



REPORT: **Credentialing Review of the Proposal For Mandatory Licensure for Occupational Therapists**

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Regulation and Licensure

To: Speaker of the Nebraska Legislature
Chairperson, Executive Board of the Legislature
Chairperson and Members, Health and Human Services Committee

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Introduction

The Regulation of Health Professions Act provides for an administrative process to review and present to the Nebraska Legislature recommendations regarding change in scope of practice of licensed health care professionals and the establishment of new credentialing for currently unregulated professions as defined in Neb. Rev. Stat., Section 71-6201, et. seq. This process is commonly referred to as a "407 Review." The Department of Health and Human Services Regulation and Licensure administers the Act. As Director of this Department, I am presenting this report under the authority of this Act.

Background to the Proposal

The Proposal of the Nebraska Occupational Therapy Association presents several unusual aspects that need to be explained before my recommendation can be understood in the context of the proposal, the recommendation of the Technical Committee, and the recommendation of the Board of Health.

In most circumstances, a 407 review determines whether an unregulated profession should be regulated or whether the scope of practice of a regulated profession should be changed. In the case of the practice of Occupational Therapy, elements of both types of review are present.

The current Occupational Therapy Practice Act was adopted in 1984, a year before the 407 Review law was enacted. In many respects it looks like a typical law regulating a profession, but with one notable exception. 71-6105 states that "Nothing in such act shall be construed to prevent : ... (5) An unlicensed person from performing occupational therapy;" In essence, obtaining a license has been

voluntary, and occupational therapy has features of an unregulated profession. On the other hand, in order to represent oneself as a licensed occupational therapist, the professional has had to meet licensure standards and perform within the defined scope of practice.

The current proposal would make licensure as an occupational therapist or an occupational therapy assistant mandatory. It would also refine and define more clearly the scope of practice. Because I believe the absence of mandatory licensure clearly “creates a situation of harm or danger to the health, safety, or welfare of the public and the potential for harm is easily recognizable and not remote or dependent upon tenuous argument”, 71-6222(2), which is the essential test of the need to regulate a profession, I have evaluated this proposal as one to establish licensure for the profession in question, and to create a scope of practice for it. I believe that this is consistent with the analysis conducted by the Technical Committee and the Board of Health. Because most of the work in this review focused around the development of the scope of practice, the scope of practice criteria have been used rather than the new credentialing criteria.

Regulatory Policy and Philosophy

People in Nebraska have the right to expect that health care professionals licensed by their state possess the necessary knowledge and skills to provide the services defined in their scope of practice, and are fully capable of providing these services in the sites and locations allowed by their licensing statute. Consistent with this aspect of public policy, I have directed my attention in this report to those aspects of the proposal under review that pertain to the education and training of occupational therapists to safely and effectively provide all of the services identified in their proposed scope of practice.

Summary of the Proposal Relating to the Practice of Occupational Therapy

The proposal that I am presenting to the Legislature with my recommendations has gone through several changes during the review process. The Nebraska Occupational Therapy Association submitted the initial proposal. During the review of the Technical Committee, representatives of the Occupational Therapy Association promised to develop guidelines to clarify the proposal. The State Board of Health and the Association later worked together to develop these guidelines.

The proposal, as presented to me, appears as **Attachment A** to this report. It consists of a clear and concise definition of occupational therapy, a scope of practice consisting of eight practice activities, a section on relationship with other health professionals through referrals, recognition that the public may have

direct access to an occupational therapist without a referral, licensing standards for occupational therapy assistants, and a very detailed explanation of "physical agent modalities practice requirements."

The physical agent modality practice requirements deal with the treatment modalities of 1) superficial thermal agents, 2) deep thermal agents, 3) electrotherapeutic agents, and 5) mechanical modalities. They also describe the process of establishing educational requirements and competency testing.

Findings and Recommendations

Regarding the four criteria of the credentialing review statute pertinent to scope of practice reviews, I have decided to take the following actions:

Criterion One states:

"The present scope of practice or limitations on the scope of practice creates 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."

I find that Criterion One is satisfied, and that the current situation wherein licensure for this profession is voluntary is a source of potential harm to the public health and welfare. This is an important area of health care, and the public needs the assurance that those who provide the services of this profession are qualified to provide them.

Criterion Two states,

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

I find that Criterion Two is satisfied, and that the proposal would not be likely to create significant new harm to the public health and welfare. In fact, the proposal mitigates the potential for danger or harm to the public.

Criterion Three states,

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

I find that Criterion Three is satisfied, and that the public would benefit from the mandatory licensure of occupational therapists and occupational therapy assistants.

Criterion Four states,

“The public cannot be effectively protected by other means in a more cost-effective manner.”

I find that Criterion Four is satisfied. There is no more cost-effective means of addressing the access to care problems identified by the applicant group than by approving mandatory licensure for this profession. I recommend that the statutes governing the practice of occupational therapy be amended in a manner consistent with the proposal contained in **Attachment A**. I am concerned about the unusual amount of detail this proposal would place in statute. My qualifications and concerns are explained in the following Discussion Section.

My Findings and Recommendations are essentially consistent with those of the Board of Health, which characterized the proposal as “a work-in-progress.” The Board of Health did find that all four statutory criteria were met. Although the version of the proposal that was found by the Technical Committee to also meet the four statutory criteria has been changed significantly in this final version, I believe my Findings and Recommendations are compatible with the intentions and goals of the Technical Committee.

Discussion

The final proposal, contained in **Attachment A**, is unusually detailed. Most of that detail centers on the need to clearly delineate the qualifications to and the methods of applying treatment modalities. Treatment modalities consist of the following: superficial thermal agents, deep thermal agents, electro-therapeutic agents, and various “mechanical” modalities.

There appears to be little dispute about the definition of occupational therapy and the general educational background needed to perform the eight activities related to the basic practice of the profession, safely and efficiently. There are a number of institutions of higher education that are accredited to offer degrees in occupational therapy. There are approximately 25 colleges or universities in the states of South Dakota, Kansas, Iowa, Missouri, Colorado, and Nebraska whose accreditation by the Accreditation Council for Occupational Therapy Education is recognized by the Nebraska Board of Occupational Therapy and other similar boards around the country. Most of these accredited institutions, however, do not currently include course work in treatment modalities. There is a movement to include them, but accredited course work is several years away, at the least. In Nebraska as elsewhere, those with recognized degrees in occupational therapy are receiving their basic instruction in the proper use of the treatment modalities

from a variety of sources. While the Board of Occupational Therapy is attempting to oversee this process, the lack of relationship between the training programs for treatment modalities on the one-hand, and the educational programs in the schools on the other, has created the considerable concerns that have been voiced by the Technical Committee, the Board of Health, and other health professions during the evaluation of the proposal. Consequently, the final proposal is extraordinarily detailed regarding the control of treatment modalities. While I believe these detailed provisions do adequately protect the public, I do not believe it is sound public policy to place this much detail in a statute. The practical details should be in regulations. Methods of practice change and regulation of a profession should be allowed to change with them. This is very difficult to do when detailed constraints are in statute, and much easier to do when they are in regulation.

I recommend that the Legislature establish in statute certain standards to govern development of rules and regulations regarding treatment modalities. The Department and the Board of Occupational Therapy will then define the more detailed and practical requirements in regulations. **The following are examples of the standards that should be included in statute for all treatment modalities:**

Training must be at least six clock hours in duration although the Board may require more hours for some modalities

Training must include both didactic and clinical components

Training must require passage of a competency based examination

Training must be provided by qualified instructors

Training programs must be approved by persons so authorized

Prerequisites include completion of all requirements for an occupational therapy license and being in good standing with the regulatory agency

An additional standard that should be in statute is that whenever rules and regulations are promulgated they should include the following with respect to each modality:

A definition of each modality

A description of the conditions each modality can treat

A description of any prerequisite education or credentialing for each modality

A description of the training requirements for each modality

A description of the testing processes for each modality

A description of the approval process for teachers and training programs for treatment modalities

NOTE ON THE ATTACHMENT: The following attachment describes the latest version of the proposed scope of practice for occupational therapists. The scope of practice has been written in legislative style indicating proposed language with underlining, and language to be replaced with strike-outs.

Attachment A: The Current Proposed Occupational Therapy Scope of Practice

(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

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