

# CHAPTER 36-31

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## South Dakota Codified Laws

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36-31-1. Definition of terms. Terms used in this chapter mean:

- (1) "Association," the South Dakota Occupational Therapy Association;
- (2) "Board of examiners," the South Dakota State Board of Medical and Osteopathic Examiners;
- (3) "Occupational therapists," any person licensed to practice occupational therapy as defined in this chapter and whose license is in good standing;
- (4) "Occupational therapy," the evaluation, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in his or her daily pursuits. The practice of occupational therapy includes consultation, evaluation, and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities, or anticipated dysfunction. Occupational therapy services include such treatment techniques as task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual; such evaluation techniques as assessment of sensory integration and motor abilities, assessment of development of self-care and feeding, activities and capacity for independence, assessment of the physical capacity for prevocational and work tasks, assessment of play and leisure performance, and appraisal of living areas for the handicapped; physical agent modalities limited to the upper extremities to enhance physical functional performance, if certified in accordance with § 36-31-6; and specific occupational therapy techniques such as activities of daily living skills, designing, fabricating, or applying selected orthotic devices or selecting adaptive equipment, sensory integration and motor activities, the use of specifically designed manual and creative activities, specific exercises to enhance functional performance, and treatment techniques for physical capabilities for work activities. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems;
- (5) "Occupational therapy aide," any person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant;
- (6) "Occupational therapy assistant," any person licensed to assist in the practice of occupational therapy, under the supervision of or with the consultation of a licensed occupational therapist and whose license is in good standing;
- (7) "Occupational therapy committee," the committee provided for in this chapter;
- 8) "Physical agent modalities," modalities that produce a biophysiological response through the use of light, water, temperature, sound, or electricity, or mechanical devices. Physical agent modalities include:
  - (a) Superficial thermal agents such as hydrotherapy/whirlpool, cryotherapy (cold packs/ice), fluidotherapy, hot packs, paraffin, water, infrared, and other commercially available superficial heating and cooling technologies;
  - (b) Deep thermal agents such as therapeutic ultrasound, phonophoresis, and other commercially available technologies;
  - (c) Electrotherapeutic agents such as biofeedback, neuromuscular electrical stimulation, functional electrical stimulation, transcutaneous electrical nerve stimulation, electrical stimulation for tissue repair, high-voltage galvanic stimulation, and iontophoresis and other commercially available technologies;
  - (d) Mechanical devices such as vasopneumatic devices and CPM (continuous passive motion).

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36-31-2. Occupational therapy committee appointed--Terms--Qualifications--Vacancies. The board shall appoint an occupational therapy committee composed of three registered occupational therapists or two registered occupational therapists and one certified occupational therapy assistant. The committee shall assist the Board of Examiners in approving qualifications of persons applying for a license to practice occupational therapy in South Dakota, or the promulgation of rules pertaining to occupational therapy, including guidelines for continuing competency. The committee shall meet a minimum of two times per year. All persons appointed to the board after the first members shall serve for a period of three years. No member may serve more than three consecutive full terms. Each person nominated to serve on such committee shall have the following qualifications:

- (1) The person shall be a resident of South Dakota;
- (2) The person shall be licensed to practice occupational therapy in South Dakota; and
- (3) The person shall have practiced occupational therapy a minimum of three years.

If any vacancy arises on the committee, the vacancy shall be filled in the same manner as original appointments. The member shall serve the remainder of the unexpired term. The appointment to an unexpired term is not considered a full term.

36-31-3. Practice or representation as occupational therapist by unlicensed person as misdemeanor. It is a Class 2 misdemeanor for any person to practice occupational therapy or represent himself as an occupational therapist or use in connection with his name the words or letters "OTR"; "OTR/L"; "Occupational Therapist, Registered"; "Occupational Therapist, Registered/Licensed"; "Certified Occupational Therapy Assistant"; "COTA"; "COTA/L"; "Certified Occupational Therapy Assistant/Licensed"; or any other letters, words or insignia indicating or implying that he is an occupational therapist or occupational therapy assistant, or as being able to practice occupational therapy, or to render occupational therapy services in this state unless he is licensed under the provisions of this chapter.

36-31-4. Certain activities not proscribed or restricted. Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of:

- (1) Any person licensed in this state by any other law from engaging in the profession or occupation for which he is licensed; or
- (2) Any person employed as an occupational therapist or occupational therapy assistant by the government of the United States or any agency of it, if such person provides occupational therapy solely under the direction or control of the organization by which he is employed; or
- (3) Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if the person is designated by a title which clearly indicates his status as a student or trainee; or
- (4) Any person fulfilling the supervised fieldwork experience requirements of subdivision 36- 31-6 (4), if the experience constitutes a part of the experience necessary to meet the requirement of that section; or
- (5) Any person employed as an occupational therapy aide; or
- (6) Any person performing occupational therapy services in the state if these services are performed for no more than ten days in a calendar year in association with an occupational

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therapist licensed under this chapter, if:

- (a) The person is licensed under the law of another state which has licensure requirements at least as stringent as the requirements of this chapter, or
  - (b) The person meets the requirements for certification as an occupational therapist, registered or a certified occupational therapy assistant, established by the American occupational therapy association; or
- (7) Any person when providing therapy as related services as defined in a student's individualized educational plan, the therapy shall not be an activity which supplants or duplicates the educational instruction program provided by the teaching profession.

36-31-5. Limited permit--Duration--Renewal. The board may grant a limited permit to any person who has completed the education and experience requirements of this chapter. This permit allows the person to practice occupational therapy under the supervision of or in consultation with a licensed occupational therapist. This permit is valid until the person is issued a license under § 36- 31-10, or until the results of the examination taken by the person are available to the board. If the person fails the examination, the permit expires.

36-31-6. Application for licensure--Requirements. Any applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application provided by the board, showing to the satisfaction of the board that he meets the following requirements:

- (1) Residence: Applicant need not be a resident of this state;
- (2) Character: Applicant shall be of good moral character;
- (3) Education: Applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board:
  - (a) The occupational therapy educational program shall be accredited by the committee on allied health education and accreditation/American Medical Association in collaboration with the American Occupational Therapy Association;
  - (b) The occupational therapy assistant educational program shall be approved by the American Occupational Therapy Association.
- (4) Experience: Applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he met the academic requirements or by the nationally recognized professional association:
  - (a) For an occupational therapist, a minimum of six months of supervised fieldwork experience is required;
  - (b) For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.
- (5) Examination: An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination approved by the board upon recommendation by the occupational

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therapy committee;

(6) Certification: In order to apply physical agent modalities as defined in § 36-3-1, an occupational therapist or occupational therapist assistant shall be qualified pursuant to this subdivision, as follows:

- (a) Has successfully completed twenty-five hours of American Occupational Therapy Association or American Physical Therapy Association approved education covering physical agent modalities and completed a supervised mentorship to include five case studies on each class of modality to be incorporated into patient care;
- (b) Is certified as a hand therapist by the Hand Therapy Certification commission or other equivalent entity recognized by the board; or
- (c) Has completed education during a basic occupational therapy educational program that included demonstration of competencies on each class of the physical agent modalities.

A supervising therapist or mentor may be a physical therapist, a certified hand therapist, or an occupational therapist who has completed a supervised mentorship and has five years of clinical experience utilizing each class of physical agent modalities; or an occupational therapist who has graduated from an occupational therapy program whose curriculum includes physical agent modality education.

36-31-7. Waiver of education requirements. The education requirements of subsection 36-31- 6(3)(a) are waived if the applicant:

- (1) Has practiced as an occupational therapy assistant for four years;
- (2) Has completed the requirements of subsection 36-31-6(4)(a) before January 1, 1988; and
- (3) Has passed the examination for occupational therapists.

36-31-8. Additional waiver provisions. The board shall grant a license to any person certified prior to July 1, 1986, as an occupational therapist, registered or a certified occupational therapy assistant by the American occupational therapy association. The board may waive the examination, education or experience requirements and grant a license to any person certified by the American Occupational Therapy Association after July 1, 1986 if the board determines the requirements for such certification are equivalent to the requirements for licensure in this chapter. The board may waive the examination, education or experience requirements and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure of this chapter.

36-31-9. Requirements for foreign-trained occupational therapists or assistants. Any foreign-trained occupational therapist or occupational therapy assistant shall satisfy the examination requirements of subdivision 36-31-6(5). The board shall require foreign-trained applicants to furnish proof of good moral character and completion of educational and supervised fieldwork requirements substantially equal to those contained in § 36-31-6 before taking the examination.

36-31-10. Issuance of license upon payment of fee. The board shall issue a license to any person who meets the requirements of this chapter upon payment of the prescribed license fee.

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36-31-11. Expiration of license--Renewal--Fee--Restoration of forfeited license--Time limit-- Continuing competency requirements. Any license issued by the board, pursuant to the provisions of this chapter, shall expire on the first day of January of the year next succeeding the issuance thereof. A license may be renewed upon the payment of a fee to be fixed annually by the board. Failure of a licensee to renew his license on or before the first day of March of each year, constitutes a forfeiture of such license. However, any person who has forfeited his license under this chapter may have it restored to him by making written application thereof and by payment of the annual renewal fee for the current year and late renewal fee. Late renewal of a license may not be granted more than five years after its expiration. The board may establish, pursuant to chapter 1-26, additional requirements for license renewal which provide evidence of continuing competency.

36-31-12. Setting of fees. The board shall prescribe and publish fees for the following pursuant to chapter 1-26:

- (1) Initial license fee;
- (2) Renewal of license fee;
- (3) Late renewal fee; and
- (4) Limited permit fee.

These fees shall be sufficient to cover the activities and responsibilities of the board but shall not exceed the sum of fifty dollars.

36-31-13. Promulgation of rules. The board may promulgate rules pertaining to licensure, fees, discipline, supervision, and continuing competency for licensed occupational therapists and licensed occupational therapy assistants. All rules made by the board pursuant to this chapter shall be adopted and amended in accordance with the provisions of chapter 1-26.

36-31-14. Grounds for revocation, suspension, or cancellation of license. The license of an occupational therapist or occupational therapy assistant may be revoked, suspended, or canceled upon any one of these grounds:

- (1) The licensee is guilty of fraud in the practice of occupational therapy or fraud or deceit in his admission to the practice of occupational therapy; or
- (2) The licensee has been convicted of a felony during the past five years. The conviction of a felony is the conviction of any offense, which if committed within the State of South Dakota would constitute a felony under its laws; or
- (3) The licensee is engaged in the practice of occupational therapy under a false or assumed name and has not registered that name pursuant to chapter 37-11, or is impersonating another practitioner of a like or different name; or
- (4) The licensee is determined by a medical examiner to be addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to the extent that it incapacitates him from the performance of his professional duties; or
- (5) The physical or mental condition of the licensee is determined by a medical examiner to be such as to jeopardize or endanger those who seek treatment from the licensee. A majority of the board may demand an examination of the licensee by a competent medical examiner selected by the board at the board's expense. If the licensee fails to submit to the examination, this constitutes immediate grounds for suspension of the

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licensee's license; or

- (6) Obtaining or attempting to obtain a license, certificate, or renewal thereof by bribery or fraudulent representation; or
- (7) Being guilty of unprofessional conduct as defined by the rules established by the board, or violating the code of ethics adopted and published by the board; or
- (8) Making a false statement in connection with any application under this chapter; or
- (9) Making a false statement on any form promulgated by the board in accordance with this chapter or the rules adopted by the board; or
- (10) The licensee has violated any provisions of this chapter or the rules promulgated hereunder.

36-31-15. Initiation of license cancellation, revocation, or suspension proceedings. A proceeding for cancellation, revocation, or suspension of a license may be initiated if the board has written information that any person may have been guilty of any misconduct pursuant to § 36-31-14, or is guilty of incompetence or unprofessional or dishonorable conduct.

36-31-16. Majority of board members to be present at license cancellation, revocation, suspension, or reissuance proceedings--When majority vote required. Any proceeding relative to the cancellation, revocation, or suspension of a license, or relative to reissuing a license which has been canceled, revoked, or suspended shall only be held when a majority of the members of the board are present at the hearings. The decision of the board to suspend, revoke, or cancel a license requires a majority vote of all the board members.

36-31-17. Applicability of chapter 1-26. Any proceeding relative to the cancellation, revocation, or suspension of a license shall conform to the procedure set forth in chapter 1-26.

36-31-18. Appeal from decision of board. Any party feeling aggrieved by any acts, rulings or decisions of the board relating to refusal to grant or to cancellation, revocation, or suspension of a license may appeal pursuant to chapter 1-26.

36-31-19. When license may be reissued or reinstated--Provision for automatic reinstatement. Upon written application establishing compliance with existing licensing requirements and for reasons the board deems sufficient, the board, for good cause shown, by majority vote, may, under the conditions it may impose, reinstate or reissue a license to any person whose license has been cancelled, suspended, or revoked. Upon suspension of a license, the board may provide for automatic reinstatement thereof after a specified fixed period of time.

36-31-20. Maintenance of record book--Admissibility of records and licenses in evidence-- Copies of records to be furnished on request--Fee. The secretary of the board shall keep a record book in which are entered the names of all persons to whom licenses have been granted under this chapter, the license number of each, and the date of granting the license and its renewal and other matters of record. This book is a book of records, and a transcript of any record therein or a license that is not entered therein, the name and license number of the date of granting the license to a person charged with a violation of any of the provisions of this chapter, certified under the hand of the secretary, and the seal of the board, shall be admitted as evidence in any of the courts of this state. The original books, records, and papers of the board shall be kept at the office of the secretary of the board. The secretary shall furnish any person making an application a copy of any requested record, certified by him as secretary, upon payment of a fee of twenty-five cents per page.

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36-31-21. Additional duties of board--Criminal prosecutions--Civil actions. In addition to the duties set forth elsewhere in this chapter, the board shall:

- (1) Recommend prosecutions for violations of this chapter to the appropriate state's attorneys; and
- (2) Recommend to the attorney general the bringing of civil actions to seek injunctions and other relief for violations of this chapter.

36-31-22. Investigation and report of violations. The board shall investigate every supposed violation of this chapter and report the same to the proper law enforcement officials wherein the violation is committed.

36-31-23. Action for injunction--Injunction as alternative to criminal proceedings--Election. Any person violating the provisions of this chapter may be enjoined from further violations by a suit brought by the state's attorney of the county wherein the violations occurred or suit may be brought by any citizen of this state. An action for injunction is an alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

36-31-24. Violation of chapter as misdemeanor. Any person who violates any provision of this chapter is, upon conviction, guilty of a Class 2 misdemeanor.

36-31-25. Limit on board expenditures. The total expense incurred by the Board of Medical and Osteopathic Examiners may not exceed the total money collected by the board under the provisions of this chapter.