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Contact Hours: **2**

## Florida Occupational Therapy Laws and Rules

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**LEARNING OUTCOME AND OBJECTIVES:** Upon completion of this course, you will be better prepared to comply with the laws and rules that govern occupational therapy practice in the state of Florida, including those from the Florida Statutes and Florida Administrative Code. Specific learning objectives to address potential knowledge gaps include:

- Describe the Florida Board of Occupational Therapy.
- Discuss the factors for safe delegation to unlicensed assistive personnel.
- Demonstrate knowledge of the requirements for use of prescription devices.
- Explain the requirements for renewing an occupational therapy license in Florida.
- Discuss Florida occupational therapy law grounds for discipline and penalties.
- Describe criminal and civil legal issues related to occupational therapy practice.
- Summarize the elements of the Occupational Therapy Code of Ethics.

### FLORIDA OT LAWS AND RULES

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As licensed professionals in the state of Florida, occupational therapists (OTs) and occupational therapy assistants (OTAs) must understand and practice according to Florida's laws and rules for occupational therapy.

In Florida, occupational therapy and general standards are codified in the Florida Statutes (F.S.) and Florida Administrative Code (F.A.C.). Specific laws and rules that Florida OTs and OTAs must be familiar with are found in detail in these documents:

- Chapter 456 of the **Florida Statutes** contains laws that govern healthcare practitioners in general.

- Chapter 468, Part III, of the Florida Statutes and Division 64B11 of the **Florida Administrative Code** describe specific regulations—including definitions of practice, continuing education, and renewal requirements—for the occupational therapy profession.

(See “Resources” at the end of this course for links to these documents.)

Practitioners who work in settings regulated by the Agency for Health Care Administration (AHCA)—such as health clinics, hospitals, home health, assisted living, and long-term care facilities—should also be aware of any regulations that may affect practice in those facilities. Of particular interest to those working in AHCA facilities are that agency’s background screening requirements so that one may begin or continue working in such settings (AHCA, 2021).

## Florida Occupational Therapy Practice Act

The Florida Statutes are a permanent collection of state laws organized by subject area into a code made up of titles, chapters, parts, and sections. The Florida Statutes are updated annually by laws that create, amend, transfer, or repeal statutory material (Florida Legislature, 2021).

The Florida Occupational Therapy Practice Act is outlined in the Florida Statutes, Title XXXII, Chapter 468, Part III, Regulation of Professions and Occupations, Occupational Therapy. The purpose of the act is to provide for the regulation of persons offering occupational therapy services to the public in order to:

- Safeguard the public health, safety, and welfare
- Protect the public from being misled by incompetent, unscrupulous, and unauthorized persons
- Assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants
- Assure the availability of occupational therapy services of high quality to persons in need of such services

(F.S., Title XXXII, Ch. 468.201)

The provisions of the act aim to ensure that every occupational therapist or occupational therapy assistant practicing in Florida meets minimum requirements for safe practice. It is the legislative intent that occupational therapists or occupational therapy assistants who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in the state.



**CONTENTS OF THE FLORIDA OT PRACTICE ACT**

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(See “Resources” at the end of this course for a link to the full act.)

**Florida Board of Occupational Therapy**

The Florida Board of Occupational Therapy was established to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants. The Board is responsible for the licensure and regulation of the profession, as described in the Practice Act, to ensure the availability of occupational therapy services of high quality to the people of Florida (FL BOT, 2021a).

The Board is under the jurisdiction of the Florida Department of Health and subject to the general provisions regulating health professions and occupations as outlined in F.S., Title XXXII, Chapter 456. The Department of Health’s Division of Medical Quality Assurance serves as the principle administrative support unit for the Board. The Board’s regulatory functions are funded in full by fees paid by its licensees.

The Florida Board of Occupational Therapy consists of seven members appointed by the governor and confirmed by the senate. All Board members must be residents of the state of Florida. The Board must consist of:

- Four licensed occupational therapists in good standing in Florida who have been engaged in the practice of the profession for at least four years immediately prior to appointment
- One licensed occupational therapy assistant in good standing in Florida who has been engaged in the practice of the profession for at least four years immediately prior to appointment
- Two consumer members not connected with the practice of occupational therapy (F.S., Title XXXII, Ch. 468.205)



## Florida Occupational Therapy Rules

The Florida Administrative Code is the official compilation of administrative rules for the state of Florida. The Department of State oversees the publishing of the F.A.C. and updates it weekly. Chapter 64B11 of the F.A.C. outlines rules related to occupational therapy.

### **FLORIDA ADMINISTRATIVE CODE, DIVISION 64B11**

#### **Board of Occupational Therapy**

- 64B11–1 Organization and general procedures
- 64B11–2 Admission of occupational therapists
- 64B11–3 Admission of occupational therapy assistants
- 64B11–4 Occupational therapy board—standards of practice
- 64B11–5 Licensure status and fees
- 64B11–6 Continuing education

(See “Resources” at the end of this course for a link to the full chapter.)

## Professional Organizations

One of the hallmarks of a profession is that its members band together in collegial association to provide a variety of services for its members. These services include such things as continuing education, collective bargaining, legislative advocacy, and information about the profession. These organizations are not set up by state laws or through the government.

The Florida Occupational Therapy Association (FOTA) is a professional association that represents occupational therapy practitioners in promoting best practice and in meeting the occupational needs of consumers and the community. FOTA partners with its members, clients and the communities it serves in supporting practice, education, and advocacy based on science and evidence (FOTA, 2021). It is separate and distinct from the Florida Board of Occupational Therapy.

In addition to the Florida Occupational Therapy Association, there are also the American Occupational Therapy Association (AOTA), the National Board for Certification in Occupational Therapy (NBCOT), and the Professionals Resource Network for Florida. Typically, associations are run by boards of trustees elected by members who pay voluntary membership dues.

Professional organizations have no legal authority, whereas the Florida Board has authority because it was established by the Occupational Therapy Practice Act with the unambiguous function of promoting and protecting the health of citizens through safe occupational therapy practice.



## OCCUPATIONAL THERAPY PRACTICE IN FLORIDA

[Material in this section is taken from F.S., Title XXXII, Chapter 468, and F.A.C., Chapter 64B11.]

The practice of occupational therapy in Florida is regulated by the state in order to protect members of the public who receive occupational therapy care. Safe, competent occupational therapy practice is grounded in the law as written in the state's Occupational Therapy Practice Act and its rules. The practice is dynamic and evolving and is responsive to consumer and societal needs, to system changes, and to emerging knowledge and research.

Because occupational therapy is a dynamic practice, questions may arise about whether certain tasks are within the occupational therapist's or occupational therapy assistant's scope of practice. All occupational therapy care should be consistent with the practitioner's preparation, education, experience, knowledge, demonstrated competency, and the laws and rules governing occupational therapy.

### **Types of Occupational Therapy Practitioners**

Florida's OT Practice Act recognizes three types of individuals who are engaged in the practice of occupational therapy. These include:

- **Occupational therapist:** A person licensed to practice occupational therapy as defined in the Act and whose license is in good standing; licensure for entry-level practice requires successful completion of the academic requirements of an educational program in occupational therapy recognized by the Board and a minimum of six months of supervised fieldwork.
- **Occupational therapy assistant:** A person licensed to assist in the practice of occupational therapy, who works under the supervision of an occupational therapist, and whose license is in good standing; licensure for entry-level practice requires successful completion of the academic requirements and a minimum of two months of supervised fieldwork.
- **Occupational therapy aide:** An unlicensed person who assists in the practice of occupational therapy, who works under the direct supervision of a licensed occupational therapist or occupational therapy assistant, and whose activities require a general understanding of occupational therapy pursuant to Board rules; nonprofessional training is provided on the job.  
(F.S. 468.203 and 468.209)

### **Occupational Therapy Standards of Practice**

*Occupational therapy* means the use of purposeful activity or interventions to achieve functional outcomes. Occupational therapy services include, but are not limited to:



- The assessment, treatment, and education of or consultation with the individual, family, or other persons
- Interventions directed toward developing daily living skills, work readiness or work performance, play skills or leisure capacities, or enhancing educational performance skills
- Providing for the development of sensory-motor, perceptual, or neuromuscular functioning; range of motion; or emotional, motivational, cognitive, or psychosocial components of performance

These services may require assessment of the need for use of interventions such as:

- The design, development, adaptation, application, or training in the use of assistive technology devices
- The design, fabrication, or application of rehabilitative technology such as selected orthotic devices
- Training in the use of assistive technology
- Orthotic or prosthetic devices
- The application of physical agent modalities as an adjunct to or in preparation for purposeful activity
- The use of ergonomic principles
- The adaptation of environments and processes to enhance functional performance
- The promotion of health and wellness  
(F.S. 468.203)

The use of certain devices identified by the Board is expressly prohibited except by an occupational therapist or occupational therapy assistant who has received training as specified by the Board (see also below under “Use of Prescription Devices”).

## **DELEGATION TO UNLICENSED ASSISTIVE PERSONNEL**

A licensed occupational therapist or occupational therapy assistant may delegate to occupational therapy aides only specific tasks that are neither evaluative, assessive, task selective, nor recommending in nature, and only after insuring that the aide has been appropriately trained for the performance of the task. All delegated patient-related tasks must be carried out **under the direct supervision**, which means that the aide must be within the line of vision of the supervising practitioner.

Any duties assigned to an occupational therapy aide must be determined and appropriately supervised by a licensed OT or OTA and must not exceed the level of training, knowledge, skill, and competence of the individual being supervised. The licensed occupational therapist or



occupational therapy assistant is totally and wholly responsible for the acts or actions performed by any occupational therapy aide functioning in the occupational therapy setting.

Occupational therapy aides may perform ministerial duties, tasks, and functions **without direct supervision**, which shall include, but not be limited to:

- Clerical or secretarial activities
- Transportation of patients/clients
- Preparing, maintaining, or setting up of treatment equipment and work area
- Taking care of patients' personal needs during treatment

Occupational therapy aides shall **not perform** tasks that are either evaluative, assessive, task selective, or recommending in nature, which shall include, but not be limited to:

- Interpret referrals or prescriptions for occupational therapy services
- Perform evaluative procedures
- Develop, plan, adjust, or modify treatment procedures
- Act on behalf of the occupational therapist in any matter related to direct patient care which requires judgment or decision-making except when an emergency condition exists
- Act independently or without direct supervision of an occupational therapist
- Patient treatment
- Any activities which an occupational therapy aide has not demonstrated competence in performing  
(F.A.C. 64B11-4.002)

#### **“UNDER SUPERVISION” VS. “DIRECT SUPERVISION”**

An **OT assistant (OTA) works under the supervision** of an occupational therapist. *Supervision* means responsible supervision and control, with the licensed occupational therapist providing both initial direction in developing a plan of treatment and periodic inspection of the actual implementation of the plan. Such plan of treatment shall not be altered by the supervised individual without prior consultation with, and the approval of, the supervising occupational therapist.

The supervising occupational therapist need not always be physically present or on the premises when the assistant is performing services; however, except in cases of emergency, supervision shall require the availability of the supervising occupational therapist for consultation with and direction of the supervised individual (F.S. 468.203).



An **OT aide works under the direct supervision** of an occupational therapist or an occupational therapy assistant. All delegated patient-related tasks must be carried out under direct supervision, which means that the aide must be within the line of vision of the supervising occupational therapist or occupational therapy assistant (F.A.C. 64B11-4.002).

## USE OF PRESCRIPTION DEVICES

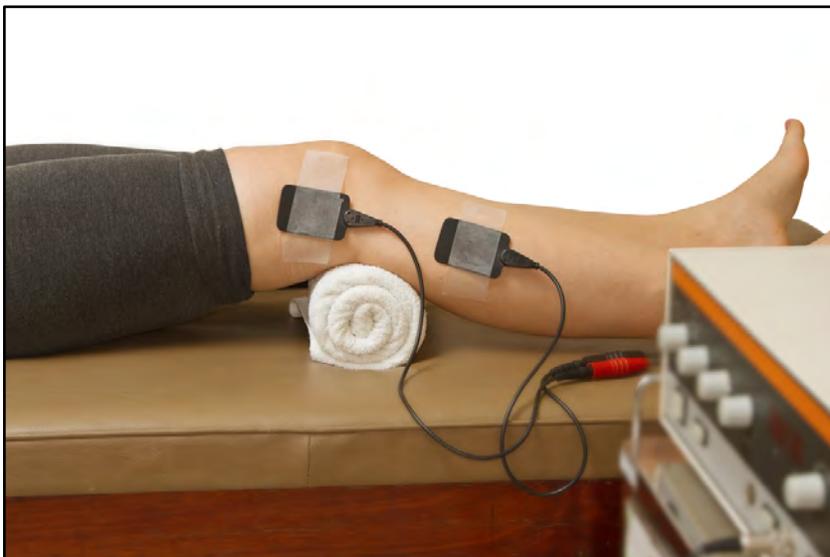
Use of both an **electrical stimulation device** and an **ultrasound device** for which a prescription is required by Federal law is expressly prohibited except by an OT or OTA who has received training.

An electrical stimulation device is any device that employs transcutaneous electric current (direct, alternating, or pulsatile) for therapeutic purposes. An ultrasound device is any device intended to generate and emit ultrasonic radiation for therapeutic purposes at ultrasonic frequencies above 100 kilohertz (kHz).

Training required to qualify for use of these devices includes:

- Didactic training of at least four hours
- Performance of at least five treatments under supervision

The required training may be obtained through approved educational programs, workshops, or seminars offered at a college or university or affiliated clinical facilities; online courses are not approved. The training must provide for the minimum competency level detailed in F.A.C. 64B11-4.001. Any OT or OTA who uses such electrical stimulation device shall be able to present proof that he or she has obtained the training required by this rule.



In Florida, OT/OTA training is required for use of electrical stimulation devices, such as the one shown here. (Source: Praisaneg/Shutterstock.com.)



**CASE**

Dwayne, an occupational therapist at an inpatient burn center, recently evaluated Mr. Hughes, a patient with significant scarring and decreased range of motion in both arms due to chemical burns he received on the job. Based on his initial assessment, Dwayne developed a plan of care specifically outlining which modalities and interventions to implement with the patient.

Dwayne then delegated treatment to Sheila, a new OTA who had joined the burn center staff two weeks earlier after a recent move to Florida from Georgia. After three treatment sessions, Sheila altered the treatment plan and began using ultrasound on the patient's scars. She'd seen the OT use ultrasound in cases of scarring at her previous position, and she had just begun training in its use. She continued this treatment approach for two more sessions.

In his role as supervising therapist, Dwayne attended the next treatment session, at which Mr. Hughes complained to him of pain and increased irritation and burning sensations to all the areas the OTA had previously treated using ultrasound. Dwayne reviewed the patient's chart and realized there were several problems pertaining to this patient's standard of care.

First, the OTA had improperly altered the original treatment plan to include ultrasound, which was not part of the plan of care established by Dwayne as the supervising OT. Secondly, ultrasound is a modality requiring a prescription, which had not been ordered by Mr. Hughes' primary care provider, as well as training, which Sheila had not yet completed. Finally, ultrasound is contraindicated in this situation.

Following the patient's session, Dwayne immediately followed the burn center's protocol for reporting these problems so that corrective action could be taken with Sheila and the patient.

**CASE**

TextJennifer is an OTA with four years' experience who has recently moved from California to Florida. This is her first shift at her new workplace. The patient, Ms. Baker, has been previously diagnosed with muscular dystrophy and arrives early for her third muscle stimulation appointment. Ms. Baker is a demanding patient, does not like to wait, and asks Jennifer to start the treatment right away.

Jennifer is uncertain whether she is allowed to begin the muscle stimulation procedure, and so she asks Ms. Baker to wait for a moment. She steps out of the room to consult a copy of the Florida Administrative Code that she received during the orientation to her new job. There she finds that occupational therapists and occupational therapy assistants qualify for the use of an electrical stimulation device only after didactic training of at least four hours and performance of at least five treatments under supervision.

Since Jennifer has not had any training yet, this task is not within her legal scope of practice in Florida. Jennifer speaks immediately to her supervising OT, Amanda, who has had the proper training for use of prescription devices to perform the procedure. Jennifer and Amanda return to Ms. Baker and explain the legal limits of Jennifer's scope of practice. The patient is understanding and thanks Jennifer for her diligence.



## LICENSURE RENEWAL REQUIREMENTS

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[Material in this section is taken from F.S., Title XXXII, Chapter 468, and F.A.C., Chapter 64B11.]

Occupational therapists or occupational therapy assistants may not practice occupational therapy or render occupational therapy services in Florida unless they are properly licensed. Florida OT and OTA licenses are monitored by the Florida Board of Occupational Therapy and must be renewed every two years. All licenses expire on February 28 of every odd-numbered year. It is unlawful to practice with a delinquent license.

### Continuing Education

A licensure biennium is the 24-month period between expiration dates. During this time period continuing education requirements must be met for each renewal cycle. Those persons licensed by examination within a biennium are exempt from the continuing education requirement for that biennium.

During each biennium, 26 hours of continuing education are required. At least 14 of the required hours per biennium must be in person or from interactive, real-time (“live”) courses. A licensee may receive continuing education credit for no more than 12 hours per biennium of self-paced, non-interactive independent (“home”) study that requires a certificate of completion. All courses must be given by a Board-approved provider. All licensees must complete the following Florida state-mandated courses:

- A 2-hour course on prevention of medical errors
- A 2-hour course on the laws and rules that govern the practice of occupational therapy in Florida (such as this course)
- A 1-hour course on HIV/AIDS (required only for the first license renewal)

The licensee shall retain for four years certificates of attendance and other records to document the completion of the continuing education requirement.

The Florida Department of Health, Division of Medical Quality Assurance, verifies continuing education records in the **CE Broker** electronic tracking system for license renewals. The Department encourages Florida licensees to log in to the tracking system before applying for renewal to ensure information is complete and accurate. Although most CE providers report courses to CE Broker immediately, they legally have 90 days to report successful completion. (Wild Iris Medical Education reports course completions for existing Florida licensees within 24 hours.)

### Fees

Fees are due to the Florida Board of Occupational Therapy at the time of license renewal. Fee amounts vary depending on renewal and are listed on the Board’s website.



## **MILITARY LICENSE RENEWAL**

The Florida Department of Health is committed to honoring veterans, members of the military, and their families by offering several licensing support services to qualified military families. The VALOR System (Veterans Application for Licensure Online Response System) provides an expedited licensing avenue and a waiver of most licensing fees for honorably discharged veterans and their spouses seeking licensure in all healthcare professions.

The Department offers additional Armed Forces licensure support, including opportunities for physicians to receive a temporary certificate to practice in areas of critical need, renewal exemptions for active-duty service members holding a healthcare license in Florida, and temporary licensure for spouses of active-duty service members who possess a valid license in another state, the District of Columbia, or any possession or territory of the United States (FL DOH, 2021).

## **Inactive Status**

A licensee may apply to the Florida Department of Health to place a license on inactive status. The application shall be made on forms provided by the Board and shall be accompanied by an application fee for inactive status. Applications for inactive status will be considered by the Department only during the biennium license renewal period. It is unlawful to practice occupational therapy with an inactive license.

## **DISCIPLINARY ACTION AND PENALTIES**

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The legislature created the Florida Board of Occupational Therapy to assure protection of the public from persons who do not meet minimum requirements for safe practice or who pose a danger to the public.

### **Grounds for Discipline**

[Material in this section is taken from F.S., Title XXXII, Ch. 456.072, Grounds for discipline, penalties, enforcement.]

Following are some of the acts that constitute grounds for denial of a license or disciplinary action:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of occupational therapy
- Intentionally violating any rule adopted by the Board or the Department
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, occupational therapy



- Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction for a violation that would constitute a violation under Florida law
- Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the Department or the Board
- Failing to report to the Department any person who the licensee knows is in violation of statutes regulating the alleged violator or the rules of the Department or the Board
- Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to statutes regulating the profession or the rules of the Department or the Board
- Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so
- Making deceptive, untrue, or fraudulent representations, or employing a trick or scheme in or related to the practice of a profession
- Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party
- Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform
- Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of the responsibilities knows, or has reason to know, the person is not qualified by training, experience, and authorization when required to perform them
- Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding
- Failing to comply with continuing education course requirements
- Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing
- Failing to comply with state requirements to provide patients with information about their patient rights and how to file a patient complaint
- Engaging or attempting to engage in sexual misconduct as defined and prohibited by statute



- Failing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application
- Failing to report to the Board, or the Department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction
- Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition
- Testing positive for any drug, as defined in F.S. 112.0455, on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug
- Performing or attempting to perform healthcare services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition
- Being terminated from a treatment program for impaired practitioners for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program
- Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to healthcare fraud

(This is not a complete list; see also F.S., Title XXXII, Ch. 456.072, Grounds for discipline, penalties, enforcement.)

## Penalties

When the Board or the Department finds any person guilty of the grounds set forth in F.S., Title XXXII, Ch. 456.072, subsection (1), or of any grounds set forth in the Practice Act, it may impose one or more penalties. The purposes of disciplinary action are to punish the violators and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants or licensees from violations.

Among the range of punishments, in increasing severity, are:

- **Letter of concern** and a minimum administrative fine of \$100, remedial education, and/or refund of fees billed



- **Probation** with conditions to include limitations on the type of practice or practice setting, requirements of supervision, employer and self-reports, periodic appearances before the Board, counseling or participation in the Professionals Resource Network (PRN), payment of administrative fines, and such conditions to assure protection of the public
- **Suspension** for a minimum of 90 days and thereafter until the licensee appears before the Board to demonstrate current competency and ability to practice safely and in compliance with any previous Board orders
- **Denial** of licensure with conditions to be met prior to any reapplication
- **Permanent revocation**, with limited ability to reapply (F.A.C., 64B11-4.003)

### **Aggravating and Mitigating Circumstances**

Based upon consideration of aggravating and mitigating factors present in an individual case, the Board may deviate from the penalties. The Board shall consider as aggravating or mitigating factors the following:

- Exposure of patients or public to injury or potential injury, physical or otherwise; none, slight, severe, or death
- Legal status at the time of the offense; no restraints, or legal constraints
- The number of counts or separate offenses established
- The disciplinary history of the applicant or licensee in any jurisdiction and the length of practice
- Pecuniary benefit or self-gain inuring to the applicant or licensee
- Any efforts at rehabilitation, attempts by the licensee to correct or to stop violations, or refusal by the licensee to correct or to stop violations
- Any other relevant mitigating factors (F.A.C., 64B11-4.003)

Penalties, including fines, are imposed within a range corresponding to the possible violations, as described in F.A.C. 64B11-4.003. In addition to the penalty imposed, the Board shall recover the costs of investigation and prosecution of the case. Additionally, if the Board makes a finding of pecuniary benefit or self-gain related to the violation, then the Board shall require refund of fees billed and collected from the patient or a third party on behalf of the patient.



**CASE**

Alexa is an occupational therapist who works in an outpatient pediatric clinic. Though she excels in her professional and clinical responsibilities, she has lately been struggling with some personal issues, including a health crisis with her elderly father and a recent acrimonious divorce. She also just found out that her teenage son dropped out of high school.

With all the recent upheaval in her personal life, Alexa accidentally misplaced the letter from the Florida Board of Occupational Therapy regarding her upcoming licensure renewal deadline. Three weeks after the February renewal deadline had passed, the director of the pediatric practice where Alexa works requested updated copies of state licenses for all therapist employees. Alexa realized that she had forgotten to renew her license, which was now expired. To make matters worse, Alexa also realized she had not completed the required 26 hours of continuing education to be eligible for license renewal. Alexa was extremely upset and embarrassed and became tearful in her manager's office as she described the recent stressors in her life that had contributed to her forgetting to complete her license renewal requirements.

Alexa's manager, Jade, was a very supportive employer and knew Alexa to be a conscientious employee and highly competent therapist who had simply made a mistake. Jade gently explained to Alexa that she would have to cease practicing immediately and begin the process of reinstating her lapsed license in accordance with the Florida Occupational Therapy Practice Act. They would need to contact the Board in order to explain the situation and to determine if Alexa would be liable for any disciplinary action due to having inadvertently practiced with a lapsed license for three weeks.

They discussed Alexa's other recent personal stressors, and Jade suggested that Alexa use some of her accrued paid time off to take an approved continuing education course that was being offered a few hours away. Jade assisted Alexa in finding respite care for her elderly father and making arrangements for Alexa's son to stay with relatives temporarily, allowing Alexa to enjoy some much-needed down-time while simultaneously completing the continuing education that she needed to reinstate her license.

## LEGAL ISSUES AND OCCUPATIONAL THERAPY PRACTICE

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Occupational therapists and occupational therapy assistants practice within a society governed by laws. Laws flow from ethical principles and are limited to specific situations and codified by detailed language. These rules of conduct are formulated by an authority with power to enforce them. Florida's legislature has the power to create and enforce laws governing the profession of occupational therapy in the state, including licensure.



SOURCES OF LAW		
	Statutory Law	Administrative Law
<b>Source</b>	Laws passed by legislative bodies of federal, state, and local governments	Executive powers, delegated by the legislative branch
<b>Functions</b>	Protects and provides for the general welfare of society	Carries out special duties of various agencies
<b>Example</b>	The Florida legislature passed the Occupational Therapy Practice Act, which is outlined in the Florida Statutes, Title XXXII, Chapter 456, Regulation of Professions and Occupations	The Florida Department of State maintains statewide rules for occupational therapy, which are outlined in the Florida Administrative Code, Division 64B11, Board of Occupational Therapy

## Civil Vs. Criminal Law

There are two major divisions of law:

- **Civil law** pertains to the private rights of one or more individuals and provides a means by which individuals may seek to enforce their rights against other individuals. Some types of civil law include contract law, wills, family law, and trusts. Civil litigation that involves injury (due to assault, battery, negligence, professional negligence, etc.) is called a *tort*.
- **Criminal law** regulates the conduct of the individual in order to protect the public and society as a whole. Criminal prosecution is initiated by the government as opposed to an individual. The main types of criminal offenses are felonies, misdemeanors, and infractions. The primary goal of criminal litigation is to punish the defendant (University of Minnesota, 2018).

It is a criminal offense to violate provisions of Florida’s Occupational Therapy Practice Act. When individuals or agencies believe an occupational therapist or occupational therapy assistant has violated a provision of the Practice Act, they may complain to the Board of Occupational Therapy. The Board will investigate the allegations, and if sufficient evidence is found to support the complaint, state attorneys may file a complaint against the licensee.

It is important to be aware that an action can potentially be both criminal and civil in nature (Stanford & Connor, 2020).



TYPES OF LAW	
<b>CIVIL LAW</b>	
<b>Function/Goal</b>	To redress wrongs and injuries suffered by individuals
<b>Types</b>	<ul style="list-style-type: none"> <li>• Contract law</li> <li>• Wills</li> <li>• Family law</li> <li>• Trusts</li> <li>• Torts (involves injury due to assault, battery, negligence, professional negligence, etc.)</li> </ul>
<b>Proof</b>	By preponderance of evidence; adjudicated by a judge or jury; a jury decision need not be unanimous
<b>CRIMINAL LAW</b>	
<b>Function/Goal</b>	To regulate individual conduct for the good of society as a whole; to punish defendant (if found guilty)
<b>Types</b>	<ul style="list-style-type: none"> <li>• Felonies (serious crimes such as manslaughter, murder, rape, etc.)</li> <li>• Misdemeanors (lesser offences such as simple battery, first DUI offense, violation of Occupational Therapy Practice Act, etc.)</li> <li>• Infractions (petty-level crimes usually not punishable by imprisonment, such as speeding, parking violations, etc.)</li> </ul>
<b>Proof</b>	Beyond a reasonable doubt; jury decision must be unanimous
(University of Minnesota Open Library, 2018)	

## Civil Law and Occupational Therapy Practice

**(The information in this section is in no way intended to be a substitute for professional legal advice.)**

Civil law is concerned with harm against individuals, including breaches of contracts and torts. A civil action is considered a wrong between individuals, such as defamation of character. Its purpose is to make right the wrongs and injuries suffered by individuals, usually by assigning monetary compensation.

A **contract** is a legally binding agreement between two or more parties. Breaking such an agreement—such as a written employment agreement between a healthcare agency and an occupational therapist—is called a breach of contract. Both parties to a contract must do exactly what they agreed to do or risk legal action being taken against them. For that reason, it is vital that each party clearly understands all the terms of a contractual agreement before signing it.



A **tort** is a wrong against an individual. Torts may be classified as either intentional or unintentional.

- Intentional torts include assault and battery, false imprisonment, defamation of character, invasion of privacy, fraud, and embezzlement.
- Unintentional torts are commonly referred to as *negligence*. In order to be successfully claimed, negligence must consist of four elements: duty, breach of duty, causation, and damages.

(Stanford & Connor, 2020)

## INTENTIONAL TORTS

**Assault** is doing or saying anything that makes people fear they will be touched without their consent. The key element of assault is fear of being touched, for example, threatening to force a resistant patient to get out of bed against their will. **Battery** is touching a person without consent, whether or not the person is harmed. For battery to occur, unapproved touching must take place. The key element of battery is lack of consent.

Examples of assault and battery in a healthcare context are:

- Forcing a client to submit to treatments for which they have not consented orally, in writing, or by implication
- Moving a protesting client from one place to another
- Forcing a client to get out of bed to walk
- In some states, performing blood alcohol tests or other tests without consent

**False imprisonment** is a tort offense that involves restraining or confining a competent person against their will. Some examples of false imprisonment are:

- Restraining (physically, pharmacologically, etc.) a client for non-medically approved reasons
- Detaining an unwilling client in the hospital, even after the client insists on leaving
- Detaining a person who is medically ready for discharge for an unreasonable period of time

(Louisiana State University Law Center, 2018)

**Defamation of character** is communication that is untrue and injures the good name or reputation of another or in any way brings that person into disrepute. This includes clients as well as other healthcare professionals. When the communication is spoken, it is called **slander**; when it is written, it is called **libel**. Prudent healthcare professionals: 1) record only objective data about clients, such as data related to treatment plans, and 2) follow agency policies and



approved channels when the conduct of a colleague endangers client safety (Stanford & Connor, 2020).

**Invasion of privacy** includes intruding into aspects of a patient's life without medical cause. Invasion of privacy is a legal issue separate from violations of HIPAA's privacy rule due to the fact that invasion of privacy goes beyond protected health information.

**Fraud** includes deceitful practices in healthcare and can include the following:

- False promises
- Upcoding (such as billing group treatment sessions as individual therapy)
- Insurance fraud

**Embezzlement** is the conversion of property that one does not own for their own use, such as when an employee appropriates funds from a business's bank account (Stanford & Connor, 2020).

## **UNINTENTIONAL TORTS (NEGLIGENCE)**

It is the legal responsibility of all healthcare professionals to uphold a certain standard of care. This standard is generally measured against an established norm of what other similarly trained professionals would do if presented with a comparable situation.

### ***Components of Negligent Care***

In the case of negligent care, four components must be present in order to establish a successful unintentional tort claim:

- **Duty** is established when a healthcare professional agrees to treat a patient.
- **Breach of duty** occurs when a healthcare professional fails to act in a manner consistent with what another member of that health profession would prudently do in a similar situation. Breaches fall under three general categories:
  - Misfeasance occurs when a mistake is made (e.g., administering a treatment to the wrong patient unknowingly because the patient had the same or similar name).
  - Nonfeasance occurs when a healthcare professional fails to act (e.g., not calling the paramedics when an OT initiates a home care evaluation and finds the patient lying on the floor after sustaining a fall; or not reporting signs of abuse or neglect for a client currently receiving services).
  - Malfeasance occurs when the negligence action involves questionable intent (e.g., by physically pulling a resistant patient



from bed by their wrists instead of using a gait belt, thereby causing bruises on the patient's wrist).

- **Causation** requires that an injury of ill-effect to the patient must be proven to have been a direct result of the action (or lack of action) taken by the healthcare professional.
- **Damages** refers to the actual injuries inflicted by the accused for which compensation is owed.  
(Stanford & Connor, 2020)

## ETHICS AND OCCUPATIONAL THERAPY PRACTICE

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Ethical action goes beyond rote compliance with principles and is a manifestation of moral character and mindful reflection. It is a commitment to benefit others, to virtuous practice of artistry and science, to genuinely good behaviors, and to noble acts of courage. Recognizing and resolving ethical issues is a systematic process that includes analyzing the complex dynamics of situations, weighing consequences, making reasoned decisions, taking action, and reflecting on outcomes (AOTA, 2020).

The terms *laws* and *ethics* are distinct from one another, although some individuals mistakenly assume they mean the same thing. In the United States, **law** refers to any rule that, if broken, “subjects the person(s) who break the rule to criminal punishment or civil liability” (The Free Dictionary, n.d.a). Occupational therapists and occupational therapy assistants must practice according to the laws that govern their society as well as their occupational therapy practice.

**Ethics** refers to a system or set of moral principles that govern behavior, including job performance. Ethics includes beliefs about the “rightness” and “wrongness” of actions as well as the “goodness” and “badness” of motives and outcomes (The Free Dictionary, n.d.-b). Occupational therapists and occupational therapy assistants must practice according to the ethical principles of their profession as described in the *AOTA Occupational Therapy Code of Ethics* (see below).

### Occupational Therapy Code of Ethics

Codes of ethics are formal statements that set forth standards of ethical behavior for members of a group. In fact, one of the hallmarks of a profession is that its members subscribe to a code of ethics. Every member of a profession is expected to read, understand, and abide by the ethical standards of its occupation.

In order to assert the values and standards expected of members of the profession of occupational therapy, the American Occupational Therapy Association (AOTA) developed the *Occupational Therapy Code of Ethics* (the “Code”). As stated in its preamble:



The Code is an AOTA Official Document and a public statement tailored to address the most prevalent ethical concerns of the occupational therapy profession. It outlines Standards of Conduct the public can expect from those in the profession. It should be applied to all areas of occupational therapy and shared with relevant stakeholders to promote ethical conduct. The Code serves two purposes:

1. It provides aspirational Core Values that guide members toward ethical courses of action in professional and volunteer roles.
2. It delineates enforceable Principles and Standards of Conduct that apply to AOTA members.

(AOTA, 2020)

## CORE VALUES

The Code describes seven long-standing Core Values that guide the ethical conduct of occupational therapy practitioners and provide a foundation to guide their interactions with others. These values should form the basis of determining the most ethical course of action. They include:

1. **Altruism:** Demonstrating unselfish concern for the welfare of others
2. **Equality:** Treating all people with fairness and impartiality
3. **Freedom:** Valuing each person's right to exercise autonomy and demonstrate independence, initiative, and self-direction
4. **Justice:** Maintaining a goal-directed and objective relationship with recipients of service and upholding moral and legal principles and the legal rights of recipients of service
5. **Dignity:** Valuing, promoting, and preserving the inherent worth and uniqueness of each person while respecting a person's social and cultural heritage and life experiences
6. **Truth:** Being faithful to facts and reality as demonstrated by accountable, honest, forthright, accurate, and authentic attitudes and actions
7. **Prudence:** Governing and disciplining oneself through the use of reason, and valuing judiciousness, discretion, vigilance, moderation, care, and circumspection

(AOTA, 2020)



## PRINCIPLES

The Principles guide ethical decision making and inspire occupational therapy personnel to act in accordance with the highest ideals. These Principles are not hierarchically organized. At times, conflicts between competing principles must be considered in order to make ethical decisions. These Principles may need to be carefully balanced and weighed according to professional values, individual and cultural beliefs, and organizational policies.

1. **Beneficence:** Occupational therapy personnel shall demonstrate a concern for the well-being and safety of the recipients of their services.
2. **Nonmaleficence:** Occupational therapy personnel shall refrain from actions that cause harm.
3. **Autonomy:** Occupational therapy personnel shall respect the right of the individual to self-determination, privacy, confidentiality, and consent.
4. **Justice:** Occupational therapy personnel shall promote fairness and objectivity in the provision of occupational therapy services.
5. **Veracity:** Occupational therapy personnel shall provide comprehensive, accurate, and objective information when representing the profession.
6. **Fidelity:** Occupational therapy personnel shall treat clients, colleagues, and other professionals with respect, fairness, discretion, and integrity.  
(AOTA, 2020)

## STANDARDS OF CONDUCT

The Code includes a comprehensive set of Standards of Conduct, which are grouped into seven sections:

1. **Professional Integrity, Responsibility, and Accountability:** Occupational therapy personnel maintain awareness and comply with AOTA policies and official documents, current laws and regulations that are relevant to the profession of occupational therapy, and employer policies and procedures.
2. **Therapeutic Relationships:** Occupational therapy personnel develop therapeutic relationships to promote occupational well-being in all persons, groups, organizations, and society, regardless of age, gender identity, sexual orientation, race, religion, origin, socioeconomic status, degree of ability, or any other status or attributes.
3. **Documentation, Reimbursement, and Financial Matters:** Occupational therapy personnel maintain complete, accurate, and timely records of all client encounters.
4. **Service Delivery:** Occupational therapy personnel strive to deliver quality services that are occupation based, client centered, safe, interactive, culturally sensitive, evidence based, and consistent with occupational therapy's values and philosophies.



5. **Professional Competence, Education, Supervision, and Training:** Occupational therapy personnel maintain credentials, degrees, licenses, and other certifications to demonstrate their commitment to develop and maintain competent, evidence-based practice.
6. **Communication:** Whether in written, verbal, electronic, or virtual communication, occupational therapy personnel uphold the highest standards of confidentiality, informed consent, autonomy, accuracy, timeliness, and record management.
7. **Professional Civility:** Occupational therapy personnel conduct themselves in a civil manner during all discourse. Civility “entails honoring one’s personal values while simultaneously listening to disparate points of view” (Kaslow & Watson, 2016). (AOTA, 2020)

(A complete list of the Standards of Conduct can be found in the *Occupational Therapy Code of Ethics*. See “Resources” at the end of this course for a link to that document.)

## Ethics Violations

The *Enforcement Procedures for the AOTA Occupational Therapy Code of Ethics* articulates the procedures followed by the Association’s Ethics Commission (EC) as it carries out its duties to enforce the Code. A primary goal of these Enforcement Procedures is to ensure objectivity and fundamental fairness to all individuals who may be parties in an ethics complaint. The Enforcement Procedures help ensure compliance with the Code’s enforceable Principles and Standards of Conduct that apply to Association members (AOTA, 2019).

## Ethical Dilemmas

An ethical dilemma is a conflict between choices that, no matter what choice is made, some ethical principle will be compromised. Resolution of ethical dilemmas requires careful evaluation of all the facts of a case, including applicable laws, consultation with all concerned parties, and appraisal of the decision makers’ ethical philosophies (Hegde, 2019).

In order to resolve an ethical dilemma in the best possible way, several steps should be taken. These include:

1. Gather all relevant data; include all options and opinions.
2. Identify the existence of an ethical issue. Such issues typically occur when dealing with “right vs. wrong” and “good vs. bad” concepts.
3. Identify the person(s) involved in the dilemma and their concerns, conflicts, and how they will be affected by decisions made.
4. Identify all options for the resolution of the ethical dilemma.
5. Analyze options and determine what solutions best facilitate resolution.



6. Determine a course of action.
7. Review how the involved persons feel about the proposed course of action.
8. Take action.  
(Mintz, 2019)

## CONCLUSION

The Florida laws related to occupational therapy are in place to define the Board of Occupational Therapy that then, along with the law itself, sets the standards of competent occupational therapy practice and standards for promoting patient safety. By so doing, the mission of the Board of Occupational Therapy to promote and protect the health of citizens through safe occupational practice is achieved.



## RESOURCES

CE Broker

<http://www.cebroke.com>

Florida Administrative Code, Division 64B11, Board of Occupational Therapy

<https://www.flrules.org/gateway/Division.asp?DivID=302>

Florida Board of Occupational Therapy

<http://floridasoccupationaltherapy.gov>

Florida Occupational Therapy Act (F.S., Title XXXII, Ch. 468, Part III)

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0400-0499/0468/0468PartIIIContentsIndex.html&StatuteYear=2020&Title=%2D%3E2020%2D%3EChapter%20468%2D%3EPart%20III](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0468/0468PartIIIContentsIndex.html&StatuteYear=2020&Title=%2D%3E2020%2D%3EChapter%20468%2D%3EPart%20III)

Florida Occupational Therapy Association

<http://www.flota.org>

Florida Statutes, Chapter 456, Health Professions and Occupations: General Provisions

[http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0400-0499/0456/0456.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0456/0456.html)

National Board for Certification in Occupational Therapy

<http://www.nbcot.org>

Occupational Therapy Code of Ethics

<https://doi.org/10.5014/ajot.2020.74S3006>



Professionals Resource Network  
<http://flprn.org>

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## TEST

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[ [Take the test online at wildirismedicaleducation.com](https://www.wildirismedicaleducation.com) ]

1. Which is a **true** statement about the Florida Board of Occupational Therapy?
  - a. It oversees and enforces safe occupational therapy practice.
  - b. It has no legal authority under the Florida Occupational Therapy Practice Act.
  - c. It is exempt from regulating occupational therapy assistants.
  - d. It is funded by taxpayer dollars.
  
2. Which task is **unlawful** for an occupational therapist to delegate to an occupational therapy aide?
  - a. Taking the patient's pulse and blood pressure
  - b. Scheduling the patient's next appointment
  - c. Transporting the patient to a hospital room on a different floor
  - d. Setting up the rehab gym for a group exercise program
  
3. When an occupational therapy assistant (OTA) is asked to perform tasks or provide care beyond basic occupational therapy practice, such as using prescription devices, according to Florida rules for OTAs, the OTA:
  - a. May be trained to make a diagnosis for treatment with a prescription device.
  - b. Must wait for four years to receive training on prescription devices.
  - c. Must obtain additional education and training in order to use prescription devices.
  - d. Does not need special training to use prescription devices if working under OT supervision.
  
4. An occupational therapist (OT) of eight years has forgotten to apply for license renewal by the deadline. Which is the OT's **correct** action?
  - a. Continue practicing as soon as a \$100 penalty is paid.
  - b. File a report about the lapse in licensure with the Department of Health.
  - c. Continue practicing while reapplying for the license.
  - d. Stop practicing immediately until the license has been renewed.
  
5. All of the following are stated purposes for disciplinary actions against occupational therapists who violate Florida laws governing their practice, **except**:
  - a. Deterring others from committing such violations.
  - b. Offering violators opportunities for rehabilitation.
  - c. Punishing violators and deterring future violations.
  - d. Generating revenue from fines to fund the work of the Board.



- 6.** All of the following elements must be present for a successful claim of negligence, **except**:
- A duty owed by one party to another.
  - A breach of duty to perform professionally.
  - Actual damages inflicted by the accused.
  - Proof that the accused acted intentionally.
- 7.** When an occupational therapist refuses to provide treatment based on a client's sexual orientation, the therapist is violating which Core Value of the Occupational Therapy Code of Ethics?
- Altruism
  - Equality
  - Truth
  - Prudence
- 8.** When an occupational therapist accepts a patient's decision to refuse therapy that may improve the patient's functional ability, the therapist is honoring the ethical principle of:
- Beneficence.
  - Confidentiality.
  - Justice.
  - Autonomy.

