

2018

STATE OF NEBRASKA

**STATUTES RELATING TO
OCCUPATIONAL THERAPY PRACTICE ACT**



Department of Health and Human Services
Division of Public Health
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STATUTES PERTAINING TO OCCUPATIONAL THERAPY PRACTICE ACT

38-2501. Act, how cited.

Sections 38-2501 to 38-2531 shall be known and may be cited as the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 29; Laws 2003, LB 242, § 138; Laws 2004, LB 1005, § 120; R.S. Supp., 2006, § 71-6101; Laws 2007, LB463, § 841.

38-2502. Purpose of act.

In order to (1) safeguard the public health, safety, and welfare, (2) protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, (3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants, and (4) assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of the Occupational Therapy Practice Act to provide for the regulation of occupational therapists.

Source: Laws 1984, LB 761, § 30; R.S. 1943, (2003) § 71-6102; Laws 2007, LB463, § 842.

38-2503. Definitions, where found.

For purposes of the Occupational Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2504 to 38-2514 apply.

Source: Laws 1984, LB 761, § 31; Laws 1993, LB 121, § 451; Laws 1996, LB 1044, § 757; Laws 2001, LB 346, § 1; Laws 2002, LB 1021, § 95; Laws 2004, LB 1005, § 121; R.S. Supp., 2006, § 71-6103; Laws 2007, LB296, § 651; Laws 2007, LB463, § 843.

38-2504. Association, defined.

Association means a recognized national or state association for occupational therapy.

Source: Laws 2007, LB463, § 844.

38-2505. Board, defined.

Board means the Board of Occupational Therapy Practice.

Source: Laws 2007, LB463, § 845.

38-2506. Deep thermal agent modalities, defined.

Deep thermal agent modalities means therapeutic ultrasound and phonophoresis. Deep thermal agent modalities does not include the use of diathermy or lasers.

Source: Laws 2007, LB463, § 846.

38-2507. Electrotherapeutic agent modalities, defined.

Electrotherapeutic agent modalities means neuromuscular electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis. Electrotherapeutic agent modalities does not include the use of ultraviolet light.

Source: Laws 2007, LB463, § 847.

38-2508. Mechanical devices, defined.

Mechanical devices means intermittent compression devices. Mechanical devices does not include devices to perform spinal traction.

Source: Laws 2007, LB463, § 848.

38-2509. Occupational therapist, defined.

Occupational therapist means a person holding a current license to practice occupational therapy.

Source: Laws 2007, LB463, § 849.

38-2510. Occupational therapy, defined.

(1) 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 independent function, prevent further disability, and achieve and maintain health and productivity.

(2) Occupational therapy encompasses evaluation, treatment, and consultation and may include (a) remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes, (b) adaptation of task, process, or the environment, or the teaching of compensatory techniques, in order to enhance performance, (c) disability prevention methods and techniques which facilitate the

development or safe application of performance skills, and (d) health promotion strategies and practices which enhance performance abilities.

Source: Laws 2007, LB463, § 850.

38-2511. Occupational therapy aide, defined.

Occupational therapy aide means a person who is not licensed under the Occupational Therapy Practice Act and who provides supportive services to occupational therapists and occupational therapy assistants.

Source: Laws 2007, LB463, § 851.

38-2512. Occupational therapy assistant, defined.

Occupational therapy assistant means a person holding a current license to assist in the practice of occupational therapy.

Source: Laws 2007, LB463, § 852.

38-2513. Physical agent modalities, defined.

Physical agent modalities means modalities that produce a biophysiological response through the use of water, temperature, sound, electricity, or mechanical devices.

Source: Laws 2007, LB463, § 853.

38-2514. Superficial thermal agent modalities, defined.

Superficial thermal agent modalities means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling technologies.

Source: Laws 2007, LB463, § 854.

38-2515. Board; members; qualifications.

The board shall consist of at least four members appointed pursuant to section 38-158. Three of the persons appointed shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointments. Two of the persons appointed shall be occupational therapists and one shall be either an occupational therapist or an occupational therapy assistant and all shall be holders of active licenses issued under the Occupational Therapy Practice Act during their terms. One of the persons appointed shall be a public member who meets the requirements of section 38-165.

Source: Laws 1984, LB 761, § 43; Laws 1987, LB 473, § 62; Laws 1988, LB 1100, § 178; Laws 2001, LB 346, § 3; Laws 2002, LB 1021, § 97; Laws 2004, LB 1005, § 131; R.S.Supp.,2006, § 71-6115; Laws 2007, LB463, § 855.

38-2516. Occupational therapist; therapy assistant; licensure required; activities and services not prohibited.

No person may represent himself or herself to be a licensed occupational therapist or occupational therapy assistant unless he or she is licensed in accordance with the Occupational Therapy Practice Act. Nothing in such act shall be construed to prevent:

(1) Any person licensed in this state pursuant to the Uniform Credentialing Act from engaging in the profession or occupation for which he or she is licensed;

(2) The activities and services of any person employed as an occupational therapist or occupational therapy assistant who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) The activities and services of any person pursuing an accredited course of study leading to a degree or certificate in occupational therapy if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(4) The activities and services of any person fulfilling the supervised fieldwork experience requirements of sections 38-2518 and 38-2519 if such activities and services constitute a part of the experience necessary to meet the requirements of such sections; or

(5) Qualified members of other professions or occupations, including, but not limited to, recreation specialists or therapists, special education teachers, independent living specialists, work adjustment trainers, caseworkers, and persons pursuing courses of study leading to a degree or certification in such fields, from doing work similar to occupational therapy which is consistent with their training if they do not represent themselves by any title or description to be occupational therapists.

Source: Laws 1984, LB 761, § 32; Laws 1991, LB 2, § 14; Laws 2004, LB 1005, § 122; R.S.Supp.,2006, § 71-6104; Laws 2007, LB463, § 856.

38-2517. Occupational therapist; therapy assistant; temporary license; applicability of section.

(1) Any person who has applied to take the examination under section 38-2518 or 38-2519 and who has completed the education and experience requirements of the Occupational Therapy Practice Act may be granted a temporary license to practice as an occupational therapist or an occupational therapy assistant. A temporary license shall allow the person to practice only in association with a licensed occupational therapist and shall be valid until the date on which the results of the next licensure examination are available to the department. The temporary license shall not be renewed if the applicant has failed the examination. The temporary license may be extended by the department, with the recommendation of the board. In no case may a temporary license be extended beyond one year.

(2) This section does not apply to a temporary license issued as provided in section 38-129.01.

Source: Laws 1984, LB 761, § 33; Laws 1988, LB 1100, § 175; R.S.1943, (2003), § 71-6105; Laws 2007, LB463, § 857; Laws 2017, LB88, § 82.

38-2518. Occupational therapist; license; application; requirements.

(1) An applicant applying for a license as an occupational therapist shall show to the satisfaction of the department that he or she:

- (a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;
- (b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of six months of supervised fieldwork experience shall be required for an occupational therapist; and
- (c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapist in a foreign country, the applicant shall:

- (a) Present documentation of completion of an educational program in occupational therapy that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;
- (b) Present proof of proficiency in the English language; and
- (c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 34; Laws 1989, LB 344, § 33; Laws 1993, LB 121, § 452; Laws 1997, LB 752, § 194; Laws 2003, LB 242, § 139; R.S.1943, (2003), § 71-6106; Laws 2007, LB463, § 858; Laws 2018, LB1034, § 40.

Effective Date: July 19, 2018

38-2519. Occupational therapy assistant; license; application; requirements; term.

(1) An applicant applying for a license as an occupational therapy assistant shall show to the satisfaction of the department that he or she:

- (a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;
- (b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and
- (c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapy assistant in a foreign country, the applicant shall:

- (a) Present documentation of completion of an educational program for occupational therapy assistants that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;
- (b) Present proof of proficiency in the English language; and
- (c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapy assistant pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 35; Laws 1989, LB 344, § 34; Laws 1993, LB 121, § 453; Laws 2003, LB 242, § 140; R.S.1943, (2003), § 71-6107; Laws 2007, LB463, § 859; Laws 2018, LB1034, § 41.

Effective Date: July 19, 2018

38-2520. Examination; requirements.

(1) Each applicant for licensure pursuant to the Occupational Therapy Practice Act shall be examined by a written 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 the board may deem useful to determine the applicant's fitness to practice. The board shall approve the examination and establish standards for acceptable performance. The board may choose a nationally standardized occupational therapist and occupational therapy assistant entry-level examination.

(2) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine.

Source: Laws 1984, LB 761, § 36; Laws 1985, LB 250, § 18; Laws 1987, LB 473, § 61; R.S.1943, (2003), § 71-6108; Laws 2007, LB463, § 860.

38-2521. Continuing competency requirements; waiver.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but does not reside or practice in Nebraska;

(2) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the license renewal date; and

(3) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by a school or college approved by the board which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy.

Source: Laws 1984, LB 761, § 41; Laws 1994, LB 1223, § 77; Laws 2001, LB 346, § 2; Laws 2002, LB 1021, § 96; Laws 2003, LB 242, § 142; Laws 2004, LB 1005, § 129; R.S.Supp.,2006, § 71-6113; Laws 2007, LB463, § 861; Laws 2018, LB1034, § 42.

Effective Date: July 19, 2018

38-2522. Applicant for licensure; continuing competency requirements.

An applicant for licensure to practice as an occupational therapist who has met the education and examination requirements in section 38-2518 or to practice as an occupational therapy assistant who has met the education and examination requirements in section 38-2519, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 862.

38-2523. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice as an occupational therapist or to practice as an occupational therapy assistant who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

38-2524. Fees.

The department shall establish and collect fees for credentialing activities under the Occupational Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1984, LB 761, § 42; Laws 1986, LB 926, § 63; Laws 1988, LB 1100, § 177; Laws 1992, LB 1019, § 92; Laws 1994, LB 1223, § 78; Laws 2003, LB 242, § 143; R.S.1943, (2003), § 71-6114; Laws 2007, LB463, § 864.

38-2525. Occupational therapy aide; supervision requirements.

An occupational therapy aide shall function under the guidance and responsibility of an occupational therapist and may be supervised by an 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. The board shall develop supervision requirements for aides which are consistent with prevailing professional standards.

Source: Laws 2004, LB 1005, § 123; R.S.Supp.,2006, § 71-6117; Laws 2007, LB463, § 865.

38-2526. Occupational therapist; services authorized.

An occupational therapist may perform the following services:

- (1) Evaluate, develop, improve, sustain, or restore skills in activities of daily living, work activities, or productive activities, including instrumental activities of daily living, and play and leisure activities;
- (2) Evaluate, develop, remediate, or restore sensorimotor, cognitive, or psychosocial components of performance;
- (3) Design, fabricate, apply, or train in the use of assistive technology or orthotic devices and train in the use of prosthetic devices;
- (4) Adapt environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;
- (5) If certified pursuant to section 38-2530, apply 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;
- (6) Evaluate and provide intervention in collaboration with the client, family, caregiver, or others;
- (7) Educate the client, family, caregiver, or others in carrying out appropriate nonskilled interventions; and
- (8) Consult with groups, programs, organizations, or communities to provide population-based services.

Source: Laws 2004, LB 1005, § 124; R.S.Supp.,2006, § 71-6118; Laws 2007, LB463, § 866.

38-2527. Occupational therapy assistant; supervision required.

An occupational therapy assistant may deliver occupational therapy services enumerated in section 38-2526 in collaboration with and under the supervision of an occupational therapist.

Source: Laws 2004, LB 1005, § 125; R.S.Supp.,2006, § 71-6119; Laws 2007, LB463, § 867.

38-2528. Referrals.

- (1) An occupational therapist may accept a referral from a licensed health care professional for the purpose of evaluation and rehabilitative treatment which may include, but not be limited to, consultation, rehabilitation, screening, prevention, and patient education services.
- (2) 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.
- (3) Referrals shall be in writing, except that oral referrals may be accepted if they are followed by a written and signed request of the person making the referral within thirty days after the day on which the patient consults with the occupational therapist.

Source: Laws 2004, LB 1005, § 126; R.S.Supp.,2006, § 71-6120; Laws 2007, LB463, § 868.

38-2529. Direct access to services.

The public may have direct access to occupational therapy services.

Source: Laws 2004, LB 1005, § 127; R.S.Supp.,2006, § 71-6121; Laws 2007, LB463, § 869.

38-2530. Physical agent modalities; certification required.

(1) In order to apply physical agent modalities, an occupational therapist shall be certified pursuant to this section. The department shall issue a certificate to an occupational therapist to administer a physical agent modality if the occupational therapist:

- (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 certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the board;
 - (c) Has a minimum of five years of experience in the use of the physical agent modality and has passed an examination approved by the board on the physical agent modality; or
 - (d) Has completed education during a basic educational program which included demonstration of competencies for application of the physical agent modality.
- (2) The department shall issue a certificate to authorize an occupational therapy assistant to set up and implement treatment using superficial thermal agent modalities if the occupational therapy assistant has successfully completed a training course approved by the board and passed an examination approved by the board. Such set up and implementation shall only be done under the onsite supervision of an occupational therapist certified to administer superficial thermal agent modalities.
- (3) An occupational therapist shall not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

Source: Laws 2004, LB 1005, § 128; R.S.Supp.,2006, § 71-6122; Laws 2007, LB463, § 870.

38-2531. Rules and regulations.

- (1) The board shall adopt and promulgate rules and regulations regarding role delineation for occupational therapy assistants and continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. Such requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education.
- (2) The board may adopt and promulgate rules and regulations governing the training courses for an occupational therapist to be certified to administer a physical agent modality. The board may adopt and promulgate rules and regulations governing the training course for an occupational therapy assistant to be certified to set up and implement superficial thermal agent modalities. In adopting such rules and regulations, the board shall give consideration to the levels of training and experience which are required, in the opinion of the board, to protect the public health, safety, and welfare and to insure, to the greatest extent possible, the efficient, adequate, and safe practice of occupational therapy. Such rules and regulations shall include the approval of examinations and the passing score for such examinations for certification.

Source: Laws 2004, LB 1005, § 130; Laws 2005, LB 244, § 1; R.S.Supp.,2006, § 71-6123; Laws 2007, LB463, § 871.

- 71-6101. Transferred to section 38-2501.
- 71-6102. Transferred to section 38-2502.
- 71-6103. Transferred to section 38-2503.
- 71-6104. Transferred to section 38-2516.
- 71-6105. Transferred to section 38-2517.
- 71-6106. Transferred to section 38-2518.
- 71-6107. Transferred to section 38-2519.
- 71-6108. Transferred to section 38-2520.
- 71-6109. Repealed. Laws 2007, LB 463, § 1319.
- 71-6110. Repealed. Laws 2007, LB 463, § 1319.
- 71-6111. Repealed. Laws 2007, LB 463, § 1319.
- 71-6112. Repealed. Laws 2007, LB 463, § 1319.
- 71-6113. Transferred to section 38-2521.
- 71-6114. Transferred to section 38-2524.
- 71-6115. Transferred to section 38-2515.
- 71-6116. Repealed. Laws 2003, LB 242, §154.
- 71-6117. Transferred to section 38-2525.
- 71-6118. Transferred to section 38-2526.
- 71-6119. Transferred to section 38-2527.
- 71-6120. Transferred to section 38-2528.
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- 71-6122. Transferred to section 38-2530.
- 71-6123. Transferred to section 38-2531.