

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 43. ARIZONA BOARD OF OCCUPATIONAL THERAPY EXAMINERS

PREAMBLE

- 1. Sections Affected**

R4-43-101	Amend
R4-43-401	Amend
R4-43-402	Amend
R4-43-403	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-3404(A)(4)
Implementing statute: A.R.S. § 32-3441(D)
- 3. The effective date of the rules:**

January 25, 2000
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 4 A.A.R. 1973, July 24, 1998
Notice of Rulemaking Docket Opening: 5 A.A.R. 1320, May 7, 1999
Notice of Proposed Rulemaking: 5 A.A.R. 1358, May 14, 1999
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Cedes Bruno
Address:	5060 North 19th Avenue, Suite 216 Phoenix, Arizona 85015
Telephone:	(602) 589-8352
Fax Number:	(602) 589-8354
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Board is revising four of its rules: R4-43-101, Definitions; R4-43-401, Supervision of Occupational Therapy Assistants; R4-43-402, Supervision of Occupational Therapy Aides and other Unlicensed Personnel; and R4-43-403 Designation of Title. Rules R4-43-401, Supervision of Occupational Therapy Assistants, and R4-43-402, Supervision of Occupational Therapy Aides and other Unlicensed Personnel are being amended for clarification. The Arizona Occupational Therapy industry is interpreting these two rules beyond the intended scope of practice. The amended rules leave less flexibility for personal interpretation. Rules R4-43-101, Definitions and R4-43-403, Designation of Title are being amended to conform with revisions to R4-43-401 and R4-43-402.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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9. The summary of the economic, small business, and consumer impact:

There is little or no cost impact on small business. The Board will absorb costs for reprinting and distribution of the amended rules to licensees.

10. A description of changes between the proposed rule, including supplemental notice, and final rule (if applicable):

The changes between the proposed rules and the final rules were minimal. Various grammatical and format changes were made to improve clarity and consistency, and the Board made technical changes suggested by the Office of the Secretary of State and the Governor's Regulatory Review Council staff.

R4-43-101(11)(c), (d), and (e)

Changed "direct" contact to "face-to-face" contact for routine, general, and minimal supervision. The Occupational Therapy community and the Board preferred the term face-to-face.

R4-43-403(3)

Deleted the definition of Occupational Therapy Student. The Board has no jurisdiction over students.

11. A summary of the principal comments and the agency responses to them:

The Board received several written comments. There were no specific arguments against the rule changes, but there were some suggestions regarding wording, all of which the Board took under consideration. (see attached table of comments and responses) The most significant comments came from the academic community seeking more guidance on the supervision of occupational therapy students performing fieldwork prior to licensing. The Board reviewed these comments at length and concluded the current statutes give the Board no jurisdiction over students. The Board deferred this topic for future consideration pending a statutory change.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section

R4-43-101. Definitions

ARTICLE 4. REGULATORY PROVISIONS

Section

R4-43-401. Supervision of Occupational Therapy Assistants

R4-43-402. Supervision of Occupational Therapy Aides and other Unlicensed Personnel

R4-43-403. Designation of Title

ARTICLE 1. GENERAL PROVISIONS

R4-43-101. Definitions

In addition to the definitions at A.R.S. § 32-3401, in this Chapter:

~~A.1.~~ "Facility of practice" means the principal location of ~~each an~~ agency or organization ~~for which the~~ where an occupational therapist or occupational therapy assistant practices occupational therapy.

~~B.2.~~ "Good moral character" means ~~the person an applicant~~ has not been convicted of a felony or a misdemeanor within 5 years ~~prior to before~~ application and ~~has~~ never been convicted of a felony or misdemeanor involving moral turpitude.

~~C.3.~~ "Health care professional" means ~~any a~~ person ~~who is~~ certified as an Occupational Therapist or an Occupational Therapy Assistant by the American Occupational Therapy Certification Board or the National Board for Certification in Occupational Therapy, ~~Incorporated Inc.~~ or any ~~health care~~ medical professional ~~duly licensed pursuant to by~~ A.R.S. Title 32 or the equivalent if licensed outside of Arizona.

4. "Immediate area" means an occupational therapist is on the same floor and within 80 feet of an occupational therapy aide providing services to an occupational therapy patient.

~~D.5.~~ "Immorality or misconduct that tends to discredit the occupational therapy profession" means:

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- 1-a. Engaging in false advertising ~~regarding~~ of occupational therapy services.
 - 2-b. Engaging in assault and battery of a patient, ~~or~~ client, or other person; with whom the licensee has a professional relationship.
 - 3-c. ~~Engaging in or attempting to falsify~~ Falsifying patient or client documentation or reports ~~or intentionally making false reports.~~
 - 4-d. Failing to provide appropriate supervision of an occupational therapy assistants or unlicensed personnel ~~practicing or performing~~ occupational therapy.
 - 5-e. Failing to provide a comprehensive occupational therapy service ~~that is compatible with current research and within an ethical and professional framework standards,~~ or failing to provide professional occupational therapy services based upon the an evaluation of the patient or client needs and appropriate treatment procedures.
 - 6-f. Failing ~~or refusing~~ to document or maintain adequate patient treatment records, or failing to prepare patient or client reports within 30 days of service or treatment.
 - 7-g. Failing to renew a license while continuing to practice occupational therapy.
 - 8-h. ~~Falsely or fraudulently~~ claiming to have performed a professional service, charging for a service not rendered, or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.
 - 9-i. Obtaining a fee ~~by fraud, misrepresentation, or offering to refer or referring a patient or client for a referral fee, or other compensation from a 3rd party.~~ by fraud or misrepresentation.
 - 10-j. Sexually inappropriate conduct with a ~~current~~ client or patient, or with a former client or patient within 6 months after the ~~cessation or~~ termination of treatment.
 - 11-k. Signing a blank, undated, or unprepared prescription form.
 - 12-l. Using fraud, misrepresentation, or deception in assisting another person to obtain or attempt to obtain an occupational therapist or occupational therapy assistant license.
 - 13-m. ~~Violation~~ Violating of any federal ~~or state-law, state law,~~ or administrative rules, and or regulations applicable to concerning the practice of occupational therapy.
 - 14-n. ~~Violating the rules and or statutes involving concerning~~ the training of unlicensed occupational therapy personnel assisting with the practice of occupational therapy or requiring an unlicensed person to provide occupational therapy services for which they have not been trained without proper training.
- ~~E-6.~~ "Licensee" means a person licensed in Arizona as an occupational therapist or an occupational therapy assistant.
- ~~F-7.~~ "Occupational therapy aide," "unlicensed personnel," and "occupational therapy technician" mean a person who is not a licensed as an occupational therapist or occupational therapy assistant, who works working under the direct continuous supervision of a licensed occupational therapist, and assists in the practice of occupational therapy. The person's activities may require an understanding of occupational therapy, but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.
- ~~G-8.~~ "Physically present" means personally a supervising occupational therapist is present to observe the practice of occupational therapy.
- ~~H-9.~~ "Premise" "Premises" means the building and the surrounding property in which the occupational therapy is practiced.
- ~~I-10.~~ "Person" means the same as in A.R.S. § 41-1001.
11. "Supervision" means a collaborative process for the responsible periodic review and inspection of all aspects of occupational therapy services. The following levels of supervision are minimal. An occupational therapist may assign an increased level of supervision if necessary for the safety of a patient or client. The levels of supervision are:
- a. "Close supervision" means the supervising occupational therapist provides initial direction to the occupational therapy assistant and daily contact while on the premises.
 - b. "Continuous supervision" means the supervising occupational therapist is in the immediate area of the occupational therapy aide performing supportive services.
 - c. "General supervision" means the supervising occupational therapist has face-to-face contact with the occupational therapy assistant at least once every 30-calendar days on a per patient or client basis while on the premises, with the supervising occupational therapist available by telephone or by written communication.
 - d. "Minimal supervision" means the supervising occupational therapist has face-to-face contact with the occupational therapy assistant at least once every 30-calendar days while on the premises.
 - e. "Routine supervision" means the supervising occupational therapist has face-to-face contact with the occupational therapy assistant at least once every 15-calendar days on a per patient or client basis while on the premises, with the supervising occupational therapist available by telephone or by written communication.
12. "Supportive Services" means clerical and maintenance activities, preparation of work area or equipment, and delegated, routine aspects of an intervention session with a patient or client that require no adaptations by an occupational therapy aide.

ARTICLE 4. REGULATORY PROVISIONS

R4-43-401. Supervision of Occupational Therapy Assistants

- ~~A. The occupational therapist shall be responsible for the supervision of the occupational therapy assistant and the treatment of the patient. The supervising therapist need not be physically present or on the premises at all times when the occupational therapy assistant is performing the service. When the supervising therapist is not physically present, the supervising therapist must be available for telephonic consultation.~~
- ~~B. The occupational therapist shall be responsible for the evaluation of the patient and development of the patient's treatment plan. The occupational therapy assistant may contribute information from observations and standardized test procedures to the evaluation and the treatment plans.~~
- ~~C. The supervising occupational therapist shall determine the mode and extent of the communication between the supervising occupational therapist and the occupational therapy assistant. This determination shall be based on the competency and level of experience of the occupational therapy assistant and the patient's diagnosis and condition. At a minimum, every 30 days the occupational therapist and occupational therapy assistant shall meet and review:
 - 1. Patient's progress;
 - 2. Treatment rendered;
 - 3. Treatment plan.~~
- ~~D. The occupational therapist is responsible for maintaining written records documenting the meeting and the items discussed between the licensed occupational therapist and the occupational therapy assistant.~~
- ~~E. At a minimum, every thirty days, the occupational therapist shall observe and re-assess the patient's performance and make necessary modification to the treatment plan as needed when patient treatment has been delegated to an occupational therapy assistant.~~
- A. Only a licensed occupational therapist shall:
 - 1. Prepare an initial treatment plan, initiate or re-evaluate a client or patient's treatment plan, or authorize in writing a change of a treatment plan;
 - 2. Delegate duties to a licensed occupational therapy assistant, designate an assistant's duties, and assign a level of supervision; and
 - 3. Authorize a patient discharge.
- B. A licensed occupational therapy assistant shall not:
 - 1. Evaluate or develop a treatment plan independently;
 - 2. Initiate a treatment plan before a client or patient is evaluated and a treatment plan is prepared by an occupational therapist;
 - 3. Continue a treatment procedure appearing harmful to a patient or client until the procedure is reevaluated by an occupational therapist; or
 - 4. Continue or discontinue occupational therapy services unless the treatment plan is approved or re-approved by a supervising occupational therapist.
- C. A supervising occupational therapist shall supervise a licensed occupational therapy assistant as follows:
 - 1. Not less than routine supervision if the occupational therapy assistant has less than 12 months work experience in a particular practice setting or with a particular skill.
 - 2. Not less than general supervision if the occupational therapy assistant has more than 12 months but less than 24 months of experience in a particular practice setting or with a particular skill.
 - 3. Not less than minimal supervision if an occupational therapy assistant has more than 24 months of experience in a particular practice setting or with a particular skill.
 - 4. Increased level of supervision, if necessary, for the safety of a patient or client.

R4-43-402. Supervision of Occupational Therapy Aides and other Unlicensed Personnel

- ~~A. The occupational therapist shall be responsible for the on the job training and supervision of the occupational therapy aide and any other unlicensed personnel. Written records shall be maintained of the on the job training and specific duties that have been delegated to the occupational therapy aide by the supervising occupational therapist.~~
- ~~B. The occupational therapist is responsible for and may delegate specific occupational therapy related tasks to an occupational therapy aide. The supervising occupational therapist shall provide initial direction and periodic inspection of the tasks being performed. The nature of the tasks shall be limited to duties that support treatment, including transportation, preparation of materials, setup of equipment, arrangement of therapy schedules and aiding the occupational therapist or certified occupational therapy assistant who is actively providing individual or group treatment.~~
- ~~C. The supervising occupational therapist shall be on the premise during any patient related activity performed by unlicensed personnel. The supervising occupational therapist shall remain in that part of the premise where any occupational therapy related activity is being conducted by unlicensed personnel. The supervising occupational therapist shall be available to provide direction and supervision to the aide and other unlicensed personnel at all times. The supervision of unlicensed personnel shall be daily and periodic throughout the day.~~

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- A. An occupational therapy aide shall not provide occupational therapy services in any setting. However, an occupational therapy aide may provide supportive services assigned by an occupational therapist or occupational therapy assistant after the aide is specifically trained to provide the supportive services by an occupational therapist.
- B. An occupational therapy aide shall receive continuous supervision.
- C. An occupational therapy aide shall not act independently.
- D. An occupational therapy aide shall not perform the following tasks:
 - 1. Evaluate a client or patient;
 - 2. Prepare a treatment plan;
 - 3. Make entries in client or patient record regarding client or patient status;
 - 4. Develop, plan, adjust, or modify treatment procedures;
 - 5. Interpret referrals or prescriptions for occupational therapy services;
 - 6. Continue a task if there is a change in the client's or patient's condition;
 - 7. Perform any task without adequate training or skills; and
 - 8. Perform any task requiring licensure under A.R.S. § 32-3401-3445.

R4-43-403. Designation of Title

~~On official patient records or third-party reimbursement forms, title shall be designated as follows: An unlicensed person who works in a facility of practice shall use 1 of the following titles:~~

- ~~1. A person who is practicing under a limited permit shall use the term "~~limited permit~~" "Limited Permit" following his or her the person's name.~~
- ~~2. The occupational therapist supervisor of an occupational therapy aide shall require the aide to use the abbreviation of "~~OT Aide~~". An occupational therapy aide shall use the term "OT Aide" following the occupational therapy aide's name.~~
- ~~3. An occupational therapy student enrolled in an accredited program in occupational therapy shall use the term "OT Student" following the student's name.~~