



Montana Department of LABOR & INDUSTRY

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Board of Occupational Therapy Practice

To: Economic Affairs Interim Committee

From: Montana Board Occupational Therapy Practice

Date: June 14, 2013

Subject: HB525 – OTP response to the Economic Affairs Interim Committee questions

1. What is the public health, safety or welfare rationale for licensing and regulating your Profession/Occupation?

The professions (Occupational Therapist, Occupational Therapist Assistant) that are regulated by this board are those that generally work in a healthcare environment or an educational environment (primary and secondary school systems). This being the case, proper patient assessment and use of modalities allowed under this licensure is critical. It is this board's responsibility to insure that proper education, rule making, and an ongoing continuing education are consistently applied to protect the public.

2. If your profession/occupation were not licensed, what public protection would be lost?

Licensure of the professions is preceded by and premised upon strict standards of education and periods of supervised experience for Assistants. The failure to regulate those who would practice under this board would be exposing the public to potentially harmful procedures. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public/patient complaints. The board sets the standards needed to insure that competency is met for the profession it regulates.

3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

The board determines the educational curriculum and school standards that will be accepted to ensure that all licensees receive adequate and appropriate education in their scope of practice. Yes. A board is necessary to provide the expertise to evaluate initial licensure of applicants (such as appropriate education, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Occupational Therapy Practice is comprised of five members and currently includes three professional and two public members.

4. Does your board deal with unlicensed practice issues? If yes, what types of issues?

Occasionally, the board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to practice when they are not qualified. A great deal of personal harm to individuals may result if the unlicensed person is not trained in the correct procedures. This is rare for this board as there is also oversight and internal regulation of licensees by healthcare and educational entities.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?

The safe and competent practice of the disciplines under this board is learned through formal education and training and under supervision of a competent Occupational Therapist when dictated by statute and/or rule. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living once they have met qualifications. Healthcare and educational entities that employ members of this profession require licensure as a condition of employment.

6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists and they have followed this procedure. The Presiding Officer and staff also monitor bias on a case- by-case basis to help ensure that the possibility or perception of bias is avoided, also the public right to participation in open meetings is encouraged. Having a mix of public and professional members who serve together on the board is another safeguard. Board Counsel will also advise members/staff if issues of bias come forward.

7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?

Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are two separate functions not well-suited to be performed by the same entity.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

Healthcare and educational entities (and some private practice entities) that employ members of this profession, routinely bill insurance for the procedures performed by licensees of this board. This also includes Medicaid and Medicare. All of the above entities require strict adherence to billing practices in which the individual is licensed and competent to provide the services performed. Many require the order of another healthcare practitioner such as a physician in order to provide and bill the service.

9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

The board has the expertise of the disciplines it licenses along with members who understand the technical and beneficial aspects of the profession and two public members to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available (efficiently) to the department without the use of a board.

10. Is there an optimum ratio between licensees, board size, or public representation?

The number of licensees regulated by the board does not necessarily dictate the number of board members; however it may be taken into consideration on a board by board basis. What we have now, three professional and two public members, appears to work well.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

A disinterested third party would spend significant time and money learning the professions to best protect the public, the regulating entity must have adequate knowledge of "standards of practice," with which the board is already uniquely equipped because of its professional members.

12. If boards have overlapping scopes of practice, should there be a third- party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

The scope of practice involving the Board of Occupational Therapy (37-24-103 MCA defines the areas of practice. The Board of Physical Therapists probably has the most overlapping scope of practice with this board. The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third-party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.

13. Should any board have the ability to limit use of certain terminology to only a licensee?

Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Consumers have a right to know the minimum qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.