive skills, AND/OR PERFORMANCE ABILITIES designed to achieve maximal physical, COGNITIVE and mental functioning of the [patient in] CLIENT ASSOCIATED WITH his or her ACTIVITIES OF DAILY LIVING AND daily life tasks. [Such] A treatment program DESIGNED TO RESTORE FUNCTION, shall be rendered on the prescription or referral of a physician [or], nurse practitioner OR OTHER HEALTH CARE PROVIDER ACTING WITHIN HIS OR HER SCOPE OF PRACTICE PURSUANT TO THIS TITLE. However, nothing contained in this article shall be construed to permit any licensee hereunder to practice medicine or psychology, including psychotherapy OR TO OTHERWISE EXPAND SUCH LICENSEE'S SCOPE OF PRACTICE BEYOND WHAT IS AUTHORIZED BY THIS CHAPTER.

S 7902. Practice of occupational therapy and use of title "occupational therapist". Only a person licensed or otherwise authorized to practice under this article shall practice occupational therapy or use the title "occupational therapist".

S 7902-A. DEFINITION OF OCCUPATIONAL THERAPY ASSISTANT AND USE OF THE TITLE "OCCUPATIONAL THERAPY ASSISTANT." (1) AN "OCCUPATIONAL THERAPY ASSISTANT" MEANS A PERSON LICENSED IN ACCORDANCE WITH THIS ARTICLE WHO PROVIDES OCCUPATIONAL THERAPY SERVICES WITH THE SUPERVISION OF A LICENSED OCCUPATIONAL THERAPIST AND PERFORMS CLIENT RELATED ACTIVITIES AS ARE ASSIGNED BY THE SUPERVISING OCCUPATIONAL THERAPIST. ONLY A PERSON LICENSED OR OTHERWISE AUTHORIZED UNDER THIS ARTICLE SHALL PARTICIPATE IN THE PRACTICE OF OCCUPATIONAL THERAPY AS AN OCCUPATIONAL THERAPY ASSISTANT AND ONLY A PERSON LICENSED UNDER THIS SECTION SHALL USE THE TITLE "OCCUPATIONAL THERAPY ASSISTANT".

(2) CLIENT RELATED SERVICES PROVIDED BY OCCUPATIONAL THERAPY ASSISTANTS SHALL BE DEFINED AS:

(A) CONTRIBUTING TO THE EVALUATION OF A CLIENT BY GATHERING DATA, REPORTING OBSERVATIONS AND IMPLEMENTING ASSESSMENTS DELEGATED BY THE SUPERVISOR;

(B) CONSULTING WITH THE SUPERVISING OCCUPATIONAL THERAPIST IN ORDER TO ASSIST THE SUPERVISING OCCUPATIONAL THERAPIST IN MAKING DETERMINATIONS RELATED TO THE TREATMENT PLAN, MODIFICATION OF CLIENT PROGRAMS OR TERMINATION OF A CLIENT'S TREATMENT;

(C) THE UTILIZATION OF A PROGRAM OF PURPOSEFUL ACTIVITIES, A TREATMENT PROGRAM, AND/OR CONSULTATION WITH THE CLIENT, FAMILY, CAREGIVER, OR OTHER HEALTH CARE OR EDUCATION PROVIDERS, IN KEEPING WITH THE TREATMENT PLAN AND THE DIRECTION OF THE SUPERVISING OCCUPATIONAL THERAPIST;

(D) THE USE OF TREATMENT MODALITIES AND TECHNIQUES THAT ARE BASED ON APPROACHES TAUGHT IN AN OCCUPATIONAL THERAPY ASSISTANT EDUCATIONAL PROGRAM APPROVED BY THE DEPARTMENT, AND THAT THE OCCUPATIONAL THERAPY ASSISTANT HAS DEMONSTRATED TO THE SUPERVISING OCCUPATIONAL THERAPIST THAT HE OR SHE IS COMPETENT IN USING; OR

(E) IMMEDIATE SUSPENSION OF ANY TREATMENT INTERVENTION THAT APPEARS HARMFUL TO THE CLIENT AND IMMEDIATE NOTIFICATION OF THE SUPERVISING OCCUPATIONAL THERAPIST.

S 7902-B. SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS. (1) SUPERVISION OF AN OCCUPATIONAL THERAPY ASSISTANT, AS DEFINED BY COMMISSIONER'S REGULATIONS, SHALL BE BY A LICENSED OCCUPATIONAL THERAPIST.

(2) IN NO INSTANCE SHALL ANY PERSON DIRECT AN OCCUPATIONAL THERAPIST TO DELEGATE RESPONSIBILITIES TO AN OCCUPATIONAL THERAPY ASSISTANT THAT MAY BE HARMFUL TO A CLIENT OR DIMINISH THE REASONABLE QUALITY OF CARE OF THAT CLIENT, PROVIDE INADEQUATE SUPERVISION TO AN OCCUPATIONAL THERAPY ASSISTANT, OR DIRECT AN OCCUPATIONAL THERAPY ASSISTANT TO ASSUME CLIENT SERVICE RESPONSIBILITIES THAT ARE NOT APPROVED BY A SUPERVISING OCCUPATIONAL THERAPIST.

(3) IN NO INSTANCE SHALL THE RATIO OF SUPERVISOR TO OCCUPATIONAL THERAPY ASSISTANT EXCEED ONE TO FOUR.

S 7903. State board for occupational therapy. A state board for occupational therapy shall be appointed by the board of regents on the recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this title. The board shall be composed of not less than seven licensed occupational therapists, [and two additional members who shall include] one physician [and one member who is primarily and actively engaged in hospital administration. Members of the first board, who are occupational therapists, need not be licensed prior to their appointment to the board], ONE OCCUPATIONAL THERAPY ASSISTANT, AND TWO MEMBERS OF THE PUBLIC WHO ARE NOT LICENSED UNDER THIS TITLE. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner.

S 7904. Requirements for a professional license AS AN OCCUPATIONAL THERAPIST. To qualify for a license as an occupational therapist, an applicant shall fulfill the following requirements:

(1) File an application with the department.

(2) Have satisfactorily completed an approved occupational therapy curriculum in a baccalaureate or masters program, or a certificate program satisfactory to the department which is substantially equivalent to a baccalaureate degree program, in accordance with the [commissioner of education's] COMMISSIONER'S regulations.

(3) Have a minimum of six months of supervised occupational therapy experience which supervision and experience shall be satisfactory to the board of occupational therapy and in accordance with the commissioner's regulations.

(4) Pass an examination satisfactory to the board of occupational therapy and in accordance with the commissioner's regulations.
(5) Be at least twenty-one years of age.
(6) Meet no requirements as to United States citizenship.
(7) Be of good moral character as determined by the department.
(8) [Fees: pay] PAY a fee of one hundred forty dollars to the department for admission to a department conducted examination and for an initial license, a fee of seventy dollars for each re-examination, a fee of one hundred fifteen dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of one hundred fifty-five dollars for each triennial registration period.
S 7904-A. REQUIREMENTS FOR A LICENSE AS AN OCCUPATIONAL THERAPY ASSISTANT. TO QUALIFY FOR A LICENSE AS AN OCCUPATIONAL THERAPY ASSISTANT, AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:
(1) FILE AN APPLICATION WITH THE DEPARTMENT;
(2) HAVE RECEIVED AN EDUCATION INCLUDING COMPLETION OF AN ACCREDITED TWO-YEAR COLLEGE OCCUPATIONAL THERAPY ASSISTANT PROGRAM OR EQUIVALENT IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;
(3) HAVE A MINIMUM OF THREE MONTHS CLINICAL EXPERIENCE SATISFACTORY TO THE STATE BOARD FOR OCCUPATIONAL THERAPY AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;
(4) BE AT LEAST EIGHTEEN YEARS OF AGE;
(5) BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT;
(6) MEET NO REQUIREMENTS AS TO UNITED STATES CITIZENSHIP;
(7) ALL OCCUPATIONAL THERAPY ASSISTANTS SHALL REGISTER TRIENNIALLY WITH THE DEPARTMENT IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;
(8) PAY A FEE FOR AN INITIAL LICENSE OF FORTY-FIVE DOLLARS, AND A FEE OF FIFTY DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD; AND
(9) PASS AN EXAMINATION ACCEPTABLE TO THE DEPARTMENT.
S 7905. Limited permits. Permits limited as to eligibility, practice, and duration, shall be issued by the department to eligible applicants, as follows:
(1) The following persons shall be eligible for a limited permit:
(a) An occupational therapist who has graduated from an occupational therapy curriculum with a baccalaureate degree or certificate in occupational therapy which is substantially equivalent to a baccalaureate degree satisfactory to the board of occupational therapy and in accordance with the commissioner's regulations; or
(b) A foreign occupational therapist who is in this country on a non-immigration visa for the continuation of occupational therapy study, pursuant to the exchange student program of the United States Department of State; OR
(C) AN INDIVIDUAL WHO HAS GRADUATED FROM AN OCCUPATIONAL THERAPY ASSISTANT CURRICULUM WITH AN ASSOCIATES DEGREE OR CERTIFICATE IN OCCUPATIONAL THERAPY ASSISTANT WHICH IS SUBSTANTIALLY EQUIVALENT TO AN ASSOCIATES DEGREE SATISFACTORY TO THE BOARD OF OCCUPATIONAL THERAPY AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.
(2) A LIMITED permittee shall be authorized to practice occupational therapy only under the DIRECT supervision of a licensed occupational therapist [or a licensed physician and shall practice only in a public, voluntary, or proprietary hospital, health care agency or in a preschool or an elementary or secondary school for the purpose of providing occupational therapy as a related service for a handicapped child].
(A) FOR PURPOSES OF THIS SUBDIVISION, SUPERVISION OF AN INDIVIDUAL WITH A LIMITED PERMIT TO PRACTICE OCCUPATIONAL THERAPY ISSUED BY THE

DEPARTMENT SHALL BE DIRECT SUPERVISION AS DEFINED BY THE COMMISSIONER'S REGULATIONS.

(B) SUPERVISION OF AN INDIVIDUAL WITH A LIMITED PERMIT ISSUED TO PRACTICE AS AN OCCUPATIONAL THERAPY ASSISTANT ISSUED BY THE DEPARTMENT, SHALL BE DIRECT SUPERVISION BY A LICENSED OCCUPATIONAL THERAPIST AS DEFINED BY THE COMMISSIONER'S REGULATIONS.

(3) A limited permit shall be valid for one year. It may be renewed once for a period not to exceed one additional year, at the discretion of the department, upon the submission of an explanation satisfactory to the department for an applicant's failure to become licensed within the original one-year period. [A limited permit shall become null and void if and when the holder thereof fails to pass a licensing examination.]

(4) The fee for a limited permit shall be seventy dollars FOR A GRADUATE OF AN OCCUPATIONAL THERAPY PROGRAM AND FIFTY-FIVE DOLLARS FOR A GRADUATE OF AN OCCUPATIONAL THERAPY ASSISTANT PROGRAM.

S 7906. Exempt persons. This article shall not be construed to affect or prevent the following, provided that no title, sign, card or device shall be used in such manner as to tend to convey the impression that the person rendering such service is a licensed occupational therapist OR A LICENSED OCCUPATIONAL THERAPY ASSISTANT:

(1) A licensed physician from practicing his OR HER profession as defined under article one hundred thirty-one and article one hundred [thirty-one-A, as added by chapter eleven hundred thirty-five of the laws of nineteen hundred seventy-one, respectively] THIRTY-ONE-B OF THIS TITLE.

(2) Qualified members of other licensed or legally recognized professions from performing work incidental to the practice of their profession, except that such persons may not hold themselves out under the title occupational therapist OR UNDER THE TITLE OCCUPATIONAL THERAPY ASSISTANT or as performing occupational therapy.

(3) A student from engaging in clinical practice as part of an accredited program in occupational therapy, pursuant to subdivision three of section seventy-nine hundred four of this article.

(4) AN OCCUPATIONAL THERAPY ASSISTANT STUDENT FROM ENGAGING IN CLINICAL PRACTICE UNDER THE DIRECT SUPERVISION OF AN OCCUPATIONAL THERAPIST AS PART OF AN ACCREDITED OCCUPATIONAL THERAPY ASSISTANT PROGRAM, PURSUANT TO SUBDIVISION TWO OF SECTION SEVENTY-NINE HUNDRED FOUR-A OF THIS ARTICLE, AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, AN OCCUPATIONAL THERAPY ASSISTANT STUDENT SHALL BE PERMITTED TO WORK WITH AN OCCUPATIONAL THERAPY ASSISTANT UNDER THE DIRECT SUPERVISION OF AN OCCUPATIONAL THERAPIST.

(5) The care of the sick by any person, provided such person is employed primarily in a domestic capacity. This shall not authorize the treatment of patients in a home care service of any hospital, clinic, institution or agency.

[(5)] (6) An employee of a federal agency from using the title [of] OR practicing as an occupational therapist insofar as such activities are required by his salaried position and the use of such title shall be limited to such employment.

[(6) The following people from working under the direct supervision of a licensed occupational therapist or a licensed physician:

Occupational therapy assistants certified by the commissioner as having successfully completed a program for occupational therapy assistants in accordance with the commissioner's regulations. However, in the case of those working under a licensed physician such exemption shall

apply only in a public, voluntary or proprietary hospital or health or home care agency. All such certified occupational therapy assistants shall register with the education department in accordance with regulations of the commissioner. The fee for such certification shall be forty-five dollars. The registration fee shall be fifty dollars for each triennial registration period.]

(7) [The following people from working under the direct supervision of a licensed occupational therapist:]

An individual employed by the state or municipal government at the effective date of this [act] ARTICLE who performs supportive services in occupational therapy solely for the time such person continues in that employment.

(8) Any occupational therapist who is licensed in another state, United States possession or country or who has received at least a baccalaureate degree or its equivalent in occupational therapy and who is either in this state for the purposes of (a) consultation, provided such practice is limited to such consultation; or (b) an occupational therapist authorized to practice in another state or country from conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education or post graduate education in an approved school of occupational therapy or its affiliated clinical facility or health care agency or before a group of licensed occupational therapists; or (c) because he OR SHE resides near a border of this state, provided such practice is limited in this state to the vicinity of such border and said occupational therapist does not maintain an office or place to meet patients or receive calls in this state.

S 7907. Special conditions. A person who on the effective date of this [act] ARTICLE:

(1) submits evidence of a minimum of three years experience with training satisfactory to the board in occupational therapy and in accordance with the regulations of the commissioner; or

(2) a baccalaureate degree or its equivalent in occupational therapy, shall be licensed upon the filing of an application with the department [of education] within six months of the effective date of this [act] ARTICLE.

(3) HAS A CURRENT REGISTRATION WITH THE DEPARTMENT AS AN OCCUPATIONAL THERAPY ASSISTANT, IF SUCH PERSON MEETS THE REQUIREMENTS FOR A LICENSE ESTABLISHED WITHIN THIS ARTICLE, EXCEPT FOR EXAMINATION, THE DEPARTMENT SHALL LICENSE WITHOUT EXAMINATION.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part contained in any part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part contained in any part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, the commissioner of education and the board of regents are authorized, prior to such effective date, to promulgate such rules and regulations as may be necessary for the timely implementation of this act.