REPORT OF THE NEBRASKA STATE BOARD OF HEALTH
On the Occupational Therapy Proposal
(January 27, 2003)

The reviews of the Board of Health on credentialing proposals are always the second stage of a three stage review process defined in the credentialing review statute **(Section 71: 6201- 6230)** that begins with the review of the technical committee and culminates with the review of the Director of the Health and Human Services Department of Regulation and Licensure. The Board's review is usually a two-step process wherein the Credentialing Review Committee of the Board meets one time to review the record of the review to that point in time, listen to any new testimony from interested parties, and take formal action on the four criteria of the credentialing review statute to formulate their advice to the full Board of Health. However, during the course of the Board's review it became clear that the usual two-step process would not be sufficient to deal with all of the issues generated by the review of the occupational therapy proposal. The Board members found that it would be necessary to allow the applicant group more time than what the usual meeting format would allow to respond to Board concerns about the proposal.

The outcome of the Board's review was a positive recommendation on the proposal. The Board members recommended approval of a version of this proposal that was significantly changed since it was first submitted on June 20, 2002, and which now includes detailed provisions on modalities as well as new language on occupational therapy services and practice.

The Credentialing Review Committee of the Board of Health met three times to review the issues surrounding the proposal for mandatory licensure of occupational therapists. These meetings were held on November 18, 2002, January 9, 2003, and January 27, 2003. **Section "A" (Beginning on Page 1 of this report)** describes the discussions that occurred on November 18. **Section "B" (Beginning on Page 4 of this report)** describes the discussions that occurred on January 9. **Section "C" (Beginning on Page 8 of this report)** describes the discussions and actions taken at the morning meeting on January 27. **Section "D" (Page 12 of this report)** describes the actions taken on the proposal by the full Board of Health during the afternoon session on January 27. **Appended materials (Pages 13 through 21 of this report)** are provided in order to clarify the specific changes made in the proposal by the applicant group between November 18, 2002 and January 27, 2003.

Section A: November 18, 2002 Meeting of the Credentialing Review Committee

Committee chairperson Vaughan initiated the committee's review of the occupational therapy proposal by asking Amy Lamb, OTR., the applicant group spokesperson in attendance at the meeting, to present comments on the proposal to the committee members. Amy Lamb began her comments by thanking the committee members for granting the applicant group's request that the formulation of their advice on the proposal

be deferred until January. This applicant spokesperson then proceeded with her remarks on the issues under review by stating the reasons why the applicant group is seeking mandatory licensure. These reasons were identified as follows: to protect the public, to provide recourse from negligent practice, to clarify the scope of practice, to provide greater assurance that occupational therapy services are covered by third-party payers and thereby make these services more accessible to the public. The applicant spokesperson went on to state that those who need these services rely on the credentialing processes of the state to protect them from harm. The applicant spokesperson stated that the proposal does not represent a change in the scope of practice, but is rather an attempt to clarify it.

Applicant spokesperson Lamb commented that her group realizes that their proposal needs clarification pertinent to its scope of practice provisions, and commented that specific guidelines pertinent to the functions and services provided by the profession including any modalities used by occupational therapists are needed in order to make it clear what are the parameters of occupational therapy practice. This spokesperson added that her group would generate these guidelines for the members of the committee in advance of the January meeting. **A summary of the original scope of practice is contained in <u>Appendix "A"</u> beginning on page 13 of this report.**

Applicant spokesperson Lamb commented that her group also intends to clarify the role delineation between occupational therapists and occupational therapy assistants prior to the January meeting. Committee member Sam Augustine, RP, commented that this is an area of concern particularly as it relates to the use of modalities by occupational therapy assistants.

Committee chairperson Vaughan raised the question of whether such guidelines should be in statute or in rules and regulations. Agency staff person Ron Briel responded that the agency's view is that these guidelines need to be in statute because of the concerns that have been raised about what services occupational therapists should provide and what their education and training is to provide these services.

Committee chairperson Vaughan commented that any guidelines developed to clarify the proposal need to address the role that occupational therapists play in the measurement and assessment of eye problems in the school system, and that their role must not conflict with the scope of practice of licensed eye care professionals. Spokesperson Lamb agreed, and commented that part of the problem with the current proposal is that it is based on the national model practice act for occupational therapy and that this wording is often very broad and all-encompassing.

Committee chairperson Vaughan then asked whether there were other interested parties who wanted to make comments on the proposal. Mark Longacre, PT, introduced himself and indicated that he would like to present comments on the proposal on behalf of the Nebraska Physical Therapy Association. This spokesperson stated that his organization is generally supportive of the applicant group's goal of mandatory licensure for occupational therapists, but that there are significant concerns regarding the proposed scope of practice. This spokesperson commented that there is a need for clarification not

only of what it is that occupational therapists would be allowed to do under the terms of this proposal, but a need for clarification of the educational components of the proposal as well. Another spokesperson for the Nebraska Physical Therapy Association, Pat Hageman, PT, commented that her group has a concern with the way occupational therapy education pertinent to modalities is documented and monitored. This spokesperson also commented that the baseline education and training of occupational therapists does not include as part of the curriculum anything pertinent to physical modalities. This spokesperson commented that this situation creates concerns regarding the ability of the graduates of occupational therapy programs to be able to use such modalities safely and effectively. This concluded the presentation of the Nebraska Physical Therapy Association.

Committee chairperson Vaughan asked whether any other interested parties wanted to present comments to the committee members. There being none, chairperson Vaughan asked for comments from the committee members. Committee member Leslie Spry, MD, asked the applicants to discuss the training occupational therapists receive to use physical modalities, and how many practitioners use physical modalities. Applicant group spokesperson Amy Lamb responded by stating that occupational therapists who provide hand therapy are examples of occupational therapists who use physical modalities. Spokesperson Lamb went on to state that occupational therapists learn physical modalities after the completion of their baseline education and training, and that occupational therapy education programs do not provide course work in these areas. Committee member Spry responded that the absence of course work on physical modalities in the basic curriculum of occupational therapy education is a concern, and commented that the profession should consider either integrating educational programs on modalities into the curriculum or eliminating modalities from their proposed scope or practice entirely. Spokesperson Lamb responded that the applicant group intends to develop new education and training guidelines pertinent to modalities to address these concerns, but commented that the ability of the applicant group to make changes in occupational therapy education is of course limited.

Committee member Spry continued by asking the applicants to discuss how specialty certification and advanced training for specialty certification currently occurs in occupational therapy. Spokesperson Lamb responded by stating that occupational therapists can specialize in geriatrics, hand therapy, and pediatrics, for example, and that a candidate must work under supervision in a specialty area for five years before they are eligible to take a specialty certification exam. Committee member Spry responded that the exact nature of this training is not clear, and commented that concerns remain regarding how this training is received, how it is documented, and whether it conforms to appropriate standards. Committee chairperson Vaughan then commented that the current process for training pertinent to specialty certification lacks an academic component, and that this is needed as a foundation for any specialty certification in a health care profession. Steve Wooden, chairperson of the State Board of Health, asked the applicants whether or not their profession is heading in the direction of a more standardized approach to preparing their practitioners for advanced practice. Spokesperson Lamb

responded that occupational therapy is heading in the direction of a more standardized approach to preparing practitioners for advanced practice.

Committee member Dennis Hirschbrunner, PE, asked if all of the suggested changes to the proposal were made, would the result of these changes be a different proposal than the one now being reviewed, and, if so, would this make it necessary to start the credentialing review process for the proposal all over again? Agency staff person Briel responded that the new provisions pertinent to guidelines currently under discussion can be characterized as clarifications of the proposal rather than as comprising a different proposal, and that the review can continue to move forward.

The committee members will hold a meeting in January to formulate their advice to the full Board on the proposal. The members of the full Board will formulate their recommendations on the proposal during their January 27, 2002 bimonthly meeting.

Section B: January 9, 2003 Meeting of the Credentialing Review Committee

The members of the Board's Credentialing Review Committee met on January 9 to review additional information from the applicant group and to present advice to the full Board on the applicants' proposal.

Committee chairperson Vaughan asked Amy Lamb, OTR, the applicant group spokesperson at the meeting, to present testimony on the proposal. Amy Lamb submitted documents to the committee members which consisted of additional changes to the proposed scope of practice for occupational therapy. Spokesperson Lamb stated that the changes were intended to address concerns raised by the committee members at the November 18 meeting regarding the utilization of physical modalities by occupational therapists, the need for clarification of the role occupational therapists play in the school system pertinent to the identification of vision problems of children, and the need for clarification of the role of occupational therapy assistants.

Pertinent to the use of physical modalities by occupational therapists, the documentation submitted by spokesperson Lamb defined the following modalities as part of occupational therapy scope of practice:

1) "Superficial thermal agents" as adjuncts to occupational therapy treatment regimens. The practitioner must pass an examination on these modalities upon completion of a training course.

2) "Deep thermal agents" as adjuncts to occupational therapy treatment regimens. The practitioner must pass an examination in the use of ultrasound and phonophoresis upon completion of a training course.

3) "Electro-therapeutic agents" as adjuncts to occupational therapy treatment regimens. The practitioner must pass an examination in the use of these modalities upon completion of a sixteen-hour training course.

Spokesperson Lamb then commented on the role occupational therapists play in the identification of vision problems of students in school systems. This spokesperson submitted documentation which stated that occupational therapy practice as regards vision care involves the following:

1) Evaluation of the visual perceptual system to identify deficiencies in functional performance.

2) The design of practical short-term interventions which increase independence in daily living activities.

3) The measurement of improvement as regards a particular vision problem of a student is done by observing the extent of improvement in student performance.

The documentation pertinent to eye care issues went on to state that occupational therapy practice does not include the following:

1) The diagnosis of eye diseases or conditions.

2) The prescription of specific eye exercises, devices, or the implementation of eye training.

Spokesperson Lamb then commented on changes that were made by her group pertinent to the role of occupational therapy assistants. Provisions were added to ensure that these practitioners would provide their services under direct supervision of occupational therapists. Changes were made to the section on referral provisions to clarify that the public has direct access to occupational therapists.

Committee member Hoover commented that the revised language on referrals seemed to indicate that an occupational therapy assistant could take a referral, and asked whether or not that was the intent of the applicant group. Applicant spokesperson Lamb responded by stating that it is not the intention of the applicant group that these practitioners take referrals, and that her group would change the wording of the referral section to make this clear.

Committee chairperson Vaughan then asked what the significance is of the requirement that written referrals must be made within fourteen days of an initial consultation, and whether there is a rationale for this time frame, or whether it is arbitrary. Applicant spokesperson Lamb responded by stating that there is a need to establish a deadline for this process and fourteen days seemed to be a reasonable amount of time. Chairperson Vaughan responded that there is a need for a deadline, but that it might be advisable to

extend it somewhat, and suggested that thirty days might be more optimal. Applicant spokesperson Lamb indicated that the proposal would be modified to make this suggested change.

Committee member Hoover then asked the applicant spokesperson why the proposal needs to have referral provisions if the public has direct access to providers. Spokesperson Lamb responded that there certain services programs wherein referral procedures are needed. Committee member Sam Augustine then suggested several changes in the wording of the referral section to make it clearer when referrals are indicated. The applicants indicated that these changes would be made.

Applicant spokesperson Lamb then commented on new language added to the proposal consisting of guidelines on the utilization and training for physical modalities. Representative Lamb presented an overview of the changes, and then took questions on the new language. Committee member Augustine commented on language pertinent to "service competency" and advised the applicants to reword the language on delegation so as to ensure that a task is not delegated if there are concerns about the abilities of the person to whom the task would be delegated. Committee member Hoover then commented that this concern should be a matter of common sense, and advised the applicants that it would be best if they not raise the issue at all. Chairperson Vaughan agreed with committee member Hoover, and the applicant representative indicated that her group would delete this language by deleting the last sentence of the definition of "service competency."

Pertinent to the new language on physical modalities, applicant spokesperson Lamb commented that separate certifications would be required for each of the numbered items listed as modalities. Pertinent to electrotherapeutic agents, committee member Augustine asked why the number of minimum required didactic hours was set at sixteen hours rather than twelve hours, for example. Applicant spokesperson Lamb responded that her group felt that this modality required additional hours beyond that provided for other modalities, and that sixteen hours seemed to be the appropriate amount of time given the nature of this modality.

Committee member Augustine suggested that the applicants insert language that would ensure that occupational therapy assistants are not delegated tasks associated with evaluation, making treatment plans, or formulating treatment goals that involve physical agent modalities. The applicant spokesperson indicated that this would be done. Committee member Hoover then asked what the term "direct supervision" means in the context of the OT / OTA relationship. The applicants responded that this term means the same as "on site." Committee member Augustine commented that this term means "line-of-site" in the context of some other health professions.

Chairperson Vaughan then asked the applicant spokesperson to comment further on the role that occupational therapists play in identifying students who have problems with "low vision," and indicated that he wanted to know where in occupational therapy scope of practice this subject is covered. Amy Lamb then introduced Pat Gromak, OT, for the

purpose of responding to this question. Applicant testifier Gromak responded that occupational therapists document student performance as part of their role in school "i.e.p." teams, but that occupational therapists do not diagnose. Rather, they observe, record and assess performance deficits, and then make a recommendation regarding whether the student should be sent to an eye care professional for further evaluation or whether the method of teaching should be adjusted to improve their performance. This testifier added that occupational therapists do not attempt to prescribe an eye care solution to such problems. Chairperson Vaughan commented that it is not clear what happens to a student with low vision problems once the occupational therapist has completed their work as part of the team, and asked how a referral to an eye care professional would occur in this context. The applicants responded that at this point in the process that is up to the school administration.

The committee members then discussed some general concerns about the proposal. Chairperson Vaughan commented that the distinction between "evaluation" and "assessment" as used in the proposal on the one hand, and "diagnosis" on the other, is not entirely clear. Committee member Hoover commented that the proposed scope of practice still needs some additional clarification, and cited the applicants' use of the term "assistive technology" as an example. This committee member commented that the proposal needs additional language to clarify what this term does not include. However, the committee members indicated that the applicant group has been very responsive to Board concerns and that their proposal has been greatly improved since it was first submitted.

The committee members then discussed the four criteria of the credentialing review statute pertinent to the review of the occupational therapy proposal in order to present advice to the members of the full Board of Health. **Due to the fact that a quorum of the committee was not present during this discussion, no votes were taken.**

Criterion One states, "The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument."

> There was a consensus among those Board members in attendance that there is significant potential for harm inherent in the current situation of the profession under review due to the fact that persons can legally provide the services of this profession without getting a license due to the voluntary nature of its current credentialing statute.
>
> Committee chairperson Vaughan commented that there is potential for harm in a situation wherein anyone can do whatever they want in this area of care. Committee member Hoover added that the current situation is confusing to the public because the profession possesses a license in name, but cannot legally prevent unlicensed practice.

Criterion Two states, "The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public."

> The Board members present indicated that the applicant group has successfully addressed the concerns of the Board regarding the use of physical modalities and their role in the evaluation of low vision problems of school children, and that any points of clarification that remain to be made should not stand in the way of approving the proposal on this criterion.

Criterion Three states, "Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public."

> There was a consensus of the Board members present that the public would benefit from the assurance that those who provide these services are qualified to provide them, and that mandatory licensure would come as close to providing such assurance as is possible.

Criterion Four states, "The public cannot be effectively protected by other means in a more cost-effective manner."

> There was a consensus among the Board members present that the proposal would effectively address the problem identified in the current practice situation of the occupational therapy, and that no more cost-effective means of addressing the problem identified. No interested party or group came forward to oppose the idea of mandatory licensure for this profession, albeit concerns were raised about the clarity of the proposal by which this idea would be implemented.

This discussion on the four criteria by those Board members present indicated that they were in agreement that the proposal as clarified should be approved by the full Board of Health.

Section C: January 27, 2003 Meeting of the Credentialing Review Committee

Committee chairperson Vaughan began the meeting by asking the applicant group spokesperson Amy Lamb, OTR, to comment on any changes to the proposal since the previous meeting of the committee. Spokesperson Lamb informed the committee members that the applicant group met with Board member Robert Sandstrom, PT, to discuss his concerns about the proposal as clarified by the applicants since November 18, 2002. These concerns were articulated in an e-mail note from Dr. Sandstrom to all Board of Health members on January 13, 2003, and are summarized in the following items:

1) The proposal as clarified continues to be deficient in providing adequate safeguards for public protection due to the fact that occupational therapy education does not currently provide baseline education or training in the area of physical modalities.

2) Occupational therapy practitioners must acquire this education and training after they have completed their education and training for the basic occupational therapy license.

3) It is important that any legislative version of the proposal be written so that it provides for adequate education and training in this area to ensure that services provided by occupational therapists using physical modalities are provided safely and effectively.

Pertinent to specific physical modalities identified in the proposed scope of practice Dr. Sandstrom went on to make additional comments which include the following:

1) Clarification is needed from the applicants regarding how they would use diathermy and laser technology. Educational preparation of occupational therapists to apply these modalities safely and effectively is currently lacking.

2) Educational preparation of occupational therapists to use phonophoresis which is usually the application of a topical steroid to a joint is currently not adequate to ensure public protection.

3) Clarification is needed from the applicants regarding how they would use electrotherapy which includes iontophoresis which is the application of pharmacological agents via electrical current. Educational preparation of occupational therapists to use this modality safely and effectively is currently lacking.

4) Clarification is needed regarding what is meant by "mechanical devices" and whether this implies the application of spinal traction and external compression devices for peripheral edema. Clarification is needed regarding how occupational therapists would use these modalities. Educational preparation of occupational therapists to apply these modalities safely and effectively is currently lacking.

Spokesperson Lamb then proceeded to discuss changes that were made in the proposal as a result of the meeting with Dr. Sandstrom, and informed the Board members that a new purpose section was added to clarify the context within which occupational therapists use modalities in their practice. **The full text of these changes is described in Appendix "B" beginning on Page 13 of this report.**

Spokesperson Lamb proceeded to describe new wording that was added to the exception provision for hand therapists as well as changes to the wording of the language on "deep thermals" which limited this aspect of the scope to ultrasound and phonophoresis, and which now provides for a physician prescription and excludes laser and diathermy. New language was also included pertinent to "electrotherapeutic agents" which had the effect of limiting this to electrical stimulation, nerve stimulation, and iontophoresis. Here too a

physician prescription is required for topical applications. Ultraviolet light is now excluded from the proposal. Mechanical modalities were also discussed and changes were made limiting the scope to intermittent compression devices. Spinal traction is now excluded from the proposal. Pertinent to superficial thermal agents changes were made in the area of wound care pertinent to whirlpool, infection control, and sterilization. Pertinent to oversight of occupational therapy assistants, direct on-site supervision would now be required by the proposal. This completed the presentation of Amy Lamb.

Committee chairperson Vaughan then asked if there were other interested parties who wanted to make comments. Board member Sandstrom commented that many of his concerns about the proposal have been addressed, but added that the fact that schools of occupational therapy do not provide baseline education in physical modalities is what has made it necessary to put so much of the proposal's provisions on modalities into statute rather than rule and regulation. Board member Sandstrom commented that the new wording on hand therapy exceptions is not entirely clear, and that the wording on "deep thermals" which describes what they include needs further clarification so that we know how this modality would be limited under the proposed scope of practice.

Mark Longacre, PT, commented that the changes made by the applicants have addressed many of his concerns about the proposal, but that there still are concerns about the testing process for occupational therapists pertinent to the use of modalities. This spokesperson commented that his group is willing to work with the applicant group in the future to further improve the proposal.

Board member Spry asked Mr. Longacre whether the detailed wording of the proposal might in any way limit what physical therapists can do in the area of modalities. Mr. Longacre responded that the physical therapy statute's provisions in this area and the schooling provided for physical therapy graduates is such that there is no reason to perceive anything in the proposal as limiting what physical therapists can do in this area of care.

The Board members agreed that the best approach for the purposes of the current review would be to take the proposal as a work-in-progress rather than try to address every possible shortcoming of the proposal. The Board members agreed that when they take action of the four criteria that they would consider the overall concept under review rather than become overly concerned about details. The Board members agreed that the applicant group has made a good faith effort to address the problems of their proposal, and took note of the fact that the applicants continue to welcome the assistance of other interested parties in improving the proposal.

The Board members then took action of the four criteria of the credentialing review statute.

Criterion One states, "The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public,

and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument."

> Board member Wooden moved and Board member Vaughan seconded that the proposal satisfies the first criterion. Voting aye were Augustine, Heiden, Hirschbrunner, Hoover, Spry, Vaughan, Sandstrom, Wooden, and Lazure. There were no nay votes or abstentions. By this vote the Board members in attendance at this meeting recommended that the proposal as clarified satisfies the first criterion.

Criterion Two states, "The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public."

> Board member Hoover moved and Board member Hirschbrunner seconded that the proposal satisfies the first criterion. Voting aye were Augustine, Heiden, Hirschbrunner, Hoover, Spry, Vaughan, Wooden, and Lazure. Voting nay was board member Sandstrom. There were no abstentions. By this vote the Board members in attendance at this meeting recommended that the proposal as clarified satisfies the second criterion.

Criterion Three states, "Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public."

> Board member Wooden moved and Board member Vaughan seconded that the proposal satisfies the third criterion. Voting aye were Augustine, Heiden, Hirschbrunner, Hoover, Spry, Vaughan, Sandstrom, Wooden, and Lazure. There were no nay votes or abstentions. By this vote the Board members in attendance at this meeting recommended that the proposal as clarified satisfies the third criterion.

Criterion Four states, "The public cannot be effectively protected by other means in a more cost-effective manner."

> Board member Vaughan moved and Board member Spry seconded that the proposal satisfies the fourth criterion. Voting aye were Augustine, Heiden, Hirschbrunner, Hoover, Spry, Vaughan, Sandstrom, Wooden, and Lazure. There were no nay votes or abstentions. By this vote the Board members in attendance at this meeting recommended that the proposal as clarified satisfies the fourth criterion.

By these four votes the Board members in attendance at the meeting recommended that the full Board of Health approve the proposal as clarified. The full Board of Health are scheduled to take action on the proposal during the afternoon session on January 27, 2003.

Section D: The Recommendations of the full Board of Health, January 27, 2003

The members of the full Board of Health reviewed the discussions and recommendations of their Credentialing Review Committee, and after a brief discussion, Board member Spry moved and Board member Balters seconded that the members of the full Board of Health approve the recommendations of the Board's Credentialing Review Committee on the occupational therapy proposal. Voting aye were Augustine, Heiden, Hoover, Spry, Vaughan, Wooden, Lazure, Ihle, Forney, Nelson, York, Bieganski, Balters, and Akerson. Board members Schiefen and Sandstrom abstained from voting. By this vote the members of the full Board of Health approved the recommendations of their Credentialing Review Committee and thereby recommended approval of the occupational therapy proposal as clarified. The next phase of the review of this proposal is the review of the Director of Health and Human Services Department of Regulation and Licensure.

APPENDIX A: The Original Proposed Scope of Practice as Described in The Applicants' Proposal, Pages 10 and 11

(13) ~~Occupational therapist means a person holding an active license as an occupational therapist;~~ **"Occupational Therapist"** means a person licensed to practice Occupational Therapy under this Act.

(14) ~~Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. Occupational therapy encompasses evaluation, treatment, and consultation and may include teaching daily living skills, developing perceptual-motor skills and sensory integrative functioning, developing prevocational capacities, designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment, using specifically designed therapeutic media and exercises to enhance functional performance, administering and interpreting tests such as manual muscle and range of motion, and adapting environments for the handicapped;~~

(14) **Occupational therapy** means the use of purposeful activity with persons who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability or the aging process, in order to maximize independent function, prevent further disability and achieve and maintain health and productivity, and encompasses evaluation, treatment and consultation services that are provided to a person or group of persons. Occupational therapy intervention includes:

1) remediation or restoration of performance abilities that are limited due to impairment of biological, physiological, psychological, or neurological processes.
2) adaptation of task, process or the environment, or the teaching of compensatory techniques, in order to enhance performance.
3) disability prevention methods and techniques which facilitate the development or safe application of performance skills.
4) health promotion strategies and practices which enhance performance abilities.

A **licensed occupational therapist** or **occupational therapy assistant** would be qualified to perform the following activities for which they have received training or established service competency:

1) evaluating, developing, improving, sustaining, or restoring skills and activities of daily living, work activities, and play and leisure activities.
2) evaluating, developing, remediating, or restoring sensorimotor, cognitive, or psychosocial components of performance.
3) designing, fabricating, applying, or training in the use of assistive technology or orthotic devices, and training in the use of prosthetic devices.
4) adaptation of environments and processes, the application of ergonomic principles to enhance performance.

5) application of physical agent modalities as an adjunct to the process of enhancing performance.
6) evaluating and providing intervention in collaboration with the client, family, caregiver, or others.
7) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions.
8) consulting with groups, programs, organizations, or communities to provide population-based services.

Referral requirements would be as follows:

1) Evaluation and rehabilitative treatment shall be based on referral from a licensed physician, dentist, psychologist, chiropractor, ophthalmologist, or podiatrist.
2) An occupational therapist or occupational therapy assistant may accept a referral for the purpose of providing services which include consultation, habilitation, screening, prevention, and patient education services.
3) Referrals may be for an individual case, or may be for an established treatment program that includes occupational therapy services as a component.
4) Referrals shall be in writing; referrals may be generated by a medical professional, family member, or another professional colleague.

(15) ~~Occupational therapy aide means a person who assists in the practice of occupational therapy, who works under the supervision of an occupational therapist, and whose activities require an understanding of occupational therapy but do not require professional or advanced training or licensure;~~ **"Occupational Therapy Aide"** means a person who is not licensed by the Board and who provides supportive services to Occupational Therapists and Occupational Therapy Assistants. An Aide shall function under the guidance and responsibility of the licensed Occupational Therapist and may be supervised by the Occupational Therapist or an Occupational Therapy Assistant for specifically selected routine tasks for which the Aide has been trained and has demonstrated competence. The Aide shall comply with supervision requirements developed by the Board which are consistent with prevailing professional standards.
(16) ~~Occupational therapy assistant means a person holding an active license as an occupational therapy assistant; and~~ **"Occupational Therapy Assistant"** means a person ~~occupational therapy assistant; and~~ **"Occupational Therapy Assistant"** means a person licensed to assist in the practice of Occupational Therapy under this Act and who shall work under the supervision of an Occupational Therapist.
(17) ~~Person means any individual, partnership, limited liability company, unincorporated organization, or corporate body.~~ **"Person"** means any individual, partnership, unincorporated organization, limited liability entity, or corporate body, except that only an individual may be licensed under this Act.
(18) **"Act"** means the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 31; Laws 1993, LB 121, § 451; Laws 1996, LB 1044, § 757; Laws 2001, LB 346, § 1. Effective date September 1, 2001.

APPENDIX B: The Proposed Scope of Practice of Occupational Therapy as Clarified on January 27, 2003

(13) ~~Occupational therapist means a person holding an active license as an occupational therapist;~~ **"Occupational Therapist"** means a person licensed to practice Occupational Therapy under this Act.

(14) ~~Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. Occupational therapy encompasses evaluation, treatment, and consultation and may include teaching daily living skills, developing perceptual motor skills and sensory integrative functioning, developing prevocational capacities, designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment, using specifically designed therapeutic media and exercises to enhance functional performance, administering and interpreting tests such as manual muscle and range of motion, and adapting environments for the handicapped;~~

(14) **Occupational therapy** means the use of purposeful activity with persons who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability or the aging process, in order to maximize independent function, prevent further disability and achieve and maintain health and productivity, and encompasses evaluation, treatment and consultation services that are provided to a person or group of persons. Occupational therapy intervention includes:

(1) remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological or neurological processes.

(2) adaptation of task, process or the environment, or the teaching of compensatory techniques, in order to enhance performance.

(3) disability prevention methods and techniques which facilitate the development or safe application of performance skills.

(4) health promotion strategies and practices which enhance performance abilities.

An occupational therapist is qualified to perform the following services:

(1) evaluating, developing, improving, sustaining or restoring skills in activities of daily living (ADLs), work or productive activities, including instrumental activities of daily living (IADLs), and play and leisure activities.

(2) evaluating, developing, remediating, or restoring sensorimotor, cognitive, or psychosocial components of performance.

(3) designing, fabricating, applying, or training in the use of assistive technology or orthotic devices, and training in the use of prosthetic devices.

(4) adaptation of environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles.

(5) application of physical agent modalities as an adjunct to or in preparation for engagement in occupations when applied by a practitioner who has documented evidence

of possessing the theoretical background and technical skills for safe and competent use. (Refer to subsection 71-6103a)

(6) evaluating and providing intervention in collaboration with the client, family, caregiver, or others.

(7) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions.

(8) consulting with groups, programs, organizations, or communities to provide population-based services.

The occupational therapy assistant delivers occupational therapy services in collaboration with and under the supervision of an occupational therapist.

Referral Requirements:

(a) Evaluation and rehabilitative treatment may be based on referral from a licensed healthcare professional.

(b) An occupational therapist may accept a referral for the purpose of providing services which include but are not limited to: consultation, habilitation, screening, prevention, and patient education services.

(c) Referrals may be for an individual case or may be for an established treatment program that includes occupational therapy services. If programmatic, the individual shall meet the criteria for admission to the program and protocol for the treatment program shall be established by the treatment team members.

(d) Referrals shall be in writing. However, oral referrals may be accepted if they are followed by a written and signed request of the person making the referral within 30 days from the day on which the patient consults with the occupational therapist.

e) The public may have direct access to occupational therapy services.

(15) ~~Occupational therapy aide means a person who assists in the practice of occupational therapy, who works under the supervision of an occupational therapist, and whose activities require an understanding of occupational therapy but do not require professional or advanced training or licensure;~~ **"Occupational Therapy Aide"** means a person who is not licensed by the Board and who provides supportive services to Occupational Therapists and Occupational Therapy Assistants. An Aide shall function under the guidance and responsibility of the licensed Occupational Therapist and may be supervised by the Occupational Therapist or an Occupational Therapy Assistant for specifically selected routine tasks for which the Aide has been trained and has demonstrated competence. The Aide shall comply with supervision requirements developed by the Board which are consistent with prevailing professional standards.

(16) ~~Occupational therapy assistant means a person holding an active license as an occupational therapy assistant; and~~ **"Occupational Therapy Assistant"** means a person

licensed to assist in the practice of Occupational Therapy under this Act and who shall work under the supervision of an Occupational Therapist.

(17) ~~Person means any individual, partnership, limited liability company, unincorporated organization, or corporate body.~~ **"Person"** means any individual, partnership, unincorporated organization, limited liability entity, or corporate body, except that only an individual may be licensed under this Act.

(18) **"Act"** means the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 31; Laws 1993, LB 121, § 451; Laws 1996, LB 1044, § 757; Laws 2001, LB 346, § 1. Effective date September 1, 2001.

71-6103a. Physical Agent Modalities Practice Requirements

1. Purpose

To promote the safe provision of occupational therapy, the following requirements are set forth, including education which must be met and documented before applying physical agent modalities as adjuncts to or in preparation for purposeful activity. Preparatory methods support and promote the acquisition of the performance skills necessary to enable an individual to resume or assume habits, routines, and roles for engagement in occupation. The exclusive use of physical agent modalities as a therapeutic intervention without application to occupational performance is not considered occupational therapy. Physical agent modalities, when used, are always integrated into occupational therapy interventions as a preparatory method for the therapeutic use of occupations or purposeful activities.

2. Exceptions

a) A licensee who is currently credentialed and in good standing as a certified hand therapist is exempt from the requirements set forth as a result of physical agent modalities competencies obtained from the Hand Therapy Certification Commission, including the properties of heat, water, light, electricity, and sound.

b) A licensee who has a minimum of five years of experience in the use of physical agent modalities. These licensees will be required to demonstrate competencies through a written examination for superficial thermal agents and written and practical examination for deep thermal agents and electrotherapeutic agents.

c) A licensee who has documentation of education received in basic educational program which included demonstration of competencies for physical agent modality use.

3. Terms Defined

a) **"Physical agent modalities"** are defined as those modalities that produce a biophysiological response through the use of light, water, temperature, sound, electricity, or mechanical devices.

b) **"Superficial thermal agents"** are defined as hot packs, cold packs, ice, Fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling technologies.

c) **"Deep thermal agents"** are defined as therapeutic ultrasound and phonophoresis. The use of phonophoresis requires a physician prescription for topical medications used. The use of diathermy and lasers are excluded.

d) **"Electrotherapeutic agents"** are defined as functional electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis. The use of iontophoresis requires a physician prescription for topical medications used. The use of ultra violet light is excluded.

e) **"Mechanical modalities"** are defined as intermittent compression devices. The use of spinal traction is excluded.

f) **"Occupational therapy practitioner"** is defined as a licensed occupational therapist or licensed occupational therapy assistant

g) **"Service competency"** is defined as the process of teaching, training, and evaluating in which the supervising occupational therapist determines that the occupational therapy assistant perform tasks in the same way that the occupational therapist would and achieves the same outcomes.

h) **"Approved educational courses"** means the instructor of the educational course is qualified to offer the program with their credentials and experience, this course includes a method for competency testing, and this course meets the requirements of the objectives set forth herein. Approval is through the Board of Occupational Therapy Practice.

4. **To use superficial thermal agents as an adjunct to occupational therapy treatment an occupational therapy practitioner must:**

a) Be licensed in the state of Nebraska as a licensed occupational therapist or a licensed occupational therapy assistant and be in good standing with the Department of Regulation and Licensure.

b) Have successfully passed a written examination in superficial thermal agents which shall demonstrate competencies of the following:

i. The physical properties and principles of the modalities to be used for treatment

ii. The physiological response of normal and abnormal tissue to the specific modality

iii. Types of heat and cold transference

iv. The indications, precautions and contraindications related to selection and application of the modality

v. Instruction in the parameters and safe operation of the therapy equipment used in the modality including care and maintenance of the equipment

vi. Guidelines for educating the client and/or family in the purpose, benefit and potential risk(s) of the modality.

vii. Proper positioning of client during application of modality.

viii. Identify and classify client's wounds that are appropriate for whirlpool treatment.

ix. Demonstrate an understanding of universal precautions, sterile techniques, infection control, and the use of modalities.

x. Appropriate documentation including the rationale and clinical indications for treatment, position of the client's extremity during application of the modality, treatment duration, the effectiveness of treatment related to therapy goals and modification in treatment plan based on response to the modality, the occupational activity that followed the modality use.

c) Written Documentation

i. Documentation of training and instruction in superficial thermal physical agent modalities shall include results of competency testing.
ii. The occupational therapy practitioner and supervisor or employer shall maintain documentation to assure stated competencies as listed above.

5. **To use deep thermal agents as an adjunct to occupational therapy treatment an occupational therapy practitioner must:**
   a) Be licensed in the state of Nebraska as an occupational therapist and be in good standing with the Department of Regulation and Licensure.
   b) The training required for the use of deep thermal agents such as ultrasound and phonophoresis shall meet the objectives identified below. The required training must be obtained through an approved educational course with a minimum of 6 hours. Training must include written and practical testing of competency at the completion of the approved educational course.
   c) The licensed occupational therapist shall demonstrate the ability to:
      i. Describe the physiological effects of pulsed versus continuous modes of ultrasound as well as differentiate tissue responses to the modes of application
      ii. Understand ultrasound absorption characteristics of various body tissues.
      iii. Determine the appropriate ultrasound medium to be used and the temperature of that medium.
      iv. Determine appropriate methods for maximizing therapeutic effect in the use of phonophoresis as a physical agent modality.
      v. Select appropriate sound head size considering the surface area and conditions being treated.
      vi. Describe equipment characteristics, indications, and contraindications for treatment with ultrasound and phonophoresis.
      vii. Identify the source and mechanisms to generate ultrasound energy and its transmission through air and physical matter.
      viii. Prepare a patient for treatment through proper identification of parameter settings, sequence of operation, correct sound head application techniques and application of all safety rules and precautions.
      ix. Document treatment including duration, parameters, intensity, immediate effects, long-term effects, and facilitation of occupational function resulting from clinical ultrasound and phonophoresis.
   d) Written Documentation
      i. Documentation of training and instruction in deep thermal physical agent modalities shall include but not be limited to: course outline with learning objectives to verify education, certificate of course completion, date, location, name and credentials of educator(s), amount of training time, and results of competency testing.
      ii. The occupational therapy practitioner and supervisor or employer shall maintain documentation to assure stated competencies as listed above.

6. **To use electrotherapeutic agents as an adjunct to occupational therapy treatment an occupational therapy practitioner must:**
    a) Be licensed in the state of Nebraska as an occupational therapist and be in good standing with the Department of Regulation and Licensure.
    b) The training required to qualify for the use of electrotherapeutic agents shall include didactic training of a minimum of 16 hours. The required training must be obtained through an approved educational course. Training must include written and practical testing of competency at the completion of the approved educational course.
    c) The licensed occupational therapist shall demonstrate the ability to:
        i. Identify appropriate use of electrotherapeutic agents as an adjunct to treatment preparation or in conjunction with purposeful activity.
        ii. Describe principles of electricity as pertinent to the application of therapeutic neuromuscular electrical stimulation and pain control.
        iii. Define and differentiate the clinical application of iontophoresis from phonophoresis.
        iv. Understand concepts of the peripheral nervous system and describe the anatomy and physiology of resting nerve membrane, action potentials and recruitment of motor units.
        v. Prepare the patient for treatment through positioning and adequate instructions
        vi. Explain to the patient the benefits expected of the electrotherapeutic treatment
        vii. Determine the duration and mode of current appropriate to the patients neurophysiological status while understanding Ohm's law of electricity, physical laws related to the passage of current through various media, as well as impedance.
        viii. Describe the "strength-duration curve" as applied to electric modalities.
        ix. Describe the "Gate Control Theory" of controlling pain.
        x. Describe normal and abnormal tissue responses to external electrical stimuli while understanding the differing responses to varieties of current duration, frequency and intensity of stimulation.
        xi. Identify treatment indications and contraindications electrotherapeutic agents.
        xii. Differentiate between various types of electrical stimulation.
        xiii. Correctly operate equipment and appropriately adjust the intensity and current while understanding rate of stimulation, identification of motor points and desired physiological effects to achieve an optimal therapeutic response.
        xiv. Correctly operate the phoresor with understanding of parameter settings including time, intensity and dosage.
        xv. Document treatment including duration, parameters, intensity, immediate effects, long-term effects and facilitation of occupational function resulting from electrotherapeutic agents.
    d) Written Documentation
        i. Documentation of training and instruction in electrotherapeutic physical agent modalities shall include but not be limited to: course outline with learning objectives to verify education, certificate of

course completion, date, location, name and credentials of educator(s), amount of training time, and results of competency testing.

ii. The occupational therapy practitioner and supervisor or employer shall maintain documentation to assure stated competencies as listed above.

7. Occupational Therapy Assistant use of physical agent modalities

An occupational therapy assistant may set up and implement treatment using superficial thermal agent modalities if the assistant meets the training requirements of this part, has demonstrated service competency for the particular modality used, and works under the direct on-site supervision of an occupational therapist who has met the superficial thermal agent requirements of this part. An occupational therapist shall not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

RB
January 31, 2003