

Report of Recommendations and Findings

By the Nebraska State Board of Health

To the Director of the Division of Public Health of the Department of Health and Human Services and members
of the Health and Human Services Committee of the Legislature

March 17, 2025



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Part One: Preliminary Information

The Credentialing Review Program is a review process advisory to the Legislature, which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires review bodies to assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports submitted to the State Board of Health and the Director of the Division, along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

List of members of the Nebraska State Board of Health:

- Mark Bertch, DPT
- J Paul Cook, MD
- Russell Crotty, OD
- Jaime Dodge, MD
- Staci Hubert, PharmD
- Patricia Kucera, MSN, GRN, RN
- Brett Lindau, DO
- Connie Petersen, PhD
- David Reese, MHA
- Daniel Rosenthal, PE
- Kimberly Stuhmer, RN, MT
- Kenneth Tusha, DDS
- Douglas Vander Broek, DC
- Dan Vehle
- Jeffrey Wienke Jr, DPM

The Board's Credentialing Review Committee met on the morning of March 17, 2025, to formulate its advice to the full Board on the proposal.

The members of the full Board of Health met on the afternoon of March 17, 2025, to formulate their recommendations on the proposal.

Part Two: Summary of Board of Health Recommendations

The Board's Credentialing Review Committee members advised the full Board to recommend approval of the proposal via a roll call vote of six "yes" votes and zero "no" votes.

The members of the full Board recommended in favor of the proposal.

Part Three: Summary of the Applicant's Proposal

The applicant's proposal would, if approved, incorporate the following wording into the existing statute that regulates the practice of Occupational Therapy, Occupational Therapists, Occupational Therapy Assistants (OTAs), and Occupational Therapy aides:

Occupational Therapy:

- "The Practice of Occupational Therapy" means the therapeutic use of everyday life occupations with persons, groups, or populations (clients) to support occupational performance and participation. Occupational therapy practice includes clinical reasoning and professional judgment to evaluate, analyze, and diagnose occupational challenges (e.g., issues with client factors, performance patterns, and performance skills) and provide occupation-based interventions to address them. A license does not authorize a license holder to independently diagnose a medical condition or disease. Occupational therapy services include habilitation, rehabilitation, and the promotion of physical and mental health and wellness for clients with all levels of ability-related needs. These services are provided for clients who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Through the provision of skilled services and engagement in everyday activities, occupational therapy promotes physical and mental health and well-being by supporting occupational performance in people with, or at risk of experiencing, a range of developmental, physical, and mental health disorders.
- The practice of occupational therapy includes the following components:
 1. Evaluation of factors affecting activities of daily living (ADLs), instrumental activities of daily living (IADLs), health management, rest and sleep, education, work, play leisure, and social participation, including:
 - a. Context (environmental and personal factors) and occupational and activity demands that affect performance.
 - b. Performance patterns including habits, routines, roles, and rituals.
 - c. Performance skills, including motor skills (e.g., moving oneself or moving and interacting with objects), process skills (e.g., actions related to selecting, interacting with, and using tangible task objects), and social interaction skills (e.g., using verbal and nonverbal skills to communicate).
 - d. Client factors, including body functions (e.g., neuromuscular, sensory, visual, mental, psychosocial, cognitive, pain factors), body structures (e.g., cardiovascular, digestive, nervous, integumentary, and genitourinary systems; structures related to movement), values, and spirituality.
 2. Methods or approaches to identify and select interventions, such as
 - a. Establishment, remediation, or restoration of a skill or ability that has not yet developed, is impaired, or is in decline.

- b. Compensation, modification, or adaptation of occupations, activities, and contexts to improve or enhance performance.
 - c. Maintenance of capabilities to prevent decline in performance in everyday life occupations.
 - d. Health promotion and wellness to enable or enhance performance in everyday life activities and quality of life.
 - e. Prevention of occurrence or emergence of barriers to performance and participation, including injury and disability prevention.
3. Interventions and procedures to promote or enhance safety and performance in ADLs, IADLs, health management, rest and sleep, education, work, play, leisure, and social participation, for example:
- a. Therapeutic use of occupations and activities.
 - b. Training in self-care, self-management, health management (e.g., medication management, health routines), home management, community/work integration, school activities, and work performance.
 - c. Identification, development, remediation, or compensation of physical neuromusculoskeletal, sensory-perceptual, emotional regulation, visual, mental, and cognitive functions; pain tolerance and management; praxis; developmental skills; and behavioral skills.
 - d. Education and training of persons, including family members, caregivers, groups, populations, and others.
 - e. Care coordination, case management, and transition services.
 - f. Consultative services to persons, groups, populations, programs, organizations, and communities.
 - g. Virtual interventions (e.g., simulated, real-time, and near-time technologies, including telehealth and mobile technology).
 - h. Modification of contexts (environmental and personal factors in settings such as home, work, school, and community) and adaptation of processes, including the application of ergonomic principles.
 - i. Assessment, design, fabrication, application, fitting, and training in seating and positioning, assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.
 - j. Assessment, recommendation, and training in techniques to enhance functional mobility, including fitting and management of wheelchairs and other mobility devices.
 - k. Exercises, including tasks and methods to increase motion, strength, and endurance for occupational participation.
 - l. Remediation of and compensation for visual deficits, including low vision rehabilitation.
 - m. Driver rehabilitation and community mobility.
 - n. Management of feeding, eating, and swallowing to enable eating and feeding performance.
 - o. Application of physical agent, instrument-assisted, and mechanical modalities (and use of a range of specific therapeutic procedures (e.g., wound care management; techniques to enhance sensory, motor, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.
 - p. Facilitating the occupational participation of persons, groups, or populations through modification of contexts (environmental and personal) and adaptation of processes.
 - q. Efforts directed toward promoting occupational justice and empowering clients to seek and obtain resources to fully participate in their everyday life occupations.

- r. Group interventions (e.g., use of dynamics of group and social interaction to facilitate learning and skill acquisition across the life course).

Occupational Therapist and Occupational Therapy Assistant; services authorized.

- An Occupational Therapy professional may perform any services as identified above that they are competent to perform based on their entry-level training or continued professional development. Occupational Therapy professionals may pursue specialization, training, or professional development in specific modalities, procedures, and techniques. It is the responsibility of the practitioner to be proficient and document proficiency in the specific modality he/she is practicing.

Occupational therapy assistant, defined.

- “Occupational Therapy Assistant” means a person licensed to assist in the practice of Occupational Therapy under this Act and who shall work under the appropriate supervision of and in partnership with an Occupational Therapist.

Supervision

- “Supervision” means a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services. The Occupational Therapist is accountable for occupational therapy services provided by the Occupational Therapy Assistant and the Aide. In addition, the Occupational Therapy Assistant is accountable for occupational therapy services they provide. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development.

Occupational therapy aide, defined.

- “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 only under the guidance, responsibility, and supervision of the licensed Occupational Therapist or an Occupational Therapy Assistant who is appropriately supervised by an Occupational Therapist. An aide does not provide occupational therapy services. An Aide must first demonstrate competence before performing assigned, delegated client related and non-client related tasks.
- Positions that provide supportive services for therapy may also be titled rehabilitation aide, rehabilitation technician, or other designations as a non-licensed, supportive professional.

Physical agent and instrument assisted modalities, defined.

- Physical agent and instrument-assisted modalities mean modalities that produce a biophysiological response through the use of water, temperature, sound, electricity, or mechanical devices.

Electrotherapeutic agent modalities, defined.

- Modalities that use electrotherapeutic currents and waveforms to facilitate physiologic changes in tissues to increase circulation, facilitate tissue healing, and modulate pain. Examples include, but are not limited to, high-voltage galvanic stimulation for tissue and wound repair (ESTR) and high voltage pulsed current (HVPC). They also facilitate neuromuscular or sensory activity to improve muscle strength, reeducate muscle function, or modulate pain response. Examples include, but are not limited to, neuromuscular electrical stimulation (NMES), functional electrical stimulation (FES), transcutaneous electrical nerve stimulation (TENS), and interferential current.

Mechanical devices, defined.

- The therapeutic use of mechanical devices to apply force, such as compression, distraction, vibration, or controlled mobilization, to modify biomechanical properties and functions of tissues. Mechanical devices do not include devices to perform spinal traction. The scope of practice of occupational therapists does not include the use of joint manipulation, grade V mobilization/manipulation, thrust joint manipulation, high-velocity/low-amplitude thrust, nor any other procedure intended to result in joint cavitation. Joint manipulation commences where grades one through four mobilization ends.

Superficial thermal agent modalities, defined.

- Modalities such as hydrotherapy, whirlpool, cryotherapy (cold packs, ice), fluidotherapy, hot packs, paraffin, water, infrared, and other commercially available superficial heating and cooling technologies.

Deep thermal agents, defined.

- Modalities such as therapeutic ultrasound, phonophoresis, and other commercially available technologies.

Instrument-assisted modalities, defined.

- Instrument-assisted modalities refer to the therapeutic use of an instrument or tool that is manually applied by a trained practitioner to target specific tissues like skin, fascia, and other connective tissues or muscle. These modalities include but are not limited to dry needling and cupping.

Electromagnetic modalities, defined.

- Electromagnetic modalities use electromagnetic waves such as radio waves, microwaves, and light waves to transport electrical and magnetic energy through space to effect changes in body structures. Low-level laser (light) therapy (LLLT): Low intensity, nonthermal (cold) lasers use light energy to cause a photochemical reaction in body tissues that can influence tissue repair, inflammation, and pain.

Physical agent and instrument-assisted modalities; certification required.

- If the licensee's Occupational Therapy educational program included education on superficial thermal, deep thermal, electrotherapeutic, and mechanical devices or the therapist is certified by the Hand Therapy Certification commission or other equivalent entity recognized by the board, nothing further is needed to utilize these techniques in Nebraska practice. If these techniques were not part of the licensee's educational program, the licensee must request approval to utilize them in Nebraska practice. An occupational therapist may perform dry needling only in accordance with the level of education and training successfully completed. Education and training must have been approved by the State Board of Occupational Therapy and includes clinical instruction and application on the performance of dry needling. Diathermy: Diathermy uses short-wave frequencies to affect healing tissue or higher frequencies that cause tissue heating. An occupational therapist may not use diathermy.

Oxygen management.

- Occupational therapy professionals are allowed to complete insertion and removal of cannulas for oxygen and adjustment of the rate of flow per physician order.

Occupational therapy assistant; physical agent and instrument-assisted modalities.

- In order to apply physical agent modalities, an Occupational Therapy Assistant may administer a physical agent modality if the Occupational Therapy Assistant (a) Has successfully completed a training course approved by the board and passed an examination approved by the board on the physical agent

modality; (b) is appropriately supervised by an Occupational Therapist who is approved to utilize physical agent modalities in NE and (c) shall not complete evaluation, re-evaluation, treatment planning, or treatment goals related to physical agent modality use. An Occupational Therapy Assistant may not utilize the instrument-assisted modality of dry needling or diathermy.

Occupational therapist; therapy assistant; temporary license; applicability of section.

- Addition of:
 - (C) A temporary permit expires the earlier of:
 - 1) The date the person holding the permit is issued a permanent license under this article.
 - 2) The date the Board disapproves the person's license application; or
 - 3) One hundred eighty (180) days after the date the permit is issued.
 - 4) The date the applicant is notified of a failure of the licensure examination.

Examination; requirements.

- Each applicant for licensure pursuant to the Occupational Therapy Practice Act shall be examined by an examination which tests his or her knowledge of the basic and clinical sciences relating to Occupational Therapy and Occupational Therapy theory and practice including, but not limited to, professional skills and judgment in the utilization of Occupational Therapy techniques and methods and such other subjects as identified by the entity administering the national licensure examination.
- Applicants shall follow the rules as outlined by the entity administering the national licensure examination and meet the minimum requirements for the examination. Results of the examination should be sent to the Board for verification of entry-level competency.

The full text of the applicant's proposal can be found under the Occupational Therapy tab of the Credentialing Review program link at: <https://dhhs.ne.gov/licensure/Pages/Credentialing-Review.aspx>

Part Four: The Recommendations of the Members of the Credentialing Review Committee of the Board of Health on the Occupational Therapy Proposal

Credentialing Review Committee Questions on the Occupational Therapy Proposal

Melissa Kimmerling Ed. D, MOT, OTR/L, representing the applicant group, presented at this meeting and responded to questions by committee members. Questions addressed included those relating to specific draft language and the difference between direct and indirect supervision. Other questions asked included the requirements for training and language relating to exam requirements. Dr. Kimmerling accepted the feedback from committee members and shared that she would make those suggestions to bill drafters to make the Occupational Therapy bill more reflective of those concerns and recommendations.

The Board's Credentialing Review Committee members made their recommendations on each of the six statutory criteria as follows:

Criterion one: The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.

- Voting "yes" to approve the proposal on criterion one:
 - Daniel Rosenthal, PE; Douglas Vander Broek, DC; Mark Bertch, DPT; Russell Crotty, OD; Patricia Kucera, MSN; Jeffrey Wienke Jr., DPM
- Voting "no" to recommend against approval of the proposal:

- None

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

- Voting “yes” to approve the proposal on criterion two:
 - Daniel Rosenthal, PE; Douglas Vander Broek, DC; Mark Bertch, DPT; Russell Crotty, OD; Patricia Kucera, MSN; Jeffrey Wienke Jr., DPM
- Voting “no” to recommend against approval of the proposal:
 - None

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

- Voting “yes” to approve the proposal on criterion three:
 - Daniel Rosenthal, PE; Douglas Vander Broek, DC; Mark Bertch, DPT; Russell Crotty, OD; Patricia Kucera, MSN; Jeffrey Wienke Jr., DPM
- Voting “no” to recommend against approval of the proposal:
 - None

Criterion four: The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.

- Voting “yes” to approve the proposal on criterion four:
 - Daniel Rosenthal, PE; Douglas Vander Broek, DC; Mark Bertch, DPT; Russell Crotty, OD; Patricia Kucera, MSN; Jeffrey Wienke Jr., DPM
- Voting “no” to recommend against approval of the proposal:
 - None

Criterion five: There are appropriate post-professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill or service in a safe manner.

- Voting “yes” to approve the proposal on criterion five:
 - Daniel Rosenthal, PE; Douglas Vander Broek, DC; Mark Bertch, DPT; Russell Crotty, OD; Patricia Kucera, MSN; Jeffrey Wienke Jr., DPM
- Voting “no” to recommend against approval of the proposal:
 - None

Criterion six: There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

- Voting “yes” to approve the proposal on criterion six:
 - Daniel Rosenthal, PE; Douglas Vander Broek, DC; Mark Bertch, DPT; Russell Crotty, OD; Patricia Kucera, MSN; Jeffrey Wienke Jr., DPM
- Voting “no” to recommend against approval of the proposal:
 - None

The Board’s Credentialing Review Committee members formulated their advice to the members of the full Board of Health via an “up-down vote” as follows:

- Voting “yes” to recommend approval of this proposal:

- Daniel Rosenthal, PE; Douglas Vander Broek, DC; Mark Bertch, DPT; Russell Crotty, OD; Patricia Kucera, MSN; Jeffrey Wienke Jr., DPM.
- Voting “no” to recommend against this proposal:
 - None.

By this vote, the Board’s Credentialing Review Committee members advised that the members of the full Board of Health recommend approval of the proposal.

Part Five: The Recommendations of the Members of the Full Board of Health on the Occupational Therapy Proposal during the March 17, 2025, Board of Health Meeting

Comments by the Members of the Full Board of Health and Interested Parties to the Occupational Therapy Proposal:

Dr. Connie Petersen explained the premise of the proposal and the discussions that ensued in those meetings.

The recommendations of the members of the full Board of Health on the Occupational Therapy proposal:

The Board of Health members made their recommendation on the proposal via a yes/ no, up-down vote on the recommendation of their Credentialing Review Committee, as follows:

Voting “yes” to recommend approval of this committee’s recommendation which was to recommend approval of the applicant’s proposal were: Mark Bertch, DPT; J Paul Cook, MD; Russell Crotty, OD; Jaime Dodge, MD; Staci Hubert, PharmD; Patricia Kucera, MSN, GRN, RN; Brett Lindau, DO; Connie Petersen, PhD; David Reese, MHA; Daniel Rosenthal, PE; Kimberly Stuhmer, RN, MT; Kenneth Tusha, DDS; Douglas Vander Broek, DC; Dan Vehle; Jeffrey Wienke Jr, DPM;

Voting “no” to recommend against approval of this committee’s recommendation, which was to recommend approval of the applicant’s proposal were: None.

By this vote, the full Board of Health members recommended approval of the proposal.