

## **21 NCAC 38 .0304            GROUNDS FOR LICENSE DENIAL OR DISCIPLINE**

(a) In addition to the conduct set forth in G.S. 90-270.76, the Board may deny, suspend, or revoke a license, or impose probationary conditions on a license, upon any of the following grounds:

- (1) writing a check given to the Board in payment of required fees which is returned unpaid;
- (2) allowing an unlicensed occupational therapist or occupational therapy assistant to practice under the licensee's supervision or control;
- (3) making any false statement or giving any false information in connection with an application for a license or renewal of a license or any investigation by the Board or the Board's designee;
- (4) committing a crime the circumstances of which relate to the occupational therapy profession;
- (5) violating any federal or state statute or rule which relates to the occupational therapy profession;
- (6) practicing occupational therapy while the licensee's ability to practice was impaired by alcohol or other drugs or a physical or mental disability or disease;
- (7) engaging in sexual misconduct. For the purposes of this Paragraph, sexual misconduct includes:
  - (A) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person;
  - (B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients;
- (8) obtaining or attempting to obtain payment by fraud or deceit;
- (9) violating any Order of the Board;
- (10) failing to properly make the disclosures required by 21 NCAC 38 .0305;
- (11) abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of care;
- (12) recording or communicating false or misleading data, measurements or notes regarding a patient;
- (13) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (14) practicing or offering to practice beyond the scope permitted by law;
- (15) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (16) performing, without supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional;
- (17) harassing, abusing, or intimidating a patient either physically or verbally;
- (18) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (19) promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party;
- (20) delegating professional responsibilities to a person when the licensee delegating the responsibilities knows or has reason to know that the person is not qualified by training, by experience, or by licensure to perform the responsibilities;
- (21) billing or charging for services or treatments not performed; or
- (22) making treatment recommendations based on the extent of third party benefits instead of the patient's condition.

(b) A licensee has been incompetent in practice under G.S. 90-270.76(a)(5) if the licensee has engaged in conduct which evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of occupational therapy.

(c) When a person licensed to practice occupational therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Occupational Therapy may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Occupational Therapy Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

*History Note:* Authority G.S. 90-270.69(4); 90-270.76;  
Eff. July 1, 1985;  
Amended Eff. January 1, 2009; July 1, 2007; May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.