Minnesota Department of Health
121 East Seventh Place
P.O. Box 64975
St. Paul, MN 55164-0975

NOV 20 1995

November 9, 1995

Maryanne V. Hruby
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, MN 55155

Re: Proposed Rules of the Department of Health Governing the Registration of Occupational Therapists and Occupational Therapy Assistants

Dear Ms. Hruby:

The Minnesota Department of Health intends to adopt rules governing the registration of occupational therapists and occupational therapy assistants. We plan to publish a Notice of Intent to Adopt Rules in the December 11, 1995 issue of the State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness which is now available to the public. Also as required, a copy of this Statement is enclosed with this letter.

For your information, we are also enclosing a copy of the proposed Rules and a copy of the Notice of Intent to Adopt Rules in this matter.

Please contact me at (612) 282-5624 if you have any questions regarding these rules.

Sincerely,

Annette Spencer

Annette Spencer
Health Occupations Program

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
DEPARTMENT OF HEALTH

IN THE MATTER OF THE
PROPOSED ADOPTION OF RULES
OF THE DEPARTMENT OF HEALTH
GOVERNING THE REGISTRATION OF
OCCUPATIONAL THERAPISTS AND
OCCUPATIONAL THERAPY ASSISTANTS

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

This statement of need and reasonableness is prepared pursuant to the requirements set forth in Minnesota Statutes, sections 14.131 and 14.23. It contains a summary of the evidence and arguments in support of the need for and reasonableness of the registration rules for occupational therapy practitioners. Also included is a statement addressing the impact of these rules on small businesses and the approval of the Commissioner of Finance regarding the fees to be charged for the registration system.

BACKGROUND

The proposed registration rules for occupational therapy practitioners establish protected titles for two occupational groups, occupational therapists and occupational therapy assistants. The State of Minnesota has not regulated either of these occupations. Thus, the proposed rules will be the first Minnesota credential for occupational therapists and occupational therapy assistants.

Nationwide, 50 jurisdictions have regulatory laws. The mode of regulation for these jurisdictions is as follows:

* 39 states plus the District of Columbia and Puerto Rico have licensure.

* 2 states have registration.
* 5 states have certification.
* 2 states have trademark law.

New Jersey and Vermont are in the process of developing their regulations for occupational therapy practitioners. Colorado does not regulate occupational therapy practitioners.

The American Occupational Therapy Association (AOTA) estimates that there are 1,286 occupational therapists in the workforce in Minnesota. AOTA estimates that there are 792 occupational therapy assistants in the workforce in Minnesota. Information on regulation in other states and number of practitioners was obtained from the AOTA staff in the Legislative and Political Affairs Department. The Minnesota Occupational Therapy Association (MOTA), the professional association for occupational therapists and occupational therapy assistants, has approximately 950 members. As of April 1, 1994, the membership consists of 623 occupational therapists, 147 occupational therapy assistants, 165 students and 13 associate members. Membership in this association is voluntary.

Minnesota has two schools for occupational therapists. The University of Minnesota graduates 30 students per year; the College of Saint Catherine graduates approximately 40 students in their day program and 20 students in their weekend program.

Minnesota has four schools for occupational therapy assistants. Anoka Technical College graduates approximately 30 students per year; Austin Community College graduates approximately 20 students per year; Duluth Technical College graduates approximately 20 students per year; and St. Mary's Campus, College of St. Catherine graduates approximately 30 students per year.

Typical occupational therapy practice settings nationwide in 1990 were as follows:

INPATIENT / RESIDENTIAL		OUTPATIENT / COMMUNITY	
General Hospital	27.1	School System	18.6
Psychiatric Hospital	4.6	Private Practice	7.7
Skilled Nursing Home/ Int. Care Facility	6.4	Outpatient Clinic (free standing)	3.7
Rehabilitation Hospital	11.4	Home Health Agency	3.6
Residential Care Facility	2.7	Physician's Office	1.2
		Comm. Mental Health Center	1.1
TOTAL	52.2		39.6

AOTA Research Information & Evaluation Division, AOTA 1990 Member Data Survey, p. 4 (1991). While the majority of occupational therapy practitioners work in inpatient or residential settings (52.2%), a significant and increasing number of occupational therapy practitioners work in outpatient or community settings (39.6%). The remaining practitioners (8.2%) are in other settings such as teaching institutions, research facilities, and managed care programs. Id.

Occupational therapy practitioners work in a variety of medical and educational settings with a broad range of physical and psychological conditions. The common element of all occupational therapy practice, regardless of setting or population served, is the goal to increase purposeful activity. An occupational therapy practitioner may be employed in a psychiatric hospital or community mental health center working with persons who have

significant psycho-social dysfunction. In this setting, an occupational therapy practitioner might provide social activities designed to help the individual develop coping skills to successfully deal with the stresses, problems and changes of daily living. An occupational therapy practitioner may be employed in a skilled nursing or outpatient rehabilitation facility that serves persons who have lost the ability to perform some daily living activities due to disability or age. In this setting, an occupational therapy practitioner may evaluate and construct equipment that promotes independence in daily living skills such as self-care, vocational and homemaking. An occupational therapy practitioner may be employed in a home-based program to work with infants who are physically or mentally disabled, and their parents. In this setting the occupational therapy practitioner may instruct parents in range of motion exercises and sensory integration activities to promote development. Occupational therapy practitioners may be employed in hand therapy clinics to restore hand function after injury or surgery. In this setting the occupational therapy practitioner may use physical agent modalities, such as superficial heat, superficial cold, ultrasound, or electrical stimulation to relieve pain, decrease swelling, and increase movement. In one setting alone, a hospital, you may find occupational therapists providing services to burn patients, cardiac patients, premature infants, and patients using prosthetics or orthopedic devices.

The diversity of the profession is reflected in the organization of the professional association of occupational therapists and occupational therapy assistants in Minnesota. MOTA has 12 practice groups; long term care, school therapy, early intervention, administration, gerontology, industrial rehabilitation, cardiac rehabilitation, physical disability, pediatrics, mental health, home health, and hand therapy. In addition, there is a

statewide hand therapy association whose membership is approximately 90% occupational therapists and 10% physical therapists.

Occupational therapists represent one discipline on the medical or education team. Other members of the team, such as physical therapists, social workers, nurses, psychologists and physicians work with occupational therapists to promote complete or optimal rehabilitation of patients who are medically or educationally handicapped. As a team member, the occupational therapist provides information regarding the patient's physical and psychological adaption in the performance of daily living skills and functional activities.

The following functions are typically included in occupational therapy services: evaluate patients and clients, interpret evaluation findings, develop treatment plans, implement treatment, monitor patients/client's response to treatment and modify treatment as indicated, develop appropriate home or community programs, and initiate referrals.

STATUTORY AUTHORITY

The Commissioner is directed by Minnesota Statutes, section 214.13, subdivision 1 to "promote the recognition of human services occupations useful in the effective delivery of human services." The Commissioner is authorized to:

> establish procedures for the identification of human services occupations not now credentialed by the state, recommend appropriate regulatory modes, and promulgate by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations.

Minn. Stat. § 214.13, subd. 1.

The Commissioner must consider the criteria in Minnesota Statutes, section 214.001 to determine whether regulation is necessary. If the Commissioner determines regulation is necessary, the Commissioner is empowered only to register the occupation. Minn. Stat. §

214.13, subd. 1.

Registration is defined as " a system ... whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications." Minn. Stat. § 214.001, subd. 3(c). Unlike licensure, registration provides title protection only. Persons who are not registered are not prohibited from performing occupational therapy tasks; however, they are prohibited from using the protected title designated in the rules or holding themselves out as a member of the occupation.

In promulgating rules for registration of an occupation, the Commissioner may include procedures and standards addressing registration requirements, the scope of authorized practice, fees, supervision, continuing education, career progression, and disciplinary matters. Minnesota Statutes, section 214.13, subdivision 3. The rules may also include provisions for indicating functional differentiation of the group, qualifications for achieving registration via different entry routes, requirements for different levels of registered titles corresponding to steps in the occupation's career progression, the organizational structure of the advisory council, procedures for registration, requirements for registration renewal, disciplinary procedures and fees. Minn. R. part 4695.1500, subp. 4.

Minnesota Statutes, section 214.13, subdivision 4, states "the commissioner of health shall wherever possible delegate the administration of regulation activities to a health-related licensing board with the concurrence of that board." Alternatively, the Commissioner may act as the administrative authority for a registered occupation. See id.; Minn. R. 4695.1500 subp. 4 (1991).

The MOTA submitted an application for registration to the Commissioner in 1988. This application was reviewed under the criteria established in Minnesota Statutes, section 214.001 subdivision 2 by staff of the Health Occupations Program of the Minnesota Department of Health (MDH) and the Human Services Occupations Advisory Council (HSOAC).

Following a review of the recommendations from the Health Occupations Program staff and the Human Services Occupations Advisory Council, the Commissioner determined on August 31, 1989, that occupational therapy practitioners should be regulated within the state of Minnesota. She further determined that the form of regulation should be a registration system administered by the Commissioner and her delegatees in the Minnesota Department of Health.

GENERAL STATEMENT OF NEED AND REASONABLENESS

The legislature has declared that "no regulation shall be imposed unless it is required for the safety and well being of the citizens of the state." Minnesota Statutes, section 214.001, subd. 2. There are several factors which must be examined before regulation can be initiated. It must be determined "whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote." Minnesota Statutes, section 214.001, subd. 2(a). A second factor examines "whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability." Minnesota Statutes, section 214.001, subd. 2(b). Another consideration is "whether the citizens of the state are or may be effectively protected by other means." Minnesota Statutes, section 214.001, subd. 2(c). The final factor is

"whether the overall cost effectiveness and economic impact of regulating the occupation would be positive for the citizens of the state." Minnesota Statutes, section 214.001, subd. 2(d).

Review of the occupation of occupational therapy practitioners under these criteria resulted in findings, conclusions and recommendations by the Commissioner which are set out in the Determination of the Commissioner of Health dated August 31, 1989, a copy of which is attached as Attachment A and incorporated into this statement of need and reasonableness. Based on a thorough review of the application, the recommendations of the Human Services Occupational Advisory Council (HSOAC) and the Minnesota Department of Health Staff,[1] and after evaluating the criteria for regulation set out in Minnesota Statutes, section 214.001, subdivision 2, the Commissioner concluded that a registration system for occupational therapy practitioners was needed and reasonable for the following reasons:

1. There is a potential that the unregulated practice of occupational therapy will harm or endanger the health, safety, and welfare of the citizens of the state.

The Commissioner determined that, though harm may not be proximate, the potential for harm is real, serious and highly likely to occur when occupational therapy services are incompetently delivered. She agreed with the HSOAC and staff finding that the harm may be remote in that it often may not be immediately recognizable. Harm from incompetently

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[1] The HSOAC voted to not regulate occupational therapy practitioners on a divided vote (3 votes were in favor of registration, 3 votes were against registration and there were 2 abstentions). The HSOAC recommendation on the regulation of occupational therapists and occupational therapy assistants is attached as Attachment B.

Department of Health staff recommended regulation by implementation of a registration system. See Health Occupations Program Staff Recommendations on the Regulation of Occupational Therapists and Occupational Therapy Assistants, Attachment C.

delivered occupational therapy services is generally not immediate, rather it is evidenced over time. In addition, when the harm is lost productivity and unrealized rehabilitative progress, it may be difficult to determine that harm is due to improperly or poorly delivered services. Efficacy studies demonstrate that properly delivered services are beneficial and cost effective. Thus, if occupational therapy services are poorly delivered, it could be concluded that patients suffer harm when services are not maximally beneficial.

The Commissioner noted that harm may occur even in "supervised" settings because occupational therapy practitioners work independently when formulating plans of care and when delivering services. Furthermore, occupational therapists are increasingly providing services in community or outpatient settings due to deinstitutionalization and shorter hospitalizations. Therefore, there is a need to recognize services that are provided by qualified practitioners.

2. The delivery of occupational therapy services requires specialized skill and training. The public needs and will benefit by assurances of initial and continuing competency.

The Commissioner concluded that the practice of occupational therapy requires specialized skill and training. The Commissioner found that occupational therapy services require extensive skills involving independently performed functions.

> The functions performed by occupational therapists require a detailed knowledge and understanding of how each function will improve or ameliorate the condition being treated. This is true especially in the medical setting. For example, therapy could be permanently damaging if not properly administered to burn patients, accident victims, patients recovering from strokes (i.e. incorrect positioning of splints, burn masks, contraindicated exercise programs, etc.). While the absence of specialized skills may not produce immediate and irreparable harm, treatments which have little or no value can, over time, deprive the patient/client of an opportunity to improve his or her medical or education rehabilitation effort. For some patients/clients, the time lost may mean that "the window of opportunity" for improvement no longer exists.

Commissioner's Determination, Attachment A, p. 3. Finally, the Commissioner found that new techniques are emerging and it is important that occupational therapy practitioners remain current in their field.

3. Regulation of occupational therapy practitioners will provide the citizens of the state with an additional means of protection.

The Commissioner concluded that:

> While there is a strong private and national credentialing organization that helps ensure entry-level competence, there are no mechanisms for promoting continuing competence either nationally or within Minnesota, and there is no mechanism for investigating incompetent or unprofessional conduct in Minnesota. In addition, there is no authority or means to sanction such conduct.

Commissioner's Determination, Attachment A, p. 4.

4. The overall cost and economic impact of regulation will be positive on the citizens of the state.

The HSOAC and staff disagreed in their conclusions concerning the economic impact and cost effectiveness of regulation. The Commissioner concurred with the staff's analysis on this factor. First, additional regulation is needed to protect the public, and the benefit to the public outweighs the costs associated with implementing and administering a regulatory system. Second, direct lifestyle and employment productivity benefits accrue to individuals receiving occupational services from competently trained practitioners, and the costs attributed to regulation would be more than offset by individual and societal benefits. Finally, there was likely to be no changes to public programs or third party reimbursement systems if regulation was implemented.

ADDITIONAL REQUIREMENTS

1. Review and Comment by Commissioner of Finance

Minnesota Statutes, section 16A.1285, states that charges for regulation must be established according to Minnesota Statutes, Chapter 14. The Commissioner of Finance must review and comment on all charges submitted for approval under Minnesota Statutes, Chapter 14 and the commissioner's comments and recommendations must be included in the statement of need and reasonableness. In accordance with this requirement, the Commissioner of Finance's review and comment of the fees established in the proposed registration rules is contained in Attachment T which is incorporated into this statement of need and reasonableness. Minnesota Statutes, section 16A.1285 replaces Minnesota Statutes, section 16A.128 which was repealed in 1993.

2. Small business considerations

When an administrative agency proposes rules which may directly affect small business, the agency is required by Minnesota Statutes, section 14.115 to consider various methods for reducing the impact of the rules on small businesses. It is the Commissioner's position with respect to these proposed rules that the provisions of Minnesota Statutes, section 14.115 do not apply.

Minnesota Statutes, section 14.115, subdivision 7 specifies four types or classes of rules to which the small business requirements of section 14.115 are inapplicable. These proposed rules come within the terms of two of the exemptions; (1) agency rules that do not affect small businesses directly and (2) service businesses, regulated by government bodies, for standards and costs.

a. The proposed rules do not directly affect small businesses.

The vast majority of occupational therapists and occupational therapy assistants are employed by hospitals, nursing homes, long term care facilities and schools. These employment settings are generally not small businesses. However, some occupational therapists and occupational therapy assistants may be employed by businesses that meet the definition of a small business. In addition, some occupational therapists and occupational therapy assistants may be self-employed, and thus considered a small business.

Even though the work setting for some occupational therapy practitioners may be considered a small business, Minnesota Statutes, section 14.115 does not apply because the rules "do not affect small businesses directly." Minn. Stat., §14.115, subdivision 7(2). These rules have no direct impact on small business. Instead, they regulate individuals, in particular those who apply for and are registered as occupational therapists and occupational therapy assistants. Registration is not mandatory, thus, individuals may still work in the field of occupational therapy even though they choose to forgo registration.

That the proposed rules have no direct affect on small businesses is highlighted when the rules are analyzed under the standards contained in Minnesota Statutes, section 14.115, subdivision 2. Subdivision 2 requires an agency, when adopting rules which may affect small businesses, to consider five "methods for reducing the impact of the rules on small business." The Commissioner has considered these five methods, as explained below, in case these proposed rules are in some way construed as affecting small businesses. The methods are: (a) the establishment of less stringent compliance or reporting requirements for small business; (b) the establishment of less stringent schedules or deadlines for compliance

or reporting requirements for small businesses; (c) the consolidation or simplification of compliance or reporting requirements for small businesses; (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and (e) the exemption of small businesses from any or all requirements of the rule.

b. The Commissioner has concluded that, if the rules were determined to affect small businesses, it would not be feasible to incorporate any of the five suggested methods into these proposed rules.

The Commissioner has considered the feasibility of implementing each of the five suggested methods, considered whether implementing any of the five methods would be consistent with the statutory objectives that are the basis for this rulemaking, and concluded that it would not be feasible to incorporate any of the five suggested methods into these proposed rules. The Commissioner has also concluded that reducing the impact of these rules on small businesses would undermine the objectives of the registration system. The Commissioner's reasons are as follows.

Methods (a) through (c) of Minnesota Statutes, section 14.115, subdivision 2 relate to lessening compliance or reporting requirements for small businesses by (a) establishing less stringent requirements, (b) establishing less stringent schedules or deadlines for compliance with the requirements, or (c) consolidating or simplifying the requirements. The commissioner is not proposing any compliance or reporting requirements for either small or large businesses. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Commissioner is not proposing any design

or operational standards for any person or entity in business, and therefore there is no reason to implement performance standards for small businesses as a replacement for design or operational standards that do not exist. Finally, method (e) suggests exempting small businesses from any or all requirements of the rules. Under the Commissioner's view that these proposed rules do not directly regulate small businesses, there are no rule requirements from which to exempt small businesses.

c. Reducing the impact of these rules on small businesses would undermine the objectives of the registration system.

As the foregoing demonstrates, these proposed rules do not directly affect small businesses and thus under Minnesota Statutes, section 14.115, subdivision 7(2), the rules are not subject to the provisions of section 14.115. However, if these proposed rules are viewed as regulating businesses directly, it would be contrary to the Commissioner's statutory authority to adopt one set of regulations that would apply to occupational therapists who work in a large business and adopt another less stringent set of regulations to be applied to those occupational therapists who work in a small business setting. Minnesota Statutes, section 214.13 charges the Commissioner with the duty of recommending appropriate regulatory modes for human service occupations not now credentialed by the state and further requires the Commissioner, should she decide that the appropriate mode of regulation for a specific group is registration, to promulgate rules for establishing standards and procedures to implement that decision. Given these statutory mandates, it is the Commissioner's duty to establish registration procedures which apply equally to and govern all applicants and registrants, regardless of the size of their business setting. Protection of the public and

equitable treatment of all persons under the proposed rules require regulations that are consistent for all persons regardless of employment in small or large business settings. Furthermore, Minnesota Statutes, section 214.001, subdivision 2, paragraph (d) requires the Commissioner to consider whether the overall cost effectiveness and economic impact of the proposed regulation would be positive for the citizens of the state. Therefore, the Commissioner has already taken the cost impact of the proposed registration system into consideration and determined that the proposed registration system is the least costly method of regulating the occupation so as to protect the public.

d. The proposed rules apply to service businesses regulated by government bodies, for standards and costs.

These rules are also exempt from section 14.115 under terms of subdivision 7(3). This exemption applies to rules governing service businesses which are regulated by government bodies for standards and cost. The vast majority of employment settings for occupational therapy practitioners, such as nursing homes, long-term care facilities, hospitals, group homes and residential care facilities are all specifically exempt from the small business provisions under this portion of the statute. The remaining employment settings for occupational therapy practitioners should fall within the exemption because, like the businesses specifically named in the statute, they are service businesses regulated by government bodies for standards and costs.

e. Conclusion.

It is the Commissioner's position that the proposed rules are exempt from the small business considerations because the rules do not affect small businesses directly and the

employers are service businesses which are regulated by government bodies. As explained above, the Commissioner considers implementation of any of the five suggested methods enumerated in Minnesota Statutes, section 14.115, subdivision 2 to be infeasible. Nonetheless, to the extent that the proposed rules may affect the business operation of an occupational therapy practitioner, and to the extent it may be feasible to implement any of the suggested methods for lessening the impact on small businesses, the Commissioner asserts that it would be contrary to the purposes to be served by these rules to exempt one group of occupational therapy practitioners from the requirements of the proposed rules. It is the Commissioner's view that these proposed rules must apply equally to all occupational therapy practitioners if the public is to be adequately protected. For all of these reasons, it is not feasible for the Commissioner to incorporate into these proposed rules any of the five methods specified in Minnesota Statutes, section 14.115, subdivision 2.

Minnesota Statutes, section 14.115, subdivision 4 requires the agency to provide an opportunity for small businesses to participate in the rulemaking process. The Department has complied with this requirement. Throughout the rule drafting process, input has been obtained from a variety of businesses which employ OTs, including small business as that term is defined at Minnesota Statutes, §14.115. Meetings to discuss the draft rules have been held with occupational therapy practitioners from a variety of practice settings including metropolitan hospitals, academic institutions that are located in the metropolitan area and rural areas, free-standing physical rehabilitation centers, rural long term care facilities, hand therapy clinics and schools. The Minnesota Occupational Therapy Association has participated in a number of reviews of the draft rules at various stages in their development.

In addition, The Minnesota Occupational Therapy Association, in cooperation with the Department, invited each member of their association to obtain a copy of the draft rules for review and comment.

Furthermore, a variety of professional associations that represent employers of occupational therapy practitioners were included in the review of the draft rules prior to the publication of the proposed rules, including the Minnesota Home Care Association, Care Providers of Minnesota, Minnesota Hospital Association, Minnesota Association of Homes for the Aging, Minnesota Academy of Medicare Rehabilitation Agencies and the Minnesota Medical Association. All of these individuals and associations have also been invited to review the rules as published in the form of the proposed rules.

3. Other statutory requirements.

The Commissioner has determined that Minnesota Statutes, sections 14.11; 17.80 to 17.84; 115.43, subdivision 1; 116.07, subdivision 6; and 144A.29, subdivision 4 do not apply to the proposed registration rules. Therefore, this Statement of Need and Reasonableness does not address the topics referenced in those statutes.

4666.0010. SCOPE.

PARTS 4666.0010 TO 4666.1400 APPLY ONLY TO PERSONS WHO ARE APPLICANTS FOR REGISTRATION, WHO ARE REGISTERED, WHO USE PROTECTED TITLES, OR WHO REPRESENT THAT THEY ARE REGISTERED AS OCCUPATIONAL THERAPISTS OR OCCUPATIONAL THERAPY ASSISTANTS.

It is necessary to set out the scope of the proposed rules to clearly identify those persons that are subject to the rules. The scope section is necessary so that affected persons have

adequate notice of who is subject to the proposed rules.

The proposed rules do not apply to every person who practices occupational therapy. The proposed rules apply only to occupational therapy practitioners who fit into one of the categories set out above: is an applicant for registration, is registered, uses protected titles or represents that he or she is registered. It is reasonable to include these categories of persons because the Commissioner will only have jurisdiction over each group of persons identified. The Commissioner's jurisdiction extends beyond applicants and registrants to any person who uses titles protected by the registration system whether or not they are authorized to do so. The authority for the Commissioner's jurisdiction over individuals who violate parts 4666.0010 to 4666.1400, including persons who use a title protected by part 4666.0030 whether or not they are authorized to do so, arises out of several sections of Minnesota Statutes, chapter 214. First, the Commissioner is authorized to register an occupation. Minnesota Statutes, section 214.13, subdivision 1, states in part "If the commissioner determines that credentialing of an occupation is appropriate, the commissioner is empowered only to register the occupation." Second, the Commissioner is authorized to protect titles through a registration system. Minnesota Statutes, section 214.001, subdivision 3, paragraph (c) describes registration as a system "whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications...." Third, the Commissioner is allowed to include in the registration system procedures and standards relating to several topics, including disciplinary matters. Minnesota Statutes, section 214.13, subdivision 3, states in part that "[r]ules promulgated by the commissioner pursuant to subdivision 1 may include procedures and

standards relating to the registration requirement, the scope of authorized practice, fees, supervision required, continuing education, career progression, and disciplinary matters." Emphasis supplied.

Fourth, Chapter 214 provides the Commissioner with disciplinary authority for registered occupations. The Commissioner is given authority to receive and act on complaints by Minnesota Statutes, section 214.13, subdivision 6:

> The provisions of section 214.10 (regarding the conduct of licensing boards in the receipt of complaints, investigations and hearings) shall apply to any complaint or other communication, whether oral or written, received by the commissioner of health which alleges or implies a violation of a statute or rule which the commissioner is empowered to enforce relating to a specific occupational group for which a registration requirement has been created pursuant to this section.

Parenthesis added. Minnesota Statutes, section 214.13, subdivision 7 authorizes the Commissioner to use the subpoena powers granted to boards by section 214.10 subdivision 3. Finally, Minnesota Statutes, section 214.11 authorizes the Commissioner to seek injunctive relief to enforce the rules. The language of the statutes cited above give the Commissioner jurisdiction over applicants, registrants and persons who use any title protected by part 4666.0030, whether or not authorized to do so.

4666.0020 DEFINITIONS.

SUBPART 1. SCOPE. FOR THE PURPOSE OF PARTS 4666.0010 TO 4666.1400, THE FOLLOWING TERMS HAVE THE MEANING GIVEN THEM.

It is necessary and reasonable to define in this part those words which are used in the proposed rules because they are key to understanding the practice of occupational therapy and the registration system for occupational therapists and occupational therapy assistants.

SUBP. 2. ADVISORY COUNCIL. "ADVISORY COUNCIL" MEANS THE

OCCUPATIONAL THERAPY PRACTITIONERS ADVISORY COUNCIL AUTHORIZED BY MINNESOTA STATUTES, SECTION 214.13, SUBDIVISION 4.

It is necessary to include this definition in the rules to distinguish this advisory council from other advisory councils in Minnesota. The definition is reasonable because it clearly identifies the advisory council referred to in these rules and because it cites the statutory authority for creating the advisory council. Minnesota Statutes, section 214.13, subdivision 4 states in part: "The commissioner of health may establish an advisory council to advise the commissioner or the appropriate health-related licensing board on matters relating to the registration and regulation of an occupation."

SUBP. 3. ASSIGN. "ASSIGN" MEANS THE PROCESS OF INSTRUCTING DIRECT SERVICE STAFF HOW TO PERFORM A SELECTED TASK WHICH, UNDER ESTABLISHED PRACTICE STANDARDS, DOES NOT REQUIRE THE SKILLS OF AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT, WITH THE EXPECTATION THAT THE TASK WILL BE PERFORMED IN THE ABSENCE OF AN OCCUPATIONAL THERAPIST.

It is necessary to define this term in order to specify the meaning of the term as used in part 4666.0600 and to differentiate this term from the use of the term "delegate." The definition is reasonable in view of the concerns expressed by advocates of persons with developmental disabilities and recreational therapists that occupational therapists be allowed to "integrate treatment procedures into functional activities which occur throughout the person's normal daily routine." The proposed rule part recognizes that occupational therapists can train direct service staff in specific functional activities and then delegate

performance of the activities so as to enhance the overall provision of occupational therapy services. For example, the occupational therapist may train direct service staff in positioning techniques, feeding techniques and use of ambulatory devices.

SUBP. 4. BIENNIAL REGISTRATION PERIOD. "BIENNIAL REGISTRATION PERIOD" MEANS THE TWO-YEAR PERIOD FOR WHICH REGISTRATION IS EFFECTIVE.

It is necessary to define "biennial registration period" because that is the unit of measurement for a full term registration period. It is reasonable to define "biennial registration period" in order to clearly indicate that a registration issued for a full term is effective for a two year period.

SUBP. 5. COMMISSIONER. "COMMISSIONER" MEANS THE COMMISSIONER OF THE MINNESOTA DEPARTMENT OF HEALTH OR A DESIGNEE.

It is necessary to define the term "Commissioner" as the Commissioner of the Department of Health because it distinguishes this Commissioner from those of other state agencies. It is reasonable to use the term "Commissioner" to refer only to the Commissioner of the Department of Health because state statute specifically provides authority for the Commissioner of Health to register human service occupations. Minn. Stat. § 214.13 subd. 1 (1994). It is also necessary to define "Commissioner" as including a designee because it may be necessary for the Commissioner to assign to a person within or outside of the Department of Health tasks that she is authorized to perform. It is reasonable that the Commissioner be able to delegate administrative tasks. The designee is authorized to do only that which the Commissioner is authorized to do and has chosen to delegate.

SUBP. 6. CONTACT HOUR. "CONTACT HOUR" MEANS AN INSTRUCTIONAL SESSION OF 60 CONSECUTIVE MINUTES, EXCLUDING COFFEE BREAKS, REGISTRATION, MEALS WITHOUT A SPEAKER, AND SOCIAL ACTIVITIES.

It is necessary to define this term because it is used in the rules to establish a uniform unit of measurement for acquiring credit for continuing education activities. Sixty minutes is a reasonable period of time to use as the uniform measurement for a contact hour because it conforms to the standard measurement of time.

SUBP. 7. CREDENTIAL. "CREDENTIAL" MEANS A LICENSE, PERMIT, CERTIFICATION, REGISTRATION, OR OTHER EVIDENCE OF QUALIFICATION OR AUTHORIZATION TO ENGAGE IN THE PRACTICE OF OCCUPATIONAL THERAPY ISSUED BY ANY AUTHORITY.

It is necessary to include this definition in the rules because the term "credential" is used in the rules and has a meaning that, although consistent with the common usage of the term, may differ from definitions given in dictionaries and is specific to the subject area of occupational regulation. The definition is reasonable because (1) it is consistent with common usage, and (2) clarifies that any qualification or authorization to engage in the practice of occupational therapy issued by a private body or governmental unit will be considered a credential for the purpose of these rules. States regulate occupational therapy practitioners in a variety of ways, including licensure and registration. Private organizations also issue evidence of qualification for various occupations. This definition encompasses any evidence of qualification or authorization issued by either type of body.

SUBP. 8. CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST. "CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST" MEANS THE EXAMINATION SPONSORED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD FOR CREDENTIALING AS AN OCCUPATIONAL THERAPIST, REGISTERED, OR ANOTHER CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPISTS APPROVED BY THE COMMISSIONER.

It is necessary to define "credentialing examination for occupational therapist" because this phrase is used in the proposed rules to designate the examination required for persons who seek to qualify for registration under part 4666.0060. This definition is reasonable because it designates the examination currently used by all states who credential occupational therapists and require an examination as part of the entry level qualifications. It is also reasonable because Minnesota Statutes, section 214.03 directs regulatory boards to use national standardized tests for the objective, nonpractical portion of a licensure examination. The examination administered by the American Occupational Therapy Certification Board is a national standardized test for occupational therapists. It is reasonable to allow the Commissioner to approve a different credentialing examination in order to avoid having to amend the rules if the American Occupational Therapy Certification Board discontinues sponsoring the national examination.

SUBP. 9. CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANT. "CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANT" MEANS THE EXAMINATION SPONSORED BY THE

AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD FOR CREDENTIALING AS A CERTIFIED OCCUPATIONAL THERAPY ASSISTANT, OR ANOTHER CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANTS APPROVED BY THE COMMISSIONER.

It is necessary to define "credentialing examination for occupational therapy assistants" because this phrase is used in the proposed rules to designate the examination required for persons who seek to qualify for registration under part 4666.0070. This definition is reasonable because it designates the examination currently used by all states who credential occupational therapy assistants and require an examination as part of the entry level qualifications. It is also reasonable because Minnesota Statutes, section 214.03 directs regulatory boards to use national standardized tests for the objective, nonpractical portion of a licensure examination. The examination administered by the American Occupational Therapy Certification Board is a national standardized test for occupational therapy assistants. It is reasonable to allow the Commissioner to approve a different credentialing examination in order to avoid having to amend the rules if the American Occupational Therapy Certification Board discontinues sponsoring a national examination.

SUBP. 10. DELEGATE. "DELEGATE" MEANS TO TRANSFER TO AN OCCUPATIONAL THERAPY ASSISTANT THE AUTHORITY TO PERFORM SELECTED PORTIONS OF AN OCCUPATIONAL THERAPY EVALUATION OR TREATMENT PLAN FOR A SPECIFIC PATIENT.

It is necessary to define this term in order to specify the meaning of the term in parts 4666.0600 and 4666.0700 and to differentiate this term from the use of the term "assign."

The definition is reasonable because it is based on a definition used in professional literature, see National Council of State Board of Nursing, Inc., Concept Paper on Delegation 1 (1990) (Attachment D), and is consistent with the use of the word within the occupation.

SUBP. 11. DIRECT SUPERVISION. "DIRECT SUPERVISION" OF A LEVEL ONE PRACTITIONER OR AN OCCUPATIONAL THERAPY ASSISTANT USING PHYSICAL AGENT MODALITIES MEANS THAT THE LEVEL TWO PRACTITIONER HAS EVALUATED THE PATIENT AND DETERMINED A NEED FOR USE OF A PARTICULAR PHYSICAL AGENT MODALITY IN THE OCCUPATIONAL THERAPY TREATMENT PLAN, HAS DETERMINED THE APPROPRIATE PHYSICAL AGENT MODALITY APPLICATION PROCEDURE, AND IS PHYSICALLY PRESENT IN THE DEPARTMENT AND AVAILABLE FOR IN PERSON INTERVENTION WHILE TREATMENT IS PROVIDED.

It is necessary to define "direct supervision" because that term is used in part 4666.1000 to describe the level of supervision required for occupational therapists who are receiving clinical training in the use of specific physical agent modalities (referred to as level one practitioners) and for occupational therapy assistants.

The level one practitioner must meet a variety of requirements prior to using physical agent modalities without supervision. See part 4666.1000, subparts 6, 7, and 8. One of these requirements is to develop and implement treatment plans for a specified number of patients under the supervision of the level two practitioner. See subpart 6, item B (1), subpart 7, item B (1) and subpart 8, item B (1). In order to assure that services provided by a level one practitioner are safe and effective, it is necessary to require the level two

practitioner evaluate the patient and determine the need for a particular physical agent modality. However, in order to provide appropriate clinical training opportunities, the Commissioner recognizes that it will be necessary during the course of training for the level one practitioner to perform evaluations and determine whether a particular physical agent modality would be appropriate. Under these situations, the requirements of "direct supervision" still apply and the level two practitioner would be required to independently verify the evaluation and determination of the level one practitioner.

SUBP. 12 ELECTRICAL STIMULATION DEVICE. "ELECTRICAL STIMULATION DEVICE" IS ANY DEVICE WHICH GENERATES PULSED, DIRECT, OR ALTERNATING ELECTRICAL CURRENT FOR THE PURPOSES OF REHABILITATION OF NEUROMUSCULOSKELETAL DYSFUNCTION.

It is necessary to define electrical stimulation devices so that registered persons can clearly identify the devices that are referred to in part 4666.1000. It is necessary to have a definition which is broad enough to cover all devices which use various types of electrical current for rehabilitation of a particular dysfunction but is specific enough to limit the type of dysfunction to neuromusculoskeletal. It is reasonable for the definition to describe these devices by their function (e.g. devices generating electrical current for rehabilitation of neuromusculoskeletal dysfunction), because that allows registered persons to identify the devices without having to name all devices in the proposed rules.

SUBP. 13. ELECTROTHERAPY. "ELECTROTHERAPY" IS THE USE OF ELECTRICAL STIMULATION DEVICES FOR A THERAPEUTIC PURPOSE.

It is necessary to define electrotherapy because that term is used in part 4666.1000. The

definition is reasonable because it concisely states what electrotherapy is for purposes of the rules.

SUBP. 14. LEVEL ONE PRACTITIONER. "LEVEL ONE PRACTITIONER" MEANS AN OCCUPATIONAL THERAPIST WHO IS QUALIFIED TO USE SUPERFICIAL PHYSICAL AGENT MODALITIES, ELECTRICAL STIMULATION DEVICES, OR ULTRASOUND DEVICES FOLLOWING COMPLETION OF THE THEORETICAL TRAINING REQUIRED IN PART 4666.1000, SUBPART 3, 4, OR 5, AND WHO USES THE MODALITY UNDER THE DIRECT SUPERVISION OF A LEVEL TWO PRACTITIONER.

It is necessary to define level one practitioner because that term is used in part 4666.1000 to designate a person who has completed certain theoretical and clinical training requirements and is able to use specific physical agent modalities under the supervision of a level two practitioner. It is reasonable that this title be applied only to persons who have completed certain theoretical and clinical training because use of physical agent modalities is not part of the entry level training provided at accredited occupational therapist educational programs.

SUBP. 15. LEVEL TWO PRACTITIONER. "LEVEL TWO PRACTITIONER" MEANS AN OCCUPATIONAL THERAPIST WHO IS QUALIFIED TO USE SUPERFICIAL PHYSICAL AGENT MODALITIES, ELECTRICAL STIMULATION DEVICES, OR ULTRASOUND WITHOUT SUPERVISION FOLLOWING COMPLETION OF THE REQUIREMENTS IN PART 4666.1000, SUBPARTS 6, 7, OR 8.

It is necessary to define level two practitioner because that term is used in part

4666.1000 to designate a person who has gained clinical experience while working as a level one practitioner, and is now able to work without supervision. The reasonableness of the clinical training required to become a level two practitioner is described at part 4666.1000, subparts 6, 7 and 8.

SUBP. 16. LICENSED HEALTH CARE PROFESSIONAL. "LICENSED HEALTH CARE PROFESSIONAL" MEANS A PERSON LICENSED IN GOOD STANDING IN MINNESOTA TO PRACTICE MEDICINE, OSTEOPATHY, CHIROPRACTIC, PODIATRY, OR DENTISTRY.

It is necessary to define "licensed health care professional" in order that occupational therapists can clearly identify the professionals referred to in part 4666.0800, Coordination of Services. The definition is reasonable because it is based on the definition of the same phrase in the rules governing the registration of physical therapists and is used for the same purpose, to protect the consumer and facilitate communication between therapists and the named professionals. See Minn. R. 5601.0100 Subp. 5. Pursuant to their registration rules, physical therapists must communicate information to a "licensed health care professional" or "licensed health care provider," see Minn. R. 5601.1200 & 5601.2000, and under certain circumstances, must refer a patient to a "licensed health care professional" or "health care provider," see Minn. R. 5601.1800 & 5601.2000. Similarly, the proposed rules require occupational therapists to communicate with a "licensed health care professional" and, under certain circumstances, refer a patient to a "licensed health care professional" in order to protect consumers from harmful practices. See Part 4666.0800.

SUBP. 17. LIMITED REGISTRATION. "LIMITED REGISTRATION" MEANS A

METHOD OF REGISTRATION DESCRIBED IN PART 4666.0400, SUBPART 3, ITEM D, SUBITEM (1), FOR PERSONS WHO HAVE ALLOWED THEIR REGISTRATION TO LAPSE FOUR YEARS OR MORE AND WHO CHOOSE A SUPERVISED PRACTICE AS THE METHOD OF QUALIFYING FOR REGISTRATION.

It is necessary to define this term because it is used in the rules to indicate an alternate method of registration. It is reasonable that methods of registration be identified in the definition section in order to eliminate confusion. Limited registration is necessary in order to enforce the supervision requirements of the supervised practice (e.g. review and approve the supervision agreement) and to collect fees to cover the cost of enforcement. Limited registration is reasonable because it allows persons who are completing a supervised practice as the method of qualifying for registration following lapse to use the protected titles during their supervised practice.

SUBP. 18. OCCUPATIONAL THERAPIST. EXCEPT AS PROVIDED IN PART 4666.0060 SUBPART 3, ITEM B, "OCCUPATIONAL THERAPIST" MEANS AN INDIVIDUAL WHO MEETS THE QUALIFICATIONS IN PARTS 4666.0010 TO 4666.1400 AND REGISTERS WITH THE COMMISSIONER. FOR PURPOSES OF PART 4666.0060 SUBPART 3, ITEM B, OCCUPATIONAL THERAPIST MEANS THE EMPLOYMENT TITLE OF A NATURAL PERSON BEFORE THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400.

It is necessary to include this definition in the proposed rules because the term is used to indicate persons who meet minimum qualifications set by the rules and who are registered with the commissioner. It is necessary to distinguish the use of the term in part 4666.0060

subpart 3 in order to avoid confusion. Use of the term "occupational therapist" in part 4666.0060 subpart 3 refers to use of the title prior to the effective date of the rules and is not an exemption to the requirement that all persons using the protected titles must be registered. The definition is reasonable because the Commissioner has authority, pursuant to Minnesota Statutes, sections 214.001, subdivision 3, paragraph (c) and 214.13, subdivision 3, to set prerequisites for registration and to protect certain titles. The definition is also reasonable because it clearly states the elements necessary to use the term.

SUBP. 19. OCCUPATIONAL THERAPY. "OCCUPATIONAL THERAPY" MEANS THE USE OF PURPOSEFUL ACTIVITY TO MAXIMIZE THE INDEPENDENCE AND THE MAINTENANCE OF HEALTH OF AN INDIVIDUAL WHO IS LIMITED BY A PHYSICAL INJURY OR ILLNESS, A COGNITIVE IMPAIRMENT, A PSYCHOSOCIAL DYSFUNCTION, A MENTAL ILLNESS, A DEVELOPMENTAL OR LEARNING DISABILITY, OR AN ADVERSE ENVIRONMENTAL CONDITION. THE PRACTICE ENCOMPASSES EVALUATION, ASSESSMENT, TREATMENT, AND CONSULTATION. OCCUPATIONAL THERAPY SERVICES MAY BE PROVIDED INDIVIDUALLY, IN GROUPS, OR THROUGH SOCIAL SYSTEMS. OCCUPATIONAL THERAPY INCLUDES THOSE SERVICES DESCRIBED IN PART 4666.0040.

It is necessary to define the term occupational therapy because that term is used in the proposed rules to indicate a function or set of functions performed by occupational therapists and occupational therapy assistants. The definition is reasonable because it encompasses the primary functions performed by occupational therapists and occupational therapy assistants.

SUBP. 20. OCCUPATIONAL THERAPY ASSISTANT. EXCEPT AS PROVIDED IN PART 4666.0070 SUBPART 3, ITEM B, "OCCUPATIONAL THERAPY ASSISTANT" MEANS AN INDIVIDUAL WHO MEETS THE QUALIFICATIONS FOR AN OCCUPATIONAL THERAPY ASSISTANT IN PARTS 4666.0010 TO 4666.1400, AND REGISTERS WITH THE COMMISSIONER. FOR PURPOSES OF PART 4666.0070 SUBPART 3, ITEM B, OCCUPATIONAL THERAPY ASSISTANT MEANS THE EMPLOYMENT TITLE OF A NATURAL PERSON BEFORE THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400.

It is necessary to include this definition in the proposed rules because the term is used to indicate persons who meet minimum qualifications set by the rules and who are registered with the Commissioner. It is necessary to distinguish the use of the phrase in part 4666.0070 subpart 3 in order to avoid confusion. Use of the phrase "occupational therapy assistant" in part 4666.0070 subpart 3 refers to the use of the title prior to the effective date of the rules and is not an exemption to the requirements that all persons using the titles must be registered. The definition is reasonable because it clearly states the elements necessary to use the term. The definition is also reasonable because the Commissioner has authority, pursuant to Minnesota Statutes, sections 214.001, subdivision 3, paragraph (c) and 214.13, subdivision 3, to set prerequisites for registration and to protect certain titles.

SUBP. 21. PHYSICAL AGENT MODALITIES. "PHYSICAL AGENT MODALITIES" MEANS MODALITIES THAT USE THE PROPERTIES OF LIGHT, WATER, TEMPERATURE, SOUND, OR ELECTRICITY TO PRODUCE A RESPONSE IN SOFT TISSUE. THE PHYSICAL AGENT MODALITIES REFERRED TO IN PARTS

4666.0040 AND 4666.1000 ARE SUPERFICIAL PHYSICAL AGENT MODALITIES, ELECTRICAL STIMULATION DEVICES, AND ULTRASOUND.

It is necessary to define the term physical agent modalities because the term is used in the rules to refer to a group of therapeutic modalities that are not part of entry level-training for occupational therapists and occupational therapy assistants. Use of these modalities is governed by proposed rule parts 4666.1000, and is considered advanced practice for occupational therapists and occupational therapy assistants. It is reasonable that the definition provide a broad general description of physical agent modalities and then describe the specific modalities referred to in the proposed rules, because this information helps readers to understand the type of therapeutic medium the rule is referring to.

SUBP. 22. PROVISIONAL REGISTRATION. "PROVISIONAL REGISTRATION" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4666.0060, SUBPART 3, FOR OCCUPATIONAL THERAPISTS AND PART 4666.0070, SUBPART 3, FOR OCCUPATIONAL THERAPY ASSISTANTS, IN EFFECT FOR A LIMITED TIME, BY WHICH AN INDIVIDUAL WHO HAS NOT COMPLETED AN ACCREDITED OR APPROVED EDUCATION PROGRAM BUT WHO MEETS THE EMPLOYMENT REQUIREMENTS SPECIFIED IN THOSE SUBPARTS MAY QUALIFY FOR REGISTRATION PENDING SUCCESSFUL COMPLETION OF THE CREDENTIALING EXAMINATION.

It is necessary that this term be defined because it refers to an alternate method of registration which is in existence for a limited period of time. It is reasonable to identify this method of registration for applicants so they may pursue this option of registration within the

time frame allowed. Provisional registration is necessary and reasonable in order to allow those practitioners, who are not otherwise credentialed or formally educated but who have acquired competency in occupational therapy through work experience, to become registered and use the protected titles until they pass the credentialing examination or until the period of provisional registration expires.

SUBP. 23. QUALIFIED SUPERVISOR. "QUALIFIED SUPERVISOR" MEANS THE SUPERVISOR OF AN APPLICANT FOR PROVISIONAL REGISTRATION, UNDER PART 4666.0060, SUBPART 3, WHO:

A. SUPERVISES OCCUPATIONAL THERAPISTS, OR BEFORE THE ADOPTION OF PARTS 4666.0010 TO 4666.1400, SUPERVISED PERSONS CERTIFIED AS OCCUPATIONAL THERAPISTS BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD; OR

B. IS LICENSED BY THE BOARD OF MEDICAL PRACTICE, THE BOARD OF NURSING, OR THE BOARD OF TEACHING AND IS KNOWLEDGEABLE OF OCCUPATIONAL THERAPY EVALUATIONS, INTERVENTION PLANNING, AND THERAPEUTIC PROCEDURES; OR

C. THE COMMISSIONER DETERMINES HAS SUFFICIENT KNOWLEDGE OF OCCUPATIONAL THERAPY EVALUATIONS, INTERVENTION PLANNING, AND THERAPEUTIC PROCEDURES TO ASSESS THE EXTENT TO WHICH THE APPLICANT HAS PERFORMED THESE TASKS.

It is necessary to define "qualified supervisor" in order to provide consistent guidelines as to the persons who are qualified to verify that an applicant has been employed as an

occupational therapist for purposes of qualifying for provisional registration. See Part 4666.0060, subpart 3. The definition is reasonable because it includes only those persons who will have knowledge of occupational therapy techniques, such as evaluation, intervention planning and therapeutic procedures. The definition is also reasonable because it recognizes various types of supervisors who will have that knowledge, including a supervisor not specifically identified in the rules but whom the Commissioner determines has sufficient knowledge to determine whether an applicant has performed occupational therapy.

SUBP. 24. REGISTER OR REGISTERED. "REGISTER" OR "REGISTERED" MEANS THE ACT OR STATUS OF A NATURAL PERSON WHO MEETS THE REQUIREMENTS OF PARTS 4666.0010 TO 4666.1400 AND IS AUTHORIZED BY THE COMMISSIONER TO USE THE TITLES IN PART 4666.0030.

It is necessary to include these terms in the definition section because the terms are used in the proposed rules to indicate people who go through the process of registration or who have status as registered persons. The definition is reasonable because it clarifies the specific meaning of the terms as used in parts 4666.0010 to 4666.1400.

SUBP. 25. REGISTRANT. "REGISTRANT" MEANS A PERSON WHO MEETS THE REQUIREMENTS OF PARTS 4666.0010 TO 4666.1400 AND IS AUTHORIZED BY THE COMMISSIONER TO USE THE TITLES IN PART 4666.0030.

It is necessary to define the term "registrant" because the term is used throughout the rules to indicate a person who meets the qualifications of the rules and is authorized to use the titles in part 4666.0030. The definition is reasonable because it is consistent with the requirements provided in the rules.

SUBP. 26. REGISTRATION. "REGISTRATION" MEANS A SYSTEM IN WHICH PRACTITIONERS, WHO ARE THE ONLY INDIVIDUALS PERMITTED TO USE THE DESIGNATED TITLES IN PART 4666.0030, ARE LISTED ON AN OFFICIAL ROSTER AFTER HAVING MET PREDETERMINED QUALIFICATIONS.

It is necessary to define "registration" in order to clarify use of the term within the rules and to promote consistency in the use of the term and thereby reduce confusion. The definition is reasonable because it correlates with the definition provided in the authorizing statute for the registration system. See Minn. Stat. § 214.001, Subd. 3, Para. (c).

SUBP. 27. REGISTRATION BY EQUIVALENCY. "REGISTRATION BY EQUIVALENCY" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4666.0080 BY WHICH AN INDIVIDUAL WHO POSSESSES A CREDENTIAL FROM THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD OR ANOTHER NATIONAL CREDENTIALING ORGANIZATION APPROVED BY THE COMMISSIONER MAY QUALIFY FOR REGISTRATION.

It is necessary to define this term because it is used in the rules to signify an alternate method of acquiring registration as an occupational therapist or occupational therapy assistant. It is reasonable that alternate methods of acquiring registration be identified so that applicants who are qualified may be registered. It is necessary and reasonable to register persons who possess a credential from the American Occupational Therapy Certification Board so long as the qualifications for that credential are equivalent to or exceed the requirements for registration as an occupational therapist or an occupational therapy assistant under the proposed rules.

SUBP. 28. REGISTRATION BY RECIPROCITY. "REGISTRATION BY RECIPROCITY" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4666.0090 BY WHICH AN INDIVIDUAL WHO POSSESSES A CREDENTIAL FROM ANOTHER JURISDICTION MAY QUALIFY FOR MINNESOTA REGISTRATION.

It is necessary to define this term because it is used in the rules to signify an alternate method of acquiring registration as an occupational therapist or an occupational therapy assistant. It is reasonable that alternate methods of acquiring registration be identified so that qualified applicants may be registered. It is necessary and reasonable to register persons who possess a credential from another jurisdiction so long as the qualifications for that credential are equivalent to or exceed the requirements for registration as an occupational therapist or occupational therapy assistant under the proposed rules.

SUBP. 29. SERVICE COMPETENCY. "SERVICE COMPETENCY" OF AN OCCUPATIONAL THERAPY ASSISTANT IN PERFORMING EVALUATION TASKS MEANS THE ABILITY OF AN OCCUPATIONAL THERAPY ASSISTANT TO OBTAIN THE SAME INFORMATION AS THE SUPERVISING OCCUPATIONAL THERAPIST WHEN EVALUATING A CLIENT'S FUNCTION.

SERVICE COMPETENCY OF AN OCCUPATIONAL THERAPY ASSISTANT IN PERFORMING TREATMENT PROCEDURES MEANS THE ABILITY OF AN OCCUPATIONAL THERAPY ASSISTANT TO PERFORM TREATMENT PROCEDURES IN A MANNER SUCH THAT THE OUTCOME, DOCUMENTATION, AND FOLLOW-UP ARE EQUIVALENT TO THAT WHICH WOULD HAVE BEEN ACHIEVED HAD THE SUPERVISING OCCUPATIONAL THERAPIST PERFORMED THE TREATMENT

PROCEDURE.

It is necessary to define this term in order to provide guidance to occupational therapists in determining the level of supervision required for occupational therapy assistants. An occupational therapist must establish that the occupational therapy assistant has service competency prior to delegating portions of evaluation or treatment procedures. See part 4666.0700. The definition is reasonable because it is based on the accepted principles of service competency for this occupation. See American Occupational Therapy Association, Inc., Occupational Therapy Roles (1994) (Attachment E); American Occupational Therapy Association, Inc., Guide for Supervision of Occupational Therapy Personnel (1994) (Attachment F).

SERVICE COMPETENCY OF AN OCCUPATIONAL THERAPIST MEANS THE ABILITY OF AN OCCUPATIONAL THERAPIST TO CONSISTENTLY PERFORM AN ASSESSMENT TASK OR INTERVENTION PROCEDURE WITH THE LEVEL OF SKILL RECOGNIZED AS SATISFACTORY WITHIN THE APPROPRIATE ACCEPTABLE PREVAILING PRACTICE OF OCCUPATIONAL THERAPY.

It is necessary to define this term in order to provide guidance to occupational therapists as to the use of that term in Part 4666.0800 item C, which requires an occupational therapist to "refer a client ... if the client's condition requires services not within the occupational therapist's service competency." The definition is reasonable because it relies on appropriate acceptable prevailing practice standards and thus does not expand or restrict the occupational therapists area of practice.

SUBP 30. SUPERFICIAL PHYSICAL AGENT MODALITY. "SUPERFICIAL PHYSICAL AGENT MODALITY" MEANS A THERAPEUTIC MEDIUM WHICH PRODUCES TEMPERATURE CHANGES IN SKIN AND UNDERLYING SUBCUTANEOUS TISSUES WITHIN A DEPTH OF ZERO TO THREE CENTIMETERS FOR THE PURPOSES OF REHABILITATION OF NEUROMUSCULOSKELETAL DYSFUNCTION. SUPERFICIAL PHYSICAL AGENT MODALITIES MAY INCLUDE, BUT ARE NOT LIMITED TO: PARAFFIN BATHS, HOT PACKS, COLD PACKS, FLUIDOTHERAPY, CONTRAST BATHS, AND WHIRLPOOL BATHS. SUPERFICIAL PHYSICAL AGENT MODALITIES DO NOT INCLUDE THE USE OF ELECTRICAL STIMULATION DEVICES, ULTRASOUND, OR QUICK ICING.

It is necessary to define superficial physical agent modalities so that registered persons can identify the devices that are referred to in part 4666.1000. It is necessary to have a definition which is broad enough to cover all devices which produce temperature changes in skin and underlying tissue because that allows registrants to identify the devices without having to name all of them. The rule part states that superficial physical agent modalities do not include electrical stimulation devices and ultrasound, in order to avoid confusion between the term "physical agent modalities" (broad term that includes superficial physical agent modalities, ultrasound and electrical stimulation devices) and superficial physical agent modality (one category of physical agent modalities). It is necessary to exclude "quick icing" from the definition of superficial physical agent modalities because quick icing is an entry level skill for occupational therapists and occupational therapy assistants, and therefore is not a therapeutic medium that requires the advanced training specified in part 4666.1000.

SUBP. 31. TEMPORARY REGISTRATION. "TEMPORARY REGISTRATION" MEANS A METHOD OF REGISTRATION DESCRIBED IN PART 4666.0100, BY WHICH AN INDIVIDUAL WHO (1) HAS COMPLETED AN APPROVED EDUCATION PROGRAM BUT HAS NOT MET THE EXAMINATION REQUIREMENT; OR, (2) POSSESSES A CREDENTIAL FROM ANOTHER JURISDICTION OR THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD BUT WHO HAS NOT SUBMITTED THE DOCUMENTATION REQUIRED BY PART 4666.0200, SUBPARTS 3 AND 4, MAY QUALIFY FOR MINNESOTA REGISTRATION FOR A LIMITED TIME PERIOD.

It is necessary to define this term because it is used in the rules to indicate an alternate method of acquiring registration as an occupational therapist or occupational therapy assistant. It is reasonable that alternate methods of acquiring registration be identified so that applicants may be registered. Temporary registration is necessary and reasonable because it allows for the earliest possible registration for those applicants described in the rule part.

SUBP. 32. ULTRASOUND DEVICE. "ULTRASOUND DEVICE" MEANS A DEVICE INTENDED TO GENERATE AND EMIT HIGH FREQUENCY ACOUSTIC VIBRATIONAL ENERGY FOR THE PURPOSES OF REHABILITATION OF NEUROMUSCULOSKELETAL DYSFUNCTION.

It is necessary to define ultrasound device so that registered persons can clearly identify the devices that are referred to in part 4666.1000. It is reasonable to describe these devices by their function (e.g. to generate and emit high frequency acoustic vibrational energy for the purposes of rehabilitation of neuromusculoskeletal dysfunction), because that allows

registered persons to identify the devices without having to name all devices.

4666.0030 PROTECTED TITLES AND RESTRICTIONS ON USE; EXEMPT PERSONS; SANCTIONS.

SUBPART 1. PROTECTED TITLES AND RESTRICTIONS ON USE. USE OF THE PHRASE "OCCUPATIONAL THERAPY" OR "OCCUPATIONAL THERAPIST," OR THE INITIALS "O.T." ALONE OR IN COMBINATION WITH ANY OTHER WORDS OR INITIALS TO FORM AN OCCUPATIONAL TITLE, OR TO INDICATE OR IMPLY THAT THE PERSON IS REGISTERED BY THE STATE AS AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT, IS PROHIBITED UNLESS THAT PERSON IS REGISTERED UNDER PARTS 4666.0010 TO 4666.1400.

This section is necessary to identify those titles which are available for use only by registered individuals. The establishment of specific protected titles is necessary in order to provide consumers and employers with a means for identifying individuals who have met the standards for registration and are registered. The language in this rule is intended to prohibit individuals from using the listed titles as well as any other titles or designations which would infer that the individual has met minimum requirements for registration, unless that individual has complied with the registration rules. The titles that are protected are reasonable because they are the titles that are commonly used and thus will be recognized by consumers. The proposed subpart protects the phrases "occupational therapy," "occupational therapist" and the initials "O.T." alone or in combination with any words or initials to form an occupational title. Therefore, the titles "occupational therapist," "occupational therapy

assistant," "certified occupational therapy assistant," "OT," "OTA" and "COTA" are protected titles. The proposed subpart will also protect other titles that can be formed using the protected phrases or initials. It is reasonable that the rules protect the closely related titles in order to lessen or eliminate confusion by the public.

SUBP 2. USE OF "MINNESOTA REGISTERED." USE OF THE TERM "MINNESOTA REGISTERED" IN CONJUNCTION WITH TITLES PROTECTED UNDER THIS PART BY ANY PERSON IS PROHIBITED UNLESS THAT PERSON IS REGISTERED UNDER PARTS 4666.0010 TO 4666.1400.

This part is necessary because the term "Minnesota registered," when used with the protected titles, will help inform the consumer about persons who have met the state's minimum requirements and registered with the Commissioner. The section is reasonable because it uses words that are factually accurate, that is, if the person is registered with the Commissioner in Minnesota, he or she is "Minnesota registered."

SUBP. 3. PERSONS LICENSED OR CERTIFIED IN OTHER STATES.

PERSONS WHO ARE REGISTERED IN MINNESOTA AND LICENSED OR CERTIFIED IN ANOTHER STATE MAY USE THE DESIGNATION "LICENSED" OR "CERTIFIED" WITH A PROTECTED TITLE ONLY IF THE STATE OF LICENSURE OR CERTIFICATION IS CLEARLY INDICATED.

This part is necessary in order to require Minnesota registered practitioners who are licensed or certified in other states, and who desire to use that designation with a protected title, to identify the state of licensure or certification. Many states that regulate occupational therapy practitioners use licensure as the form of regulation. Other states use certification.

If a Minnesota registered occupational therapy practitioner used the term "licensed" or "certified" with the protected titles, it may imply to the consumer an additional qualification conferred by the State of Minnesota. The group of occupational therapy practitioners that consulted with the Department on the development of the rules advised department staff that this practice is likely to occur. Therefore, this subpart is necessary in order to eliminate confusion. The subpart is reasonable because it does not prevent an occupational therapy practitioner from using the designation, it only requires that they indicate the source of the credential.

Of course, a person credentialed in another state may use the protected titles in Minnesota only if they are registered in Minnesota or fall within one of the exemptions. If they are registered in Minnesota or fall within one of the exemptions, persons credentialed in another state may use the out-of-state credential in their title if they comply with this subpart.

SUBP. 4. EXEMPT PERSONS. SUBPART 1 DOES NOT APPLY TO:

A. A PERSON EMPLOYED AS AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT BY THE GOVERNMENT OF THE UNITED STATES OR ANY AGENCY OF IT. HOWEVER, USE OF THE PROTECTED TITLES UNDER THOSE CIRCUMSTANCES IS ALLOWED ONLY IN CONNECTION WITH PERFORMANCE OF OFFICIAL DUTIES FOR THE FEDERAL GOVERNMENT;

It is necessary to exempt employees of the federal government who are performing official duties from restrictions on use of certain titles created by these rules because the state has no jurisdiction over federal work-sites in Minnesota, therefore these rules cannot control the practices of federal employees in their official duties. This provision is reasonable

because it exempts federal employees from the requirements of the rules only while they are working in their official capacity.

B. A STUDENT PARTICIPATING IN SUPERVISED FIELDWORK OR SUPERVISED COURSEWORK THAT IS NECESSARY TO MEET THE REQUIREMENTS OF PART 4666.0060, SUBPART 1, OR 4666.0070, SUBPART 1, IF THE PERSON IS DESIGNATED BY A TITLE WHICH CLEARLY INDICATES THE PERSON'S STATUS AS A STUDENT TRAINEE. ANY USE OF THE PROTECTED TITLES UNDER THESE CIRCUMSTANCES IS ALLOWED ONLY WHILE THE PERSON IS PERFORMING THE DUTIES OF THE SUPERVISED FIELDWORK OR SUPERVISED COURSEWORK; OR

It is necessary to allow students participating in a supervised fieldwork or supervised coursework to use the protected titles with the designation of student trainee in order to identify persons who are working in this capacity. It is reasonable to allow this exception to the protected titles because the exception serves the purpose of the registration system by identifying to consumers persons who are students and therefore have not yet met the entry level qualifications.

C. A PERSON PERFORMING OCCUPATIONAL THERAPY SERVICES IN THE STATE, IF THE SERVICES ARE PERFORMED NO MORE THAN 30 DAYS IN A CALENDAR YEAR IN ASSOCIATION WITH AN OCCUPATIONAL THERAPIST REGISTERED UNDER PARTS 4666.0010 TO 4666.1400, AND:

(1) THE PERSON IS CREDENTIALED UNDER THE LAW OF ANOTHER STATE WHICH HAS CREDENTIALING REQUIREMENTS AT LEAST AS STRINGENT

AS THE REQUIREMENTS OF PARTS 4666.0010 TO 4666.1400; OR

(2) THE PERSON MEETS THE REQUIREMENTS FOR CERTIFICATION AS AN OCCUPATIONAL THERAPIST REGISTERED (OTR) OR A CERTIFIED OCCUPATIONAL THERAPY ASSISTANT (COTA), ESTABLISHED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD OR ANOTHER NATIONAL CREDENTIALING ORGANIZATION APPROVED BY THE COMMISSIONER.

This proposed rule part is necessary in order to provide a limited exemption for persons working in the state temporarily. The Commissioner believes there are specific circumstances that will require this exemption. First, occupational therapy practitioners who are in the state to provide training, or to obtain training, should be allowed to use the protected titles, as long as they possess the qualifications in (1) or (2) above. It is reasonable to provide an exemption for these persons because encouraging persons to enter the state for training serves the regulatory purpose of promoting continuing competency. Second, persons in other states who work in Minnesota for no more than 30 days in a calendar year should be allowed to use the protected titles, as long as they possess the qualifications in (1) and (2) above. The group of occupational therapy practitioners that advised department staff developing the rules commented that this provision was necessary because practitioners credentialed in other states will provide occupational therapy services on a short term basis to persons in Minnesota. For example, a practitioner in North Dakota may provide in-home care services to a Minnesota resident in a nearby rural area. Also, an out-of-state practitioner may work in Minnesota to fill a short-term vacancy. Prohibiting these persons

from using the protected titles would act to discourage these persons from working in Minnesota and may restrict occupational mobility. It is reasonable to allow an exemption to these person because they posses the qualifications needed for registration, as required by (1) or (2) above, and therefore the exemption simply allows them to use the protected titles in Minnesota for the temporary time period specified without requiring them to pay the registration fee.

SUBPART 5. SANCTIONS. PERSONS WHO HOLD THEMSELVES OUT AS OCCUPATIONAL THERAPISTS OR OCCUPATIONAL THERAPY ASSISTANTS BY OR THROUGH THE USE OF ANY TITLE PROVIDED IN SUBPART 1 WITHOUT PRIOR REGISTRATION ACCORDING TO PARTS 4666.0010 TO 4666.1400 ARE SUBJECT TO SANCTIONS OR ACTION AGAINST CONTINUING THE ACTIVITY ACCORDING TO MINNESOTA STATUTES, CHAPTER 214, OR OTHER STATUTORY AUTHORITY.

It is necessary to set forth the consequences of the unauthorized use of a protected title because it puts persons on notice that these rules may be enforced. This subpart is reasonable because the sanctions referred to are within the Commissioner's authority.

4666.0040 SCOPE OF PRACTICE.

THE PRACTICE OF OCCUPATIONAL THERAPY BY AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT INCLUDES, BUT IS NOT LIMITED TO, INTERVENTION DIRECTED TOWARD:

It is necessary to delineate the scope of practice to provide a common reference to assist in the identification of those services which a registered occupational therapist or occupational therapy assistant can be expected to provide. Delineation of services included

in the scope of occupational therapy practice is reasonable because it provides examples but does not limit registered occupational therapists or occupational therapy assistants to the provision of only those services listed in the rules, nor does it prevent practitioners from utilizing any new techniques which may be developed in the future. The language contained in the scope of practice is also reasonable because it is patterned after the American Occupational Therapy Association's "Definition of Occupational Therapy Practice For State Legislation." American Occupational Therapy Association, Policies Adopted or Amended by the 1992 Representative Assembly, 47 Am. J. of Occupational Therapy 361 (1993). For additional information on the need for and reasonableness of including physical agent modalities within the scope of practice for occupational therapists and occupational therapy assistants, see part 4666.1000.

A. ASSESSMENT AND EVALUATION, INCLUDING THE USE OF SKILLED OBSERVATION OR THE ADMINISTRATION AND INTERPRETATION OF STANDARDIZED OR NONSTANDARDIZED TESTS AND MEASUREMENTS, TO IDENTIFY AREAS FOR OCCUPATIONAL THERAPY SERVICES;

B. PROVIDING FOR THE DEVELOPMENT OF SENSORY INTEGRATIVE, NEUROMUSCULAR, OR MOTOR COMPONENTS OF PERFORMANCE;

C. PROVIDING FOR THE DEVELOPMENT OF EMOTIONAL, MOTIVATIONAL, COGNITIVE, OR PSYCHOSOCIAL COMPONENTS OF PERFORMANCE;

D. DEVELOPING DAILY LIVING SKILLS;

E. DEVELOPING FEEDING AND SWALLOWING SKILLS;

F. DEVELOPING PLAY SKILLS AND LEISURE CAPACITIES;

G. ENHANCING EDUCATIONAL PERFORMANCE SKILLS;

H. ENHANCING FUNCTIONAL PERFORMANCE AND WORK READINESS THROUGH EXERCISE, RANGE OF MOTION, AND USE OF ERGONOMIC PRINCIPLES;

I. DESIGNING, FABRICATING, OR APPLYING REHABILITATIVE TECHNOLOGY, SUCH AS SELECTED ORTHOTIC AND PROSTHETIC DEVICES, AND PROVIDING TRAINING IN THE FUNCTIONAL USE OF THESE DEVICES;

J. DESIGNING, FABRICATING, OR ADAPTING ASSISTIVE TECHNOLOGY AND PROVIDING TRAINING IN THE FUNCTIONAL USE OF ASSISTIVE DEVICES;

K. ADAPTING ENVIRONMENTS USING ASSISTIVE TECHNOLOGY SUCH AS ENVIRONMENTAL CONTROLS, WHEELCHAIR MODIFICATIONS, AND POSITIONING;

L. EMPLOYING PHYSICAL AGENT MODALITIES, IN PREPARATION FOR OR AS AN ADJUNCT TO PURPOSEFUL ACTIVITY, WITHIN THE SAME TREATMENT SESSION OR TO MEET ESTABLISHED FUNCTIONAL OCCUPATIONAL THERAPY GOALS, CONSISTENT WITH THE REQUIREMENTS OF PART 4666.1000; AND

M. PROMOTING HEALTH AND WELLNESS.

4666.0050 REGISTRATION REQUIREMENTS; PROCEDURES AND QUALIFICATIONS.

AN APPLICANT FOR REGISTRATION MUST COMPLY WITH THE GENERAL REGISTRATION PROCEDURES IN PART 4666.0200. TO QUALIFY FOR REGISTRATION, AN APPLICANT MUST SATISFY ONE OF THE REQUIREMENTS IN

ITEMS A TO E AND NOT BE SUBJECT TO DENIAL OF REGISTRATION UNDER PART 4666.1300.

It is necessary and reasonable to include this summary in order to inform applicants of the procedures and qualifications required for registration and the location of that information in the registration rules.

A. A PERSON WHO APPLIES FOR REGISTRATION AS AN OCCUPATIONAL THERAPIST AND WHO HAS NOT BEEN CREDENTIALED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD OR ANOTHER JURISDICTION MUST MEET THE REQUIREMENTS IN PART 4666.0060.

B. A PERSON WHO APPLIES FOR REGISTRATION AS AN OCCUPATIONAL THERAPY ASSISTANT AND WHO HAS NOT BEEN CREDENTIALED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD OR ANOTHER JURISDICTION MUST MEET THE REQUIREMENTS IN PART 4666.0070.

C. A PERSON WHO IS CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD MAY APPLY FOR REGISTRATION BY EQUIVALENCY AND MUST MEET THE REQUIREMENTS IN PART 4666.0080.

D. A PERSON WHO IS CREDENTIALED IN ANOTHER JURISDICTION MAY APPLY FOR REGISTRATION BY RECIPROCITY AND MUST MEET THE REQUIREMENTS IN PART 4666.0090.

E. A PERSON WHO APPLIES FOR TEMPORARY REGISTRATION MUST MEET THE REQUIREMENTS IN PART 4666.0100.

It is necessary and reasonable to include items A through E in the rules as a means of

summarizing the various methods of qualifying for registration. It is necessary and reasonable to provide this summary in order to refer interested persons to the parts of the rules where information on the required qualifications can be obtained.

4666.0060 QUALIFICATIONS FOR OCCUPATIONAL THERAPIST.

SUBPART 1. EDUCATION REQUIRED.

A. AN APPLICANT WHO HAS RECEIVED PROFESSIONAL EDUCATION IN THE UNITED STATES OR ITS POSSESSIONS OR TERRITORIES MUST SUCCESSFULLY COMPLETE ALL ACADEMIC AND FIELDWORK REQUIREMENTS OF AN EDUCATIONAL PROGRAM FOR OCCUPATIONAL THERAPISTS ACCREDITED BY THE ACCREDITATION COUNCIL FOR OCCUPATIONAL THERAPY EDUCATION OR ANOTHER NATIONAL ACCREDITING ORGANIZATION APPROVED BY THE COMMISSIONER.

B. AN APPLICANT WHO HAS RECEIVED PROFESSIONAL EDUCATION OUTSIDE THE UNITED STATES OR ITS POSSESSIONS OR TERRITORIES MUST SUCCESSFULLY COMPLETE ALL ACADEMIC AND FIELDWORK REQUIREMENTS OF AN EDUCATIONAL PROGRAM FOR OCCUPATIONAL THERAPISTS APPROVED BY A MEMBER ASSOCIATION OF THE WORLD FEDERATION OF OCCUPATIONAL THERAPISTS OR ANOTHER ORGANIZATION APPROVED BY THE COMMISSIONER.

SUBP. 2. QUALIFYING EXAMINATION SCORE REQUIRED.

A. AN APPLICANT MUST ACHIEVE A QUALIFYING SCORE ON THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST.

B. THE COMMISSIONER SHALL DETERMINE THE QUALIFYING SCORE FOR THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST. IN DETERMINING THE QUALIFYING SCORE, THE COMMISSIONER SHALL CONSIDER THE CUT SCORE RECOMMENDED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD, OR OTHER NATIONAL CREDENTIALING ORGANIZATION APPROVED BY THE COMMISSIONER, USING THE MODIFIED ANGOFF METHOD FOR DETERMINING CUT SCORE OR ANOTHER METHOD FOR DETERMINING CUT SCORE THAT IS RECOGNIZED AS APPROPRIATE AND ACCEPTABLE BY INDUSTRY STANDARDS.

C. THE APPLICANT IS RESPONSIBLE FOR:

(1) MAKING ARRANGEMENTS TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST;

(2) BEARING ALL EXPENSES ASSOCIATED WITH TAKING THE EXAMINATION; AND

(3) HAVING THE EXAMINATION SCORES SENT DIRECTLY TO THE COMMISSIONER FROM THE TESTING SERVICE THAT ADMINISTERS THE EXAMINATION.

The justification for subpart 1 and subpart 2 is organized in two sections: I) necessity and reasonableness of minimum entry-level qualifications - general considerations and II) necessity and reasonableness of specific provisions.

I. Necessity and Reasonableness of Minimum Entry Level Qualifications - General Considerations.

The entry level qualifications for an occupational therapist are graduation from an accredited educational program and successful completion of the examination sponsored by the American Occupational Therapy Certification Board (AOTCB). Persons who completed an educational program outside the United States that is approved by the World Federation of Occupational Therapists (WFOT) and who successfully complete the examination sponsored by AOTCB also qualify under the entry level qualifications.

The Commissioner of Health has the authority to establish entry level qualifications in human service occupation registration rules. Minnesota Statutes, section 214.13, subdivision 3 states, in part, "Rules promulgated by the commissioner pursuant to subdivision 1 may include procedures and standards relating to the registration requirement ...." It is necessary to have minimum entry-level qualifications for persons registered as occupational therapists to assure the public that individuals who use the titles have met the same education and training standards.

As the following discussion demonstrates, the proposed rules are reasonable because they are consistent with the certification requirements of the American Occupational Therapy Certification Board. The proposed entry level qualifications are also reasonable because they are consistent with those third party reimbursement sources that specify the qualifications required in the absence of a state credential.

A. Certification Requirements of the American Occupational Therapy Certification Board.

The education, fieldwork and examination requirements of this part incorporate the

current requirements for AOTCB certification.[2] The Commissioner has determined that the qualifications for AOTCB certification as an occupational therapist are appropriate guidelines for Minnesota to follow in setting reasonable entry level qualifications for the registration system because the AOTCB, and its predecessor, the AOTA, have established credibility and national acceptance of their standards for professional competence of occupational therapists.

For over 60 years there has existed a national voluntary credentialing organization that has set educational standards and certification requirements for the profession of occupational therapy. Initially this responsibility was assumed by the American Occupational Therapy Association (AOTA). In 1930 AOTA approved a plan for the national registration of occupational therapists and registration was begun in 1931. The eligibility requirements for registration as Occupational Therapist, Registered, went through some changes during the early years. In 1931, registration was restricted generally to graduates of schools or courses whose curriculum and staff met the training standards set by AOTA. By 1938, the AMA had adopted standards for occupational therapy educational programs and AOTA registration status was then available to graduates of these programs and to therapists who passed an examination but were not otherwise eligible for registration. The current requirements for entry level certification, graduation from an accredited educational program and successful completion of the certification examination, were implemented in 1946.

In 1986 the AOTA Assembly and membership voted to create a separate autonomous

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[2] Subsequent parts of the proposed rules include provisions to recognize other persons who the Commissioner believes are qualified to use the protected titles (e.g. persons certified by the AOTCB in previous years when other qualifications were accepted for private certification, see part 4666.0080, and persons who were employed as an occupational therapist prior to the effective date of the rules, see subpart C of this part.

certification board, the American Occupational Therapy Certification Board (AOTCB), to independently set certification policies and procedures. AOTA believed this separation was necessary to remove potential conflict of interest and antitrust problems. AOTA continues to exist as a national voluntary membership organization.[3]

In order to qualify for certification as an Occupational Therapist, Registered, the AOTCB requires that the individual (1) graduate from an accredited occupational therapist educational program and have successfully completed all the therapist level fieldwork required by the educational program (but not less than six months) and (2) have successfully completed the Certification Examination for Occupational Therapist, Registered. American Occupational Therapy Certification Board, Inc., Certification Requirements, Regulatory Board Reference Manual (March 1992) (Attachment G).

Graduates from foreign schools may also qualify for certification. Graduates of an occupational therapist educational program approved by the World Federation of Occupational Therapists (WFOT) must successfully complete all academic and clinical fieldwork requirements of the program, obtain a recommendation from the program director and pass the Certification Examination for Occupational Therapist, Registered. Id. Graduates of an occupational therapist educational program that is not approved by the WFOT must first qualify to sit for the examination. Eligibility to take the examination is determined by AOTCB after evaluating each individual's education as compared to the educational standards for accredited U.S. and WFOT-approved schools. Id.

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[3] The historical information regarding the AOTA and AOTCB provided in this section was obtained from, Carolyn Manville Baum & Madelaine S. Gray, Certification: Serving the Public Interest, 42 Am. J. of Occupational Therapy, February 1988, at 77-79.

B. Third party payor requirements for reimbursement.

The Minnesota Department of Health surveyed third party payors, including Medicare, Medical Assistance, Minnesota Department of Education and private insurers, in order to determine the necessary qualifications for occupational therapists seeking reimbursement from each source. In addition, information was obtained from the Joint Commission on Accreditation of Health Organizations to determine the standards for occupational therapy services provided in accredited hospitals.

1. MEDICARE

Medicare is the largest single payor for occupational therapy services in the United States. In 1985, an estimated 20 percent of the occupational therapy profession served Medicare beneficiaries in hospital inpatient and out patient settings, physicians' offices, skilled nursing facilities, home health agencies, and hospices. American Occupational Therapy Association, Inc., Payment For Occupational Therapy Services, 1-1 (Susan Jane Scott ed. 1988).

Medicare uses a set of regulations that establish minimum health and safety standards for health care facilities participating in the Medicare program. These sets of regulations, called "conditions of participation," include standards for the provision of occupational therapy services. Separate sets of conditions of participation cover hospitals, intermediate care facilities for the mentally retarded, home health agencies and comprehensive outpatient rehabilitation facilities. In addition, the Medicare Carriers Manual sets out the criteria for occupational therapists providing outpatient occupational therapy services under part B. There is no uniform definition of qualified occupational therapist for Medicare, so it is

necessary to look at the conditions of participation for each type of facility.

The conditions of participation for hospitals require that occupational therapy services, if provided, must be provided by "staff who meet the qualifications specified by the medical staff, consistent with State law." 42 C.F.R. § 482.56(a)(2) (1991) (emphasis added).

Occupational therapy services provided in intermediate care facilities for the mentally retarded must be provided by staff that are licensed, certified or registered by the state to provide those services. 42 C.F.R. § 483.430(b)(5)(1991). If no state credentialing exists, occupational therapy staff must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body. Id. at (b)(5)(i).

Occupational therapy services in Home Health Agencies and Comprehensive Outpatient Rehabilitation Facilities must be provided by occupational therapists who:

(1) graduated from an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; or

(2) are eligible for the National Registration Examination of the American Occupational Therapy Association; or

(3) have two years of appropriate experience as an occupational therapist, and have achieved a satisfactory grade on a proficiency examination approved by the U.S. Public Health Service, except that such determination of proficiency does not apply with respect to persons initially licensed by a state or seeking initial qualification as an occupational therapist after December 31, 1977.

42 C.F.R. § 484.4 (1991) (Home Health Agencies); 42 C.F.R. § 485.70 (c) (1991)

(Comprehensive Outpatient Rehabilitation Facilities)(referring to § 405.1202 which was redesignated as § 484.4).

Occupational therapists providing outpatient therapy services under Medicare Part B must meet one of the three alternatives listed above, and in addition, must be "licensed by the State in which practicing". Medicare Carriers Manual, Part 3 - Claims Process § 2215, Transmittal No. 1209 (August 1987) (emphasis added).

2. JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS (JCAHO)

Federal law provides that certain health organizations which are accredited by JCAHO, including hospitals, are deemed to meet the health and safety requirements for participation in Medicare. Most hospitals participating in Medicare qualify by meeting the JCAHO accreditation standards. 1 Division of Health Care Services, Institute of Medicine, Medicare: A Strategy for Quality Assurance 97 (1990). The JCAHO Accreditation Manual for Hospitals defines a qualified occupational therapist as "an individual who is a graduate of an occupational therapy program approved by a nationally recognized accrediting body and is currently certified as an occupational therapist by the American Occupational Therapy Certification Board, or has the documented equivalent in training, education, and/or experience; and who meets any current legal requirements of licensure or registration; and who is currently competent in the field." 1 Joint Commission on Accreditation of Health Care Facilities, Accreditation Manual for Hospitals 321 (1991) (emphasis added).

3. MEDICAL ASSISTANCE

The Minnesota Medical Assistance rules for Rehabilitative and Therapeutic Services

define "occupational therapist" as a person who is currently registered by the American Occupational Therapy Association as an occupational therapist." Minn. R. 9505.0390, subpart 1, item D (1993).

4. MINNESOTA DEPARTMENT OF EDUCATION

Occupational therapists are employed in the schools to work with children who qualify for special education services under the Education for All Handicapped Children Act. Under the Act, occupational therapy is a "related service." 20 U.S.C. §1401 (a)(17) (supp. 1991). Staff providing related services must meet "[s]tate educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing ... related services." 34 C.F.R. 300.16 (1990) (emphasis added). The Minnesota State Board of Education requires the following qualifications for "related services staff:"

> Every related services staff member shall hold an appropriate license issued by the Board of Teaching or the State Board of Education. When such a license is not available, related services staff shall meet recognized professional standards which shall be documented by the district.

Minn. Rules 3525.1500, subpart 4 (1993) (emphasis added). The Minnesota Board of Teaching, the state agency responsible for credentialing most of the teaching and special education staff in the schools, does not credential occupational therapists and does not require that persons providing occupational therapy services are certified by the AOTCB. Currently, the only mechanism for monitoring the qualifications of persons providing occupational therapy services in the schools is reimbursement. In order to qualify for partial salary reimbursement from the state, the Minnesota Department of Education requires that school districts employ occupational therapists that are certified by the American Occupational

Therapy Certification Board. If state reimbursement is not sought, there is no mechanism to assure the qualifications of occupational therapists. Telephone conversation with Wayne Erickson, Minnesota Department of Education, Manager, Unique Learner Needs Section (October 27 1991); telephone conversation with Bob Fisher, Minnesota Department of Education, Information and Technology Section (October 28, 1992).

5. PRIVATE HEALTH CARE PLANS

In July 1992 the Minnesota Department of Health conducted a survey of 32 health care plans (health maintenance organizations, preferred provider organizations, and indemnity plans), chosen at random to determine reimbursement policies for occupational therapy services. Attachment H is a copy of the survey form. Fourteen of the fifteen health care plans that responded to the survey indicated that their plan provided reimbursement for occupational therapy services. Each of the respondents that provided information on the qualifications required for occupational therapists stated that the occupational therapist must be licensed, certified or registered by the State. Some contract language specifically requires licensure. However, one respondent noted that other state credentials are acceptable (e.g. registration and certification) if the qualifications for that credential are equivalent to the qualifications for licensure. Based on telephone conversations with representatives of various health care plans, Department staff believe that the policy of accepting other credentials that are equivalent to licensure is common in the industry. Department staff do not know the extent to which AOTCB certification is an acceptable credential in the absence of a state credential.

Conclusion

There currently exists no uniform standard for the qualifications required for occupational therapists in Minnesota. Employers look to reimbursement requirements to determine the qualifications required for occupational therapy employees. The language emphasized in the previous discussion demonstrates that reimbursement sources frequently rely on a state credential. That credential currently does not exist in Minnesota. These proposed rules are necessary to establish that credential and uniform qualifications and standards for persons in Minnesota who use the title occupational therapist.

II. Necessity and Reasonableness of Specific Provisions.

A. Education Program Accredited by the Accreditation Council for Occupational Therapy Education

It is necessary to designate an approved education program to assure the consistency and adequacy of training for persons utilizing the title "occupational therapist." The requirement that all persons registered as occupational therapists complete the academic and field work requirements of a program accredited by the Accreditation Council for Occupational Therapy Education is reasonable because (1) this accreditation is the nationally recognized standard for occupational therapy education programs and (2) graduation from an accredited program is required for certification by the national voluntary credentialing organization, the AOTCB, and by most reimbursers.

The Accreditation Council of Occupational Therapy Education (ACOTE) was formed when the AOTA decided to discontinue its affiliation with the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association. CAHEA was

the accrediting body for occupational therapy education programs prior to this time. ACOTE has temporarily adopted CAHEA accreditation standards while developing criteria for accreditation of educational programs for occupational therapists. The minimum accreditation standards for an educational program for occupational therapists are contained in the Essentials and Guidelines of an Accredited Educational Program for the Occupational Therapist. American Occupational Therapy Association and the American Medical Association, Essentials and Guidelines for an Accredited Educational Program for the Occupational Therapist (Attachment I). Educational programs accredited by CAHEA were granted accreditation by ACOTE. Newly developing educational programs are being accredited by ACOTE.

The provision that the Commissioner may approve another accrediting organization is necessary should ACOTE discontinue accreditation of educational programs in the future. It is reasonable to allow the Commissioner to designate another national accrediting organization to recognize programs that become accredited by a new accrediting body at such time as the Commissioner determines that the accreditation standards of the new accrediting body are sufficient to assure an acceptable and consistent level of quality by the new accrediting body. The occupational therapy profession currently has 79 accredited programs for occupational therapists and 77 accredited programs for occupational therapy assistants. Professional Licensing Report, 5 (June 1993).

B. Educational Program Approved by World Federation of Occupational Therapists (WFOT).

It is necessary to designate approved foreign occupational therapy education programs to

provide for registration of foreign trained persons and to assure the consistency and adequacy of training of foreign trained therapists. It is necessary to include a specific provision in the qualifications section that recognizes therapists trained in foreign education programs approved by the WFOT in order to allow these qualified therapists to continue working in their profession.

The WFOT is a federation of national professional organizations of occupational therapists from approximately 34 countries and independent "city states." World Federation of Occupational Therapists, The History of WFOT 2 (1990) (Attachment J). The WFOT has diverse objectives for the advancement of occupational therapy, including "to promote internationally recognized standards for education of occupational therapists." Id. at 1. The WFOT was created in 1952. World Federation of Occupational Therapists, Recommended Minimum Standards for the Education of Occupational Therapists 1 (1985) (on file at the Minnesota Department of Health). The first WFOT statement outlining minimum standards for the education of occupational therapist was approved in 1954. In 1958 WFOT published a document entitled Establishment of a Programme for the Education of Occupational Therapists. The Recommended Minimum Standards for the Education of Occupational Therapists is the most recent version of that original document. The Standards include requirements for occupational therapy curriculum in the areas 1) pre-clinical studies; 2) clinical sciences; 3) theory of occupational therapy; 4) therapeutic activities and techniques; and 5) clinical practice/fieldwork. Id. at 23-37.

It is reasonable for the Commissioner to accept educational programs approved by WFOT as meeting the academic requirements for the proposed rules because WFOT has

demonstrated its ability to set standards for foreign educational programs and is recognized and accepted as a credible accrediting organization.

Foreign trained occupational therapists who did not graduate from a WFOT approved educational program may be eligible for Minnesota registration under subpart 3 of this part, "waiver of education requirement," and may be eligible under part 4666.0080, "registration by equivalency." Registration eligibility for non-WFOT graduates is explained under those rule provisions.

C. Qualifying Examination Score.

This requirement is necessary so that an applicant can demonstrate a minimum level of competency in and knowledge of occupational therapy skills to the Commissioner. An examination is commonly accepted as a valid method of assessing minimum competency regarding specific tasks. It is reasonable for the Commissioner to use a qualifying score on an examination designed to measure competency in occupational therapy skills as a basis for this competency because it is an objective method of assessment.

The AOTCB's credentialing examination for occupational therapist's is administered by the Professional Examination Service (PES). PES is responsible for examination development, application processing, test administration and test scoring. Linda M. Iorizzo, AOTCB at PES, Volume XIII, Number 1 PES NEWS 3. PES staff, together with a group of occupational therapists and occupational therapy assistants, write the test questions. PES staff then work with AOTCB's Certification Examination Development Committee to review the examination questions and rate each item on a validation scale to confirm that it is an appropriate question for the examination. AOTCB, Information Exchange 1 (July 1991).

The examination questions are based on the AOTA's Entry Level Role Delineation which is updated periodically to reflect changes in practice. AOTCB, Information Exchange 5 (April 1991). The AOTCB determines the cut score for the examination using the modified Angoff method.

It is reasonable to register individuals who achieve a qualifying score on the AOTCB certification examination because this examination is based on the AOTA's entry level role delineation and therefore represents the minimum level of knowledge required for competent performance of occupational therapy. Furthermore, use of the AOTCB examination as the minimum competency level for Minnesota registration is consistent with other states which credential occupational therapists, and will enable mobility of practitioners into Minnesota.

It is also reasonable that the Commissioner use the AOTCB certification examination because Minnesota Statutes, section 214.03 directs state examining and licensing boards to use a national standardized test for the examination given to prospective licensees. The AOTCB certification examination is a national standardized test for assessing the level of knowledge of occupational therapists, therefore it is appropriate to specify this test as the examination used for registration of occupational therapists.

It is necessary that the Commissioner consider the cut score recommended by the AOTCB because the Commissioner does not have the expertise or the resources to perform test analysis to yield the cut score on a particular examination. It is reasonable to rely on the modified Angoff method for determining cut score because it is accepted by industry standards as appropriate. It is necessary and reasonable to allow the Commissioner to consider a cut score determined by another acceptable method because alternative methods

for determining cut score may become accepted as industry standards develop.

The provision that the Commissioner may approve another national credentialing organization for the credentialing examination is necessary to provide for the contingency that the AOTCB may dissolve or discontinue its testing at some point in the future. It is reasonable that the Commissioner have the flexibility to approve another examination if that becomes necessary to provide for an ongoing examination process.

It is necessary and reasonable that the applicant bear the expenses associated with taking the examination because it is not feasible for the Commissioner to pay the examination cost for every individual who applies for registration. It is reasonable that the costs for taking the examination be borne by the applicant because it is not unduly burdensome for the individual.

It is also necessary and reasonable that the applicant sign a release to have the examination scores sent from the PES, or other examination service approved by the Commissioner, to the Commissioner so that the Commissioner may be assured of obtaining confidential information directly from the source.

SUBP. 3. WAIVER OF EDUCATION REQUIREMENT.

A. THIS SUBPART IS EFFECTIVE AS LONG AS THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD ALLOWS THE COMMISSIONER TO AUTHORIZE PERSONS TO TAKE THE CERTIFICATION EXAMINATION FOR STATE REGISTRATION ONLY OR FOR THREE YEARS AFTER THE EFFECTIVE DATES OF PARTS 4666.0010 TO 4666.1400, WHICHEVER OCCURS FIRST.

This item is necessary in order to provide notice to applicants and provisional registrants that provisional registration will be automatically terminated if the AOTCB discontinues their current policy of allowing States to authorize persons to take the certification examination for state registration only. The definition of "credentialing examination for occupational therapist" is the examination sponsored by the AOTCB or another credentialing examination approved by the Commissioner." Part 4666.0020, subpart 8. This item is also necessary to clearly inform potential applicants and provisional registrants that the Commissioner is not obligated to approve "another credentialing examination" in the event the AOTCB's current policy is changed. It is reasonable to terminate provisional registration under these circumstances because the AOTCB certification examination is the key element in determining whether a provisional registrant possesses the skills for full registration status. The cost of developing an examination solely for provisional registrants is prohibitive.

B. A PERSON WHO HAS BEEN EMPLOYED AS AN OCCUPATIONAL THERAPIST FOR AT LEAST 4,000 HOURS DURING THE SIX YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 MAY APPLY TO THE COMMISSIONER TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST WITHOUT MEETING THE EDUCATION REQUIREMENTS OF SUBPART 1. A PERSON EMPLOYED AS AN OCCUPATIONAL THERAPY ASSISTANT DOES NOT QUALIFY FOR REGISTRATION UNDER THIS SUBPART. THE COMMISSIONER SHALL DETERMINE WHETHER THE APPLICANT WAS EMPLOYED AS AN OCCUPATIONAL THERAPIST BASED ON THE INFORMATION PROVIDED UNDER ITEM C, SUBITEMS (1) AND (2). A PERSON

GRANTED PERMISSION TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST WILL BE ISSUED A PROVISIONAL REGISTRATION. ALL PROVISIONAL REGISTRATIONS WILL EXPIRE THREE YEARS AFTER THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 OR WHEN THE COMMISSIONER GRANTS OR DENIES REGISTRATION, WHICHEVER OCCURS FIRST.. IF THE APPLICANT PASSES THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPIST WITHIN THREE YEARS OF THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400, THE COMMISSIONER SHALL WAIVE THE EDUCATION REQUIREMENT OF SUBPART 1.

This provision is necessary in order to provide persons who have not completed an approved educational program but who have acquired a level of competency by working as an occupational therapist the opportunity to register. It is reasonable to require that persons must have worked a minimum number of hours to qualify for provisional registration in order to assure sufficient work experience to develop on the job skills. The number of hours required, four thousand hours, is reasonable because persons with a variety of work schedules would be recognized. For example, the following person would qualify: a person who worked forty hours a week for two years, a person who worked 20 hours a week for four years, or a person who worked 667 hours a year for six years.

It is necessary that persons who seek to register based on their employment as an occupational therapist pass the credentialing examination for occupational therapists in order to have a common and objective measure of their occupational abilities and skills. Other states have used similar grandparenting provisions that allowed experienced practitioners who

did not meet the minimum entry requirements to qualify for state credentialing upon passing the examination sponsored by the American Occupational Therapy Certification Board. See, e.g., Md. Health Occupations Code Ann. §§ 10-302, 10-303(a), 10-305(a) (1991); Va. Regs. Reg. 465-08-01 §2.3 F. The AOTCB allows persons who meet state determined criteria to take the certification examination "for state regulatory board purposes only." See generally, American Occupational Therapy Certification Board, Regulatory Board Reference Manual, Examinations for State Regulatory Board Purposes Only (Attachment K). Candidates who qualify for the examination on this basis are informed in AOTCB correspondence that "passing the examination does not make you eligible for AOTCB certification as an Occupational Therapist, Registered (OTR) or Certified Occupational Therapy Assistant (COTA)." Id. at p. 6 (Sample Letter: Sent to candidates who do not meet AOTCB requirements).

It is necessary to require that persons pass the examination within three years of the effective date of the rules in order to implement the general registration requirements within a reasonable time and attain uniformity in the minimum competency level of occupational therapists registered by the Commissioner after a specific date. A three year period is necessary and reasonable in order to allow persons sufficient time to apply for provisional registration, study for the examination, take the examination (which is offered twice each year) and receive their examination results.

C. TO QUALIFY TO TAKE THE EXAMINATION, A PERSON MUST:

(1) SUBMIT THE APPLICATION MATERIALS REQUIRED BY PART 4666.0200 AND THE FEES REQUIRED BY PART 4666.1200; AND

It is necessary that an applicant submit the application materials to the Commissioner so that the Commissioner may assess the applicant's qualifications to take the examination, and upon passing the examination, to be registered. It is also necessary that an applicant submit the application materials so that the Commissioner may assess whether there are grounds for denial of registration under part 4666.1300. The necessity and reasonableness of the application materials are stated in part 4666.0200.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.128 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials.

(2) OBTAIN DOCUMENTATION FROM A QUALIFIED SUPERVISOR ON FORMS PROVIDED BY THE COMMISSIONER THAT VERIFIES THAT THE APPLICANT HAS BEEN EMPLOYED AS AN OCCUPATIONAL THERAPIST FOR AT LEAST 4,000 HOURS DURING THE SIX YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400. THIS DOCUMENTATION MUST INCLUDE THE APPLICANT'S JOB TITLE, EMPLOYMENT SETTING, DIAGNOSES OF PERSONS SEEN FOR OCCUPATIONAL THERAPY, AND THE TYPE AND FREQUENCY OF EVALUATIONS, INTERVENTION PLANNING, AND THERAPEUTIC PROCEDURES.

It is necessary that the registration rules set out specific criteria to determine whether the applicant has been employed as an occupational therapist in order to assure that all applicants

are evaluated fairly and to give applicants notice of the determining factors. The criteria listed are reasonable because they will determine whether the tasks required and the individual's performance are similar to that of a person who meets the qualifications stated in subpart 1 and subpart 2.

D. WHEN THE COMMISSIONER HAS AUTHORIZED AN APPLICANT UNDER THIS SUBPART TO TAKE THE CREDENTIALING EXAMINATION, THE APPLICANT IS RESPONSIBLE FOR:

(1) MAKING ALL ARRANGEMENTS TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPISTS;

(2) BEARING ALL EXPENSE ASSOCIATED WITH TAKING THE EXAMINATION; AND

(3) HAVING THE EXAMINATION SCORES SENT DIRECTLY TO THE COMMISSIONER FROM THE TESTING SERVICE THAT ADMINISTERS THE EXAMINATION.

It is necessary and reasonable that the applicant bear the expenses associated with taking the examination because it is not feasible for the Commissioner to pay the examination cost for every individual who applies for registration. It is reasonable that the costs for taking the examination be borne by the applicant because it is not unduly burdensome for the individual.

It is also necessary and reasonable that the applicant sign a release to have the examination scores sent from the PES, or other examination service approved by the Commissioner, to the Commissioner so that the Commissioner may be assured of obtaining

confidential information directly from the source.

E. THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 IS THE FIRST DAY OF THE THREE-YEAR PROVISIONAL REGISTRATION PERIOD. APPLICATIONS FOR REGISTRATION UNDER THIS SUBPART WILL NOT BE ACCEPTED AFTER THE EXPIRATION OF THE THREE-YEAR PROVISIONAL REGISTRATION PERIOD.

It is necessary that the rules clearly inform persons seeking registration under this part of the limited time period in which persons can qualify for provisional registration and that after a certain date, individuals applying for registration must comply with the general registration requirements. The necessity and reasonableness of the three year limit on the provisional registration period is stated in this part at subpart 3, item B.

4666.0070 QUALIFICATIONS FOR OCCUPATIONAL THERAPY ASSISTANTS.

SUBPART 1. EDUCATION REQUIRED. AN APPLICANT MUST SUCCESSFULLY COMPLETE ALL ACADEMIC AND FIELDWORK REQUIREMENTS OF AN OCCUPATIONAL THERAPY ASSISTANT PROGRAM APPROVED OR ACCREDITED BY THE ACCREDITATION COUNCIL FOR OCCUPATIONAL THERAPY EDUCATION OR ANOTHER NATIONAL ACCREDITING ORGANIZATION APPROVED BY THE COMMISSIONER.

SUBP. 2. QUALIFYING EXAMINATION SCORE REQUIRED.

A. AN APPLICANT FOR REGISTRATION MUST ACHIEVE A QUALIFYING SCORE ON THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANTS.

B. THE COMMISSIONER SHALL DETERMINE THE QUALIFYING SCORE FOR THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANTS. IN DETERMINING THE QUALIFYING SCORE, THE COMMISSIONER SHALL CONSIDER THE CUT SCORE RECOMMENDED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD, OR OTHER NATIONAL CREDENTIALING ORGANIZATION APPROVED BY THE COMMISSIONER, USING THE MODIFIED ANGOFF METHOD FOR DETERMINING CUT SCORE OR ANOTHER METHOD FOR DETERMINING CUT SCORE THAT IS RECOGNIZED AS APPROPRIATE AND ACCEPTABLE BY INDUSTRY STANDARDS.

C. THE APPLICANT IS RESPONSIBLE FOR:

(1) MAKING ALL ARRANGEMENTS TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANTS;

(2) BEARING ALL EXPENSE ASSOCIATED WITH TAKING THE EXAMINATION; AND

(3) HAVING THE EXAMINATION SCORES SENT DIRECTLY TO THE COMMISSIONER FROM THE TESTING SERVICE THAT ADMINISTERS THE EXAMINATION.

The narrative portion for subpart 1 and 2 follows the same format as the section for occupational therapists and is organized in two sections: I) necessity and reasonableness of minimum entry level qualifications - general considerations II) necessity and reasonableness of specific provisions.

I. Necessity and Reasonableness of Minimum Entry Level Qualifications - General Considerations.

The entry level qualifications for an occupational therapy assistant are graduation from an accredited educational program and successful completion of the examination sponsored by the AOTCB. The Commissioner of Health has the authority to establish entry level qualifications in human service occupational registration rules. Minnesota Statutes, section 214.13, subdivision 3 states, in part, "[r]ules promulgated by the commissioner pursuant to subdivision 1 may include procedures and standards relating to the registration requirement...." As the following discussion will demonstrate, the proposed rules are necessary to establish uniform qualifications for persons using the title occupational therapy assistant in Minnesota. The entry level qualifications in the proposed rules are reasonable because they are consistent with the certification requirements of the American Occupational Therapy Certification Board. The proposed entry level qualifications are also reasonable because they are consistent with the third party reimbursement requirements that exist in the absence of a state credential.

A. Certification Requirements of the American Occupational Therapy Certification Board.

The education, fieldwork and examination requirements of this part incorporate the current requirements for AOTCB certification.[4] The Commissioner's view is that the

[4] Subsequent parts of the proposed rules include provisions to recognize other persons who the Commissioner believes are qualified to use the protected titles (e.g. persons certified by the AOTCB when other qualifications were accepted for certification, see subpart 4666.0080, and persons who were employed as an occupational therapy assistant prior to the effective date of the rules, see subpart C of this part.

qualifications for AOTCB certification as an occupational therapy assistant are appropriate guidelines for Minnesota to follow in setting reasonable entry level qualifications for the registration system because the AOTCB, and its predecessor, the AOTA, have established credibility and national acceptance of their standards for professional competence of occupational therapy assistants.

In 1958, AOTA established standards for educational programs for occupational therapy assistants. From 1958 to 1977, persons who completed an approved educational program were qualified for certification as Certified Occupational Therapy Assistant upon payment of the certification fee. In 1977, the certification requirements for certified occupational therapy assistant were expanded to require the passing of a written examination administered by AOTA. These factors, education and examination, remain the qualifications required for certification.[5] Specifically, AOTCB requires (1) graduation from an AOTA approved occupational therapy assistant educational program and successful completion of all assistant level fieldwork required by the educational program (but not less than six months) and (2) successful completion of the Certification Examination for Occupational Therapy Assistant. American Occupational Therapy Certification Board, Inc., Regulatory Board Reference Manual, Certification Requirements 1 (March 92) (Attachment G).

(B) Third Party Payor Requirements for Reimbursement

The reimbursers who were surveyed for purposes of determining the necessary qualifications for occupational therapy assistants seeking reimbursement are Medicare,

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[5] The historical information regarding certification of occupational therapy assistants was obtained from Certification, supra note 2, at 77-79.

JCAHO, Medical Assistance, the Minnesota Department of Education and private health care plans.

1. MEDICARE AND JCAHO

The Medicare conditions of participation for hospitals require that occupational therapy services "must be provided by staff who meet the qualifications specified by the medical staff, consistent with State law." C.F.R. §482.56 (a) (2) (1991). The JCAHO accreditation standards do not define occupational therapy assistants and do not require that hospitals employ only AOTCB certified occupational therapy assistants. Telephone conversation with Ed Stevens, JCAHO (October 30, 1992). The JCAHO relies on individual states to set qualifications for professional employees where JCAHO standards do not specify qualifications. Id. Therefore, in the absence of state regulation, hospitals are not required to employ AOTCB certified occupational therapy assistants in order to qualify for medicare reimbursement.

Medicare conditions of participation for intermediate care facilities for the mentally retarded, home health agencies and comprehensive outpatient rehabilitation facilities set out the qualifications for occupational therapy assistant. Occupational therapy services provided in intermediate care facilities for the mentally retarded must be provided by staff that is licensed, certified or registered by the state to provide those services. 42 C.F.R 483.430(b)(5)(1991). If no state credentialing exists, a person may be designated as an occupational therapy assistant if the person is eligible for certification as a certified occupational therapy assistant by the AOTA or another comparable body. Id. at (b)(5)(i). The language "eligible for certification" means that the person has graduated from an

accredited program and therefore is "eligible" to take the AOTCB certification examination. The regulation does not require that the person have passed the examination.

An occupational therapy assistant providing services in home health agencies and comprehensive outpatient rehabilitation facilities must:

(1) meet the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

(2) have two years experience as an occupational therapy assistant and have achieved a satisfactory grade on a proficiency examination approved by the U.S. Public Health Service, except that such determination of proficiency does not apply with respect to person initially licensed by a state or seeking initial qualifications as an occupational therapy assistant after December 31, 1977.

42 C.F.R. § 484.4 (1991) (Home Health Agencies); 42 C.F.R. § 485.70(c)(1991) (Comprehensive Outpatient Rehabilitation Facilities)(referring to §405.1202 which was redesignated as §484.4)

2. MEDICAL ASSISTANCE

The Minnesota Medical Assistance rules for Rehabilitative and Therapeutic Services define "occupational therapist" as a person who has an associate degree in occupational therapy and is currently certified by the AOTCB as an occupational therapy assistant. Minn. R. 9505.0390, subpart 1, item E. (1992 Supp.).

3. MINNESOTA DEPARTMENT OF EDUCATION

Occupational therapy assistants are employed in the schools to work with children who qualify for special education services under the Education for All Handicapped Children Act.

Under the Act, occupational therapy is a "related service." 20 U.S.C. §1401(a)(17) (Supp. 1991). Staff providing related services must meet "[s]tate educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing ... related services." 34 C.F.R. 300.13 (1990). The Minnesota State Board of Education requires the following qualifications for "related services staff:"

> Every related services staff shall hold an appropriate license issued by the Board of teaching or the State Board of Education. When such a license is not available, related services staff shall meet recognized professional standards which shall be documented by the district.

Minn. Rules 3525.1500, subpart 4 (1991) emphasis added. The Minnesota Board of Teaching, the state agency responsible for credentialing most of the teaching and special education staff in the schools, does not credential occupational therapy assistants and does not require that persons providing occupational therapy services are certified by the AOTCB. Currently, the only mechanism for monitoring the qualifications of persons providing occupational therapy services in the schools is reimbursement. In order to qualify for partial salary reimbursement from the state, the Minnesota Department of Education requires that school districts employ occupational therapy assistants that are certified by the AOTCB. If state reimbursement is not sought, there is no mechanism to assure the qualifications of occupational therapy assistants. Telephone conversation with Bob Fisher, Minnesota Department of Education, Information and Technology Section (October 28, 1992).

4. PRIVATE HEALTH CARE PLANS

In our survey of health care plans, the Minnesota Department of Health asked whether services provided by occupational therapy assistants were reimbursable. Five of the fifteen

respondents reimburse for services provided by occupational therapy assistants. Three of the five health care plans specifically require that the occupational therapy assistant be licensed (or have the appropriate state credential). One health care plan said the contract does not specify the required qualifications. The remaining health care plans did not answer the question regarding qualifications.

Conclusion

There currently exists no uniform standard for the qualifications required for occupational therapy assistants in Minnesota. Employers look to reimbursement requirements to determine the qualifications the employer will require for occupational therapy employees. The language emphasized in the previous discussion demonstrates that reimbursement sources frequently rely on a state credential. That credential currently does not exist in Minnesota. These proposed rules are necessary to establish that credential, and uniform qualifications and standards for persons in Minnesota who use the title occupational therapy assistant. The entry-level qualifications for occupational therapy assistant are reasonable because they are consistent with current third party reimbursement requirements, where they exist.

II. Necessity and Reasonableness of Specific Provisions.

A. Education Program Approved or Accredited by the Accreditation Council for Occupational Therapy Education

It is necessary to designate an approved or accredited education program to assure the consistency and adequacy of training for persons utilizing the title "occupational therapy assistant." The phrase "approved or accredited" is used because prior to 1991, AOTA

approved the occupational therapy assistant educational programs. In 1991, AOTA moved occupational therapy assistant programs into the CAHEA accreditation system. CAHEA has been dissolved as an accrediting body and the Accreditation Council for Occupational Therapy Education (ACOTE) now accredits educational programs for occupational therapy assistants.

The requirement that all persons registered as occupational therapy assistants complete the academic and field work requirements of a program approved or accredited by ACOTE is reasonable because (1) this accreditation is the nationally recognized standard for occupational therapy assistant education programs and (2) graduation from an approved or accredited program is required for certification by the national voluntary credentialing organization, the AOTCB, and by most reimbursers.

ACOTE has adopted CAHEA accreditation standards while developing criteria for accreditation of educational programs for occupational therapy assistants. The minimum accreditation standards for an education program for occupational therapists are contained in American Medical Association and the American Occupational Therapy Association, Inc., Essentials and Guidelines of an Accredited Educational Program for the Occupational Therapy Assistant (Attachment L). Educational programs accredited by CAHEA were granted accreditation by ACOTE with new programs being accredited by ACOTE. Newly developing educational programs are being accredited by ACOTE.

The provision that the Commissioner may approve another credentialing organization id necessary should ACOTE discontinue accreditation of educational programs in the future. It is reasonable to allow the Commissioner to designate another national accrediting

organization in order to recognize programs as they become accredited by any new accrediting body.

B. Qualifying Examination Score.

This requirement is necessary so that an applicant can demonstrate a minimum level of competency in and knowledge of occupational therapy skills to the Commissioner. An examination is commonly accepted as a valid method of assessing minimum competency regarding specific tasks. It is reasonable for the Commissioner to use a qualifying score on an examination designed to measure competency in occupational therapy skills as a basis for this competency because it is an objective method of assessment.

The role of the professional examination service in developing and administering the examination is explained at pages 65-66. It is reasonable to register individuals who achieve a qualifying score on the AOTCB examination because this examination is based on the AOTA's entry level role delineation and therefore represents the minimum level of knowledge required for competent performance of occupational therapy at the level of occupational therapy assistant. Furthermore, use of the AOTCB examination as the minimum competency level for Minnesota registration is consistent with other states which credential occupational therapy assistants, and will enable mobility of practitioners into Minnesota.

It is also reasonable that the Commissioner use the AOTCB certification examination because Minnesota Statutes, section 214.03 directs state examining and licensing boards use a national standardized test for the examination given to prospective licensees. The AOTCB certification examination is a national standardized test for assessing the level of knowledge

of occupational therapy assistants, therefore it is appropriate to specify this test as the examination used for registration of occupational therapy assistants.

It is necessary that the Commissioner consider the cut score recommended by the AOTCB because the Commissioner does not have the expertise or the resources to perform test analysis to yield the cut score on a particular examination. It is reasonable to rely on the modified Angoff method for determining cut score because it is accepted by industry standards as appropriate. It is necessary and reasonable to allow the Commissioner to consider a cut score determined by another acceptable method because alternative methods for determining cut score may become accepted as industry standards develop.

The provision that the Commissioner may approve another national credentialing organization for the credentialing examination is necessary to provide for the contingency that the AOTCB may dissolve or discontinue its testing at some point in the future. It is reasonable that the Commissioner have the flexibility to approve another examination if that becomes necessary to provide for an ongoing examination process.

It is necessary and reasonable that the applicant bear the expenses associated with taking the examination because it is not feasible for the Commissioner to pay the examination cost for every individual who applies for registration. It is reasonable that the costs for taking the examination be borne by the applicant because it is not unduly burdensome for the individual.

It is also necessary and reasonable that the applicant sign a release to have the examination scores sent from the PES, or other examination service approved by the Commissioner, to the Commissioner so that the Commissioner may be assured of obtaining

confidential information directly from the source.

SUBP. 3. WAIVER OF EDUCATION REQUIREMENT.

A. THIS SUBPART IS EFFECTIVE AS LONG AS THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD ALLOWS THE COMMISSIONER TO AUTHORIZE PERSONS TO TAKE THE CERTIFICATION EXAMINATION FOR STATE REGISTRATION ONLY OR FOR THREE YEARS AFTER THE EFFECTIVE DATES OF PARTS 4666.0010 TO 4666.1400, WHICHEVER OCCURS FIRST.

This item is necessary in order to provide notice to applicants and provisional registrants that provisional registration will be automatically terminated if the AOTCB discontinues their current policy of allowing States to authorize persons to take the certification examination for state registration only. The definition of "credentialing examination for occupational therapy assistant" is the examination sponsored by the AOTCB or another credentialing examination approved by the Commissioner. Part 4666.0020, subpart 9. This item is necessary to clearly inform potential applicants and provisional registrants that the Commissioner is not obligated to approve "another credentialing examination" in the event the AOTCB's current policy is changed. It is reasonable to terminate provisional registration under these circumstances because the AOTCB certification examination is the key element in determining whether a provisional registrant possesses the skills for full registration status. The cost of developing an alternative examination solely for provisional registrants is prohibitive.

B. A PERSON WHO HAS BEEN EMPLOYED AS AN OCCUPATIONAL THERAPY ASSISTANT FOR AT LEAST 4,000 HOURS DURING THE SIX YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 MAY APPLY TO THE COMMISSIONER TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANT WITHOUT MEETING THE EDUCATION REQUIREMENTS OF SUBPART 1. THE COMMISSIONER SHALL DETERMINE WHETHER THE APPLICANT WAS EMPLOYED AS AN OCCUPATIONAL THERAPY ASSISTANT BASED ON THE INFORMATION PROVIDED UNDER ITEM C, SUBITEMS (1) AND (2). A PERSON GRANTED PERMISSION TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANT WILL BE ISSUED A PROVISIONAL REGISTRATION. PROVISIONAL REGISTRATION MUST BE RENEWED ANNUALLY. ALL PROVISIONAL REGISTRATIONS WILL EXPIRE THREE YEARS AFTER THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400, OR WHEN THE COMMISSIONER GRANTS OR DENIES REGISTRATION, WHICHEVER OCCURS FIRST. IF THE APPLICANT PASSES THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANT WITHIN THREE YEARS OF THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400, THE COMMISSIONER SHALL WAIVE THE EDUCATION REQUIREMENT OF SUBPART 1.

This grandparenting provision for occupational therapy assistants is similar to the grandparenting provision for occupational therapist, Part 4666.0060, subpart 3. This provision is necessary in order to register persons who have not completed an accredited

educational program but who have acquired a comparable level of competency by working as an occupational therapy assistant. It is reasonable to require that persons must have worked a minimum number of hours to qualify for provisional registration in order to assure sufficient work experience to develop on the job skills. The number of hours required, four thousand, is reasonable because persons with a variety of work schedules would be recognized. For example, the following persons would qualify: a person who worked forty hours a week for two years, a person who worked 20 hours a week for four years, or a person who worked 667 hours a year for six years.

It is necessary that persons who seek to register based on their employment as an occupational therapy assistant pass the national credentialing examination for occupational therapy assistants in order to have an objective measure of their knowledge and abilities as an occupational therapy assistant. Other states have used similar grandparenting provisions that allow experienced practitioners who did not meet the minimum entry requirements to qualify for state credentialing upon passing the examination sponsored by the American Occupational Therapy Certification Board. See, e.g., Md. Health Occupations Code Ann. § 10-302, 10-303(b), 10-305(a)(1991). The AOTCB allows persons who meet state determined criteria to take the certification examination "for state regulatory board purposes only." See generally, American Occupational Therapy Certification Board, Regulatory Board Reference Manual, Examinations for State Regulatory Board Purposes Only (Attachment K). Candidates who qualify for the examination on this basis are informed in AOTCB correspondence that "passing the examination does not make you eligible for AOTCB certification as an Occupational Therapist, Registered (OTR) or Certified Occupational Therapy Assistant

(COTA)." Id. at p. 6 (Sample Letter: Sent to candidates who do not meet AOTCB requirements).

It is necessary to require that persons pass the examination within three years of the effective date of the rules in order to implement the general registration requirements within a reasonable time and attain uniformity in the minimum competency level of occupational therapy assistants registered by the Commissioner after a specific date. A three year period is necessary and reasonable in order to allow a person sufficient time to apply for provisional registration, study for the examination, take the examination (which is offered twice a year) and receive the examination results.

C. TO QUALIFY TO TAKE THE EXAMINATION, A PERSON MUST:

(1) SUBMIT THE APPLICATION MATERIALS REQUIRED BY PART 4666.0200 AND THE FEES REQUIRED BY PART 4666.1200; AND

It is necessary that an applicant submit the application materials to the Commissioner so that the Commissioner may assess the applicant's qualifications to take the examination, and upon passing the examination, to be registered. It is also necessary that an applicant submit the application materials so that the Commissioner may assess whether there are grounds for denial of registration under part 4666.1300. The necessity and reasonableness of the information requested in the application materials is stated in part 4666.0200.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.1285 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it

is an efficient method of processing registration materials.

(2) OBTAIN DOCUMENTATION FROM AN OCCUPATIONAL THERAPIST ON FORMS PROVIDED BY THE COMMISSIONER THAT VERIFIES THAT THE APPLICANT HAS BEEN EMPLOYED AS AN OCCUPATIONAL THERAPY ASSISTANT FOR AT LEAST 4,000 HOURS DURING THE SIX YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400. THIS DOCUMENTATION MUST INCLUDE THE APPLICANT'S JOB TITLE, EMPLOYMENT SETTING, DIAGNOSES OF PERSONS SEEN FOR OCCUPATIONAL THERAPY, AND THE TYPE AND FREQUENCY OF OCCUPATIONAL THERAPY SERVICES PROVIDED BY THE APPLICANT.

It is necessary that the registration rules set specific criteria to determine whether the applicant has been employed as an occupational therapy assistant in order to assure that all applicants are evaluated using the same criteria. The criteria listed are reasonable because they will determine whether the tasks required and the individual's performance are similar to that required of an occupational therapy assistant who has met the qualifications of subpart 1 and subpart 2.

D. WHEN THE COMMISSIONER HAS AUTHORIZED AN APPLICANT UNDER THIS PART TO TAKE THE CREDENTIALING EXAMINATION, THE APPLICANT IS RESPONSIBLE FOR:

(1) MAKING ALL ARRANGEMENTS TO TAKE THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANTS;

(2) BEARING ALL EXPENSE ASSOCIATED WITH TAKING THE

EXAMINATION; AND

(3) HAVING THE EXAMINATION SCORES SENT DIRECTLY TO THE COMMISSIONER FROM THE TESTING SERVICE THAT ADMINISTERS THE EXAMINATION.

It is necessary and reasonable that the applicant bear the expenses associated with taking the examination because it is not feasible for the Commissioner to pay the examination cost for every individual who applies for registration. It is reasonable that the costs for taking the examination be borne by the applicant because it is not unduly burdensome for the individual.

It is also necessary and reasonable that the applicant sign a release to have the examination scores sent from the PES, or other examination service approved by the Commissioner, to the Commissioner so that the Commissioner may be assured of obtaining confidential information directly from the source.

E. THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 IS THE FIRST DAY OF THE THREE-YEAR PROVISIONAL REGISTRATION PERIOD. APPLICATIONS FOR REGISTRATION UNDER THIS SUBPART WILL NOT BE ACCEPTED AFTER THE EXPIRATION OF THE THREE-YEAR PROVISIONAL REGISTRATION PERIOD.

It is necessary that the rules clearly inform persons seeking registration under this part of the limited time period in which persons can qualify for provisional registration, and that after a certain date, individuals applying for registration must comply with the general registration requirements. The necessity and reasonableness of the three year limit on the

provisional registration period is stated in this part at subpart 3, item B.

4666.0080 REGISTRATION BY EQUIVALENCY.

SUBPART 1. PERSONS CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD BEFORE THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400. PERSONS CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD AS AN OCCUPATIONAL THERAPIST BEFORE THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 MAY APPLY FOR REGISTRATION BY EQUIVALENCY FOR OCCUPATIONAL THERAPIST. PERSONS CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD AS AN OCCUPATIONAL THERAPY ASSISTANT BEFORE THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 MAY APPLY FOR REGISTRATION BY EQUIVALENCY FOR OCCUPATIONAL THERAPY ASSISTANT.

This subpart is necessary as it serves three separate functions. First, it allows the Commissioner to register an individual who is currently certified by the AOTCB without requiring independent proof that the individual has completed the academic, fieldwork and examination requirements of parts 4666.0060 for occupational therapists and part 4666.0070 for occupational therapy assistants. The registration requirements set out in parts 4666.0060 and 4666.0070 are nearly identical to the requirements for AOTCB certification (the few exceptions are discussed below) since 1977 for occupational therapy assistants and since 1946 for occupational therapists. See Carolyn Manville Baum & Madelaine S. Gray, Certification: Serving the Public Interest, 42 Am. J. of Occupational Therapy, February 1988, at 77-78.

The proposed rule is necessary in order to allow occupational therapy practitioners who are certified by AOTCB to provide evidence of current certification in order to prove they have met the minimum qualifications for Minnesota registration. It is reasonable to allow AOTCB certified practitioners to utilize this method of proving their qualifications in order to streamline the application process for applicants and the Minnesota Department of Health. The rule will streamline the application process for AOTCB certified applicants because it will eliminate the need to request documentation from accredited educational programs and the testing agency.

Second, the rule is necessary because some occupational therapy practitioners credentialed by the AOTCB as an Occupational Therapist, Registered or a Certified Occupational Therapy Assistant have not completed an accredited program or have not completed the examination as required for Minnesota registration. It is necessary to register persons who do not meet the education, fieldwork or examination requirements of parts 4666.0060 and 4666.0070, but who are certified by the AOTCB, in order to assure that persons currently working in the field, who are considered qualified to provide occupational therapy services by reimbursers and the AOTCB, will continue to be qualified when the rules are effective. It is reasonable for the Commissioner to register these persons because they possess qualifications that are substantially equivalent to the entry level qualifications required for occupational therapist and occupational therapy assistant in the proposed rules.

The Department is aware of three groups of occupational therapy practitioners credentialed by the AOTCB that have not completed an accredited program or that have not completed the certification examination. The first group consists of occupational therapists

who were initially trained as occupational therapy assistants and subsequently became certified as occupational therapists through the AOTA career mobility program. In the career mobility program, occupational therapy assistants who had practiced at least four years and who had completed the field work experience requirements stated in the Essentials of an Accredited Education Program for the Occupational Therapist were eligible to take the certification examination for occupational therapists. American Occupational Therapy Certification Board, Regulatory Board Reference Manual, Admission to the Certification Examination for Occupational Therapist, Registered, 1 (Rev. February 1987) (Attachment M). Upon passing the certification examination, these occupational therapy assistants became certified as occupational therapists. This program was closed to new candidates as of November 1982. Id.

The second group consists of foreign trained occupational therapists who graduated from an educational program not approved by the World Federation of Occupational Therapists (WFOT). Graduates of educational programs not approved by WFOT must request permission to take the AOTCB certification examination (in contrast, graduates of WFOT approved schools are automatically eligible to take the examination). AOTCB determines eligibility to take the examination after evaluating each individual's education as compared to the educational standards for U.S. and WFOT-approved schools. American Occupational Therapy Certification Board, Inc., Regulatory Board Reference Manual, Certification Requirements (March 1992) (Attachment G). If the AOTCB concludes that an individual's education meets AOTCB standards, the individual is allowed to take the certification examination and upon passing the examination is certified as an occupational therapist

registered.

The third group consists of occupational therapy assistants certified prior to 1977. Occupational therapy assistants were not required to take a certification examination until 1977. See Carolyn Manville Baum & Madelaine S. Gray, Certification: Serving the Public Interest, 42 Am. J. of Occupational Therapy, February 1988, at 78. These individuals, who are currently certified as occupational therapy assistants by the AOTCB, would not meet the examination requirement of these rules. In addition, in 1961 and 1962, AOTA allowed qualified occupational therapy assistants to become certified based on work experience alone. Telephone conversation with Susan McFadden, AOTCB Director of Regulatory Affairs, July 23, 1991. This was an exception to the general rule requiring completion of an approved educational program. Id.

The proposed rule would allow each of these three groups of AOTCB credentialed occupational therapy practitioners to qualify for registration by equivalency.

The third and final function of this rule is to have an efficient method of processing applications from occupational therapy practitioners who are both credentialed in another state and certified by the AOTCB. These applicants could use their AOTCB credential for registration rather than applying for reciprocity under part 4666.0090. This would eliminate the need for the Commissioner to make an individual determination as to the equivalency of other states credentialing requirements, as would otherwise be required by part 4666.0090, when the applicant qualifies for registration based on their AOTCB certification. The rule is necessary to provide the Commissioner authority to accept AOTCB certification as proof the applicant has met the minimum entry qualifications for applicants who possess both an out-

of-state credential and AOTCB certification. The rule is reasonable because it provides a streamlined method of verifying the applicant's qualifications for registration.

SUBP. 2. PERSONS CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD AFTER THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400. THE COMMISSIONER MAY REGISTER ANY PERSON CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD AS AN OCCUPATIONAL THERAPIST AFTER THE EFFECTIVE DATES OF PARTS 4666.0010 TO 4666.1400, IF THE COMMISSIONER DETERMINES THE REQUIREMENTS FOR CERTIFICATION ARE EQUIVALENT TO OR EXCEED THE REQUIREMENTS FOR REGISTRATION AS AN OCCUPATIONAL THERAPIST UNDER PART 4666.0060. THE COMMISSIONER MAY REGISTER ANY PERSON CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD AS AN OCCUPATIONAL THERAPY ASSISTANT AFTER THE EFFECTIVE DATES OF PARTS 4666.0010 TO 4666.1400, IF THE COMMISSIONER DETERMINES THE REQUIREMENTS FOR CERTIFICATION ARE EQUIVALENT TO OR EXCEED THE REQUIREMENTS FOR REGISTRATION AS AN OCCUPATIONAL THERAPY ASSISTANT UNDER PART 4666.0070. NOTHING IN THIS PART LIMITS THE COMMISSIONER'S AUTHORITY TO DENY REGISTRATION BASED UPON THE GROUNDS FOR DISCIPLINE IN PARTS 4666.0010 TO 4666.1400.

It is necessary that the Commissioner have the authority to evaluate whether the AOTCB continues to maintain certification standards that are equivalent to or exceed the requirements for registration under the proposed rules. This rule part is necessary in order for the

Commissioner to deny registration if, in the future, the qualifications for AOTCB registration fall below the standards required for registration under the proposed rules. It is reasonable to provide the Commissioner this authority in order to assure consumers that only qualified person are registered.

SUBPART 3. APPLICATION PROCEDURES. APPLICANTS FOR REGISTRATION BY EQUIVALENCY MUST PROVIDE:

A. THE APPLICATION MATERIALS AS REQUIRED BY PART 4666.0200, SUBPARTS 1, 3, AND 4; AND

It is necessary that an applicant submit the application materials to the Commissioner so that the Commissioner may assess whether the applicant is qualified for registration and whether there are grounds for denial of registration under part 4666.1300. The necessity and reasonableness of the information requested in the application materials are stated in part 4666.0200.

B. THE FEES REQUIRED BY PART 4666.1200.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.1285 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials.

4666.0090 REGISTRATION BY RECIPROCITY.

A PERSON WHO HOLDS A CURRENT CREDENTIAL AS AN OCCUPATIONAL THERAPIST IN THE DISTRICT OF COLUMBIA OR A STATE OR TERRITORY OF

THE UNITED STATES WHOSE STANDARDS FOR CREDENTIALING ARE DETERMINED BY THE COMMISSIONER TO BE EQUIVALENT TO OR EXCEED THE REQUIREMENTS FOR REGISTRATION UNDER PART 4666.0060 MAY BE ELIGIBLE FOR REGISTRATION BY RECIPROCITY AS AN OCCUPATIONAL THERAPIST. A PERSON WHO HOLDS A CURRENT CREDENTIAL AS AN OCCUPATIONAL THERAPY ASSISTANT IN THE DISTRICT OF COLUMBIA OR A STATE OR TERRITORY OF THE UNITED STATES WHOSE STANDARDS FOR CREDENTIALING ARE DETERMINED BY THE COMMISSIONER TO BE EQUIVALENT TO OR EXCEED THE REQUIREMENTS FOR REGISTRATION UNDER PART 4666.0070 MAY BE ELIGIBLE FOR REGISTRATION BY RECIPROCITY AS AN OCCUPATIONAL THERAPY ASSISTANT. NOTHING IN THIS PART LIMITS THE COMMISSIONER'S AUTHORITY TO DENY REGISTRATION BASED UPON THE GROUNDS FOR DISCIPLINE IN PARTS 4666.0010 TO 4666.1400. AN APPLICANT MUST PROVIDE:

It is necessary to include a reciprocity provision in these rules to accommodate credentialed occupational therapists and occupational therapy assistants coming to Minnesota from other jurisdictions. It is reasonable that applicants who are already credentialed in another jurisdiction with credentialing requirements that are equal to or exceed the registration requirements in Minnesota may qualify for registration based on their out-of-state credential.

The majority of states use the same qualifications for state credentialing as the qualifications for AOTCB certification: graduation from an accredited school and successful completion of the certification examination. Therefore, the majority of applicants who hold

an out-of-state credential will also be certified by AOTCB and will qualify for registration by equivalency. However, registration by reciprocity will be the only means for some persons to qualify for Minnesota registration. For example, persons credentialed in other states under a provision equivalent to the "waiver of education" provision in the proposed rules, see part 4666.0060 subpart 3 and part 4666.0070 subpart 3, will only qualify for registration by reciprocity. It is reasonable to register persons who were credentialed under a grandparenting provision that is equal to or exceeds the waiver of education, or grandparenting provision, of the proposed rules because those persons will have received their credential based on a demonstrated level of competency working as an occupational therapist or occupational therapy assistant and based on their successful completion of the certification examination.

It is necessary and reasonable to set forth the specific requirements for registration by reciprocity so that applicants have notice of alternate requirements for registration and are assured that the Commissioner evaluates each applicant on the same basis.

A. THE APPLICATION MATERIALS AS REQUIRED BY PART 4666.0200, SUBPARTS 1, 3, AND 4;

B. THE FEES REQUIRED BY PART 4666.1200;

It is necessary that an applicant submit the application materials to the Commissioner so that the Commissioner may assess whether the applicant is qualified for registration and whether there are grounds for denial of registration under part 4666.1300. The necessity and reasonableness of the information requested in the application materials are stated in part 4666.0200.

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.1285 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials.

C. A COPY OF A CURRENT AND UNRESTRICTED CREDENTIAL FOR THE PRACTICE OF OCCUPATIONAL THERAPY AS EITHER AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT;

It is necessary that the applicant provide a copy of a current credential granted by another jurisdiction so that the Commissioner has evidence of the applicant's qualifications for registration by reciprocity. It is reasonable to require that the applicant provide the documentation because the credential was issued to the applicant.

D. A LETTER FROM THE JURISDICTION THAT ISSUED THE CREDENTIAL DESCRIBING THE APPLICANT'S QUALIFICATIONS THAT ENTITLED THE APPLICANT TO RECEIVE THE CREDENTIAL; AND

It is necessary that the jurisdiction the issued the credential provide information on the applicant's qualifications that entitled the applicant to receive the credential in order for the Commissioner to determine that the applicant's qualifications are equivalent to or exceed the qualifications for registration under parts 4666.0010 to 4666.1400. It is reasonable to require the applicant to provide this information because the burden of proving qualifications is upon the person seeking registration.

E. OTHER INFORMATION NECESSARY TO DETERMINE WHETHER THE CREDENTIALING STANDARDS OF THE JURISDICTION THAT ISSUED THE CREDENTIAL ARE EQUIVALENT TO OR EXCEED THE REQUIREMENTS FOR REGISTRATION UNDER PARTS 4666.0010 TO 4666.1400.

It is necessary that the Commissioner have authority to request additional information because it is not feasible to list the information the Commissioner may require in order to determine whether the credentialing standards are equivalent. For example, the Commissioner may require additional information on the applicant's qualifications that entitled the applicant to a credential in the other jurisdiction. Additionally, the Commissioner may require information on the law that was in effect at the time the applicant became credentialed. It is reasonable to require the applicant to provide this information because the burden of proving qualifications is upon the person seeking registration.

4666.0100 TEMPORARY REGISTRATION.

SUBPART 1. APPLICATION. THE COMMISSIONER MAY ISSUE TEMPORARY REGISTRATION AS AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT TO APPLICANTS WHO HAVE APPLIED FOR REGISTRATION UNDER PART 4666.0060, SUBPARTS 1 AND 2, 4666.0070 SUBPARTS 1 AND 2, 4666.0080, OR 4666.0090 AND WHO ARE NOT THE SUBJECT OF A PENDING INVESTIGATION OR DISCIPLINARY ACTION OR PAST DISCIPLINARY ACTION, NOR DISQUALIFIED FOR ANY OTHER REASON.

Temporary registration is necessary so that new graduates of accredited education programs and persons applying for reciprocity and equivalency can enter the registration

system as soon as possible. As discussed earlier, the proposed rules attempt to balance the need to protect consumers by offering a method to identify qualified practitioners with the needs created by the shortage of health care practitioners, including occupational therapy practitioners. Temporary registration is one way in which the rules can promote the availability of qualified practitioners. For example, some reimbursement sources, including Medical Assistance, will reimburse for occupational therapy services only if the services are provided by a practitioner that is certified by the AOTCB. If those reimbursers accept state registration as a qualification for reimbursement, new graduates will qualify for reimbursement for a significant amount of time prior to receipt of the AOTCB certification. Ron Berkeland, Director of the University of Minnesota Program in Occupational Therapy, said that there is potentially five months between the time students graduate or finish their field work and the time they take the certification examination. It takes an additional one month to six weeks for students to receive their examination results. The temporary registration provision in the proposed rules will allow students who have completed the academic and field work requirements to use the protected titles prior to receiving the examination results.

The temporary registration system would also allow practitioners applying for registration by reciprocity to use the protected titles while waiting for verification of their out-of-state credentials. Staff of both the AOTA and the AOTCB stated that therapists applying for reciprocity frequently complain that the states in which they are credentialed are slow to provide verification of credentials, which causes lengthy delays in processing their application in a new jurisdiction. The AOTA and AOTCB staff expressed concern that the

Minnesota rules address this problem. The temporary registration provision in the proposed rules will allow applicants for registration by reciprocity to use the protected titles based on a verified copy of their out-of-state credential and their affidavit stating that they are not the subject of a pending investigation or disciplinary action.

It is reasonable to allow applicants who qualify for temporary registration to use the protected titles because the documentation required by subpart 2 item A, B, and C is evidence that these applicants possess knowledge of occupational therapy procedures. It is necessary, however, that there be additional safeguards to protect the public health and safety for persons who have not passed the examination required by part 4666.0060 or part 4666.0070, until the individual demonstrates their knowledge by passing the examination. It is therefore reasonable to require supervision for these persons while they work under temporary registration.

SUBPART 2. PROCEDURES. TO BE ELIGIBLE FOR TEMPORARY REGISTRATION, AN APPLICANT MUST SUBMIT THE APPLICATION MATERIALS REQUIRED BY PART 4666.0200, SUBPART 1, THE FEES REQUIRED BY PART 4666.1200, AND:

It is necessary that an applicant submit a completed application in order that the Commissioner can make a preliminary determination of whether the applicant is qualified for registration and whether there may be grounds for denial of registration under part 4666.1300. The necessity and reasonableness of the information requested in the application are stated in part 4666.0200, subpart 1.

It is necessary and reasonable to require the submission of fees for temporary

registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.1285 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of creating and administering the registration system. It is reasonable that the fees be submitted with the application because it is an efficient method of processing registration materials. The necessity and reasonableness of the amount of the temporary registration fee is stated in part 4666.1200.

A. EVIDENCE OF SUCCESSFUL COMPLETION OF THE REQUIREMENTS IN PART 4666.0060, SUBPART 1 OR 4666.0070, SUBPART 1;

It is necessary that applicants applying for temporary registration prior to passing the examination required by part 4666.0060 or part 4666.0070 demonstrate that they have met a minimum level of training and education as a prerequisite for temporary registration as an occupational therapist or occupational therapy assistant. One of the purposes of the registration system is to protect the public by assuring a minimum level of competency of registered practitioners. Possession of this minimum level of competency is ultimately demonstrated by achieving a qualifying score on the credentialing examination. However, an applicant who has completed the education and fieldwork requirements of the entry level qualifications has demonstrated a level of skill that, when combined with the supervision required under subpart 4, is consistent with consumer protection. Submission of a certificate of completion from an approved education program is a reasonable means of ascertaining whether an applicant has acquired the necessary training and background which would entitle him or her to temporary registration because it is not overly burdensome on the applicant.

B. A COPY OF A CURRENT AND UNRESTRICTED CREDENTIAL FOR THE PRACTICE OF OCCUPATIONAL THERAPY AS EITHER AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT IN ANOTHER JURISDICTION; OR

C. A COPY OF A CURRENT AND UNRESTRICTED CERTIFICATE FROM THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD STATING THAT THE APPLICANT IS CERTIFIED AS AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT.

It is necessary that applicants for registration by equivalency or registration by reciprocity who want to receive temporary registration submit a copy of a current and unrestricted credential as prima facie evidence that the applicant has met the qualifications for registration under part 4666.0080 or 4666.0090. It is reasonable to accept a credential from another jurisdiction or the AOTCB because that is a streamlined method of proving qualifications for registration. It is also reasonable to require that the credential is unrestricted to assure that individuals who receive temporary registration are qualified for registration and have not participated in any activity which would make them unsuitable for registration in Minnesota.

SUBP. 3. ADDITIONAL DOCUMENTATION. PERSONS WHO ARE CREDENTIALED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD OR ANOTHER JURISDICTION MUST PROVIDE AN AFFIDAVIT WITH THE APPLICATION FOR TEMPORARY REGISTRATION STATING THAT THEY ARE NOT THE SUBJECT OF A PENDING INVESTIGATION OR DISCIPLINARY ACTION AND

HAVE NOT BEEN THE SUBJECT OF A DISCIPLINARY ACTION IN THE PAST.

It ~~is~~ necessary to assure that applicants who request temporary registration do not pose a threat to the public on the basis of past practices in Minnesota or other states. It is reasonable to initially rely on the applicant's sworn statement regarding pending investigations and disciplinary actions in order to promote the speedy entry of qualified practitioners into the health care market. The Commissioner will verify the applicant's statement with the letters of verification required under part 4666.0200 subpart 3 and subpart 4. An applicant who provides false information in the application materials is subject to denial of registration under part 4666.1300, subpart 1, item A (intentionally submitted false or misleading information to the Commissioner or the advisory council). Therefore, it is reasonable to assume that applicants will provide accurate information in the required affidavit.

SUBP. 4. SUPERVISION REQUIRED. AN APPLICANT WHO HAS GRADUATED FROM AN ACCREDITED OCCUPATIONAL THERAPY PROGRAM, AS REQUIRED BY PART 4666.0060, SUBPART 1, OR 4666.0070, SUBPART 1, AND WHO HAS NOT PASSED THE EXAMINATION REQUIRED BY PART 4666.0060, SUBPART 2, OR 4666.0070, SUBPART 2, MUST PRACTICE UNDER THE SUPERVISION OF A REGISTERED OCCUPATIONAL THERAPIST. THE SUPERVISING THERAPIST MUST, AT A MINIMUM, SUPERVISE THE PERSON WORKING UNDER TEMPORARY REGISTRATION IN THE PERFORMANCE OF THE INITIAL EVALUATION, DETERMINATION OF THE APPROPRIATE TREATMENT PLAN, AND PERIODIC REVIEW AND MODIFICATION OF THE TREATMENT PLAN. THE

SUPERVISING THERAPIST MUST OBSERVE THE PERSON WORKING UNDER TEMPORARY REGISTRATION IN ORDER TO ASSURE SERVICE COMPETENCY IN CARRYING OUT EVALUATION, TREATMENT PLANNING, AND TREATMENT IMPLEMENTATION. THE FREQUENCY OF FACE-TO-FACE COLLABORATION BETWEEN THE PERSON WORKING UNDER TEMPORARY REGISTRATION AND THE SUPERVISING THERAPIST MUST BE BASED ON THE CONDITION OF EACH PATIENT OR CLIENT, THE COMPLEXITY OF TREATMENT AND EVALUATION PROCEDURES, AND THE PROFICIENCIES OF THE PERSON PRACTICING UNDER TEMPORARY REGISTRATION. THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT WORKING UNDER TEMPORARY REGISTRATION MUST PROVIDE VERIFICATION OF SUPERVISION ON THE APPLICATION FORM PROVIDED BY THE COMMISSIONER.

It is necessary to require that temporary registrants who have completed the academic and field work requirements of parts 4666.0060 subp. 1 or part 4666.0070 subp. 1 work under supervision until they pass the American Occupational Therapy Certification Board Examination. The level of supervision is reasonable because it is similar to the supervision required during temporary registration for related occupations including physical therapists, registered nurses and licensed practical nurses who have completed the academic requirements but have not yet passed the respective credentialing examination. A physical therapist who has not passed the examination and who is practicing with a temporary permit must conduct their "entire practice" under the supervision of a registered physical therapist. Minn. Stat. § 148.71 subd. 2 (1994). The supervision must be "direct, immediate, and on

premises." Id. Registered nurses and licensed practical nurses who have not passed the examination and who are practicing under a temporary permit must practice with direct supervision. See Minn. Stat. § 148.212 (1994). Direct supervision requires that the supervising nurse must be physically present either on the unit or within the facility depending on the permit holders level of skill and the condition of patients in the unit. Minn. R. 6305.0300 subp. 5 (1993).

The proposed rules do not require supervision of occupational therapists or occupational therapy assistants, beyond that required by parts 4666.0600, 4666.0700, and 4666.1000, who are credentialed in another jurisdiction and who are applying for temporary registration. Neither the physical therapy statute nor the nursing statute and rules require supervision of practitioners credentialed in another state who are working in Minnesota under temporary registration. See Minn. Stat. § 148.71, subd. 2 (b) (1994) (physical therapy); Minn. Stat. § 148.212 (1994) (nursing), Minn. R. 6305.0300 subp. 6 (1993) (nursing).

SUBP. 5. EXPIRATION OF TEMPORARY REGISTRATION. A TEMPORARY REGISTRATION ISSUED TO A PERSON PURSUANT TO SUBPART 2, ITEM A, EXPIRES TEN WEEKS AFTER THE NEXT CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS OR ON THE DATE THE COMMISSIONER GRANTS OR DENIES REGISTRATION, WHICHEVER OCCURS FIRST. A TEMPORARY REGISTRATION ISSUED TO A PERSON PURSUANT TO SUBPART 2, ITEM B OR C, EXPIRES 90 DAYS AFTER IT IS ISSUED. A TEMPORARY REGISTRATION MAY BE RENEWED ONCE TO PERSONS WHO HAVE NOT MET THE EXAMINATION

REQUIREMENT UNDER PART 4666.0060, SUBPART 2, OR 4666.0070, SUBPART 2, WITHIN THE INITIAL TEMPORARY REGISTRATION PERIOD. A TEMPORARY REGISTRATION MAY BE RENEWED ONCE TO PERSONS WHO ARE ABLE TO DEMONSTRATE GOOD CAUSE FOR FAILURE TO MEET THE REQUIREMENTS FOR REGISTRATION UNDER PART 4666.0080 OR 4666.0090 WITHIN THE INITIAL TEMPORARY REGISTRATION PERIOD.

It is necessary that the rules specify the duration of temporary registration. It is reasonable that, for persons registering pursuant to subpart 2, item A, temporary registration expires ten weeks after the next credentialing examination or when the Commissioner grants or denies registration in order that persons who passed the examination obtain full registered status as soon as possible. It is reasonable that, for persons registered pursuant to subpart 2, item B or C, temporary registration expires 90 days after it is issued because this is a sufficient amount of time for applicants to obtain verification of their credentials from the AOTCB or from other states.

It is also reasonable to allow for one renewal of temporary registration for the reasons stated by members of the occupation. The group of occupational therapy practitioners that consulted on the development of the rules agreed that persons who fail their first examination should be allowed to renew temporary registration. Directors of the Minnesota training programs for occupational therapists and occupational therapy assistants stated that occasionally a Minnesota graduate does not pass the credentialing examination. The program directors stated that often these graduates, who have successfully completed the academic and fieldwork requirements of a Minnesota educational program, fail for reasons other than lack

of knowledge. In addition, group members pointed out that the supervision required of temporary registrants provides sufficient protection for the public while the graduate prepares to retake the examination. Group members also believed it is necessary to make allowances for persons who planned to take the examination but were not able to take the exam due to unforeseen circumstances. Under the proposed rule, new graduates can renew their temporary registration for the same period of time as the initial temporary registration.

It is necessary to allow applicants for registration by reciprocity or registration by equivalency to renew their temporary registration if they can show good cause for their failure to obtain all application materials, including verification of their credentialing and good standing from AOTCB or another jurisdiction, within the initial temporary registration period. Staff of the American Occupational Therapy Association and the AOTCB stated that state boards are slow to respond to request for verification of credentials. The occupational therapists, and ultimately the consumer, is harmed for delays caused by factors outside of the therapists control. Therefore, it is reasonable to allow practitioners to renew their temporary registration, upon a showing of good cause for failure to meet the registration requirements during the initial period of temporary registration, in order to encourage the entry of out-of-state therapists into the work force.

4666.0200 GENERAL REGISTRATION PROCEDURES.

SUBPART 1. APPLICATIONS FOR REGISTRATION. AN APPLICANT FOR REGISTRATION MUST:

A. SUBMIT A COMPLETED APPLICATION FOR REGISTRATION ON FORMS PROVIDED BY THE COMMISSIONER. THE APPLICANT MUST SUPPLY

THE INFORMATION REQUESTED ON THE APPLICATION, INCLUDING:

(1) THE APPLICANT'S NAME, BUSINESS ADDRESS AND BUSINESS TELEPHONE NUMBER, BUSINESS SETTING, AND DAYTIME TELEPHONE NUMBER;

(2) THE NAME AND LOCATION OF THE OCCUPATIONAL THERAPY PROGRAM THE APPLICANT COMPLETED;

(3) A DESCRIPTION OF THE APPLICANT'S EDUCATION AND TRAINING, INCLUDING A LIST OF DEGREES RECEIVED FROM EDUCATIONAL INSTITUTIONS;

(4) THE APPLICANT'S WORK HISTORY FOR THE SIX YEARS PRECEDING THE APPLICATION, INCLUDING THE NUMBER OF HOURS WORKED;

(5) A LIST OF ALL CREDENTIALS CURRENTLY AND PREVIOUSLY HELD IN MINNESOTA AND OTHER JURISDICTIONS;

(6) A DESCRIPTION OF ANY JURISDICTION'S REFUSAL TO CREDENTIAL THE APPLICANT;

(7) A DESCRIPTION OF ALL PROFESSIONAL DISCIPLINARY ACTIONS INITIATED AGAINST THE APPLICANT IN ANY JURISDICTION;

(8) INFORMATION ON ANY PHYSICAL OR MENTAL CONDITION OR CHEMICAL DEPENDENCY THAT IMPAIRS THE PERSON'S ABILITY TO ENGAGE IN THE PRACTICE OF OCCUPATIONAL THERAPY WITH REASONABLE JUDGMENT OR SAFETY;

(9) A DESCRIPTION OF ANY MISDEMEANOR OR FELONY CONVICTION THAT RELATES TO HONESTY OR TO THE PRACTICE OF OCCUPATIONAL THERAPY;

(10) A DESCRIPTION OF ANY STATE OR FEDERAL COURT ORDER, INCLUDING A CONCILIATION COURT JUDGEMENT, OR A DISCIPLINARY ORDER RELATED TO THE INDIVIDUAL'S OCCUPATIONAL THERAPY PRACTICE; AND

(11) A STATEMENT INDICATING THE PHYSICAL AGENT MODALITIES THE APPLICANT WILL USE AND WHETHER THE APPLICANT WILL USE THE MODALITIES AS A LEVEL ONE PRACTITIONER, A LEVEL TWO PRACTITIONER, OR AN OCCUPATIONAL THERAPY ASSISTANT;

It is necessary that an applicant submit a completed application form to the Commissioner containing this information so that the Commissioner may assess the applicant's qualifications for registration. The applicant's business address and business telephone number are required so that the Commissioner may contact the applicant if necessary. The applicant's daytime telephone number is also required because the applicant may work in the evening or on weekends and it is necessary to have a telephone number where the applicant can be reached during normal business hours. The information on educational background, professional training, work history, and credentialing in Minnesota and other jurisdictions is necessary for the Commissioner to assess the applicant's qualifications for registration as an occupational therapy practitioner. Information on any disciplinary actions, drug or alcohol abuse and any convictions is also necessary to avoid

registering unqualified applicants. It is necessary to request information on physical agent modalities and practitioner level at which the modalities will be used to enable the Commissioner to maintain a roster of registrants using physical agent modalities as required in 4666.1000, subpart 1, C. It is reasonable to request this information from the applicant because it is within the applicant's knowledge and is not unduly burdensome or intrusive.

B. SUBMIT WITH THE APPLICATION ALL FEES REQUIRED BY PART 4666.1200;

It is necessary and reasonable to require the submission of fees for registration because Minnesota Statutes, sections 214.06, 214.13 and 16A.1285 require the registration system be fee supported. Fees are assessed on applicants to cover the costs of administering the registration system. It is reasonable that the fees be submitted with the application because it is most efficient.

C. SIGN A STATEMENT THAT THE INFORMATION IN THE APPLICATION IS TRUE AND CORRECT TO THE BEST OF THE APPLICANT'S KNOWLEDGE AND BELIEF;

The Commissioner must have justifiable and reliable information on which to base the decision to register an individual. It is necessary that the applicant sign a statement that the information is true and correct to the best of the applicant's knowledge in order to assure the veracity of the application materials submitted for review. It is reasonable to expect that an applicant, who has submitted an application for registration, attest to the truth and validity of the information provided because the applicant is in the best position to know whether the information is true and to do so is not unduly burdensome for the applicant.

D. SIGN A WAIVER AUTHORIZING THE COMMISSIONER TO OBTAIN ACCESS TO THE APPLICANT'S RECORDS IN THIS OR ANY OTHER STATE IN WHICH THE APPLICANT HOLDS OR PREVIOUSLY HELD A CREDENTIAL FOR THE PRACTICE OF AN OCCUPATION, HAS COMPLETED AN ACCREDITED OCCUPATIONAL THERAPY EDUCATION PROGRAM, OR ENGAGED IN THE PRACTICE OF OCCUPATIONAL THERAPY;

It is necessary for the Commissioner to be able to obtain information on the applicant's performance in any occupation in which the applicant has held a credential, including occupational therapy, in Minnesota and other jurisdictions in order to determine whether the applicant should be registered within Minnesota. This rule is reasonable because it not only provides the applicant with notice that his or her professional practice may be investigated, but also provides the Commissioner with a means of access to records which enable investigation of the applicant's background.

E. SUBMIT ADDITIONAL INFORMATION AS REQUESTED BY THE COMMISSIONER; AND

It is necessary for the Commissioner to be able to obtain additional information as needed in order to make a complete and accurate assessment of the applicant's suitability for registration. It is reasonable to expect that, should an applicant supply information that requires further clarification or supplementation, the applicant will cooperate with the Commissioner and provide information so that the Commissioner will be able to complete her evaluation of the applicant.

F. SUBMIT THE ADDITIONAL INFORMATION REQUIRED FOR PROVISIONAL REGISTRATION, REGISTRATION BY EQUIVALENCY, REGISTRATION BY RECIPROCITY, AND TEMPORARY REGISTRATION AS SPECIFIED IN PARTS 4666.0060 TO 4666.0100.

It is necessary that this rule part on "general registration procedures" include a reference to the fact that there are different ways of qualifying for registration and that parts 4666.0060 to 4666.0100 not only state the required qualifications for each method of registration but also state the additional documentation necessary to demonstrate any qualifications that are unique to that method of registration. The reasonableness of the required information is stated in the respective rule part.

SUBP. 2. PERSONS APPLYING FOR REGISTRATION UNDER PART 4666.0060 OR 4666.0070. PERSONS APPLYING FOR REGISTRATION UNDER PART 4666.0060, SUBPARTS 1 AND 2, OR 4666.0070, SUBPARTS 1 AND 2, MUST SUBMIT:

A. A CERTIFICATE OF SUCCESSFUL COMPLETION OF THE REQUIREMENTS IN PART 4666.0060, SUBPART 1, OR 4666.0070, SUBPART 1; AND

B. THE APPLICANT'S TEST RESULTS FROM THE EXAMINING AGENCY, OR ANOTHER SOURCE APPROVED BY THE COMMISSIONER, AS EVIDENCE THAT THE APPLICANT RECEIVED A QUALIFYING SCORE ON A CREDENTIALING EXAMINATION MEETING THE REQUIREMENTS OF PART 4666.0060, SUBPART 2, OR 4666.0070, SUBPART 2.

It is necessary to include a rule part that specifies the documentation that is required to verify that an applicant for registration under parts 4666.0060 or 4666.0070 has fulfilled

the education and examination requirement of those parts. The rule is reasonable because it attempts to be flexible in the documentation that will be accepted in order to verify that the applicant has met the education and examination requirements. The proposed rule uses the language "certificate of successful completion" in order to recognize the fact that the Department of Health will receive documentation that an applicant has completed the education requirement from schools throughout the United States and schools will vary in the documentation provided. The proposed rule requires that examination results are sent directly from the testing service in order to assure that the Commissioner has accurate information on an applicant's score rather than rely on information translated from a secondary source. However, the proposed rule allows the Commissioner to accept test results from another source in order to avoid the need to revise the rules if current practices change and test results are available only from a secondary source.

SUBP. 3. APPLICANTS WHO ARE CERTIFIED BY AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD. AN APPLICANT WHO IS CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD MUST PROVIDE:

A. VERIFIED DOCUMENTATION FROM THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD STATING THAT THE APPLICANT IS CERTIFIED AS AN OCCUPATIONAL THERAPIST, REGISTERED OR CERTIFIED OCCUPATIONAL THERAPY ASSISTANT, THE DATE CERTIFICATION WAS GRANTED, AND THE APPLICANT'S CERTIFICATION NUMBER. THE DOCUMENT MUST ALSO INCLUDE A STATEMENT REGARDING DISCIPLINARY

ACTIONS. THE APPLICANT IS RESPONSIBLE FOR OBTAINING THIS DOCUMENTATION BY SENDING A FORM PROVIDED BY THE COMMISSIONER TO THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD.

It is necessary that all applicants certified by the AOTCB provide documentation of that fact from the AOTCB, regardless of which method the applicant is relying on to qualify for registration, in order to determine whether the AOTCB has disciplined the applicant for an activity that would disqualify the applicant for registration. It is also necessary to obtain this information on applicant's for registration by equivalency in order to verify that the applicant is certified by AOTCB and is qualified for registration. It is reasonable to require this information because the AOTCB routinely provides this information for occupational therapy practitioners seeking licensure, certification or registration in other states.

It is necessary that the documentation include the date the applicant was certified in order to determine whether the applicant was certified prior to the effective date of the rules or after the effective date of the rules. It is reasonable to require this information because persons certified after the effective date of the rules will qualify for registration by equivalency only if the Commissioner has determined that the qualifications for AOTCB certification are equal to or exceed the qualifications required for registration under the rules.

B. A WAIVER AUTHORIZING THE COMMISSIONER TO OBTAIN ACCESS TO THE APPLICANT'S RECORDS MAINTAINED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD.

It is necessary for the Commissioner to be able to obtain information on the applicant's performance as an occupational therapy practitioner in order to determine whether

the applicant should be registered within Minnesota. It is necessary that the Commissioner have access to the records maintained by the AOTCB in order to obtain complete information on occupational therapy practitioners certified by the AOTCB. This rule is reasonable because it not only provides the applicant with notice that his or her occupational therapy practice may be investigated, but also provides the Commissioner with a means of access to records which enable investigation of the applicant's background.

SUBP. 4. APPLICANTS CREDENTIALED IN ANOTHER JURISDICTION. AN APPLICANT CREDENTIALED IN ANOTHER JURISDICTION MUST REQUEST THAT THE APPROPRIATE GOVERNMENT BODY IN EACH JURISDICTION IN WHICH THE APPLICANT HOLDS OR HELD AN OCCUPATIONAL THERAPY CREDENTIAL SEND A LETTER TO THE COMMISSIONER THAT VERIFIES THE APPLICANT'S CREDENTIALS. EXCEPT AS PROVIDED IN PART 4666.0100, REGISTRATION WILL NOT BE ISSUED UNTIL THE COMMISSIONER RECEIVES LETTERS VERIFYING EACH OF THE APPLICANT'S CREDENTIALS. EACH LETTER MUST INCLUDE THE APPLICANT'S NAME, DATE OF BIRTH, CREDENTIAL NUMBER, DATE OF ISSUANCE, A STATEMENT REGARDING INVESTIGATIONS PENDING AND DISCIPLINARY ACTIONS TAKEN OR PENDING AGAINST THE APPLICANT, CURRENT STATUS OF THE CREDENTIAL, AND THE TERMS UNDER WHICH THE CREDENTIAL WAS ISSUED.

All applicants, including applicants for registration by reciprocity, who are credentialed by another jurisdiction must request the appropriate government body in each jurisdiction in which the applicant holds a credential to provide a letter verifying the

applicant's credential and good standing. It is necessary that (1) applicants applying for registration by reciprocity and (2) applicants applying for registration under a rule part other than registration by reciprocity, submit letters of verification from the appropriate government body so that the Commissioner can maintain protection of the public health and safety by screening for those individuals who may pose a threat to the public on the basis of past practices in other states. The information requested (name, date of birth, credential number, date of issuance) is necessary so that the applicant may be correctly identified. It is reasonable to require that the applicant supply this information because it is most readily available to the applicant and is not unduly burdensome.

SUBP. 5. ACTION ON APPLICATIONS FOR REGISTRATION. THE COMMISSIONER SHALL APPROVE, APPROVE WITH CONDITIONS, OR DENY REGISTRATION. THE COMMISSIONER SHALL ACT ON AN APPLICATION FOR REGISTRATION ACCORDING TO ITEMS A TO C.

A. THE COMMISSIONER SHALL DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS FOR REGISTRATION. THE COMMISSIONER, OR THE ADVISORY COUNCIL AT THE COMMISSIONER'S REQUEST, MAY INVESTIGATE INFORMATION PROVIDED BY AN APPLICANT TO DETERMINE WHETHER THE INFORMATION IS ACCURATE AND COMPLETE.

This provision is necessary to put applicants on notice that the Commissioner will determine whether they meet the requirements needed to register. It is reasonable to have the Commissioner responsible for the determination because the Commissioner can use the advisory council's expertise regarding the issue of whether applicants meet the requirements

for registration.

This provision is also necessary to put applicants on notice that information supplied in an application for registration may be investigated by the Commissioner or advisory council. The Commissioner has the authority to delegate the administration of regulation activities. See Minn. Stat. § 214.13, subd. 4 and 7. However, by delegating authority the Commissioner does not thereby give up any of her own authority. The authority of the advisory council is only advisory pursuant to Minnesota Statutes, section 214,13, subdivision 4. Delegation does not remove the Commissioner's authority to make final decisions regarding registration and regulation of an occupation. Therefore, this rule provides that either the Commissioner or the advisory council may investigate, however, only the Commissioner will determine whether the applicant meets the requirements for registration. The definition of "Commissioner" as set out in part 4666.0020, subpart 5, also refers to the Commissioner's designee. Therefore, the investigation could be performed by a staff person acting as the Commissioner's designee.

It is necessary that the Commissioner have the option of investigating information supplied on applications because it may be only by such investigation that the record of an applicant's past practice and/or education and training can be verified. This authority is reasonable because one of the purposes of the registration system is to strengthen consumer protection. The exclusive use of the titles protected by the registration system should only be given to those who rightfully deserve the privilege. The privilege of using the protected title should not be available to those who do not meet the minimum standards set out in these rules. Investigation, provided by this rule, will help promote consumer protection.

B. THE COMMISSIONER SHALL NOTIFY AN APPLICANT OF ACTION TAKEN ON THE APPLICATION AND, IF REGISTRATION IS DENIED OR APPROVED WITH CONDITIONS, THE GROUNDS FOR THE COMMISSIONER'S DETERMINATION.

This provision is necessary to give applicants notice that they will be notified of the action taken on their application and of the grounds for denying registration or approving registration with conditions. The provision gives applicants the ability to review reasons given for denial of registration or approval of registration with conditions. This rule is reasonable because an applicant who seeks to be registered would have great difficulty appealing a denial or approval with conditions without knowing the specific grounds for the Commissioner's determination.

C. AN APPLICANT DENIED REGISTRATION OR GRANTED REGISTRATION WITH CONDITIONS MAY MAKE A WRITTEN REQUEST TO THE COMMISSIONER, WITHIN 30 DAYS OF THE DATE OF THE COMMISSIONER'S DETERMINATION, FOR RECONSIDERATION OF THE COMMISSIONER'S DETERMINATION. INDIVIDUALS REQUESTING RECONSIDERATION MAY SUBMIT INFORMATION WHICH THE APPLICANT WANTS CONSIDERED IN THE RECONSIDERATION. AFTER RECONSIDERATION OF THE COMMISSIONER'S DETERMINATION TO DENY REGISTRATION OR GRANT REGISTRATION WITH CONDITIONS, THE COMMISSIONER SHALL DETERMINE WHETHER THE ORIGINAL DETERMINATION SHOULD BE AFFIRMED OR MODIFIED. AN APPLICANT IS ALLOWED NO MORE THAN ONE REQUEST IN ANY ONE BIENNIAL

REGISTRATION PERIOD FOR RECONSIDERATION OF THE COMMISSIONER'S DETERMINATION TO DENY REGISTRATION OR APPROVE REGISTRATION WITH CONDITIONS.

It is necessary to put applicants on notice of their right to make a written request for reconsideration of their application when registration has been denied or approved with conditions. The rule is reasonable because the Commissioner's determination to deny registration or approve registration with conditions may be considered so consequential to some applicants as to warrant a request for a reconsideration.

It is also necessary to put applicants on notice that their right to make the request for reconsideration has a time limit of 30 days from the date of the Commissioner's determination. Applicants must know what time limit applies to the request to be fully aware of their rights under the registration system. The time limit of 30 days from the date of the Commissioner's determination is reasonable because it allows ample time for the applicant to consider whether to make a request for reconsideration and to prepare such a request.

It is necessary and reasonable to state in the rule that the Commissioner is required to affirm or modify the determination to deny registration or approve registration with conditions after reviewing the determination because the rule provides applicants with information about the process and consequences of the review.

4666.0300 REGISTRATION RENEWAL.

SUBPART 1. RENEWAL REQUIREMENTS. TO BE ELIGIBLE FOR REGISTRATION RENEWAL, A REGISTRANT MUST:

A. SUBMIT A COMPLETED AND SIGNED APPLICATION FOR

REGISTRATION RENEWAL ON FORMS PROVIDED BY THE COMMISSIONER.

It is necessary to require registration renewal as a method of ascertaining those registrants who continue to use the protected titles, to assure that registrant information is updated and for monitoring compliance with continuing education requirements. It is also necessary to require registration renewal in order to periodically update the person's registration certificate so that consumers, employers and reimbursers have current information on whether the registrant is the subject of any disciplinary action or is working under any other restrictions. Registration renewal is also necessary to obtain information from registrants to determine whether there are grounds for denial of registration under 4666.1300, particularly items F and H, since the registrants initial registration or last registration renewal. Registration renewal is a reasonable method of accomplishing these objectives. It is necessary and reasonable to use forms provided by the Commissioner to ensure uniformity of information received.

B. SUBMIT THE RENEWAL FEE REQUIRED UNDER PART 4666.1200.

The renewal fee is necessary to cover the expenses incurred by the Commissioner in administering the registration system. The legislature has determined that it is reasonable to require that individuals using the registration system be responsible for the costs of maintaining the system. Minn. Stat. §§ 214.06, 214.13 and 16A.1285. This is accomplished by the renewal fee.

C. SUBMIT PROOF OF HAVING MET THE CONTINUING EDUCATION REQUIREMENT OF PART 4666.1100 ON FORMS PROVIDED BY THE COMMISSIONER.

It is necessary to require proof of participation in continuing education activities at the time of renewal of registration every two years as a means of assuring that registrants are involved in activities that promote their continued competence. It is a reasonable requirement because the registrant has the information and it is not unduly burdensome to require that the registrant provide such information at the time of registration renewal.

D. SUBMIT ADDITIONAL INFORMATION AS REQUESTED BY THE COMMISSIONER TO CLARIFY INFORMATION PRESENTED IN THE RENEWAL APPLICATION. THE INFORMATION MUST BE SUBMITTED WITHIN 30 DAYS AFTER THE COMMISSIONER'S REQUEST.

This rule is necessary because the Commissioner must have adequate information to process an application for registration renewal to determine whether a registrant is qualified for registration renewal. It is reasonable to require that, should a registrant provide insufficient or unclear information, the information needed to review the application for renewal will be provided by the registrant upon request from the Commissioner, since providing additional information should not be unduly burdensome. It is necessary to require the registrant provide the information within thirty days in order to minimize the amount of time necessary to review and process the application.

SUBP. 2. RENEWAL DEADLINE. EXCEPT AS PROVIDED IN SUBPART 4, REGISTRATION MUST BE RENEWED EVERY TWO YEARS. REGISTRANTS MUST COMPLY WITH THE FOLLOWING PROCEDURES:

This rule is necessary because it informs registrants of the duration of a registration period. It is reasonable that registration renewal occur every two years in order to minimize

the administrative cost of registration renewal.

A. EACH REGISTRATION CERTIFICATE MUST STATE AN EXPIRATION DATE. AN APPLICATION FOR REGISTRATION RENEWAL MUST BE RECEIVED BY THE DEPARTMENT OF HEALTH OR POSTMARKED AT LEAST 30 CALENDAR DAYS BEFORE THE EXPIRATION DATE. IF THE POSTMARK IS ILLEGIBLE, THE APPLICATION WILL BE CONSIDERED TIMELY IF RECEIVED AT LEAST 21 CALENDAR DAYS BEFORE THE EXPIRATION DATE.

IF THE COMMISSIONER CHANGES THE RENEWAL SCHEDULE AND THE EXPIRATION DATE IS LESS THAN TWO YEARS, THE FEE SHALL BE PRORATED.

This rule is necessary to provide notice to registrants of the date by which they must apply for a renewal of their registration to avoid a penalty fee for late renewal. It is reasonable to require that the Commissioner receive the application for registration renewal 30 days before the expiration date in order that the Commissioner can process the applications and issue renewals prior to the expiration date. It is reasonable to allow a grace period for illegible postmarks to assure fairness to registrants while providing a definite time beyond which applications will be considered late.

It is necessary to assure registrants that if the Commissioner finds it necessary to change the renewal schedule and the expiration date for registrants, the Commissioner will prorate the fee for any registration that has an expiration date of less than two years.

B. AN APPLICATION FOR REGISTRATION RENEWAL NOT RECEIVED WITHIN THE TIME REQUIRED UNDER ITEM A, BUT RECEIVED ON

OR BEFORE THE EXPIRATION DATE, MUST BE ACCOMPANIED BY A LATE FEE IN ADDITION TO THE RENEWAL FEE SPECIFIED BY PART 4666.1200.

The late fee is necessary to cover the extra costs incurred by the Commissioner in expediting registration renewal for a registrant who applies for renewal after the renewal deadline. It is reasonable that a registrant, who submits an application for renewal after the renewal deadline set out in item A, be required to pay this fee, since registrants are responsible for submitting timely renewal applications. In addition, it may reasonably act as an incentive for registrants to renew in a timely manner.

C. REGISTRATION RENEWALS RECEIVED AFTER THE EXPIRATION DATE WILL NOT BE ACCEPTED AND PERSONS SEEKING REGISTERED STATUS MUST COMPLY WITH THE REQUIREMENTS OF PART 4666.0400.

This rule part is necessary to put registrants on notice as to the consequences for failure to renew registration on or before the expiration date. It is necessary to require persons use the registration procedure described in part 4666.0400 in order to determine whether the person has engaged in any activity in violation of parts 4666.0010 to 4666.1400 and whether there are grounds for denial of registration. For example, the Commissioner may deny registration to a person who uses a protected title after their registration has lapsed. See part 4666.1300, Subpart 1, item E and part 4666.0030, subpart 1. It is reasonable to make this determination in order to enforce the requirements of the registration rules.

It is also necessary to require that persons use the registration procedure described in part 4666.0400 in order to impose differing renewal requirements, depending on the period

of lapse. The necessity and reasonableness of those requirements are stated in part 4666.0400.

SUBP. 3. REGISTRATION RENEWAL NOTICE. AT LEAST 60 CALENDAR DAYS BEFORE THE EXPIRATION DATE IN SUBPART 2, THE COMMISSIONER SHALL MAIL A RENEWAL NOTICE TO THE REGISTRANT'S LAST KNOWN ADDRESS ON FILE WITH THE COMMISSIONER. THE NOTICE MUST INCLUDE AN APPLICATION FOR REGISTRATION RENEWAL AND NOTICE OF FEES REQUIRED FOR RENEWAL. THE REGISTRANT'S FAILURE TO RECEIVE NOTICE DOES NOT RELIEVE THE REGISTRANT OF THE OBLIGATION TO MEET THE RENEWAL DEADLINE AND OTHER REQUIREMENTS FOR REGISTRATION RENEWAL.

This provision is necessary to provide notice to registrants regarding renewal procedures. It is reasonable to require that the Commissioner make a good faith effort to provide notice to registrants of the registration renewal deadline and procedures since this would not be overly burdensome for the Commissioner. However, it is also reasonable to expect that a registrant would be aware of the renewal deadline, take responsibility for maintaining his or her registration status and comply with the registration deadline in the event that notice is not received from the Commissioner, because the Commissioner cannot guarantee that the renewal notice will in fact be received by each registrant.

SUBP. 4. RENEWAL OF PROVISIONAL REGISTRATION. PROVISIONAL REGISTRATION MUST BE RENEWED ANNUALLY. PROVISIONAL REGISTRANTS MUST COMPLY WITH ALL REQUIREMENTS OF THIS PART EXCEPT SUBPART 1,

ITEMS B AND C. IN ADDITION, PROVISIONAL REGISTRANTS MUST SUBMIT THE FEE FOR RENEWAL OF PROVISIONAL REGISTRATION REQUIRED BY PART 4666.1200. A PROVISIONAL REGISTRATION WILL NOT BE RENEWED FOR ANY PERIOD OF TIME BEYOND THE EXPIRATION OF THE THREE-YEAR PROVISIONAL REGISTRATION PERIOD.

This rule is necessary because it informs provisional registrants of the duration of a registration period and the requirements for renewal of provisional registration. It is reasonable to require that registrants with a provisional registration renew their registration every year in order for the Commissioner to monitor the activities of these persons who have not yet fully demonstrated their qualifications. It is reasonable to require a separate renewal fee for provisional registrants because the fee must be calculated on an annual basis rather than the biennial registration period. In addition, the legislature has determined that registration systems will be fee supported, Minnesota Statutes, sections 214,06, 214.13 and 16A.1285, and there are additional administrative costs when reviewing and processing provisional registration renewals, and these costs should be born by the provisional registrants.

4666.0400 RENEWAL OF REGISTRATION; AFTER EXPIRATION DATE.

In order to appreciate the necessity and reasonableness of this rule part it may be helpful to have an overview of the requirements for registration renewal. The proposed rules require registration renewal every two years. The consequences for failure to renew depend on the amount of time that passes before an application for registration renewal is received by the Commissioner. If the registrant renews within thirty days of the renewal deadline he

or she must pay a renewal fee, a late fee and must meet the two year continuing education requirement. If the registrant applies for renewal within four years after the expiration date, the applicant for registration must pay a renewal fee, a late fee and must provide proof of having met the continuing education requirements since the registrant's initial registration or last renewal. If the period of lapse is four years or more, the registrant must pay the renewal fee and the late fee, must provide proof of having met the continuing education requirements for the most recently completed two year cycle and must fulfill the re-entry requirement. The proposed rules include language to provide notice that the Commissioner may deny registration or discipline any person who continues to use the registered titles after their registration has expired.

SUBPART 1. REMOVAL OF NAME FROM LIST. THE NAMES OF REGISTRANTS WHO DO NOT COMPLY WITH THE REGISTRATION RENEWAL REQUIREMENTS OF PART 4666.0300 ON OR BEFORE THE EXPIRATION DATE SHALL BE REMOVED FROM THE LIST OF INDIVIDUALS AUTHORIZED TO USE THE PROTECTED TITLES IN PART 4666.0030 AND THE REGISTRANTS MUST COMPLY WITH THE REQUIREMENTS OF THIS PART IN ORDER TO REGAIN REGISTERED STATUS.

This rule part is necessary in order to inform registrants of the consequences for failure to renew registration and the process to become registered following lapse of registration. It is reasonable to remove an individual's name from the list of persons authorized to use the protected titles, if that individual does not renew their registration on or before the expiration date, because only persons who are currently registered are entitled to

use the protected titles.

SUBP. 2. REGISTRATION RENEWAL AFTER REGISTRATION EXPIRATION DATE. EXCEPT AS PROVIDED IN SUBPART 4, AN INDIVIDUAL WHOSE APPLICATION FOR REGISTRATION RENEWAL IS RECEIVED AFTER THE REGISTRATION EXPIRATION DATE MUST SUBMIT THE FOLLOWING:

This subpart is necessary in order to inform registrants of the requirements for registration renewal within four years after the registration expiration date. Generally, the requirements are reasonable because they attempt to be receptive to the needs of registrants while not sacrificing any of the protections afforded by the registration system. For example, a person who is not using the protected titles and is not representing that they are registered could let their registration lapse for up to four years without being subject to the re-entry requirement of subpart 3. However, these persons would need to pay the appropriate fees and demonstrate compliance with the continuing education requirements at the time they apply for registration following lapse.

A. A COMPLETED AND SIGNED APPLICATION FOR REGISTRATION FOLLOWING LAPSE IN REGISTERED STATUS ON FORMS PROVIDED BY THE COMMISSIONER;

It is necessary to require that applicants for registration after lapse provide the Commissioner with current information for the registration system records. It is also necessary to obtain information from registrants to determine whether there are grounds for denial of registration under part 4666.0030 or part 4666.1300, particularly items F and H, since the registrants initial registration or last registration renewal. Requiring that applicants

provide this information at the time they apply for registration following lapse is a reasonable method of accomplishing these objectives.

B. THE RENEWAL FEE AND THE LATE FEE REQUIRED UNDER PART 4666.1200;

The late fee is necessary to cover the extra costs incurred by the Commissioner in processing an application for registration after the registration has lapsed. For example, the Commissioner will need to review, and possibly investigate the information provided on the application in order to make a determination as to whether the applicant has engaged in any activity during the period of lapse that would disqualify the applicant for registration. It is reasonable to use a late fee to assess these costs solely on persons applying for registration following lapse, rather than increase the general registration and registration renewal fee, thereby assessing the costs against all registrants.

It is necessary that applicants for registration after lapse pay the renewal fee for the current two year period in order to cover the costs incurred by the Commissioner in administering the registration system. The legislature has determined that it is reasonable to require that registrants be responsible for the costs of maintaining the system. Minn. Stat. §§ 214.06, 214.13 and 16A.1285. This is accomplished by the renewal fee.

C. PROOF OF HAVING MET THE CONTINUING EDUCATION REQUIREMENTS SINCE THE INDIVIDUAL'S INITIAL REGISTRATION OR LAST REGISTRATION RENEWAL; AND

It is necessary that applicants for registration after lapse submit proof that they have met the continuing education requirements of the rules as a means of assuring that registrants

are involved in activities that promote their continued competence. It is a reasonable requirement because all registrants must meet this requirement at the time of registration renewal. If proof of continuing education activities was not required of persons applying for registration following lapse of registration of less than four years, registrants may be encouraged to allow their registration to lapse in order to avoid the continuing education requirement of the registration rules.

D. ADDITIONAL INFORMATION AS REQUESTED BY THE COMMISSIONER TO CLARIFY INFORMATION IN THE APPLICATION, INCLUDING INFORMATION TO DETERMINE WHETHER THE INDIVIDUAL HAS ENGAGED IN CONDUCT WARRANTING DISCIPLINARY ACTION AS SET FORTH IN PART 4666.1300. THE INFORMATION MUST BE SUBMITTED WITHIN 30 DAYS AFTER THE COMMISSIONER'S REQUEST.

This rule is necessary because the Commissioner must have adequate information to determine whether an applicant is qualified for registration. It is reasonable to expect that, should an applicant provide insufficient or unclear information, the information needed to review the application will be provided by the applicant upon request from the Commissioner, since providing additional information should not be unduly burdensome. It is necessary to require the registrant provide the information within thirty days in order to minimize the amount of time necessary to review and process the application.

SUBP. 3. REGISTRATION RENEWAL FOUR YEARS OR MORE AFTER THE REGISTRATION EXPIRATION DATE. EXCEPT AS PROVIDED IN SUBPART 4, AN INDIVIDUAL WHO SUBMITTED A REGISTRATION RENEWAL FOUR YEARS

OR MORE AFTER THE REGISTRATION EXPIRATION DATE MUST SUBMIT THE FOLLOWING:

This subpart is necessary in order to inform registrants of the requirements for registration renewal four years or more after the registration expiration date. The reasonableness of each requirement is provided below.

A. A COMPLETED AND SIGNED APPLICATION FOR REGISTRATION FOLLOWING LAPSE IN REGISTERED STATUS ON FORMS PROVIDED BY THE COMMISSIONER;

It is necessary to require that applicants for registration after lapse provide the Commissioner with current information for the registration system records. It is also necessary to obtain information from registrants to determine whether there are grounds for denial of registration under part 4666.0030 or part 4666.1300, particularly items F and H, since the registrants initial registration or last registration renewal. Requiring that applicants provide this information at the time they apply for registration following lapse is a reasonable method of accomplishing these objectives.

B. THE RENEWAL FEE AND THE LATE FEE REQUIRED UNDER PART 4666.1200;

The late fee is necessary to cover the extra costs incurred by the Commissioner in processing an application for registration after the registration has lapsed. For example, the Commissioner will need to review, and possibly investigate the information provided on the application in order to make a determination as to whether the applicant has engaged in any activity during the period of lapse that would disqualify the applicant for registration. It is

reasonable to use a late fee to assess these costs solely on persons applying for registration following lapse, rather than increase the general registration and registration renewal fee, thereby assessing the costs against all registrants.

It is necessary that applicants for registration after lapse pay the renewal fee for the current two year period in order to cover the costs incurred by the Commissioner in administering the registration system. The legislature has determined that it is reasonable to require that registrants be responsible for the costs of administering the system. Minn. Stat. §§ 214.06, 214.13 and 16A.1285. This is accomplished by the renewal fee. C.

C. PROOF OF HAVING MET THE CONTINUING EDUCATION REQUIREMENT FOR THE MOST RECENTLY COMPLETED TWO-YEAR CONTINUING EDUCATION CYCLE. IN ADDITION, AT THE TIME OF THE NEXT REGISTRATION RENEWAL, THE REGISTRANT MUST SUBMIT PROOF OF HAVING MET THE CONTINUING EDUCATION REQUIREMENT, WHICH SHALL BE PRORATED BASED ON THE NUMBER OF MONTHS REGISTERED DURING THE BIENNIAL REGISTRATION PERIOD;

It is necessary that applicants for registration after lapse submit proof that they have met the continuing education requirements of the rules as a means of assuring that registrants are involved in activities that promote their continued competence. It is a reasonable requirement because all registrants must meet this requirement at the time of registration renewal. Persons whose registration has lapsed four years or more need only meet the continuing education requirement for the most recently completed two year continuing education cycle (24 contact hours for occupational therapist and 18 contact hours for

occupational therapy assistant), whereas persons whose registration has lapsed less than four years must meet the continuing education requirement for the entire period since the individual's initial registration or last registration renewal (maximum of 72 contact hours for occupational therapists and a maximum of 54 contact hours for occupational therapy assistants). It is reasonable to require less continuing education contact hours for persons in the former group because they alone are subject to the additional requirement of item D.

D. PROOF OF SUCCESSFUL COMPLETION OF ONE OF THE FOLLOWING:

(1) VERIFIED DOCUMENTATION OF 160 HOURS OF SUPERVISED PRACTICE APPROVED BY THE COMMISSIONER. TO PARTICIPATE IN A SUPERVISED PRACTICE, THE APPLICANT SHALL OBTAIN LIMITED REGISTRATION. TO APPLY FOR LIMITED REGISTRATION, THE APPLICANT SHALL SUBMIT THE COMPLETED LIMITED REGISTRATION APPLICATION, FEES, AND AGREEMENT FOR SUPERVISION OF AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT PRACTICING UNDER LIMITED REGISTRATION SIGNED BY THE SUPERVISING THERAPIST AND THE APPLICANT. THE SUPERVISING OCCUPATIONAL THERAPIST SHALL STATE THE PROPOSED LEVEL OF SUPERVISION ON THE SUPERVISION AGREEMENT FORM PROVIDED BY THE COMMISSIONER. AT A MINIMUM, A SUPERVISING OCCUPATIONAL THERAPIST SHALL:

(a) BE ON THE PREMISES AT ALL TIMES THAT THE PERSON PRACTICING UNDER LIMITED REGISTRATION IS WORKING;

(b) BE IN THE ROOM TEN PERCENT OF THE HOURS WORKED EACH WEEK BY THE PERSON PRACTICING UNDER PROVISIONAL REGISTRATION; AND

(c) PROVIDE DAILY FACE-TO-FACE COLLABORATION FOR THE PURPOSE OF OBSERVING SERVICE COMPETENCY OF THE OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT, DISCUSSING TREATMENT PROCEDURES AND EACH CLIENT'S RESPONSE TO TREATMENT, AND REVIEWING AND MODIFYING, AS NECESSARY, EACH TREATMENT PLAN. THE COMMISSIONER MAY REQUIRE ADDITIONAL SUPERVISION THAN THE SUPERVISION PROPOSED IN THE SUPERVISION AGREEMENT. THE SUPERVISING THERAPIST SHALL DOCUMENT THE SUPERVISION PROVIDED. THE OCCUPATIONAL THERAPIST PARTICIPATING IN A SUPERVISED PRACTICE IS RESPONSIBLE FOR OBTAINING THE SUPERVISION REQUIRED UNDER THIS SUBITEM AND MUST COMPLY WITH THE COMMISSIONER'S REQUIREMENTS FOR SUPERVISION DURING THE ENTIRE 160 HOURS OF SUPERVISED PRACTICE. THE SUPERVISED PRACTICE MUST BE COMPLETED IN TWO MONTHS AND MAY BE COMPLETED AT THE APPLICANT'S PLACE OF WORK;

It is necessary that an individual who has allowed his or her registration to lapse for four years or more to demonstrate that he or she remains qualified for registration. A supervised practice is one method of demonstrating qualification for registration. The proposed supervised practice is reasonable because it is based on requirements for other

occupations in the state of Minnesota and for occupational therapists in other states. The physical therapy statute and rules require that all renewal applicants who have not practiced the equivalent of eight full weeks during the past five years either re-take the physical therapy examination or complete no less than eight weeks of council approved clinical experience. Minn. R. 5601.1700 (1993).

The speech-language pathologist and audiologist registration rules require persons whose registered status has lapsed for more than three years to complete a nine-month supervised clinical experience and receive a qualifying score on the national examination in order to qualify for registration. Minn. R. 4750.0090 (1991).

Persons applying for renewal of a nurse license following a lapse in their license of one day or more must show proof of acceptable nursing practice in the two years immediately preceding receipt of the application for renewal. Persons who do not meet the practice requirements must take a refresher course that includes both theory and clinical experience components. Minn. R. 6310.3100 (1993).

Virginia's occupational therapy credentialing regulations require that all persons (new applicants, renewal applicants, and persons whose certification has lapsed) who have not practiced occupational therapy for a period of six years serve a board approved supervised practice of 160 hours to be completed in two consecutive months. Va. Regs. Reg. 465-08-01, § 2.4 (1991).

The supervised practice in the proposed rules is also reasonable because the 160 hours may be completed at the applicant's place of work, and thus, in many employment settings, there will be no delay in the therapists re-entry into the work force.

(2) SUBMIT VERIFIED DOCUMENTATION OF HAVING ACHIEVED A QUALIFYING SCORE ON THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPISTS OR THE CREDENTIALING EXAMINATION FOR OCCUPATIONAL THERAPY ASSISTANTS ADMINISTERED WITHIN THE PAST YEAR; OR

It is necessary for an individual who has allowed his or her registration to lapse for more than four years to demonstrate that he or she remains qualified for registration. Achieving a qualifying score on an examination within the past year is one method of demonstrating qualifications to be registered. This requirement is reasonable because achievement of a qualifying score on a credentialing examination is an accepted method for assessing whether an individual has the knowledge and skills in a given occupation. The registration rules for speech-language pathologists and audiologists and the registration rules for respiratory care practitioners accept a passing score on a credentialing examination as one method of re-entry into the registration system following an extended lapse of registration.

(3) SUBMIT DOCUMENTATION OF HAVING COMPLETED A COMBINATION OF OCCUPATIONAL THERAPY COURSES OR AN OCCUPATIONAL THERAPY REFRESHER PROGRAM THAT CONTAINS BOTH A THEORETICAL AND CLINICAL COMPONENT APPROVED BY THE COMMISSIONER. ONLY COURSES COMPLETED WITHIN ONE YEAR PRECEDING THE DATE OF THE APPLICATION OR ONE YEAR AFTER THE DATE OF THE APPLICATION WILL QUALIFY FOR APPROVAL; AND

It is necessary for an individual who has allowed his or her registration to lapse for

more than four years to demonstrate that he or she remains qualified for registration. Occupational therapy courses approved by the Commissioner is one means of assuring continuing competency and qualification for registration. The proposed rule is reasonable because it allows applicants the opportunity to propose to the Commissioner a course or combination of courses that meet the requirements specified. The group of occupational therapy practitioners that consulted with Department staff in the development of the rules suggested that applicants for registration as occupational therapists could complete the occupational therapy refresher program that is offered each summer at the University of Minnesota. Another option, available to applicants for registration as either an occupational therapist or an occupational therapy assistant, is to propose a combination of courses that offer both the theoretical and clinical components that are necessary to meet the requirements of the rule. These courses are available from most, if not all, the accredited occupational therapy training programs. The accredited training programs for occupational therapists are located at the University of Minnesota and the College of St. Catherine. The accredited programs for occupational therapy assistants are located at Duluth Technical College, Anoka Technical College, Austin Community College, and in Minneapolis at St. Mary's Campus of the College of St. Catherine.

E. ADDITIONAL INFORMATION AS REQUESTED BY THE COMMISSIONER TO CLARIFY INFORMATION IN THE APPLICATION, INCLUDING INFORMATION TO DETERMINE WHETHER THE APPLICANT HAS ENGAGED IN CONDUCT WARRANTING DISCIPLINARY ACTION AS SET FORTH IN PART 4666.1300. THE INFORMATION MUST BE SUBMITTED WITHIN 30 DAYS AFTER

THE COMMISSIONER'S REQUEST.

This rule is necessary because the Commissioner must have adequate information to determine whether an applicant is qualified for registration. It is reasonable to expect that, should an applicant provide insufficient or unclear information, the information needed to review the application will be provided by the applicant upon request from the Commissioner, since providing additional information should not be unduly burdensome. It is necessary to require the registrant provide the information within thirty days in order to minimize the amount of time necessary to review and process the application.

SUBPART 4. REGISTRATION AFTER LAPSE OF PROVISIONAL REGISTRATION. PERMISSION TO TAKE THE CERTIFICATION EXAMINATION FOR AN INDIVIDUAL WHOSE PROVISIONAL REGISTRATION HAS LAPSED MORE THAN 30 DAYS IS REVOKED. IN ORDER TO QUALIFY TO TAKE THE CERTIFICATION EXAMINATION, AN INDIVIDUAL WHOSE PROVISIONAL REGISTRATION HAS LAPSED MUST COMPLY WITH PART 4666.0060, SUBPART 3, OR 4666.0070, SUBPART 3.

It is necessary to inform registrants who allow their provisional registration to lapse of the consequences for failure to renew provisional registration and the requirements for renewal of provisional registration. It is reasonable to allow a person to re-qualify to take the certification examination once provisional registration has been renewed. It is necessary to inform provisional registrants that the time specified in the rules to take the examination and pass the examination will not be extended beyond the three year provisional registration period specified in 4666.0060 subpart 3, A. and 4666.0070 subpart 3, A. The necessity and

reasonableness of the three year limit on the provisional registration period is stated in part 4666.0060 subpart 3, item A and 4666.0070 subpart 3, item A.

4666.0500 CHANGE OF ADDRESS

A REGISTRANT WHO CHANGES ADDRESSES MUST INFORM THE COMMISSIONER, IN WRITING, OF THE CHANGE OF ADDRESS WITHIN 30 DAYS. ALL NOTICES OR OTHER CORRESPONDENCE MAILED TO OR SERVED ON A REGISTRANT BY THE COMMISSIONER AT THE REGISTRANT'S ADDRESS ON FILE WITH THE COMMISSIONER SHALL BE CONSIDERED AS HAVING BEEN RECEIVED BY THE REGISTRANT.

It is necessary for registrants to keep the Commissioner informed of their current address because the Commissioner needs to know where to contact the registrant with any notices. In addition, at the time of registration renewal or should any disciplinary matter arise, the Commissioner needs to know the location of the registrant for purposes of notification and for obtaining information from the registrant. However, it is reasonable to expect that a registrant will keep the Commissioner informed of any address changes and for the Commissioner to assume that materials mailed to the registrant's address on file are received by the registrant. This provision is also reasonable because it does not place an undue burden on registrants.

4666.0600 DELEGATION OF DUTIES; ASSIGNMENT OF TASKS.

THE OCCUPATIONAL THERAPIST IS RESPONSIBLE FOR ALL DUTIES DELEGATED TO THE OCCUPATIONAL THERAPY ASSISTANT OR TASKS ASSIGNED TO DIRECT SERVICE PERSONNEL. THE OCCUPATIONAL THERAPIST

MAY DELEGATE TO AN OCCUPATIONAL THERAPY ASSISTANT THOSE PORTIONS OF A CLIENT'S EVALUATION, REEVALUATION, AND TREATMENT THAT, ACCORDING TO PREVAILING PRACTICE STANDARDS OF THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, CAN BE PERFORMED BY AN OCCUPATIONAL THERAPY ASSISTANT. THE OCCUPATIONAL THERAPIST MAY NOT DELEGATE PORTIONS OF AN EVALUATION OR REEVALUATION OF A PERSON WHOSE CONDITION IS CHANGING RAPIDLY. DELEGATION OF DUTIES RELATED TO THE USE OF PHYSICAL AGENT MODALITIES TO OCCUPATIONAL THERAPY ASSISTANTS IS GOVERNED BY PART 4666.1000, SUBPART 9.

I. Necessity and Reasonableness of Delegation of Duties and Assignment of Tasks - General Considerations.

The proposed rule part is necessary in order to assure that occupational therapists provide adequate supervision to persons assisting the occupational therapist in providing occupational therapy services. A primary function of the registration rules is to provide standards of care that may be used to protect the client from inappropriate or negligent care. In order to achieve this goal, it is necessary and reasonable to have standards in order to hold the therapist accountable when he or she delegates or assigns occupational therapy services or tasks related to occupational therapy services. The rule part is also reasonable because it is based on the physical therapist registration rules. Minn. R. 5601.1400 -.1600 (1991).

Medical assistance requires that the occupational therapist is "on the premises not less than every sixth treatment session of each recipient when treatment is provided by an

occupational therapy assistant." Minn. R. 9505.0390 subpart 1, item B and subpart 2, item B (Supp. 1992). If the therapist is on the premises at the time the occupational therapy assistant provides services, medical assistance will reimburse at 100% for services provided by the occupational therapy assistant. 1992 Minn. Laws Chapter 513, Art. 5. If the occupational therapist is not on the premises at the time the services are provided, the occupational therapy assistant is reimbursed at 65% of the occupational therapist rate. Id.

The Medicare conditions of participation do not specify the qualifications or level of supervision required for occupational therapy assistants working in hospitals. As discussed earlier, the conditions of participation for hospitals require that occupational therapy services "must be provided by staff who meet the qualifications specified by the medical staff, consistent with state law." 42 C.F.R. §482.56 (1991). The conditions of participation require only that the hospital employ a supervisor of rehabilitation services who must have the "knowledge, experience, and capabilities to properly supervise and administer the services." 42 C.F.R. §482.56 (1991). The JCAHO also relies on state law to determine both the qualifications for occupational therapy assistant and the supervision required. Telephone conversation with Ed Stevens, JCAHO (October 30, 1992). Thus, there are no requirements for the level of supervision necessary for persons providing occupational therapy services in hospitals under the medicare conditions of participation and under JCAHO accreditation standards. In fact, in the absence of state law, there are no qualifications required for an occupational therapy assistant working in a hospital in Minnesota and therefore an occupational therapist could delegate occupational therapy to an aide or other employee. The medicare conditions of participation and the JCAHO standards

do not provide guidance for the supervision of these persons either.

The Minnesota Department of Education reimburses for services provided by a certified occupational therapy assistant at the same level as for services provided by an occupational therapist if the occupational therapy assistant is under the supervision of an occupational therapist. Telephone conversation with Bob Fisher, Minnesota Department of Education, Information and Technology Section (October 28, 1992). The Department of Education does not specify the level of supervision required for services provided by occupational therapy assistants. Id.

This rule part on delegation of duties and assignment of tasks, and the following rule part on supervision of occupational therapy assistants was developed with the assistance of the group of occupational therapy practitioners that consulted with department staff on the development of the proposed rules. The proposed rule part is substantially the same as the rule part developed in collaboration with the practitioners.

II. Necessity and Reasonableness of Specific Provisions.

A. Delegation of Duties.

It is necessary that the rules identify who may conduct evaluations and who may carry out the occupational therapist's treatment plan in order to assure the public that occupational therapists use qualified persons to provide occupational therapy services. Thus, the word delegate, as defined in the proposed rules at part 4666.0020 subpart 10, is used to authorize occupational therapy assistants to perform certain evaluation and treatment procedures with a degree of independence reserved for them. Compare part 4666.0020, subpart 10 with part 4666.0020, subpart 3. It is reasonable to allow an occupational therapist to delegate certain

evaluation and treatment procedures to an occupational therapy assistant because (1) these persons have met the minimum entry qualifications required by the proposed rules and therefore are trained to perform the procedures and (2) these persons are subject to the supervision requirements of part 4666.0700 and the disciplinary provisions of part 4666.1300. It is also reasonable to allow occupational therapists to delegate these functions because occupational therapy assistants are skilled in providing these services, and utilizing their skills will help contain the cost of occupational therapy services and make occupational therapy service more accessible to a greater number of people.

It is reasonable to use the prevailing professional standards of the American Occupational Therapy Association (AOTA) to identify evaluation and treatment procedures that can be delegated to an occupational therapy assistant because these standards reflect the professional relationship that training programs anticipate will exist between the occupational therapist and the occupational therapy assistant, at the entry, intermediate, and high-proficiency level. See American Occupational Therapy Association, Inc., Occupational Therapy Roles, 4-14, (1994) (Attachment E); American Occupational Therapy Association, Inc., Guide for Supervision of Occupational Therapy Personnel (1994) (Attachment F). The standards establish the appropriate role for occupational therapy assistants based on the "experience, education and practice skills" of individual practitioners. Occupational Therapy Roles at 12. These documents are widely distributed by the AOTA and the accredited training programs.

It is reasonable to adopt the AOTA's prevailing standards because the profession of occupational therapy is not static; the standards for delegating evaluation and treatment

procedures are refined on an ongoing basis. It is necessary to use the Association's prevailing practice standards in order to eliminate the cost of amending the rules each time new practice standards are adopted.

B. Assignment of Tasks.

The language authorizing assignment of tasks was not included when a draft outline of the rules were distributed for informal comment. In the absence of such a provision, the Commissioner received two valuable comments. Staff of Legal Advocacy for Persons with Developmental Disabilities expressed concern over the fact that the language requiring occupational therapists to delegate occupational therapy only to occupational therapy assistants would prohibit occupational therapists from training direct service staff in methods to "integrate treatment procedures into functional activities which occur throughout the person's normal daily routine." See Letter from Luther A. Granquist to Michelle Strangis (June 1, 1992) (Attachment N). Paula Long, Chairperson of the Therapeutic Recreation Section of the Minnesota Recreation and Park Association also stated this concern. Ms. Long was concerned that occupational therapists would be prevented from training direct service staff to perform certain routine tasks that were part of the occupational therapy program. Ms. Long stated that it is essential that this relationship continue in order for clients to realize the benefits of frequent repetition of these activities. Telephone conversations between Minnesota Department of Health staff and Paula Long, May 12, 1992 and August 10, 1992.

It was necessary to add this language in order to provide occupational therapists with the authority to train direct service staff who are working with client's during daily living

activities. The proposed rule allows occupational therapists to train direct service staff in skills that can be used to facilitate daily living activities such as feeding, positioning and ambulation.

It is important to remember that the registration rules govern only the conduct of registered persons (and unregistered persons who use the protected titles and thus are in violation of the registration rules). Thus, the registration rules do not regulate the conduct of direct service staff and do not prohibit direct service staff from providing occupational therapy services. The registration rules regulate the conduct of the occupational therapist and require that if an occupational therapist assigns tasks that are part of an occupational therapy treatment plan, the occupational therapist must assign tasks consistent with the requirements of this part.

Although the occupational therapy practitioners registration rules do not regulate the conduct of direct service staff, other regulations, such as the home care licensure rules, regulate the services that can be provided by direct service staff. Those rules must be complied with separately.

4666.0700 SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS.

SUBPART 1. APPLICABILITY. IF THE PROFESSIONAL STANDARDS IDENTIFIED IN PART 4666.0600 PERMIT AN OCCUPATIONAL THERAPIST TO DELEGATE AN EVALUATION, REEVALUATION, OR TREATMENT PROCEDURE, THE OCCUPATIONAL THERAPIST MUST PROVIDE SUPERVISION CONSISTENT WITH THIS PART. SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS USING PHYSICAL AGENT MODALITIES IS GOVERNED BY PART 4666.1000,

SUBPART 9.

SUBPART 2. EVALUATIONS. THE OCCUPATIONAL THERAPIST SHALL DETERMINE THE FREQUENCY OF EVALUATIONS AND REEVALUATIONS FOR EACH CLIENT. THE OCCUPATIONAL THERAPY ASSISTANT SHALL INFORM THE OCCUPATIONAL THERAPIST OF THE NEED FOR MORE FREQUENT REEVALUATION IF INDICATED BY THE CLIENT'S CONDITION OR RESPONSE TO TREATMENT. BEFORE DELEGATING A PORTION OF A CLIENT'S EVALUATION PURSUANT TO PART 4666.0600, THE OCCUPATIONAL THERAPIST SHALL ASSURE THE SERVICE COMPETENCY OF THE OCCUPATIONAL THERAPY ASSISTANT IN PERFORMING THE EVALUATION PROCEDURE AND SHALL PROVIDE SUPERVISION CONSISTENT WITH THE CONDITION OF THE PATIENT OR CLIENT AND THE COMPLEXITY OF THE EVALUATION PROCEDURE.

SUBPART 3. TREATMENT.

A. GENERAL PRINCIPLES. THE OCCUPATIONAL THERAPIST SHALL DETERMINE THE FREQUENCY AND MANNER OF SUPERVISION OF AN OCCUPATIONAL THERAPY ASSISTANT PERFORMING TREATMENT PROCEDURES DELEGATED PURSUANT TO PART 4666.0600, BASED ON THE CONDITION OF THE PATIENT OR CLIENT, THE COMPLEXITY OF THE TREATMENT PROCEDURE, AND THE PROFICIENCIES OF THE OCCUPATIONAL THERAPY ASSISTANT.

B. MINIMUM REQUIREMENTS. FACE-TO-FACE COLLABORATION BETWEEN THE OCCUPATIONAL THERAPIST AND THE OCCUPATIONAL

THERAPY ASSISTANT SHALL OCCUR, AT A MINIMUM, EVERY TWO WEEKS DURING WHICH TIME THE OCCUPATIONAL THERAPIST IS RESPONSIBLE FOR:

(1) PLANNING AND DOCUMENTING AN INITIAL TREATMENT PLAN AND DISCHARGE FROM TREATMENT;

(2) REVIEWING TREATMENT GOALS, THERAPY PROGRAMS, AND CLIENT PROGRESS;

(3) SUPERVISING CHANGES IN THE TREATMENT PLAN;

(4) CONDUCTING OR OBSERVING TREATMENT PROCEDURES FOR SELECTED CLIENTS AND DOCUMENTING APPROPRIATENESS OF TREATMENT PROCEDURES. CLIENTS WILL BE SELECTED BASED ON THE OCCUPATIONAL THERAPY SERVICES PROVIDED TO THE CLIENT AND THE ROLE OF THE OCCUPATIONAL THERAPIST AND THE OCCUPATIONAL THERAPY ASSISTANT IN THOSE SERVICES; AND

(5) ASSURING THE SERVICE COMPETENCY OF THE OCCUPATIONAL THERAPY ASSISTANT IN PERFORMING DELEGATED TREATMENT PROCEDURES.

C. ADDITIONAL SUPERVISION REQUIRED. FACE-TO-FACE COLLABORATION MUST OCCUR MORE FREQUENTLY THAN EVERY TWO WEEKS IF NECESSARY TO MEET THE REQUIREMENTS OF ITEM A OR B.

D. DOCUMENTATION REQUIRED. THE OCCUPATIONAL THERAPIST SHALL DOCUMENT COMPLIANCE WITH THIS SUBPART IN THE CLIENT'S FILE OR CHART.

The Commissioner is authorized to require supervision as part of the regulation of human service occupations. Minn. Stat. § 214.13, subd. 3 (Supp. 1991). In order to protect consumers, it is necessary that the rules specify the level of supervision required for occupational therapy assistants. The proposed rule is reasonable because it recognizes that the required level of supervision will vary, depending on the variables listed in the rule. However, the rule recognizes that at a minimum, an occupational therapist should provide in person supervision every two weeks for the purposes described. That is the minimum requirement, and therefore the Department assumes that, in the majority of cases, additional supervision will be provided. The group of occupational therapy practitioners that consulted on the development of the rules indicated that the rule should not be overly burdensome, yet it is consistent with principles of good practice. In addition, the rule is reasonable because occupational therapists should be able to meet the supervision requirements for both medical assistance and the proposed registration rules without difficulty.

In his letter during the informal comment period, Luther Granquist, Legal Advocacy for Persons with Developmental Disabilities, requested that "the rule provide some time period in which the occupational therapist will actually see the person for whom treatment procedures are devised." The proposed rules require that the occupational therapist supervise the occupational therapy assistant, in-person, every two weeks. However, as Mr. Granquist points out, the rules do not require the occupational therapist to see each client within a set interval of time. The Commissioner believes that the proposed rules contain safeguards that registered persons will work within their competency, and that clients will receive services from an occupational therapist when appropriate. For example, subpart 2 and subpart 3

require the occupational therapist to assure the service competency of the occupational therapy assistant prior to delegating evaluation or treatment procedures. In addition, the occupational therapist is responsible for all duties delegated to the occupational therapy assistant. See part 4666.0600. Furthermore, registered persons who perform services in an incompetent manner or in a manner that falls below the community standard of care are subject to disciplinary action. See part 4666.1300, subpart 1, item c.

Finally, the group of occupational therapy practitioners that consulted with Department staff who were drafting the rules voiced very specific concerns about requiring an occupational therapist to see all clients on a predetermined and universal periodic basis (e.g. every two weeks). The practitioners believed that such a requirement is never workable because it will always be too often for some persons receiving services and not often enough for others. Therefore, this type of requirement adds unnecessary costs to the provision of services. Based on this information, the Commissioner determined it was in the best interest of the public that the rules not establish a blanket time interval, but rather that the occupational therapist determine the appropriate time interval for "conducting or observing treatment procedures for selected clients and documenting appropriateness of treatment procedures." Part 4666.0700, subpart 3, item B, subitem 4.

SUBPART 4. EXCEPTION. THE SUPERVISION REQUIREMENTS OF THIS PART DO NOT APPLY TO AN OCCUPATIONAL THERAPY ASSISTANT WHO:

A) WORKS IN AN ACTIVITIES PROGRAM; AND

B) DOES NOT PERFORM OCCUPATIONAL THERAPY SERVICES.

THE OCCUPATIONAL THERAPY ASSISTANT MUST MEET ALL OTHER

APPLICABLE REQUIREMENTS OF PARTS 4666.0010 TO 4666.1400.

This exception to the supervision requirements is necessary to allow registered occupational therapy assistants employed in activities programs to use the registered titles. Occupational therapy assistants meeting the qualifications for registration may be employed in activities programs. These programs are generally not structured to allow supervision of the occupational therapy assistant as required by the registration rules. Occupational therapy assistants are recognized as uniquely qualified for employment in activities programs by Minnesota nursing home rules and federal Medicare regulations for skilled nursing facilities. See Minnesota Rules, part 4655.5200 and 42 CFR §483.18. It is reasonable to allow this exception to the supervision requirements because of the unique nature of activities programs.

4666.0800. COORDINATION OF SERVICES.

AN OCCUPATIONAL THERAPIST SHALL:

A. COLLECT INFORMATION NECESSARY TO ASSURE THAT THE PROVISION OF OCCUPATIONAL THERAPY SERVICES ARE CONSISTENT WITH THE CLIENT'S PHYSICAL AND MENTAL HEALTH STATUS. THE INFORMATION REQUIRED TO MAKE THIS DETERMINATION MAY INCLUDE, BUT IS NOT LIMITED TO, CONTACTING THE CLIENT'S LICENSED HEALTH CARE PROFESSIONAL FOR HEALTH HISTORY, CURRENT HEALTH STATUS, CURRENT MEDICATIONS, AND PRECAUTIONS;

B. MODIFY OR TERMINATE OCCUPATIONAL THERAPY TREATMENT OF A CLIENT THAT IS NOT BENEFICIAL TO THE CLIENT, NOT

TOLERATED BY THE CLIENT, OR REFUSED BY THE CLIENT, AND IF TREATMENT WAS TERMINATED FOR A MEDICAL REASON, NOTIFY THE CLIENT'S LICENSED HEALTH CARE PROFESSIONAL BY CORRESPONDENCE POSTMARKED OR DELIVERED TO THE LICENSED HEALTH CARE PROFESSIONAL WITHIN SEVEN CALENDAR DAYS OF THE TERMINATION OF TREATMENT;

C. REFER A CLIENT TO AN APPROPRIATE HEALTH CARE, SOCIAL SERVICE, OR EDUCATION PRACTITIONER IF THE CLIENT'S CONDITION REQUIRES SERVICES NOT WITHIN THE OCCUPATIONAL THERAPIST'S SERVICE COMPETENCY OR NOT WITHIN THE PRACTICE OF OCCUPATIONAL THERAPY GENERALLY;

D. PARTICIPATE AND COOPERATE IN THE COORDINATION OF OCCUPATIONAL THERAPY SERVICES WITH OTHER RELATED SERVICES, AS A MEMBER OF THE PROFESSIONAL COMMUNITY SERVING THE CLIENT; AND

E. COMMUNICATE IN WRITING WITH THE APPROPRIATE LICENSED HEALTH CARE PROFESSIONAL AN OCCUPATIONAL THERAPY PLAN OF CARE, POSTMARKED OR DELIVERED TO THE LICENSED HEALTH CARE PROFESSIONAL WITHIN 14 CALENDAR DAYS OF THE INITIATION OF TREATMENT. THE OCCUPATIONAL THERAPIST MUST PROVIDE THIS WRITTEN COMMUNICATION EVEN IF OCCUPATIONAL THERAPY TREATMENT IS CONCLUDED IN LESS THAN 14 CONSECUTIVE DAYS. THE OCCUPATIONAL THERAPIST SHALL DOCUMENT MODIFICATIONS TO THE PLAN OF CARE

REQUESTED BY THE LICENSED HEALTH CARE PROFESSIONAL FOLLOWING CONSULTATION WITH THE LICENSED HEALTH CARE PROFESSIONAL. OCCUPATIONAL THERAPISTS EMPLOYED BY A SCHOOL SYSTEM ARE EXEMPT FROM THE REQUIREMENTS OF THIS ITEM IN THE PERFORMANCE OF THEIR DUTIES WITHIN THE SCHOOL SYSTEM.

I. Necessity and Reasonableness of Coordination of Services - General Considerations

This rule part is necessary to specify the standard of conduct required of occupational therapists when consumers have access to occupational therapy services without a referral from a licensed health care practitioner. The rule part is reasonable because it is based on accepted principles of "good practice" as demonstrated by current practices of therapists in Minnesota, the laws and regulations of other states, and the policy and standards of the American Occupational Therapy Association. This rule part is also reasonable because it does not create unnecessary costs for clients receiving occupational therapy services, it does not inhibit consumer access to occupational therapy services and it is not overly burdensome on the occupational therapist.

A. Current Practices of Occupational Therapists.

This rule part was developed following extensive research of current practices of occupational therapists in Minnesota in all practice settings. Department of Health staff conducted a survey of the Minnesota Occupational Therapy Association's 12 practice groups. The 14 page survey sought information on current practices of occupational therapists in each practice group. A copy of the survey is provided as Attachment O.

The results of the survey indicate that regardless of the setting or the population served occupational therapists are responsible for determining the need for medical information at the time of evaluation and during treatment. Therapists reported that they obtain information on a client's physical and mental health status from a variety of sources, including (1) documentation in the client's medical records, inpatient chart, or discharge notes, and (2) conversations with other health care practitioners, the client or client's parent. More significantly, therapists reported that they do not need medical information from the client's physician in all cases and, when they do, the necessary information is not always contained in the physician's referral or order. Based on this information the Commissioner concluded that the physician referral requirement, as used by many reimbursers to control utilization (discussed below), was not the best vehicle to assure that therapists were providing services on the basis of necessary medical information. Furthermore, a physician referral requirement may not be cost effective for the health care system and the consumer because therapists reported they do not require medical information from the physician in all cases.

B. Laws and Regulations of Other States.

The proposed rule part is reasonable because it is consistent with the practices in a majority of states. The American Occupational Therapy Association conducted a survey of state statutes and regulations in 1989 to determine which states require that occupational therapy services are provided with a physician referral. AOTA Legislative and Political Affairs Division, Handbook on State Regulation of Occupational Therapy, 4-17 to 4-20 (December 1989). According to the survey, 31 of the 43 states that regulate occupational therapy practitioners do not require a physician referral. Only two states require

occupational therapists provide services upon a physician referral in all cases. The remaining ten states require a physician referral but provide exceptions to that requirement. For example, most of these states allow a therapist to provide consultation and evaluation without a referral, but require a physician referral for treatment. Five of the ten states provide an across the board exemption from the physician referral requirements to occupational therapists providing services to the educationally handicapped in the schools.

C. Policies and Standards of the American Occupational Therapy Association (AOTA).

The proposed rule part is reasonable because it is consistent with the policies and standards of the AOTA. The AOTA's "Statement of Occupational Therapy Referral" provides that AOTA "does not mandate a referral for the delivery of occupational therapy services, but maintains that the requirements of state law and individual facilities should be followed." The American Occupational Therapy Association, Inc., Statement of Occupational Therapy Referral 1 (Adopted 1969, Revised 1980) (Attachment P). The Statement elucidates some broad principles regarding the occupational therapist's responsibilities to clients and other practitioners. Of particular note are the following:

> The Registered Occupational Therapist...:
> - recognizes that a physician or other professional, duly licensed to practice within an area of specialization, is the person who holds full responsibility for the medical management of the client;
> - treats within the client management plan, collaboratively with others who are involved with the client, documents services in the client's records;
> - refers a client who, in the therapist's professional judgement appears to require additional services, to an individual qualified to provide the appropriate specialized service.

Id. The AOTA's "Occupational Therapy Code of Ethics" states two principles that

are also reflected in the proposed rule part: 1) "the individual shall take all reasonable precautions to avoid harm to the recipient of services or detriment to the recipient's property," and 2) "the individual shall refer clients to other service providers or consult with other service providers when additional knowledge and expertise is required." American Occupational Therapy Association, Inc. Occupational Therapy Code of Ethics, Vol. 42 Number 12 Am. J. of Occupational Therapy 1 (1988) (Attachment Q).

Physician referral requirements are currently used by many health care plans as a means of controlling utilization of occupational therapy services.[1] The absence of a physician referral requirement in the registration rules will not dictate the practices of health care plans.

If the proposed rules required that occupational therapists provide services only upon a physician referral, the State of Minnesota would, for the first time, impose that requirement whenever an occupational therapist provides services. Currently a consumer can obtain occupational therapy services without a physician referral if (1) the client is paying for the services without expectation of reimbursement (2) the client's health care plan does not require a physician referral or (3) the client qualifies for special education services in the public schools. A number of occupational therapists responding to our survey expressed concern that a physician referral requirement would impede access to services and increase

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[1] Eleven of the fourteen health care plans that responded to the Department's survey, described at page 57, indicated that a physician referral is required in order to obtain reimbursement for occupational therapy services. Three respondents stated that a physician referral is not required for reimbursement.

The Minnesota medical assistance rules require that occupational therapy services are prescribed by a physician in order to qualify for medical assistance reimbursement. Minn. R. 9505.0390 subp. 2, A (supp. 1991).

the cost of services for persons in long term care facilities and in-home care who utilize occupational therapy services to maintain their functional status. Therapists reported that health care plans frequently do not reimburse for these services. Occupational therapists also expressed concern that an across the board physician referral requirement would discourage consumers from obtaining preventive services, which are not covered by health care plans and are therefore not subject to a physician referral requirement. In addition, as noted above, not all health care plans require a physician referral for reimbursement of occupational therapy services. Finally, schools do not require a physician referral for occupational therapy services provided in the schools.

Based on this information, the Commissioner determined that it is not necessary to require that persons registered as an occupational therapist provide occupational therapy upon a physician's referral or order. The purpose of the registration rules is to provide consumers a method of identifying practitioners who meet entry level qualifications, to facilitate continuing education of those practitioners and to have a method for enforcing professional standards. A physician referral requirement would not serve any of those purposes. The proposed rule part on coordination of services adequately protects the consumer from harm without imposing additional costs and without restricting consumers direct access to occupational therapy services. Furthermore, the proposed rule part is the least intrusive form of regulation because it does not alter current practices of occupational therapists or other health care practitioners and will not alter the reimbursement requirements of health care plans.

II. Necessity and Reasonableness of Coordination of Services - Specific Provisions.

Subpart A is necessary to delineate the occupational therapist's responsibility to collect information on the client's health status and to make that responsibility enforceable under the registration rules. This subpart is reasonable because it is not unduly burdensome and is consistent with the policies and standards of the AOTA, as discussed above.

Subpart B is necessary to delineate the occupational therapist's responsibility to modify or terminate treatment that is not beneficial or not tolerated by the client. It is reasonable to require the therapist notify the licensed health care practitioner within seven days when treatment is terminated for a medical reason because the proposed rules assume that the licensed health care practitioner is the person responsible for the medical management of the client. The subpart is also reasonable because 1) it is consistent with the AOTA's "Statement of Occupational Therapy Referral," 2) is consistent with the physical therapist registration rules (see Minn. R. 5601.2000 (1991) and 3) is not overly burdensome.

Subpart C is necessary to delineate the occupational therapists responsibility to refer a client when the services required are not within the occupational therapists service competency or not within the practice of occupational therapy generally. This requirement is reasonable because it is consistent with AOTA's "Statement of Occupational Therapy Referral" and AOTA's "Occupational Therapy Code of Ethics." This requirement is also reasonable because it is consistent with the requirements for registered physical therapist (see Minn. R. 5601.2000 (1991)).

Subpart D is necessary to delineate the occupational therapist's responsibility to coordinate occupational therapy services with other related services the client is receiving.

It is reasonable to require coordination of services because it is consistent with established principles of good practice; is already required by many reimbursement sources, including medical assistance, and therefore should not add costs to the delivery of occupational therapy services.

Subpart E is necessary to delineate the occupational therapist's responsibility to communicate with the appropriate licensed health care practitioner an occupational therapy plan of care within 14 calendar days of the initiation of treatment in order to assure that the licensed health care practitioner is aware of patients who are receiving occupational therapy services and the nature of those services. It is reasonable to require communication with a licensed health care practitioner because it is consistent with established principles of good practice and is intended to provide the licensed health care professional the opportunity to monitor the services provided if the licensed health care professional determines that is appropriate. It is necessary to exempt occupational therapists employed by a school system from this communication requirement because they work within an educational model which does not require the oversight of a licensed health care professional but relies on a team approach to establish and guide the direction of an appropriate plan of care for each client. The exemption is reasonable because the educational model has independent requirements for documentation and modification of the client's plan of care.

4666.0900 RECIPIENT NOTIFICATION.

SUBPART 1. REQUIRED NOTIFICATION. IN THE ABSENCE OF A PHYSICIAN REFERRAL OR PRIOR AUTHORIZATION, AND BEFORE PROVIDING OCCUPATIONAL THERAPY SERVICES FOR REMUNERATION OR EXPECTATION

OF PAYMENT FROM THE CLIENT, AN OCCUPATIONAL THERAPIST MUST PROVIDE THE FOLLOWING WRITTEN NOTIFICATION IN ALL CAPITAL LETTERS OF 12-POINT OR LARGER BOLD-FACE TYPE, TO THE CLIENT, PARENT, OR GUARDIAN:

> "YOUR HEALTH CARE PROVIDER, INSURER, OR PLAN MAY REQUIRE A PHYSICIAN REFERRAL OR PRIOR AUTHORIZATION AND YOU MAY BE OBLIGATED FOR PARTIAL OR FULL PAYMENT FOR OCCUPATIONAL THERAPY SERVICES RENDERED."

INFORMATION OTHER THAN THIS NOTIFICATION MAY BE INCLUDED AS LONG AS THE NOTIFICATION REMAINS CONSPICUOUS ON THE FACE OF THE DOCUMENT. A NONWRITTEN DISCLOSURE FORMAT MAY BE USED TO SATISFY THE RECIPIENT NOTIFICATION REQUIREMENT WHEN NECESSARY TO ACCOMMODATE THE PHYSICAL CONDITION OF A CLIENT OR CLIENT'S GUARDIAN.

It is necessary to use some mechanism to assure that occupational therapists and consumers understand that although the registration rules do not require a physician referral, it is possible that occupational therapy services will not be covered by the client's health care plan without a physician referral or prior authorization. The responses to our survey of occupational therapists and comments received from persons in the medical community during our informal comment period indicate that a number of persons thought the proposed rules would eliminate the current practices of most health care plans to require a physician referral or prior authorization. Therapists are frequently instrumental in obtaining the

physician referral or prior authorization required by the client's health care plan. This rule part is necessary to assure therapists' continued efforts in this area and to eliminate any confusion that may be passed on to clients. The notification requirement is reasonable because it is narrowly drawn. The notification requirement applies only to situations in which there is no physician referral or prior authorization and only to occupational therapy services provided for remuneration or with expectation of payment from the client. It does not apply to services provided in the schools to children who qualify for special education and it does not apply to therapists volunteering their services.

A written disclosure containing the information stated in the proposed rule is necessary to assure the correct information is consistently communicated to consumers in an objective fashion. A written disclosure is a reasonable format because it is currently used by many offices providing health or health related services to communicate with client's that they are the party responsible for payment. A written disclosure is also a reasonable format because it is used in other laws and rules to require health or health related professionals to communicate specific information to clients. See Minn. Stat. § 153A.15 subd. 1 (1) (1994) (hearing instrument sellers must provide customers with written notification regarding the purchase of hearing instruments); Minn. R. Chapter 5620 (1993) (physician must make written disclosure that informs the patient of the physician's financial and profit interest in the provider to which the physician is making a referral and that the patient is free to choose another provider).

SUBP. 2. EVIDENCE OF RECIPIENT NOTIFICATION. THE OCCUPATIONAL THERAPIST IS RESPONSIBLE FOR PROVIDING EVIDENCE OF

COMPLIANCE WITH THE RECIPIENT NOTIFICATION REQUIREMENT OF THIS PART.

It is necessary to require that an occupational therapist be able to provide evidence of compliance with the recipient notification requirement upon the Commissioner's request in order to enforce the notification requirement. It is reasonable to require this of the occupational therapist because he or she is the person in the best position to maintain evidence of compliance, it need not be unduly burdensome, and other state rules require the regulated practitioner to maintain evidence of compliance with disclosure requirements. See Minn. R. 5620.0140 (1991).

4666.1000. PHYSICAL AGENT MODALITIES.

SUBPART 1. GENERAL CONSIDERATIONS.

A. OCCUPATIONAL THERAPISTS WHO USE SUPERFICIAL PHYSICAL AGENT MODALITIES MUST COMPLY WITH THE STANDARDS IN SUBPARTS 3 AND 6. OCCUPATIONAL THERAPISTS WHO USE ELECTROTHERAPY MUST COMPLY WITH THE STANDARDS IN SUBPARTS 4 AND 7. OCCUPATIONAL THERAPISTS WHO USE ULTRASOUND DEVICES MUST COMPLY WITH THE STANDARDS IN SUBPARTS 5 AND 8. OCCUPATIONAL THERAPY ASSISTANTS WHO USE PHYSICAL AGENT MODALITIES MUST COMPLY WITH SUBPART 9.

Minnesota Statute section 214.13, subdivision 3, grants the Commissioner of Health authority to include within the rules for registration of occupations, the scope of authorized practice, career progression, and required supervision.

It is necessary that occupational therapists and occupational therapy assistants meet the

standards in this rule for use of physical agent modalities because a growing number of occupational therapists and occupational therapy assistants use physical agent modalities in their practice, and there is potential for harm to patients receiving treatment from occupational therapists and occupational therapy assistants who are providing these services without adequate training.

The American Occupational Therapy Association (AOTA) approved an official statement on physical agent modalities in 1991:

> Physical agent modalities may be used by occupational therapy practitioners when used as an adjunct to or in preparation for purposeful activity to enhance occupational performance and when applied by a practitioner who has documented evidence of possessing the theoretical background and technical skills for safe and competent integration of the modality into an occupational therapy intervention plan.

American Occupational Therapy Association, Official: AOTA Statement on Physical Agent Modalities, 45 Am. J. of Occupational Therapy 1075 (1991). One year later, the representative assembly of AOTA approved the "Physical Agent Modalities Position Paper" and a revised "Definition of Occupational Therapy Practice for State Legislation" that includes physical agent modalities as part of occupational therapy practice. American Occupational Therapy Association, Position Paper: Physical Agent Modalities, 46 Am. J. of Occupational Therapy 1090 (1992) (Attachment R). American Occupational Therapy Association, Policies Adopted or Amended by the 1992 Representative Assembly (includes definition of Occupational Therapy Practice for State Legislation), 47 Am. J. of Occupational Therapy 361 (1993) (Attachment S).

The inclusion of physical agent modalities into the practice of occupational therapy has been controversial, both within and outside the occupation. See, e.g. Wilma L. West

and Ruth Brunyate Wiemer, Should the Representative Assembly Have Voted as It Did, When It Did, on Occupational Therapists' Use of Physical Agent Modalities?, 45 Am. J. of Occupational Therapy 1143 (1991) (the authors succinctly present a variety of arguments against inclusion of physical agent modalities in the practice of occupational therapy).

Following the actions of the AOTA in 1991 and 1992, that recognized physical agent modalities as part of the scope of occupational therapy services, occupational therapists and occupational therapy assistants sought to have physical agent modalities included within the occupational therapy scope of practice for state regulation in order to 1) be recognized by other professions and consumers as competent personnel to provide these services and 2) resolve reimbursement issues with third party payers regarding physical agent modality use by occupational therapists. The following states recognize physical agent modalities as part of the practice of occupational therapy: Florida, Georgia, Montana, New York, North Dakota and Texas.

In the spring of 1993, members of the Minnesota Occupational Therapy Association requested that physical agent modalities be added to the scope of practice for occupational therapists and occupational therapy assistants in the proposed registration rules. During the spring and summer of 1993, Department staff researched the question of whether physical agent modalities should be incorporated. Department staff first approached the directors of the accredited training programs in Minnesota to determine whether occupational therapists or occupational therapy assistants are trained in the use of physical agent modalities. All program directors indicated that use of physical agent modalities is an advanced level skill and that the accredited training programs do not train students in the use of physical agent

modalities. Training programs typically orient students as to what the modalities are, the precautions and general applications for those modalities, as well as the type of training it would be important to have to ethically administer them.

Occupational therapists and occupational therapy assistants currently receive post graduate training in the use of physical agent modalities from a combination of three sources. First, therapists may take formal courses dealing with the theoretical constructs on which the modalities are based, e.g. physics. Second, therapists are taught to administer the modalities under the clinical supervision of someone already trained in the particular modality. And third, there are a limited number of continuing education courses available which provide basic instruction in the theory and application of select modalities.

Department staff considered the current use of physical agent modalities by occupational therapists and occupational therapy assistants and the effect of not incorporating physical agent modalities in the scope of practice. Some of the occupational therapists who specialize in physical rehabilitation, hand therapy, and work hardening use physical agent modalities for treatment of both acute and chronic physical conditions. For example, an occupational therapist may use a TENS (transcutaneous electrical nerve stimulation) unit for relief of pain during work conditioning activities, in preparation for return to employment. An occupational therapist in a hand therapy clinic may use paraffin heat to increase motion of a finger prior to a strengthening exercise.

A study published in the Journal of Occupational Therapy Students documents the current use of physical agent modalities. Funk, Occupational Therapists' Attitudes Toward and Use of Physical Agent Modalities, 8 J. of Occupational Therapy Students, 35 (Spring

1994) Thirty registered occupational therapists in a Midwestern metropolitan area who belonged to their state occupational therapy association and who listed physical disabilities as their special interest were invited to participated in the study. Of the 21 therapists who responded, 18 (86%) used physical agent modalities in practice and 3 (14%) did not. The most commonly used modalities were hot and cold packs (89% of respondents). Other commonly used modalities were joint mobilization (78%), massage (67%), paraffin (67%), and contrast baths (56%). Respondents reported using electrical stimulation devices and ultrasound with less frequency. Other articles in the professional literature document the increasing recognition of physical agent modalities as a therapeutic technique within the scope of occupational therapy practice. See e.g, Egan, Focus: Physical Agent Modalities, Useful Tools for Regaining Function, OT Week, May 7, 1992 at 14.

Based on this background information, the Commissioner determined that it is in the best interest of the consumer to include physical agent modalities in the scope of practice for occupational therapy practitioners. First, occupational therapists and occupational therapy assistants are currently using physical agent modalities without any regulation. There are currently no state laws which require occupational therapists and occupational therapy assistants to obtain education and clinical training prior to using physical agent modalities. AOTA is in the process of developing education and clinical training standards necessary for occupational therapists and occupational therapy assistants who are interested in using physical agent modalities. Those standards are in currently in draft form and not in effect. American Occupational Therapy Association, Inc., Commission on Education, Physical Agent Modalities Task Force, Educational Preparation For Use of Physical Agent Modalities

in Occupational Therapy (Final Draft April 1993). Therefore, if training standards are not established in the rules, there is a danger that occupational therapists and occupational therapy assistants will use physical agent modalities without adequate training.

Second, third party payment sources are likely to not reimburse for occupational therapy services that utilize physical agent modalities unless physical agent modalities are specifically included in the scope of practice. Therefore, in order to facilitate the consumer's ability to obtain reimbursement for services currently provided by occupational therapy practitioners, it is necessary to include physical agent modalities in the scope of practice.

Department staff distributed an outline of standards for the use of physical agent modalities to representatives of 11 practice groups of the Minnesota Occupational Therapy Association, a representative of the Minnesota Hand Therapy Group, and the program directors of each of the accredited training programs in the state. A meeting to discuss the outline was held in June 1993. Based on comments received in writing and at the June meeting, department staff developed an initial draft of rules for occupational therapy practitioner use of physical agent modalities. This draft was distributed to representatives of the Minnesota Chapter of the American Physical Therapy Association (MN APTA) in the Fall of 1994. Department staff met with three representatives of the MN APTA on October 5, 1994. As a result of that meeting, Department staff held a series of meetings with representatives of MN APTA and representatives of MOTA to discuss revisions to the draft rules on physical agent modalities that were requested by MN APTA. Three meetings were held between November 1994 and March 1995 with representatives of these professional associations for this purpose. The language in proposed rule part 4666.1000 is the result of

compromise between the two professional associations.

The proposed rule recognizes two skill levels for occupational therapists in each of the three categories of physical agent modalities; superficial physical agent modalities, electrical stimulation devices, and ultrasound devices. The first skill level is the "level one practitioner," who is able to use a specific physical agent modality when supervised by a level two practitioner following completion of the theoretical and clinical training required for that modality. See subpart 3, subpart 4, and subpart 5. The second skill level is the "level two practitioner" who is able to use a specific physical agent modality unsupervised. The standards for a level two practitioner for use of superficial physical agent modalities is stated in subpart 6. The standards for a level two practitioner using electrotherapy is stated in subpart 7. The standards for a level two practitioner using ultrasound is stated in subpart 8.

Occupational therapy assistants may set up and implement treatment using physical agent modalities if they have completed the theoretical and clinical training required in subpart 9, demonstrate competency for the particular modality, and work under the direct supervision of a level two practitioner for that modality. See subpart 9.

B. USE OF SUPERFICIAL PHYSICAL AGENT MODALITIES, ELECTRICAL STIMULATION DEVICES, AND ULTRASOUND DEVICES MUST BE ON THE ORDER OF A PHYSICIAN.

It is necessary and reasonable that occupational therapy practitioner's use of superficial physical agent modalities, electrical stimulation devices, and ultrasound devices be on the order of a physician because use of these devices is considered advanced practice for

occupational therapy practitioners and the majority of physical agent modality devices are prescription devices under federal law. See 21 C.F.R. §§ 890.1 - 890.5975 (physical medicine devices).

C. THE COMMISSIONER SHALL MAINTAIN A ROSTER OF PERSONS REGISTERED UNDER PARTS 4666.0010 TO 4666.1400 WHO USE PHYSICAL AGENT MODALITIES. PRIOR TO USING A PHYSICAL AGENT MODALITY, REGISTRANTS MUST INFORM THE COMMISSIONER OF THE PHYSICAL AGENT MODALITY THEY WILL USE AND WHETHER THEY WILL USE THE MODALITY AS A LEVEL ONE PRACTITIONER, LEVEL TWO PRACTITIONER, OR OCCUPATIONAL THERAPY ASSISTANT. PERSONS WHO USE PHYSICAL AGENT MODALITIES MUST INDICATE ON THEIR INITIAL AND RENEWAL APPLICATIONS THE PHYSICAL AGENT MODALITIES THAT THEY USE AND WHETHER THEY USE THE MODALITY AS A LEVEL ONE PRACTITIONER, LEVEL TWO PRACTITIONER, OR OCCUPATIONAL THERAPY ASSISTANT.

D. REGISTRANTS ARE RESPONSIBLE FOR INFORMING THE COMMISSIONER OF ANY CHANGES IN THE INFORMATION REQUIRED IN THIS SUBPART WITHIN 30 DAYS OF ANY CHANGE.

It is necessary that the Commissioner maintain a roster of occupational therapy practitioners who use physical agent modalities in order to identify practitioners who have met the standards of this part. Only a portion of registered occupational therapy practitioners will meet the standards of this part for use of physical agent modalities. Consumers, third party reimbursers, and other practitioners may ask the department to identify persons who

state they have met the standards and are qualified to practice in these areas. Therefore, it is reasonable that the Commissioner have a method to identify occupational therapy practitioners for this purpose. It is also necessary that the Commissioner have a method to identify practitioners who are using physical agent modalities in order to conduct the audit authorized under subpart 2, item F.

SUBPART 2. WRITTEN DOCUMENTATION REQUIRED.

A. PRIOR TO USE OF PHYSICAL AGENT MODALITIES, AN OCCUPATIONAL THERAPIST WHO WILL WORK AS A LEVEL ONE PRACTITIONER AND AN OCCUPATIONAL THERAPY ASSISTANT, MUST POSSESS AND MAINTAIN THE FOLLOWING DOCUMENTATION:

(1) A SIGNED, NOTARIZED STATEMENT FROM A LEVEL TWO PRACTITIONER STATING THAT THE LEVEL TWO PRACTITIONER WILL PROVIDE DIRECT SUPERVISION OF THE LEVEL ONE PRACTITIONER OR OCCUPATIONAL THERAPY ASSISTANT AND THAT THE LEVEL ONE PRACTITIONER OR OCCUPATIONAL THERAPY ASSISTANT HAS COMPLETED THE CLINICAL TRAINING REQUIREMENTS IN THIS PART FOR EACH PHYSICAL AGENT MODALITY USED BY THE LEVEL ONE PRACTITIONER OR OCCUPATIONAL THERAPY ASSISTANT; AND

(2) A COPY OF THE COURSE, WORKSHOP, OR SEMINAR DESCRIPTION WITH A TRANSCRIPT OR CERTIFICATE SHOWING COMPLETION OF THE THEORETICAL TRAINING REQUIRED FOR EACH PHYSICAL AGENT MODALITY USED, FROM ONE OF THE INSTITUTIONS OR ORGANIZATIONS

IDENTIFIED IN THIS PART; OR

(3) A COPY OF CURRENT CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION.

B. PRIOR TO PRACTICE AS A LEVEL TWO PRACTITIONER USING SUPERFICIAL PHYSICAL AGENT MODALITIES, AN OCCUPATIONAL THERAPIST MUST POSSESS AND MAINTAIN THE FOLLOWING DOCUMENTATION:

(1) A SIGNED STATEMENT FROM THE EMPLOYER VERIFYING COMPLETION OF THE REQUIRED NUMBER OF HOURS OF DIRECT SERVICE EXPERIENCE AS AN OCCUPATIONAL THERAPIST; AND

(2) THE DOCUMENTATION IN ITEM A, AND A SIGNED, NOTARIZED STATEMENT FROM THE LEVEL TWO PRACTITIONER THAT THE LEVEL ONE PRACTITIONER HAS DEVELOPED AND IMPLEMENTED THE TREATMENT PLANS REQUIRED IN SUBPART 6, ITEM B, SUBITEM (1), AND THAT THE LEVEL TWO PRACTITIONER HAS OBSERVED THE LEVEL ONE PRACTITIONER TO BE COMPETENT IN THE USE OF SUPERFICIAL PHYSICAL AGENT MODALITIES; OR

(3) THE DOCUMENTATION IN ITEM A, SUBITEM (2), AND A SIGNED, NOTARIZED STATEMENT FROM THE OCCUPATIONAL THERAPIST THAT THE THERAPIST HAS COMPLETED THE REQUIRED NUMBER OF TREATMENT PLANS REQUIRED IN SUBPART 6, ITEM B, SUBITEM (2); OR

(4) A COPY OF CERTIFICATION AS A CERTIFIED HAND THERAPIST FROM THE HAND THERAPY CERTIFICATION COMMISSION THAT WAS CURRENT DURING THE THREE-YEAR PERIOD FOLLOWING THE EFFECTIVE DATE OF

PARTS 4666.0010 TO 4666.1400.

C. PRIOR TO PRACTICE AS A LEVEL TWO PRACTITIONER USING ELECTROTHERAPEUTIC DEVICES, AN OCCUPATIONAL THERAPIST MUST POSSESS AND MAINTAIN THE FOLLOWING DOCUMENTATION:

(1) A SIGNED STATEMENT FROM THE EMPLOYER VERIFYING COMPLETION OF THE REQUIRED NUMBER OF HOURS OF DIRECT SERVICE EXPERIENCE AS AN OCCUPATIONAL THERAPIST; AND

(2) THE DOCUMENTATION IN ITEM A AND A SIGNED, NOTARIZED STATEMENT FROM THE LEVEL TWO PRACTITIONER THAT THE LEVEL ONE PRACTITIONER HAS DEVELOPED AND IMPLEMENTED THE TREATMENT PLANS REQUIRED IN SUBPART 7, ITEM B, SUBITEM (1), AND THAT THE LEVEL TWO PRACTITIONER HAS OBSERVED THE LEVEL ONE PRACTITIONER TO BE COMPETENT IN THE USE OF ELECTROTHERAPEUTIC DEVICES; OR

(3) A COPY OF CERTIFICATION AS A CERTIFIED HAND THERAPIST FROM THE HAND THERAPY CERTIFICATION COMMISSION THAT WAS CURRENT DURING THE THREE-YEAR PERIOD FOLLOWING THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400.

D. PRIOR TO PRACTICE AS A LEVEL TWO PRACTITIONER USING ULTRASOUND DEVICES, AN OCCUPATIONAL THERAPIST MUST POSSESS AND MAINTAIN THE FOLLOWING DOCUMENTATION:

(1) A SIGNED STATEMENT FROM THE EMPLOYER VERIFYING COMPLETION OF THE REQUIRED NUMBER OF HOURS OF DIRECT SERVICE

EXPERIENCE AS AN OCCUPATIONAL THERAPIST; AND

(2) THE DOCUMENTATION IN ITEM A AND A SIGNED, NOTARIZED STATEMENT FROM THE LEVEL TWO PRACTITIONER THAT THE LEVEL ONE PRACTITIONER HAS DEVELOPED AND IMPLEMENTED THE TREATMENT PLANS REQUIRED IN SUBPART 8, ITEM B, SUBITEM (1), AND THAT THE LEVEL TWO PRACTITIONER HAS OBSERVED THE LEVEL ONE PRACTITIONER TO BE COMPETENT IN THE USE OF ULTRASOUND DEVICES; OR

(3) A COPY OF CERTIFICATION AS A CERTIFIED HAND THERAPIST FROM THE HAND THERAPY CERTIFICATION COMMISSION THAT WAS CURRENT DURING THE THREE-YEAR PERIOD FOLLOWING THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400.

E. UPON REQUEST OF THE COMMISSIONER, PERSONS REGISTERED UNDER PARTS 4666.0010 TO 4666.1400 WHO USE PHYSICAL AGENT MODALITIES MUST PROVIDE THE COMMISSIONER WITH THE DOCUMENTATION DESCRIBED IN THIS SUBPART.

It is necessary that the Commissioner have authority to request that occupational therapy practitioners who are using physical agent modalities provide documentation that demonstrates the person has met the requirements of part 4666.1000, in order to enforce the requirements of part 4666.1000. It is reasonable to require that the practitioner provide this information because the burden of proving qualifications is on the person using physical agent modalities.

F. ONCE IN EACH BIENNIAL REGISTRATION PERIOD, THE COMMISSIONER MAY AUDIT A PERCENTAGE OF PERSONS WHO ARE USING PHYSICAL AGENT MODALITIES, BASED ON RANDOM SELECTION. THE COMMISSIONER SHALL REQUIRE THAT AUDITED PERSONS PROVIDE THE DOCUMENTATION REQUIRED BY THIS SUBPART.

It is necessary that the Commissioner have authority to audit occupational therapy practitioners who use physical agent modalities in order to verify that only qualified occupational therapy practitioners are using these modalities. The representatives of MOTA and MPTA who met with Department staff to review part 4666.1000, suggested that the Commissioner audit a portion of practitioners who are using physical agent modalities in order to verify that practitioners meet the requirements of the rule. It is reasonable to audit a portion of practitioners, chosen by random selection, in order to enforce the rule in a cost effective manner.

SUBPART 3. LEVEL ONE PRACTITIONER; STANDARDS FOR USE OF SUPERFICIAL PHYSICAL AGENT MODALITIES. AN OCCUPATIONAL THERAPIST MAY USE SUPERFICIAL PHYSICAL AGENT MODALITIES AS A LEVEL ONE PRACTITIONER IF THE OCCUPATIONAL THERAPIST:

A. IS UNDER THE DIRECT SUPERVISION OF A LEVEL TWO PRACTITIONER FOR SUPERFICIAL PHYSICAL AGENT MODALITIES;

It is necessary that the level one practitioner receive direct supervision from a level two practitioner because use of superficial physical agent modalities is not an entry level skill for occupational therapists. Therefore, the level two practitioner must monitor the skills of

the level one practitioner and be available to assist as needed. The level of supervision required, and the reasonableness of requiring direct supervision, is described in the definition of direct supervision, part 4666.0020, subpart 11.

B. HAS RECEIVED THEORETICAL TRAINING IN THE USE OF THE MODALITY THAT ENABLES THE OCCUPATIONAL THERAPIST TO:

(1) EXPLAIN THE RATIONALE AND CLINICAL INDICATIONS FOR USE OF SUPERFICIAL PHYSICAL AGENT MODALITIES;

(2) EXPLAIN THE PHYSICAL PROPERTIES AND PRINCIPLES OF THE SUPERFICIAL PHYSICAL AGENT MODALITIES;

(3) DESCRIBE THE TYPES OF HEAT AND COLD TRANSFERENCE;

(4) EXPLAIN THE FACTORS AFFECTING TISSUE RESPONSE TO SUPERFICIAL HEAT AND COLD;

(5) DESCRIBE THE BIOPHYSICAL EFFECTS OF SUPERFICIAL PHYSICAL AGENT MODALITIES IN NORMAL AND ABNORMAL TISSUE;

(6) DESCRIBE THE THERMAL CONDUCTIVITY OF TISSUE, MATTER, AND AIR;

(7) EXPLAIN THE ADVANTAGES AND DISADVANTAGES OF SUPERFICIAL PHYSICAL AGENT MODALITIES; AND

(8) EXPLAIN THE PRECAUTIONS AND CONTRAINDICATIONS OF SUPERFICIAL PHYSICAL AGENT MODALITIES;

It is necessary that the level one practitioner receive the theoretical training required in subitems (1) through (8) because each of these are important principles in effectively and

safely using superficial physical agent modalities. It is reasonable that the parameters of subject-matter mastery be defined so that both the level one practitioner and the level two practitioner have clear guidelines for the theoretical training that is required prior to using superficial physical agent modalities.

C. HAS RECEIVED THE THEORETICAL TRAINING SPECIFIED IN ITEM B BY MEETING THE REQUIREMENTS OF SUBITEM (1) OR (2):

(1) POSSESS WRITTEN EVIDENCE THAT THE OCCUPATIONAL THERAPIST RECEIVED THE TRAINING REQUIRED IN ITEM B AT COURSES, WORKSHOPS, OR SEMINARS OFFERED THROUGH:

(a) A COLLEGE OR UNIVERSITY ACCREDITED BY THE ACCREDITATION COUNCIL FOR OCCUPATIONAL THERAPY EDUCATION FOR TRAINING OCCUPATIONAL THERAPISTS;

(b) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION;

(c) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN SOCIETY OF HAND THERAPISTS;

(d) A COLLEGE OR UNIVERSITY ACCREDITED BY THE COMMISSION ON ACCREDITATION IN PHYSICAL THERAPY EDUCATION FOR TRAINING PHYSICAL THERAPISTS; OR

(e) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN PHYSICAL THERAPY ASSOCIATION.

(2) POSSESS CURRENT CERTIFICATION AS A CERTIFIED HAND

THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION; AND

This item requires that occupational therapy practitioners either receive the theoretical training required in item B from a source identified in subitem (1), or possess current certification as a certified hand therapist by the Hand Therapy Certification Commission. It is necessary that the rules identify approved training sources because of the concern expressed by both occupational therapists and physical therapists that currently occupational therapy practitioners are receiving inadequate training prior to using superficial physical agent modalities. The professional level training programs and national associations listed in the rule are reasonable because they have the capability of either designing and providing, or evaluating and approving training programs that will meet the requirements of the rule.

It is necessary and reasonable to allow persons who possess current certification as a Certified Hand Therapist to practice as a level one practitioner in order to recognize that Certified Hand Therapists have demonstrated their theoretical knowledge by successful completion of the Hand Therapy Certification Examination (the examination). The Hand Therapy Certification Commission used the results of a 1985 role delineation study to develop the examination. The examination was developed by the Professional Examination Service (PES) and experienced hand therapists who wrote the examination questions. Hand Therapy Certification Commission, Inc. Hand Therapy Certification Examination Handbook & Application for Candidates, at 1, 3 (1993). The examination consists of 200 multiple choice questions. Id. at 3. A bibliography of the books and articles used to develop the examination is included in the Examination Handbook and Application at Appendix 4. The first examination was administered in 1991. Id. at 1.

D. HAS COMPLETED CLINICAL TRAINING THROUGH ON-SITE DEMONSTRATION TO THE SUPERVISING LEVEL TWO PRACTITIONER OF THEORETICAL KNOWLEDGE AND TECHNICAL APPLICATIONS OF THE MODALITY. THIS CLINICAL COMPONENT MUST INCLUDE THE FOLLOWING CLINICAL EXPERIENCES FOR EACH SUPERFICIAL PHYSICAL AGENT MODALITY USED BY THE LEVEL ONE PRACTITIONER:

(1) OBSERVATION OF TREATMENTS PERFORMED BY THE LEVEL TWO PRACTITIONER;

(2) APPLICATION OF THE MODALITY TO NORMAL PHYSIOLOGICAL TISSUE TO DEMONSTRATE APPROPRIATE TECHNIQUES WHILE THE SUPERVISING LEVEL TWO PRACTITIONER IS PHYSICALLY PRESENT AND OBSERVING THE LEVEL ONE PRACTITIONER APPLY THE MODALITY;

(3) APPLICATION OF THE MODALITY TO PERSONS WHO WOULD BENEFIT FROM THE TREATMENT WHILE THE SUPERVISING LEVEL TWO PRACTITIONER IS PHYSICALLY PRESENT AND OBSERVING THE LEVEL ONE PRACTITIONER APPLY THE MODALITY;

(4) DEMONSTRATION OF ABILITY TO WORK WITHIN COMPETENCY IN USING THE SPECIFIC MODALITY.

It is necessary to require that occupational therapists observe clinical applications of superficial physical agent modalities and demonstrate their competency using physical agent modalities prior to practicing as a level one practitioner in order to assure that consumers receive safe and cost effective treatments from a level one practitioner. The specific clinical

experience requirements listed in subitems (1) through (4) are reasonable because, after consultation with the group of occupational therapists and physical therapists who advised the Department on the revision of this rule part, the Commissioner has determined they provide a reasonable and appropriate experience base for demonstrating sufficient knowledge and safety to use superficial physical agent modalities. These clinical requirements are also reasonable because they are recognized as an effective sequential process for teaching clinical skills.

SUBPART 4. LEVEL ONE PRACTITIONER; STANDARDS FOR USE OF ELECTROTHERAPY. AN OCCUPATIONAL THERAPIST MAY USE ELECTROTHERAPY AS A LEVEL ONE PRACTITIONER IF THE OCCUPATIONAL THERAPIST:

A. IS UNDER THE DIRECT SUPERVISION OF A LEVEL TWO PRACTITIONER FOR ELECTROTHERAPY;

It is necessary that the level one practitioner receive direct supervision from a level two practitioner because use of electrotherapy is not an entry level skill for occupational therapists. Therefore, the level two practitioner must monitor the skills of the level one practitioner and be available to assist as needed. The level of supervision required, and the reasonableness of requiring direct supervision, is described in the definition of direct supervision, part 4666.0020, subpart 11.

B. HAS RECEIVED THEORETICAL TRAINING IN THE USE OF ELECTROTHERAPY THAT ENABLES THE OCCUPATIONAL THERAPIST TO:

(1) EXPLAIN THE RATIONALE AND CLINICAL INDICATIONS OF

ELECTROTHERAPY, INCLUDING PAIN CONTROL, MUSCLE DYSFUNCTION, AND TISSUE HEALING;

(2) DEMONSTRATE COMPREHENSION AND UNDERSTANDING OF ELECTROTHERAPEUTIC TERMINOLOGY AND BIOPHYSICAL PRINCIPLES, INCLUDING CURRENT, VOLTAGE, AMPLITUDE, AND RESISTANCE (OHM'S LAW);

(3) DESCRIBE THE TYPES OF CURRENT (DIRECT, PULSED, AND ALTERNATING) USED FOR ELECTRICAL STIMULATION, INCLUDING THE DESCRIPTION, MODULATIONS, AND CLINICAL RELEVANCE;

(4) DESCRIBE THE TIME-DEPENDENT PARAMETERS OF PULSED AND ALTERNATING CURRENTS, INCLUDING PULSE AND PHASE DURATIONS AND INTERVALS;

(5) DESCRIBE THE AMPLITUDE-DEPENDENT CHARACTERISTICS OF PULSED AND ALTERNATING CURRENTS;

(6) DESCRIBE NEUROPHYSIOLOGY AND THE PROPERTIES OF EXCITABLE TISSUE (NERVE AND MUSCLE);

(7) DESCRIBE NERVE AND MUSCLE RESPONSE FROM EXTERNALLY APPLIED ELECTRICAL STIMULATION, INCLUDING TISSUE HEALING;

(8) DESCRIBE THE ELECTROTHERAPEUTIC EFFECTS AND THE RESPONSE OF NERVE, DENERVATED AND INNERVATED MUSCLE, AND OTHER SOFT TISSUE; AND

(9) EXPLAIN THE PRECAUTIONS AND CONTRAINDICATIONS OF ELECTROTHERAPY, INCLUDING CONSIDERATIONS REGARDING PATHOLOGY OF NERVE AND MUSCLE TISSUE;

It is necessary that the level one practitioner receive the theoretical training required in subitems (1) through (9) because each of these are important principles in effectively and safely using electrical stimulation devices. It is reasonable that the parameters of subject-matter mastery be defined so that both the level one practitioner and the level two practitioner have clear guidelines for the theoretical training that is required prior to using electrical stimulation devices.

C. HAS RECEIVED THE THEORETICAL TRAINING SPECIFIED IN ITEM B BY MEETING THE REQUIREMENTS OF SUBITEM (1) OR (2):

(1) POSSESS WRITTEN EVIDENCE THAT THE OCCUPATIONAL THERAPIST RECEIVED THE TRAINING REQUIRED IN ITEM B AT COURSES, WORKSHOPS, OR SEMINARS OFFERED THROUGH:

(a) A COLLEGE OR UNIVERSITY ACCREDITED BY THE ACCREDITATION COUNCIL FOR OCCUPATIONAL THERAPY EDUCATION FOR TRAINING OCCUPATIONAL THERAPISTS;

(b) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION;

(c) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN SOCIETY OF HAND THERAPISTS;

(d) A COLLEGE OR UNIVERSITY ACCREDITED BY THE

COMMISSION ON ACCREDITATION IN PHYSICAL THERAPY EDUCATION FOR TRAINING PHYSICAL THERAPISTS; OR

(e) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN PHYSICAL THERAPY ASSOCIATION; OR

(2) POSSESS CURRENT CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION; AND

This item requires that occupational therapy practitioners either receive the theoretical training required in item B from a source identified in subitem (1), or possess current certification as a certified hand therapist by the Hand Therapy Certification Commission. It is necessary that the rules identify approved training sources because of the concern expressed by both occupational therapists and physical therapists that currently occupational therapy practitioners are receiving inadequate training prior to using electrical stimulation devices. The professional level training programs and national associations listed in the rule are reasonable because they have the capability of either designing and providing, or evaluating and approving training programs that will meet the requirements of the rule.

It is necessary and reasonable to allow persons who possess current certification as a Certified Hand Therapist to practice as a level one practitioner in order to recognize that Certified Hand Therapists have demonstrated their theoretical knowledge by successful completion of the Hand Therapy Certification Examination (the examination). Information on the development and content of the examination has been provided in the narrative following subpart 3, item C.

D. HAS COMPLETED CLINICAL TRAINING THROUGH ON-SITE DEMONSTRATION TO THE SUPERVISING LEVEL TWO PRACTITIONER OF THEORETICAL KNOWLEDGE AND TECHNICAL APPLICATIONS OF ELECTRICAL STIMULATION DEVICES. THIS CLINICAL COMPONENT MUST INCLUDE THE FOLLOWING CLINICAL EXPERIENCES FOR EACH ELECTRICAL STIMULATION DEVICE USED BY THE LEVEL ONE PRACTITIONER:

(1) OBSERVATION OF TREATMENTS PERFORMED BY THE LEVEL TWO PRACTITIONER;

(2) APPLICATION OF THE ELECTRICAL STIMULATION DEVICE TO NORMAL PHYSIOLOGICAL TISSUE TO DEMONSTRATE APPROPRIATE TECHNIQUES WHILE THE SUPERVISING LEVEL TWO PRACTITIONER IS PHYSICALLY PRESENT AND OBSERVING THE LEVEL ONE PRACTITIONER APPLY THE ELECTRICAL STIMULATION DEVICE;

(3) APPLICATION OF THE ELECTRICAL STIMULATION DEVICE TO PERSONS WHO WOULD BENEFIT FROM THE TREATMENT WHILE THE SUPERVISING LEVEL TWO PRACTITIONER IS PHYSICALLY PRESENT AND OBSERVING THE LEVEL ONE PRACTITIONER APPLY THE ELECTRICAL STIMULATION DEVICE; AND

(4) DEMONSTRATION OF ABILITY TO WORK WITHIN COMPETENCY IN USING THE SPECIFIC ELECTRICAL STIMULATION DEVICE.

It is necessary to require that occupational therapists observe clinical applications of electrical stimulation devices and demonstrate their competency using electrical stimulation

devices prior to practicing as a level one practitioner in order to assure that consumers receive safe and cost effective treatments from a level one practitioner. The specific clinical experience requirements listed in subitems (1) through (4) are reasonable because, after consultation with the group of occupational therapists and physical therapists who advised the Department on the revision of this rule part, the Commissioner has determined they provide a reasonable and appropriate experience base for demonstrating sufficient knowledge of these devices. These clinical requirements are also reasonable because they are recognized as an effective sequential process for teaching clinical skills.

SUBPART 5. LEVEL ONE PRACTITIONER; STANDARDS FOR USE OF ULTRASOUND. AN OCCUPATIONAL THERAPIST MAY USE AN ULTRASOUND DEVICE AS A LEVEL ONE PRACTITIONER IF THE OCCUPATIONAL THERAPIST:

A. IS UNDER THE DIRECT SUPERVISION OF A LEVEL TWO PRACTITIONER FOR ULTRASOUND DEVICES;

It is necessary that the level one practitioner receive direct supervision from a level two practitioner because use of ultrasound devices is not an entry level skill for occupational therapists. Therefore, the level two practitioner must monitor the skills of the level one practitioner and be available to assist as needed. The level of supervision required, and the reasonableness of requiring direct supervision, is described in the definition of direct supervision, part 4666.0020, subpart 11.

B. HAS RECEIVED THEORETICAL TRAINING IN THE USE OF ULTRASOUND THAT ENABLES THE OCCUPATIONAL THERAPIST TO:

(1) EXPLAIN THE RATIONALE AND CLINICAL INDICATIONS FOR

THE USE OF ULTRASOUND, INCLUDING ANTICIPATED PHYSIOLOGICAL RESPONSES OF THE TREATED AREA;

(2) DESCRIBE THE BIOPHYSICAL THERMAL AND NONTHERMAL EFFECTS OF ULTRASOUND ON NORMAL AND ABNORMAL TISSUE;

(3) EXPLAIN THE PHYSICAL PRINCIPLES OF ULTRASOUND, INCLUDING WAVELENGTH, FREQUENCY, ATTENUATION, VELOCITY, AND INTENSITY;

(4) EXPLAIN THE MECHANISM AND GENERATION OF ULTRASOUND AND ENERGY TRANSMISSION THROUGH PHYSICAL MATTER; AND

(5) EXPLAIN THE PRECAUTIONS AND CONTRAINDICATIONS REGARDING USE OF ULTRASOUND DEVICES;

It is necessary that the level one practitioner receive the theoretical training required in subitems (1) through (5) because each of these are important principles in effectively and safely using ultrasound devices. It is reasonable that the parameters of subject-matter mastery be defined so that both the level one practitioner and the level two practitioner have clear guidelines for the theoretical training that is required prior to using ultrasound devices.

C. HAS RECEIVED THE THEORETICAL TRAINING SPECIFIED IN ITEM B BY MEETING THE REQUIREMENTS OF SUBITEM (1) OR (2):

(1) POSSESS WRITTEN EVIDENCE THAT THE OCCUPATIONAL THERAPIST RECEIVED THE TRAINING REQUIRED IN ITEM A AT COURSES, WORKSHOPS, OR SEMINARS OFFERED THROUGH:

(a) A COLLEGE OR UNIVERSITY ACCREDITED BY THE ACCREDITATION COUNCIL FOR OCCUPATIONAL THERAPY EDUCATION FOR TRAINING OCCUPATIONAL THERAPISTS;

(b) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION;

(c) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN SOCIETY OF HAND THERAPISTS;

(d) A COLLEGE OR UNIVERSITY ACCREDITED BY THE COMMISSION ON ACCREDITATION IN PHYSICAL THERAPY EDUCATION FOR TRAINING PHYSICAL THERAPISTS; OR

(e) AN EDUCATIONAL PROGRAM SPONSORED OR APPROVED BY THE AMERICAN PHYSICAL THERAPY ASSOCIATION; OR

(2) POSSESS CURRENT CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION; AND

This item requires that occupational therapy practitioners either receive the theoretical training required in item B from a source identified in subitem (1), or possess current certification as a certified hand therapist by the Hand Therapy Certification Commission. It is necessary that the rules identify approved training sources because of the concern expressed by both occupational therapists and physical therapists that currently occupational therapy practitioners are receiving inadequate training prior to using ultrasound devices. The professional level training programs and national associations listed in the rule are reasonable because they have the capability of either designing and providing, or evaluating and

approving training programs that will meet the requirements of the rule.

It is necessary and reasonable to allow persons who possess current certification as a Certified Hand Therapist to practice as a level one practitioner in order to recognize that Certified Hand Therapists have demonstrated their theoretical knowledge by successful completion of the Hand Therapy Certification Examination (the examination). Information on the development and content of the examination has been provided in the narrative following subpart 3, item C.

D. HAS COMPLETED CLINICAL TRAINING THROUGH ON-SITE DEMONSTRATION TO THE SUPERVISING LEVEL TWO PRACTITIONER OF THEORETICAL KNOWLEDGE AND TECHNICAL APPLICATIONS OF ULTRASOUND DEVICES. THIS CLINICAL COMPONENT MUST INCLUDE THE FOLLOWING CLINICAL EXPERIENCES IN THE USE OF ULTRASOUND DEVICES FOR THE LEVEL ONE PRACTITIONER:

(1) OBSERVATION OF TREATMENTS PERFORMED BY THE LEVEL TWO PRACTITIONER;

(2) APPLICATION OF ULTRASOUND TO NORMAL PHYSIOLOGICAL TISSUE TO DEMONSTRATE APPROPRIATE TECHNIQUES WHILE THE SUPERVISING LEVEL TWO PRACTITIONER IS PHYSICALLY PRESENT AND OBSERVING THE LEVEL ONE PRACTITIONER APPLY ULTRASOUND;

(3) APPLICATION OF ULTRASOUND TO PERSONS WHO WOULD BENEFIT FROM THE TREATMENT WHILE THE SUPERVISING LEVEL TWO PRACTITIONER IS PHYSICALLY PRESENT AND OBSERVING THE LEVEL ONE

PRACTITIONER APPLY ULTRASOUND; AND

(4) DEMONSTRATION OF ABILITY TO WORK WITHIN COMPETENCY IN USING ULTRASOUND.

It is necessary to require that occupational therapists observe clinical applications of ultrasound devices and demonstrate their competency using ultrasound devices prior to practicing as a level one practitioner in order to assure that consumers receive safe and cost effective treatments from a level one practitioner. The specific clinical experience requirements listed in subitems (1) through (4) are reasonable because, after consultation with the group of occupational therapists and physical therapists who advised the Department on the revision of this rule part, the Commissioner has determined they provide a reasonable and appropriate experience base for demonstrating sufficient knowledge and safety to use ultrasound. These clinical requirements are also reasonable because they are recognized as an effective sequential method for teaching clinical skills.

SUBPART 6. LEVEL TWO PRACTITIONER; STANDARDS FOR UNSUPERVISED USE OF SUPERFICIAL PHYSICAL AGENT MODALITIES. TO OBTAIN STATUS AS A LEVEL TWO PRACTITIONER, AN OCCUPATIONAL THERAPIST MUST:

A. COMPLETE 1800 HOURS IN A TWO-YEAR PERIOD OF EMPLOYMENT IN A CLINICAL SETTING PROVIDING DIRECT SERVICE AS AN OCCUPATIONAL THERAPIST;

It is necessary that a therapist who will be supervising others have at least 1800 hours clinical experience in a two year period so that he/she has practical as well as theoretical

experience by which to judge the efforts of others.

It is reasonable that the period of time for experience be long enough to provide the occupational therapist experience with many of the problems that might arise in clinical practice, but not be so long that it unnecessarily delays practitioners from working as a level two practitioner.

B. MEET ONE OF THE FOLLOWING REQUIREMENTS:

It is necessary that the rules state a standard for the theoretical training and clinical experience specific to superficial physical agent modalities that is required prior to practice as a level two practitioner, because a level two practitioner is permitted to work without supervision. The following items list three alternative methods for an occupational therapist to demonstrate his/her skills in the use of superficial physical agent modalities, in order for the therapist to qualify under the rules to use superficial physical agent modalities without supervision. The reasonableness of each of the three methods is described below.

(1) COMPLETE THE TRAINING REQUIRED IN SUBPART 3, PRACTICE AS A LEVEL ONE PRACTITIONER USING SUPERFICIAL PHYSICAL AGENT MODALITIES UNDER THE DIRECT SUPERVISION OF A LEVEL TWO PRACTITIONER, AND DEVELOP AND IMPLEMENT A TREATMENT PLAN FOR SIX PATIENTS IN WHICH ICE OR OTHER COLD MEDIUM IS USED AND FOR 14 PATIENTS IN WHICH HEAT IS USED IN AN APPROPRIATE OCCUPATIONAL THERAPY TREATMENT PLAN;

The standard stated in this item is reasonable because it states that, in addition to the training required for a level one practitioner in subpart 2, the occupational therapist must

"develop and implement" a specific minimum number of treatment plans as a level one practitioner under the supervision of the level two practitioner. The minimum number of treatment plans is reasonable because, after consultation with the group of occupational therapists and physical therapists who advised Department staff on the revision of this rule part, the Commissioner has determined they provide a reasonable and appropriate base for demonstrating sufficient knowledge and safety to use these modalities without supervision.

(2) COMPLETE THE TRAINING REQUIRED IN SUBPART 3, ITEMS B AND C, AND HAVE USED BOTH ICE OR OTHER COLD MEDIUM AND HEAT IN A TREATMENT PLAN FOR AT LEAST 20 PATIENTS IN THE ONE YEAR PRECEDING THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400; OR

This item is necessary in order to identify persons who will be qualified to act as level two practitioners (and supervise level one practitioners) when the proposed rules first go into effect. The item states that if occupational therapists have received the theoretical training required in subpart 3, item B and C, and have specific minimum experience using superficial physical agent modalities within one year preceding the effective date of the rules, the occupational therapist can practice as a level two practitioner, even though he/she did not complete the requirements of subpart 3, item A (work as a level one practitioner under direct supervision of level two practitioner) and item D (complete clinical training). This item is reasonable because it allows persons who have theoretical training and clinical experience in the use of superficial physical agent modalities to work as the supervisor of level one practitioners when the rules first go into effect.

(3) POSSESS CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION ON THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 OR, PRIOR TO PRACTICE AS A LEVEL TWO PRACTITIONER, OBTAIN CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION WITHIN THREE YEARS OF THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400; AND

This item is also necessary in order to identify persons who will be qualified to act as level two practitioners (and supervise level one practitioners) when the proposed rules first go into effect. This item states that if an occupational therapist is a certified hand therapist on the effective date of the proposed rules, or obtains certification within three years of the effective date of the rules, the occupational therapist may practice as a level two practitioner, even though he/she did not complete the requirements of subpart 3, item A (work as a level one practitioner under direct supervision of level two practitioner) and item D (complete clinical training). In order to take the Hand Therapy Certification Examination, candidates must meet the following requirements:

* possess a current credential to practice occupational therapy or physical therapy in the United States or Canada;

* possess the credential for a minimum of five years; and

* complete a minimum of 2000 hours of direct practice experience in hand therapy.

This item is reasonable because it allows persons who have demonstrated their theoretical knowledge and clinical experience by successfully completing the Hand Therapy Certification Examination, either prior to or within three years after the effective date of the proposed

rules, to work as the supervisor of level one practitioners.

While it is reasonable to allow a three year grandparenting period for persons with these qualifications, it is also reasonable that after the three year period, the rules establish uniform standards for clinical training. Thus, beginning three years after the effective date of the rules, persons who successfully complete the Hand Therapy Certification Examination will also be required to work as a level one practitioner under the direct supervision of a level two practitioner (see subpart 3, item A) and will be required to complete the clinical training described in subpart 3, item D.

C. DEMONSTRATE COMPETENCY IN:

(1) APPROPRIATE INCORPORATION OF SUPERFICIAL PHYSICAL AGENT MODALITIES INTO AN OCCUPATIONAL THERAPY TREATMENT PLAN, AS IT RELATES TO ESTABLISHED GOALS AND HOME PROGRAM;

(2) PREPARING THE PATIENT, INCLUDING POSITIONING AND EDUCATING THE PATIENT ABOUT THE PROCESS AND POSSIBLE RISKS AND BENEFITS OF TREATMENT;

(3) SAFE ADMINISTRATION OF THE SUPERFICIAL PHYSICAL AGENT MODALITIES AS RELATED TO THE CLINICAL CONDITION;

(4) SAFE AND APPROPRIATE EQUIPMENT OPERATION AND MAINTENANCE;

(5) IDENTIFYING POSSIBLE ADVERSE REACTIONS TO TREATMENT AND APPROPRIATE ADJUSTMENT OR DISCONTINUANCE, AND AFTERCARE; AND

(6) UTILIZING APPROPRIATE METHODS OF DOCUMENTATION.

This final subitem requires the occupational therapist demonstrate competency in six areas relating to the use of superficial physical agent modalities, prior to using superficial physical agent modalities as a level two practitioner. It is necessary that the level two practitioner is competent in each of these aspects of treatment because the level two practitioner is not required to work under any supervision. Failure to adequately perform any of these functions could result in patient harm. The specific areas that are identified in the subpart are reasonable because they were developed by practitioners who use superficial physical agent modalities in their occupational therapy practice, and were reviewed by the group of occupational therapists and physical therapist who advised department staff on the revision of this rule part.

SUBPART 7. LEVEL TWO PRACTITIONER; STANDARDS FOR UNSUPERVISED USE OF ELECTROTHERAPY. TO OBTAIN STATUS AS A LEVEL TWO PRACTITIONER, AN OCCUPATIONAL THERAPIST MUST:

A. COMPLETE 1800 HOURS IN A TWO-YEAR PERIOD OF EMPLOYMENT IN A CLINICAL SETTING PROVIDING DIRECT SERVICE AS AN OCCUPATIONAL THERAPIST;

It is necessary that a therapist who will be supervising others have at least 1800 hours clinical experience in a two year period so that he/she has practical as well as theoretical experience by which to judge the efforts of others.

It is reasonable that the period of time for experience be long enough to provide the occupational therapist experience with many of the problems that might arise in clinical

practice, but not be so long that it unnecessarily delays practitioners from working as a level two practitioner.

B. MEET ONE OF THE FOLLOWING REQUIREMENTS:

It is necessary that the rules state a standard for the theoretical training and clinical experience specific to electrotherapy that is required prior to practice as a level two practitioner, because a level two practitioner is permitted to work without supervision. The following items list two alternative methods for an occupational therapist to demonstrate his/her skills in the use of electrotherapy, in order for the therapist to qualify under the rules to use electrotherapy without supervision. The reasonableness of each of the three methods is described below.

(1) COMPLETE THE TRAINING REQUIRED IN SUBPART 4, PRACTICE AS A LEVEL ONE PRACTITIONER USING ELECTRICAL STIMULATION UNDER THE DIRECT SUPERVISION OF A LEVEL TWO PRACTITIONER, AND DEVELOP AND IMPLEMENT A TREATMENT PLAN FOR 12 PATIENTS IN WHICH ELECTRICAL STIMULATION IS USED IN AN APPROPRIATE OCCUPATIONAL THERAPY TREATMENT PLAN; OR

The standard stated in this item is reasonable because it states that, in addition to the training required for a level one practitioner in subpart 4, the occupational therapist must "develop and implement" a specific minimum number of treatment plans as a level one practitioner under the supervision of the level two practitioner. The minimum number of treatment plans is reasonable because, after consultation with the group of occupational therapists and physical therapists who advised Department staff on the revision of this rule

part, the Commissioner has determined they provide a reasonable and appropriate experience base for demonstrating sufficient knowledge and safety to use these devices without supervision.

(2) POSSESS CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION ON THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 OR, PRIOR TO PRACTICE AS A LEVEL TWO PRACTITIONER, OBTAIN CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION WITHIN THREE YEARS OF THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400; AND

This item is necessary in order to identify persons who will be qualified to act as level two practitioners (and supervise level one practitioners) when the proposed rules first go into effect. This item states that if an occupational therapist is a Certified Hand Therapist on the effective date of the proposed rules, or obtains certification within three years of the effective date of the rules, the occupational therapist may practice as a level two practitioner, even though he/she did not complete the requirements of subpart 4, item A (work as a level one practitioner under direct supervision of level two practitioner) and item D (complete clinical training). In order to take the Hand Therapy Certification Examination, candidates must meet the following requirements:

* possess a current credential to practice occupational therapy or physical therapy in the United States or Canada;
* possess the credential for a minimum of five years; and
* complete a minimum of 2000 hours of direct practice experience in hand therapy.

This item is reasonable because it allows persons who have demonstrated their theoretical knowledge and clinical experience by successfully completing the Hand Therapy Certification Examination either prior to, or within three years of, the effective date of the proposed rules to work as the supervisor of level one practitioners.

While it is reasonable to allow a three year grandparenting period for persons with these qualifications, it is also reasonable that after the three year period, the rules establish uniform standards for clinical training. Thus, beginning three years after the effective date of the rules, persons who successfully complete the Hand Therapy Certification Examination will also be required to work as a level one practitioner under the direct supervision of a level two practitioner (see subpart 4, item A) and will be required to complete the clinical training described in subpart 4, item D.

C. DEMONSTRATE COMPETENCY IN:

(1) APPROPRIATE INCORPORATION OF ELECTROTHERAPY INTO AN OCCUPATIONAL THERAPY TREATMENT PLAN AS IT RELATES TO ESTABLISHED TREATMENT GOALS AND HOME PROGRAM;

(2) PREPARING THE PATIENT, INCLUDING POSITIONING, AND EDUCATING THE PATIENT ABOUT THE PROCESS AND THE POSSIBLE RISKS AND BENEFITS OF TREATMENT;

(3) APPROPRIATE USE OF ELECTRODES, INCLUDING SIZE, PLACEMENT, AND TYPE, AS WELL AS RESULTANT EFFECTS ON CURRENT FLOW AND DENSITY;

(4) APPROPRIATE SELECTION AND SAFE OPERATION AND

MAINTENANCE OF ELECTROTHERAPEUTIC EQUIPMENT, INCLUDING CONTROLS, COMPONENTS, AND PARAMETERS, AS RELATED TO THE CLINICAL CONDITION AND THERAPEUTIC VALUE;

(5) IDENTIFYING POSSIBLE ADVERSE REACTIONS TO TREATMENT AND APPROPRIATE ADJUSTMENT IN OR DISCONTINUANCE OF TREATMENT AND AFTERCARE; AND

(6) UTILIZING APPROPRIATE METHODS OF DOCUMENTATION WHICH COMMUNICATE EQUIPMENT TYPE AND PARAMETERS USED.

This final subitem requires the occupational therapist demonstrate competency in six areas relating to the use of electrical stimulation devices, prior to using electrical stimulation devices as a level two practitioner. It is necessary that the level two practitioner is competent in each of these aspects of treatment because the level two practitioner is not required to work under any supervision. Failure to adequately perform any of these functions could result in patient harm. The specific areas that are identified in the subpart are reasonable because they were developed by practitioners who use electrical stimulation devices in their occupational therapy practice, and were reviewed by the group of occupational therapists and physical therapist who advised department staff on the revision of this rule part.

SUBPART 8. LEVEL TWO PRACTITIONER; STANDARDS FOR UNSUPERVISED USE OF ULTRASOUND DEVICES. TO OBTAIN STATUS AS A LEVEL TWO PRACTITIONER, AN OCCUPATIONAL THERAPIST MUST:

A. COMPLETE 1800 HOURS IN A TWO-YEAR PERIOD OF

EMPLOYMENT IN A CLINICAL SETTING PROVIDING DIRECT SERVICE AS AN OCCUPATIONAL THERAPIST;

It is necessary that a therapist who will be supervising others have at least 1800 hours clinical experience in a two year period so that he/she has practical as well as theoretical experience by which to judge the efforts of others.

It is reasonable that the period of time for experience be long enough to provide the occupational therapist experience with many of the problems that might arise in clinical practice, but not be so long that it unnecessarily delays practitioners from working as a level two practitioner.

B. MEET ONE OF THE FOLLOWING REQUIREMENTS:

It is necessary that the rules state a standard for the theoretical training and clinical experience specific to ultrasound devices that is required prior to practice as a level two practitioner, because a level two practitioner is permitted to work without supervision. The following items list two alternative methods for an occupational therapist to demonstrate his/her skills in the use of ultrasound devices, in order for the therapist to qualify under the rules to use ultrasound devices without supervision. The reasonableness of each of the three methods is described below.

(1) COMPLETE THE TRAINING REQUIRED IN SUBPART 5, PRACTICE AS A LEVEL ONE PRACTITIONER USING ULTRASOUND UNDER THE DIRECT SUPERVISION OF A LEVEL TWO PRACTITIONER, AND DEVELOP AND IMPLEMENT A TREATMENT PLAN FOR 12 PATIENTS IN WHICH ULTRASOUND DEVICES ARE USED IN AN APPROPRIATE OCCUPATIONAL THERAPY

TREATMENT PLAN; OR

The standard stated in this item is reasonable because it states that, in addition to the training required for a level one practitioner in subpart 5, the occupational therapist must "develop and implement" a specific minimum number of treatment plans as a level one practitioner under the supervision of the level two practitioner. The minimum number of treatment plans is reasonable because, after consultation with the group of occupational therapists and physical therapists who advised Department staff on the revision of this rule part, the Commissioner has determined that they provide a reasonable and appropriate experience base for demonstrating sufficient knowledge and safety to use ultrasound without supervision.

(2) POSSESS CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION ON THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 OR, PRIOR TO PRACTICE AS A LEVEL TWO PRACTITIONER, OBTAIN CERTIFICATION AS A CERTIFIED HAND THERAPIST BY THE HAND THERAPY CERTIFICATION COMMISSION WITHIN THREE YEARS OF THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400; AND

This item is necessary in order to identify persons who will be qualified to act as level two practitioners (and supervise level one practitioners) when the proposed rules first go into effect. This item states that if an occupational therapist is a Certified Hand Therapist on the effective date of the proposed rules, or obtains certification within three years of the effective date of the rules, the occupational therapist may practice as a level two practitioner, even though he/she did not complete the requirements of subpart 5, item A (work as a level

one practitioner under direct supervision of level two practitioner) and item D (complete clinical training). In order to take the Hand Therapy Certification Examination, candidates must meet the following requirements:

* possess a current credential to practice occupational therapy or physical therapy in the United States or Canada;

* possess the credential for a minimum of five years; and

* complete a minimum of 2000 hours of direct practice experience in hand therapy.

This item is reasonable because it allows persons who have demonstrated their theoretical knowledge and clinical experience by successfully completing the Hand Therapy Certification Examination either prior to, or within three years of, the effective date of the proposed rules to work as the supervisor of level one practitioners.

While it is reasonable to allow a three year grandparenting period for persons with these qualifications, it is also reasonable that after the three year period, the rules establish uniform standards for clinical training. Thus, beginning three years after the effective date of the rules, persons who successfully complete the Hand Therapy Certification Examination will also be required to work as a level one practitioner under the direct supervision of a level two practitioner (see subpart 5, item A) and will be required to complete the clinical training described in subpart 5, item D.

C. DEMONSTRATE COMPETENCY IN:

(1) APPROPRIATE INCORPORATION OF ULTRASOUND INTO AN OCCUPATIONAL THERAPY TREATMENT PLAN AS IT RELATES TO ESTABLISHED TREATMENT GOALS AND HOME PROGRAM, INCLUDING ANTICIPATED

PHYSIOLOGICAL RESPONSE OF TREATED AREAS AND APPROPRIATE CLINICAL CONDITIONS;

(2) PREPARING THE PATIENT, INCLUDING POSITIONING, AND EDUCATING THE PATIENT ABOUT THE PROCESS AND POSSIBLE RISKS AND BENEFITS OF TREATMENT;

(3) SAFE CLINICAL ADMINISTRATION OF ULTRASOUND INCLUDING USE OF APPROPRIATE FREQUENCY, INTENSITY, DURATION, AND DELIVERY METHOD, AS RELATED TO THE CLINICAL CONDITION;

(4) APPROPRIATE APPLICATION TECHNIQUES, INCLUDING COUPLING METHODS AND DUTY CYCLE, AS THEY RELATE TO TISSUE CONDITION, AREA, AND DEPTH;

(5) SELECTION AND USE OF ULTRASOUND EQUIPMENT, INCLUDING CONTROLS, SOUNDHEAD SIZE, EFFECTIVE RADIATING AREA, AND BEAM NONUNIFORMITY RATIO, AND MAINTENANCE AND CALIBRATION REQUIREMENTS;

(6) RECOGNIZING ADVERSE REACTION TO ULTRASOUND TREATMENT AND APPROPRIATE ADJUSTMENT OF TREATMENT, DISCONTINUANCE, AND AFTERCARE; AND

(7) APPROPRIATE METHODS OF DOCUMENTATION WHICH COMMUNICATE SPECIFICS OF ULTRASOUND APPLICATION.

This final subitem requires the occupational therapist demonstrate competency in seven areas relating to the use of ultrasound devices, prior to using ultrasound devices as a

level two practitioner. It is necessary that the level two practitioner is competent in each of these aspects of treatment because the level two practitioner is not required to work under any supervision. Failure to adequately perform any of these functions could result in patient harm. The specific areas that are identified in the subpart are reasonable because they were developed by practitioners who use ultrasound devices in their occupational therapy practice, and were reviewed by the group of occupational therapists and physical therapist who advised department staff on the revision of this rule part.

SUBPART 9. OCCUPATIONAL THERAPY ASSISTANT USE OF PHYSICAL AGENT MODALITIES. AN OCCUPATIONAL THERAPY ASSISTANT MAY SET UP AND IMPLEMENT TREATMENT USING PHYSICAL AGENT MODALITIES IF THE ASSISTANT MEETS THE REQUIREMENTS OF THIS PART, HAS DEMONSTRATED SERVICE COMPETENCY FOR THE PARTICULAR MODALITY USED, AND WORKS UNDER THE DIRECT SUPERVISION OF AN OCCUPATIONAL THERAPIST WHO IS A LEVEL TWO PRACTITIONER FOR THE PARTICULAR MODALITY USED. AN OCCUPATIONAL THERAPY ASSISTANT WHO USES SUPERFICIAL PHYSICAL AGENT MODALITIES MUST MEET THE REQUIREMENTS OF SUBPART 3, ITEMS B AND C. AN OCCUPATIONAL THERAPY ASSISTANT WHO USES ELECTROTHERAPY MUST MEET THE REQUIREMENTS OF SUBPART 4, ITEMS B AND C. AN OCCUPATIONAL THERAPY ASSISTANT WHO USES ULTRASOUND MUST MEET THE REQUIREMENTS OF SUBPART 5, ITEMS B AND C. A LEVEL TWO PRACTITIONER MAY NOT DELEGATE EVALUATION, REEVALUATION, TREATMENT PLANNING, AND TREATMENT GOALS FOR PHYSICAL AGENT

MODALITIES TO AN OCCUPATIONAL THERAPY ASSISTANT.

This part is necessary in order to specify the requirements for occupational therapy assistants' use of physical agent modalities. Occupational therapy assistants are not trained in the use of physical agent modalities as part of their entry level training. Therefore, it is reasonable to require that occupational therapy assistants receive additional theoretical and clinical training prior to use of physical agent modalities. This part requires occupational therapy assistants obtain the same theoretical and clinical training as is required for a level one practitioner prior to using physical agent modalities. Once they have received that training, occupational therapy assistants can use the physical agent modalities, that they have been trained to use, under the direct supervision of a level two practitioner.

The proposed rules states that a level two practitioner may not delegate evaluation, re-evaluation, treatment planning and treatment goals for physical agent modalities to an occupational therapy assistant. It is necessary and reasonable to limit the role of an occupational therapy assistant to set up and implementation of treatment because use of physical agent modalities is advanced level practice for both occupational therapists and occupational therapy assistants. This limitation is consistent with the fact that occupational therapy assistant's can not work as a level two practitioner, and therefore can not use superficial physical agent modalities without supervision.

This rule part as a whole is necessary and reasonable because it was approved by the group of occupational therapy practitioners and physical therapists who reviewed the rule part on physical agent modalities.

4666.1100. CONTINUING EDUCATION REQUIREMENTS.

SUBPART 1. GENERAL REQUIREMENTS. AN OCCUPATIONAL THERAPIST APPLYING FOR REGISTRATION RENEWAL MUST HAVE COMPLETED A MINIMUM OF 24 CONTACT HOURS OF CONTINUING EDUCATION IN THE TWO YEARS PRECEDING REGISTRATION RENEWAL. AN OCCUPATIONAL THERAPY ASSISTANT APPLYING FOR REGISTRATION RENEWAL MUST HAVE COMPLETED A MINIMUM OF 18 CONTACT HOURS OF CONTINUING EDUCATION IN THE TWO YEARS PRECEDING REGISTRATION RENEWAL. REGISTRANTS WHO ARE ISSUED REGISTRATION FOR A PERIOD OF LESS THAN TWO YEARS SHALL PRORATE THE NUMBER OF CONTACT HOURS REQUIRED FOR REGISTRATION RENEWAL BASED ON THE NUMBER OF MONTHS REGISTERED DURING THE BIENNIAL REGISTRATION PERIOD. REGISTRANTS SHALL RECEIVE CONTACT HOURS FOR CONTINUING EDUCATION ACTIVITIES ONLY FOR THE BIENNIAL REGISTRATION PERIOD IN WHICH THE CONTINUING EDUCATION ACTIVITY WAS PERFORMED.

TO QUALIFY AS CONTINUING EDUCATION ACTIVITY, THE ACTIVITY MUST BE A MINIMUM OF ONE CONTACT HOUR. CONTACT HOURS MUST BE EARNED AND REPORTED IN INCREMENTS OF ONE CONTACT HOUR OR ONE-HALF CONTACT HOUR FOR EACH CONTINUING EDUCATION ACTIVITY. ONE-HALF CONTACT HOUR MEANS AN INSTRUCTIONAL SESSION OF 30 CONSECUTIVE MINUTES, EXCLUDING COFFEE BREAKS, REGISTRATION, MEALS WITHOUT A SPEAKER, AND SOCIAL ACTIVITIES.

EACH REGISTRANT IS RESPONSIBLE FOR FINANCING THE COST OF THE REGISTRANT'S CONTINUING EDUCATION ACTIVITIES.

It is necessary to require that a registrant complete a certain number of continuing education hours because attendance at continuing education programs is an accepted method for promoting continued competency of occupational therapy practitioners. In the Determination of the Commissioner of Health Regarding the Need to Regulate Occupational Therapy Practitioners, the Commissioner found that "there are no mechanisms for promoting continuing competence either nationally or within Minnesota." Determination of the Commissioner of Health, Regarding the Need to Regulate Occupational Therapy Practitioners (August 31, 1989), Attachment A. By requiring continuing education of registrants, the proposed rules will provide such a mechanism statewide and in all employment settings.

The number of contact hours required in the proposed rules is reasonable because it is based on consideration of the continuing education requirements for occupational therapy practitioners in other states and the continuing education requirements for other health and human service occupations in Minnesota. The proposed rules require occupational therapists to complete 24 contact hours every two years; occupational therapy assistants must complete 18 contact hours every two years. The number of contact hours required for occupational therapy practitioners in a group of selected states are as follows:

	# of hours for two year period	
	Occupational Therapist	Occupational Therapy Assistant
Kansas	40	40
South Dakota	24	24
North Dakota	0	0
Iowa	30	15
Wisconsin	18	12
Virginia	0	not regulated
Texas	20	20

The number of contact hours required for selected health and human service occupations in Minnesota are as follows:

	# of hours for two year period
Physical Therapist	20 (Minn. R. 5601.2100)
Speech Language Pathologist	30 (Minn. R. 4750.0400, subp. 1, A.)
Audiologist	30 (Minn. R. 4750.0400, subp. 1, A.)
Registered Nurse	24 (Minn. R. 6310.2800, subp. 1)
Teacher	50 (Minn. R. 8700.0900, subp. 4)

Proration of continuing education contact hours for those individuals registered for less than the full biennial registration period is reasonable to assure equitable treatment of registered individuals and to avoid overly burdensome requirements. Occupational therapist registered for less than the full biennial time period may complete one hour of continuing education for every month of the biennium which they are registered. Occupational therapy assistants may complete 3/4 hour of continuing education for every month of the biennium which they are registered.

SUBP. 2. STANDARDS FOR APPROVAL. EXCEPT AS PROVIDED IN SUBPART 3, ITEM E, IN ORDER TO QUALIFY AS A CONTINUING EDUCATION ACTIVITY, THE ACTIVITY MUST:

A. CONSTITUTE AN ORGANIZED PROGRAM OF LEARNING;

B. REASONABLY BE EXPECTED TO ADVANCE THE KNOWLEDGE AND SKILLS OF THE OCCUPATIONAL THERAPY PRACTITIONER;

C. PERTAIN TO SUBJECTS THAT DIRECTLY RELATE TO THE PRACTICE OF OCCUPATIONAL THERAPY;

D. BE CONDUCTED BY INDIVIDUALS WHO HAVE EDUCATION, TRAINING, AND EXPERIENCE BY REASON OF WHICH SAID INDIVIDUALS SHOULD BE CONSIDERED EXPERTS CONCERNING THE SUBJECT MATTER OF THE ACTIVITY; AND

E. BE PRESENTED BY A SPONSOR WHO HAS A MECHANISM TO VERIFY PARTICIPATION AND MAINTAINS ATTENDANCE RECORDS FOR THREE YEARS.

In order to minimize the cost of administering the registration system for occupational therapy practitioners, the continuing education requirements will operate on an honor system, whereby registrants will be required to identify those courses that qualify for continuing education and maintain records of continuing education activities. Registrants will submit a continuing education report at the end of their reporting period (see subpart 5). Department staff will conduct periodic audits, of registrants chosen at random, to verify the accuracy of continuing education reports (see subpart 6). In order to implement this system, it is necessary that the rules provide registrants with standards for identifying those activities that will qualify for continuing education contact hours. The standards in the proposed rule are reasonable because they are sufficiently clear to permit registrants to identify those activities which will qualify for credit. The standards are also reasonable because they describe those activities that will promote the continuing competency of registrants.

It is necessary that the rules require sponsors to maintain records of attendance to enable the Commissioner to verify registrant participation in a continuing education activity. It is reasonable that sponsors maintain records of attendance for occupational therapy practitioners because sponsors must maintain attendance records for a similar length of time for other regulated professions and therefore it is not overly burdensome to maintain these records for occupational therapy practitioners also.

SUBP. 3. ACTIVITIES QUALIFYING FOR CONTINUING EDUCATION CONTACT HOURS. THE FOLLOWING ACTIVITIES QUALIFY FOR CONTINUING EDUCATION CONTACT HOURS IF THEY MEET ALL OTHER REQUIREMENTS OF THIS PART.

It is necessary to provide registrants with additional criteria for identifying those activities that will qualify for continuing education contact hours so that registrants will be able to independently identify appropriate continuing education activities and in order to minimize the time of Department staff in answering questions about the appropriateness of specific activities.

A. A REGISTRANT MAY OBTAIN AN UNLIMITED NUMBER OF CONTACT HOURS IN ANY TWO-YEAR CONTINUING EDUCATION PERIOD THROUGH PARTICIPATION IN THE FOLLOWING:

(1) ATTENDANCE AT EDUCATIONAL PROGRAMS OF ANNUAL CONFERENCES, LECTURES, PANEL DISCUSSIONS, WORKSHOPS, IN-SERVICE TRAINING, SEMINARS, AND SYMPOSIUMS;

(2) SUCCESSFUL COMPLETION OF COLLEGE OR UNIVERSITY COURSES. THE REGISTRANT MUST OBTAIN A GRADE OF AT LEAST A "C" OR A PASS IN A PASS OR FAIL COURSE IN ORDER TO RECEIVE THE FOLLOWING CONTINUING EDUCATION CREDITS:

(A) ONE SEMESTER CREDIT EQUALS 14 CONTACT HOURS;

(B) ONE TRIMESTER CREDIT EQUALS 12 CONTACT HOURS; AND

(C) ONE QUARTER CREDIT EQUALS 10 CONTACT HOURS; AND

(3) SUCCESSFUL COMPLETION OF HOME STUDY COURSES THAT REQUIRE THE PARTICIPANT TO DEMONSTRATE THE PARTICIPANT'S

KNOWLEDGE FOLLOWING COMPLETION OF THE COURSE.

It is reasonable to allow registrants to accumulate an unlimited number of contact hours in the activities described above because these are the activities that are widely recognized as the activities that best serve the goal of promoting continuing competency.

B. A REGISTRANT MAY OBTAIN A MAXIMUM OF SIX CONTACT HOURS IN ANY TWO-YEAR CONTINUING EDUCATION PERIOD FOR TEACHING CONTINUING EDUCATION COURSES THAT MEET THE REQUIREMENTS OF THIS PART. A REGISTRANT IS ENTITLED TO EARN A MAXIMUM OF TWO CONTACT HOURS AS PREPARATION TIME FOR EACH CONTACT HOUR OF PRESENTATION TIME. CONTACT HOURS MAY BE CLAIMED ONLY ONCE FOR TEACHING THE SAME COURSE IN ANY TWO-YEAR CONTINUING EDUCATION PERIOD. A COURSE SCHEDULE OR BROCHURE MUST BE MAINTAINED FOR AUDIT.

This provision is necessary because one of the basic reasons for continuing education is to require occupational therapy practitioners to gather information and education from others in order to increase their knowledge of the field. Therefore, it is reasonable to encourage registrants to learn as a "student" of continuing education courses as well as through teaching continuing education courses. This provision is reasonable because it allows a balance between contact hours earned through teaching and through the standard means of being a student.

It is reasonable to allow registrants to earn two contact hours as preparation time for each contact hour of presentation time because preparation is time consuming and often takes at least twice the amount of time as the presentation. It is reasonable to include the

restriction that contact hours may be claimed only once for teaching the same course in any two-year continuing education period because it is reasonable to assume that the highest learning value occurs in the initial preparation of a course for presentation and that after the initial presentation, less learning occurs while preparing for successive or subsequent teaching of the course.

C. A REGISTRANT MAY OBTAIN A MAXIMUM OF TWO CONTACT HOURS IN ANY TWO-YEAR CONTINUING EDUCATION PERIOD FOR CONTINUING EDUCATION ACTIVITIES IN THE FOLLOWING AREAS:

(1) BUSINESS-RELATED TOPICS: MARKETING, TIME MANAGEMENT, ADMINISTRATION, RISK MANAGEMENT, GOVERNMENT REGULATIONS, TECHNIQUES FOR TRAINING PROFESSIONALS, COMPUTER SKILLS, AND SIMILAR TOPICS;

(2) PERSONAL SKILL TOPICS: CAREER BURNOUT, COMMUNICATION SKILLS, HUMAN RELATIONS, AND SIMILAR TOPICS; AND

In a system which is attempting to assure the continued competence of registrants in a specialized field, it is necessary to limit the number of continuing education hours acquired by attending programs on business related topics and personal skills. These classes may enhance a registrant's ability to perform their job but, taken alone, would not serve the purpose of maintaining the registrant's occupational therapy training or keeping the registrant apprised of new developments in the field. Therefore it is reasonable to limit registrants to two contact hours for courses or inservice programs of this nature.

(3) TRAINING THAT IS OBTAINED IN CONJUNCTION WITH A

REGISTRANT'S EMPLOYMENT, OCCURS DURING A REGISTRANT'S NORMAL WORKDAY, AND DOES NOT INCLUDE SUBJECT MATTER SPECIFIC TO THE FUNDAMENTALS OF OCCUPATIONAL THERAPY.

The group of occupational therapy practitioners that consulted with department staff in the development of the proposed rules described a variety of topics that may relate to the occupational therapy practice of an individual occupational therapy practitioner but will not specifically relate to the fundamentals of occupational therapy practice. The topics listed in subitem 1 and 2 do not provide an exhaustive list of the types of inservices or courses that fit into this category, and therefore a more general statement is necessary. It is reasonable to limit the number of contact hours that may be earned for these topics because these courses taken alone would not serve the purpose of maintaining the registrant's occupational therapy training or keeping the registrant apprised of new developments in the field.

D. AN OCCUPATIONAL THERAPY PRACTITIONER THAT UTILIZES LEISURE ACTIVITIES, RECREATIONAL ACTIVITIES, OR HOBBIES AS PART OF OCCUPATIONAL THERAPY SERVICES IN THE PRACTITIONER'S CURRENT WORK SETTING MAY OBTAIN A MAXIMUM OF SIX CONTACT HOURS IN ANY TWO-YEAR CONTINUING EDUCATION PERIOD FOR PARTICIPATION IN COURSES TEACHING THESE ACTIVITIES.

Occupational therapy practitioners may use leisure activities, recreational activities, and hobbies as part of occupational therapy services. It is necessary to allow those practitioners to earn continuing education contact hours for courses teaching these activities. It is reasonable to require that the practitioner use these activities in their current work

setting in order to prevent registrants from taking courses that are of personal interest to them but of little, if any benefit, to the setting where they are currently working. For those registrants who will qualify to take these courses, it is reasonable to allow a limited number of contact hours for these types of continuing education activities in order to assure that practitioners maintain their more technical skills as well.

E. A REGISTRANT MAY OBTAIN A MAXIMUM OF SIX CONTACT HOURS IN ANY TWO-YEAR CONTINUING EDUCATION PERIOD FOR SUPERVISION OF OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT STUDENTS. A REGISTRANT MAY EARN ONE CONTACT HOUR FOR EVERY EIGHT HOURS OF STUDENT SUPERVISION. REGISTRANTS MUST MAINTAIN A LOG INDICATING THE NAME OF EACH STUDENT SUPERVISED AND THE HOURS EACH STUDENT WAS SUPERVISED. CONTACT HOURS OBTAINED BY STUDENT SUPERVISION MUST BE OBTAINED BY SUPERVISING STUDENTS FROM AN OCCUPATIONAL THERAPY EDUCATION PROGRAM ACCREDITED BY THE ACCREDITATION COUNCIL FOR OCCUPATIONAL THERAPY EDUCATION.

It is necessary and reasonable to allow limited continuing education credit for student supervision because this activity, while not a formally structured continuing education activity, requires the supervising practitioner to maintain knowledge and skills in occupational therapy practice. It is necessary and reasonable that supervised students be enrolled in an accredited occupational therapy education program because these programs have basic standards for student clinical experiences which assure that the registrant is

performing tasks as supervisor which maintain knowledge and skills in occupational therapy practice while instructing students. It is necessary and reasonable that the registrant maintain a log of supervision because it provides the Commissioner a means for verifying the registrant's participation in the activity and is not unduly burdensome for the registrant.

SUBP. 4. ACTIVITIES NOT QUALIFYING FOR CONTINUING EDUCATION CONTACT HOURS. NO CREDIT SHALL BE GRANTED FOR THE FOLLOWING ACTIVITIES: HOSPITAL ROUNDS, ENTERTAINMENT OR RECREATIONAL ACTIVITIES, EMPLOYMENT ORIENTATION SESSIONS, HOLDING AN OFFICE OR SERVING AS AN ORGANIZATIONAL DELEGATE, MEETINGS FOR THE PURPOSE OF MAKING POLICY, NONEDUCATIONAL ASSOCIATION MEETINGS, TRAINING RELATED TO PAYMENT SYSTEMS (INCLUDING COVERED SERVICES, CODING, AND BILLING), TRAINING REQUIRED BY PART 4666.1000, SUBPARTS 3, ITEM B; 4, ITEM B; AND 5, ITEM B, AND ANY OTHER ACTIVITIES THE COMMISSIONER DETERMINES DO NOT MEET THE REQUIREMENTS OF THIS PART.

This rule is necessary in order to provide registrants with examples of those activities that do not meet the threshold criteria of subpart 2 and thus will not qualify for continuing education contact hours. It is reasonable to exclude these activities because they do not serve the objective of the continuing education requirement. It is also reasonable to exclude these activities because most of them are excluded by the physical therapy registration rules. See Minn. R. 5601.2500, item E.

SUBP. 5. REPORTING CONTINUING EDUCATION CONTACT HOURS. AT THE TIME OF REGISTRATION RENEWAL, EACH REGISTRANT SHALL SUBMIT

VERIFICATION THAT THE REGISTRANT HAS MET THE CONTINUING EDUCATION REQUIREMENTS OF THIS PART ON THE CONTINUING EDUCATION REPORT FORM PROVIDED BY THE COMMISSIONER. THE CONTINUING EDUCATION REPORT FORM MAY REQUIRE THE FOLLOWING INFORMATION:

A. TITLE OF CONTINUING EDUCATION ACTIVITY;

B. BRIEF DESCRIPTION OF THE CONTINUING EDUCATION ACTIVITY;

C. SPONSOR, PRESENTER, OR AUTHOR;

D. LOCATION AND ATTENDANCE DATES;

E. NUMBER OF CONTACT HOURS; AND

F. REGISTRANT'S NOTARIZED AFFIRMATION THAT THE INFORMATION IS TRUE AND CORRECT.

This rule is necessary to put registrants on notice that they are personally responsible for keeping track of continuing education contact hours earned. Use of the Commissioner's continuing education report form is necessary to promote the collection of uniform information. It is reasonable to require the registrant provide the information listed in subitems A through F in order to make a preliminary determination that the registrant has complied with the continuing education requirement and is entitled to registration renewal. This preliminary determination is subject to any contrary findings obtained in the course of an audit, as authorized by subpart 6.

SUBP. 6. AUDITING CONTINUING EDUCATION REPORTS.

A. THE COMMISSIONER MAY AUDIT A PERCENTAGE OF THE

CONTINUING EDUCATION REPORTS BASED ON RANDOM SELECTION. A REGISTRANT SHALL MAINTAIN ALL DOCUMENTATION REQUIRED BY THIS PART FOR TWO YEARS AFTER THE LAST DAY OF THE BIENNIAL REGISTRATION PERIOD IN WHICH THE CONTACT HOURS WERE EARNED.

It is necessary for the Commissioner to periodically audit the records of registrants to assure that continuing education requirements are being met and the system for recording compliance with these requirements is adequate. Audits are also necessary because they will encourage registrants to accurately report continuing education contact hours. As explained above, the continuing education requirements serve a necessary and reasonable purpose and one that is worthy of safeguarding through periodic audits. It is reasonable to require registrants to maintain and supply the documentation, since they are most likely to have such information. It is reasonable to require registrants maintain documentation for two years after the biennium registration period in order to allow the Commissioner the flexibility to conduct audits when feasible, in relation to the other administrative demands of the registration system, rather than at a fixed time when additional staff may be needed to perform this function.

B. ALL RENEWAL APPLICATIONS THAT ARE RECEIVED AFTER THE EXPIRATION DATE MAY BE SUBJECT TO A CONTINUING EDUCATION REPORT AUDIT.

This provision is necessary to provide notice to persons who submit late renewals that they may be subject to a continuing education audit. Part 4666.0400, subp. 2, of the proposed rules require that registrants who submit their registration renewal after the

registration expiration date must submit proof of having met the continuing education requirements since the individual's initial registration or last registration renewal. Furthermore, Part 4666.0400, subp. 3, requires that persons who renew their registration four years or more after the registration expiration date must submit proof of having met the continuing education requirement for the most recently completed two year continuing education cycle in addition to proof of completing one of three reentry options. It is reasonable to audit the continuing education report forms of persons who renew registration after the expiration date in order to enforce the provisions of part 4666.0400.

C. ANY REGISTRANT AGAINST WHOM A COMPLAINT IS FILED MAY BE SUBJECT TO A CONTINUING EDUCATION REPORT AUDIT.

This provision is necessary to provide notice to registrants who are the subject of a complaint that they may be subject to a continuing education audit. It is reasonable to audit registrants who are the subject of a complaint in order to assess the registrant's compliance with the registration rules.

D. THE REGISTRANT SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO THE COMMISSIONER FOR AUDITING PURPOSES:

(1) A COPY OF THE COMPLETED CONTINUING EDUCATION REPORT FORM FOR THE CONTINUING EDUCATION REPORTING PERIOD THAT IS THE SUBJECT OF THE AUDIT INCLUDING ALL SUPPORTING DOCUMENTATION REQUIRED BY SUBPART 5;

(2) A DESCRIPTION OF THE CONTINUING EDUCATION ACTIVITY PREPARED BY THE PRESENTER OR SPONSOR THAT INCLUDES THE

COURSE TITLE OR SUBJECT MATTER, DATE, PLACE, NUMBER OF PROGRAM CONTACT HOURS, PRESENTERS, AND SPONSORS. SELF-STUDY PROGRAMS MUST BE DOCUMENTED BY MATERIALS PREPARED BY THE PRESENTER OR SPONSOR THAT INCLUDE THE COURSE TITLE, COURSE DESCRIPTION, NAME OF SPONSOR OR AUTHOR, AND THE NUMBER OF HOURS REQUIRED TO COMPLETE THE PROGRAM. UNIVERSITY, COLLEGE, OR VOCATIONAL SCHOOL COURSES MUST BE DOCUMENTED BY A COURSE SYLLABUS, LISTING IN A COURSE BULLETIN, OR EQUIVALENT DOCUMENTATION THAT MUST INCLUDE THE COURSE TITLE, INSTRUCTOR'S NAME, COURSE DATES, NUMBER OF CONTACT HOURS, AND COURSE CONTENT, OBJECTIVES, OR GOALS; AND

(3) VERIFICATION OF ATTENDANCE. VERIFICATION MUST CONSIST OF A SIGNATURE OF THE PRESENTER OR A DESIGNEE AT THE CONTINUING EDUCATION ACTIVITY ON THE CONTINUING EDUCATION REPORT FORM OR A CERTIFICATE OF ATTENDANCE WITH THE COURSE NAME, COURSE DATE, AND REGISTRANT'S NAME. A REGISTRANT MAY SUMMARIZE OR OUTLINE THE EDUCATIONAL CONTENT OF AN AUDIO OR VIDEO EDUCATIONAL ACTIVITY TO VERIFY THE REGISTRANT'S PARTICIPATION IN THE ACTIVITY IF A DESIGNEE IS NOT AVAILABLE TO SIGN THE CONTINUING EDUCATION REPORT FORM. SELF-STUDY PROGRAMS MUST BE VERIFIED BY A CERTIFICATE OF COMPLETION OR OTHER DOCUMENTATION INDICATING THAT THE INDIVIDUAL HAS DEMONSTRATED KNOWLEDGE AND HAS SUCCESSFULLY COMPLETED THE PROGRAM. ATTENDANCE AT A

UNIVERSITY, COLLEGE, OR VOCATIONAL COURSE MUST BE VERIFIED BY AN OFFICIAL TRANSCRIPT.

It is necessary that the registrant provide the information listed in subitems (1), (2), and (3) above in order to assure that the registrant has fulfilled the continuing education requirement. It is reasonable to require the registrant provide the continuing education report form and all supporting documentation in order to determine the courses attended, the number of contact hours and to obtain verification of attendance. It is reasonable to require that the registrant provide the documentation required by subitem (2) in order to identify the specific content of the continuing education activity, to determine whether the activity qualifies for continuing education contact hours under the rules and, if so, if the rules limit the number of contact hours which may be earned for that activity. It is reasonable to specify the requirements for verification of attendance so that registrants can obtain the necessary verification at the time the course is attended. Continuing education activities will be subject to this level of scrutiny only when an audit occurs. Therefore, it is reasonable to require this information at the time of the audit. It is reasonable to require that the registrant supply this information because the registrant is in the best position to secure the information at the time the course is attended.

SUBP. 7. WAIVER OF CONTINUING EDUCATION REQUIREMENTS. THE COMMISSIONER MAY GRANT A WAIVER OF THE REQUIREMENTS OF THIS PART IN CASES WHERE THE REQUIREMENTS WOULD IMPOSE AN EXTREME HARDSHIP ON THE REGISTRANT. THE REQUEST FOR A WAIVER MUST BE IN WRITING, STATE THE CIRCUMSTANCES THAT CONSTITUTE EXTREME

HARDSHIP, STATE THE PERIOD OF TIME THE REGISTRANT WISHES TO HAVE THE CONTINUING EDUCATION REQUIREMENT WAIVED, AND STATE THE ALTERNATIVE MEASURES THAT WILL BE TAKEN IF A WAIVER IS GRANTED. THE COMMISSIONER SHALL SET FORTH, IN WRITING, THE REASONS FOR GRANTING OR DENYING THE WAIVER. WAIVERS GRANTED BY THE COMMISSIONER SHALL SPECIFY, IN WRITING, THE TIME LIMITATION AND REQUIRED ALTERNATIVE MEASURES TO BE TAKEN BY THE REGISTRANT. A REQUEST FOR WAIVER SHALL BE DENIED IF THE COMMISSIONER FINDS THAT THE CIRCUMSTANCES STATED BY THE REGISTRANT DO NOT SUPPORT A CLAIM OF EXTREME HARDSHIP, THE REQUESTED TIME PERIOD FOR WAIVER IS UNREASONABLE, THE ALTERNATIVE MEASURES PROPOSED BY THE REGISTRANT ARE NOT EQUIVALENT TO THE CONTINUING EDUCATION ACTIVITY BEING WAIVED, OR THE REQUEST FOR WAIVER IS NOT SUBMITTED TO THE COMMISSIONER WITHIN 60 DAYS AFTER THE EXPIRATION DATE.

This rule part is necessary to allow the Commissioner to grant a waiver to a registrant who demonstrates that compliance with the continuing education requirement would impose an extreme hardship. It is reasonable to require the registrant provide the information specified in order for the Commissioner to evaluate the registrant's request. It is necessary to include grounds for a denial of a waiver to provide notice to the registrant of the criteria the Commissioner will use to deny a waiver. These criteria are reasonable because they address the information required to be submitted by the registrant.

SUBP. 8. PENALTIES FOR NONCOMPLIANCE. THE COMMISSIONER SHALL REFUSE TO RENEW OR GRANT, OR SHALL SUSPEND, CONDITION, LIMIT, OR QUALIFY THE REGISTRATION OF ANY PERSON WHO THE COMMISSIONER DETERMINES HAS FAILED TO COMPLY WITH THE CONTINUING EDUCATION REQUIREMENTS OF THIS PART. A REGISTRANT MAY REQUEST RECONSIDERATION OF THE COMMISSIONER'S DETERMINATION OF NONCOMPLIANCE OR THE PENALTY IMPOSED UNDER THIS PART BY MAKING A WRITTEN REQUEST TO THE COMMISSIONER, WITHIN 30 DAYS OF THE DATE OF NOTIFICATION TO THE APPLICANT. INDIVIDUALS REQUESTING RECONSIDERATION MAY SUBMIT INFORMATION THAT THE REGISTRANT WANTS CONSIDERED IN THE RECONSIDERATION.

It is necessary to have penalties for noncompliance in order to have a mechanism to enforce the continuing education requirements of the rules. The penalties available to the Commissioner are reasonable because they are the penalties the Commissioner is authorized to use for any other violation of the registration rules. See infra, Part 4666.1300, subp. 3. It is reasonable to allow a registrant to request reconsideration of the Commissioner's determination in order to encourage informal resolution of any disagreements with the Commissioner's determination.

SUBP. 9. EFFECTIVE DATE. THE REPORTING REQUIREMENTS OF THIS PART BEGIN AND CONTINUE TO BE IN EFFECT FOR REGISTRATION RENEWALS THREE YEARS AFTER THE EFFECTIVE DATE OF PARTS 4666.0010 TO 4666.1400 AND ALL SUBSEQUENT REGISTRATION RENEWALS.

This rule part is necessary in order to impose a realistic date to implement the continuing education requirements of the rules. It is reasonable to begin implementation of the continuing education requirement three years following the effective date of the rules to allow the Commissioner a reasonable amount of time for start-up of the registration system and to allow a reasonable amount of time to communicate the continuing education requirements to registrants. Registrants will also need some time to earn the contact hours necessary for registration renewal.

4666.1200. FEES; SURCHARGE.

The authority for the Commissioner to promulgate rules for the standards and procedures related to the credentialing of persons practicing in an occupation is contained in Minnesota Statutes, section 214.13, subdivision 1. The Commissioner's authority to establish fees in these rules is in Minnesota Statutes, section 214.13, subdivision 3.

SUBPART 1. INITIAL REGISTRATION FEE. THE INITIAL REGISTRATION FEE FOR OCCUPATIONAL THERAPISTS IS $180. THE INITIAL REGISTRATION FEE FOR OCCUPATIONAL THERAPY ASSISTANTS IS $100. THE COMMISSIONER MAY PRORATE FEES BASED ON THE NUMBER OF QUARTERS REMAINING IN THE BIENNIAL REGISTRATION PERIOD.

It is necessary to charge a fee for initial registration because the Department incurs costs in reviewing and processing the application for registration. Minnesota Statutes, section 214.06, subdivision 1 requires that the registration system be fee supported. Minnesota Statutes, section 16A.1285, subdivision 2 requires that fees not over recover or under recover costs to the Department. It is reasonable to charge occupational therapists a

larger fee because more administrative time and effort will be required to implement the registration rules as applied to occupational therapists.

SUBP. 2. REGISTRATION RENEWAL FEE. THE BIENNIAL REGISTRATION RENEWAL FEE FOR OCCUPATIONAL THERAPISTS IS $180. THE BIENNIAL REGISTRATION RENEWAL FEE FOR OCCUPATIONAL THERAPY ASSISTANTS IS $100.

It is necessary to charge a fee for registration renewal because the Department incurs costs in administering the registration system and processing registration renewals. According to Minnesota Statutes, section 214.06, the registration system must be fee supported. Fees must be set to neither under recover or over recover the Department's costs. (Minnesota Statutes, section 16A.1285) It is reasonable that occupational therapists be charged more than occupational therapy assistants because more administrative time and effort will be required to implement the registration rules as applied to occupational therapists.

SUBP. 3. LATE FEE. THE FEE FOR LATE SUBMISSION OF A RENEWAL APPLICATION IS $25.

It is necessary to charge a fee for late submission of renewals because the Department incurs additional costs in administering late renewals. The fee is reasonable because it is set to recover the additional administrative and legal costs incurred due to late renewal of registration.

SUBP. 4. INITIAL PROVISIONAL REGISTRATION FEE. THE FEE FOR INITIAL PROVISIONAL REGISTRATION IS $647.

It is necessary to charge a separate fee for provisional registration because it will require significantly more staff time and effort to administer and process the application. The materials submitted by applicants for provisional registration are not as easily verified as those submitted by applicants under other forms of registration. This fee is reasonable because it is based upon estimates of staff time required to process provisional registration applications.

SUBP. 5. PROVISIONAL REGISTRATION RENEWAL FEE. THE PROVISIONAL REGISTRATION RENEWAL FEE FOR OCCUPATIONAL THERAPISTS IS $90. THE PROVISIONAL REGISTRATION RENEWAL FEE FOR OCCUPATIONAL THERAPY ASSISTANTS IS $50. THE COMMISSIONER MAY PRORATE FEES BASED ON THE NUMBER OF QUARTERS REMAINING IN THE ANNUAL REGISTRATION PERIOD.

This fee is necessary because provisional registrants will be renewing registration on an annual basis rather than a biennial basis. The fee is reasonable because it is proportional to the biennial fee, reflecting one year of administrative costs rather than two years or administrative costs.

SUBP. 6. TEMPORARY REGISTRATION FEE. THE FEE FOR TEMPORARY REGISTRATION IS $50.

It is necessary to have a separate fee for temporary registration because temporary registration is issued for a shorter time period than other forms of registration. The fee is reasonable because it allows the Department to recover its administrative costs without being unduly burdensome to the applicant.

SUBP. 7. LIMITED REGISTRATION FEE. THE FEE FOR LIMITED REGISTRATION IS **$ 96.**

A separate fee for limited registration is necessary based upon the amount of administrative time and effort for review and processing of the limited registration application. It is reasonable because it allows the Department to recover its costs.

SUBP. 8. FEE FOR COURSE APPROVAL FOR REGISTRATION AFTER LAPSE OF REGISTRATION. THE FEE FOR COURSE APPROVAL AFTER LAPSE OF REGISTRATION IS $96.

It is necessary to charge a fee for course approval after lapse of registration based upon the amount of time and effort required for review and processing of course approval. It is reasonable because it allows the Department to recover its administrative costs.

SUBP. 9. CERTIFICATION TO OTHER STATES. THE FEE FOR CERTIFICATION OF REGISTRATION TO OTHER STATES IS $25.

It is necessary to charge a fee for certification of registration to other states because this task requires additional staff time and effort. The fee is reasonable because it recovers the Department's costs of performing the task.

SUBP. 10. VERIFICATION TO INSTITUTIONS. THE FEE FOR VERIFICATION OF REGISTRATION TO INSTITUTIONS IS $10.

It is necessary to charge a fee for verification of registration to institutions because this task requires additional staff time and effort. The fee is reasonable because it recovers the Department's costs of performing the task.

SUBP. 11. SURCHARGE. FOR FIVE YEARS FOLLOWING THE EFFECTIVE

DATE OF PARTS 4666.0010 TO 4666.1400 ALL REGISTRANTS MUST PAY A SURCHARGE FEE IN ADDITION TO OTHER APPLICABLE FEES. OCCUPATIONAL THERAPISTS MUST PAY A BIENNIAL SURCHARGE FEE OF $62 UPON APPLICATION FOR REGISTRATION AND REGISTRATION RENEWAL. OCCUPATIONAL THERAPY ASSISTANTS MUST PAY A BIENNIAL SURCHARGE FEE OF $36 UPON APPLICATION FOR REGISTRATION AND REGISTRATION RENEWAL.

It is necessary to include a surcharge because the Department must recover the costs of expenditures for rulemaking over a five year period. (Minnesota Statutes, section 214.06, subdivision 1) The surcharge is reasonable because it is calculated to neither under recover or over recover the Department's costs. The difference in surcharge amounts between occupational therapists and occupational therapy assistants is necessary and reasonable because in developing the registration system there were issues involving primarily occupational therapists that required additional time and effort for Department staff to resolve.

SUBP. 12. NONREFUNDABLE FEES. ALL FEES ARE NONREFUNDABLE.

This rule is necessary to provide notice to applicants and registrants that fees are nonrefundable. It is reasonable that fees are nonrefundable because the Department must recover the costs it incurs in administering the registration system whether or not registration is granted or denied. If fee refunds were permitted the Department could not adequately cover its costs as is required by statute.

4666.1300. GROUNDS FOR DENIAL OF REGISTRATION OR DISCIPLINE; INVESTIGATION PROCEDURES; DISCIPLINARY ACTIONS.

SUBPART 1. GROUNDS FOR DENIAL OF REGISTRATION OR DISCIPLINE. THE COMMISSIONER MAY DENY AN APPLICATION FOR REGISTRATION, MAY APPROVE REGISTRATION WITH CONDITIONS, OR MAY DISCIPLINE A REGISTRANT USING ANY DISCIPLINARY ACTIONS LISTED IN SUBPART 3 ON PROOF THAT THE INDIVIDUAL HAS:

It is necessary that the rules provide notice to applicants of the grounds for denying registration and notice to registrants of the grounds for discipline. Under the proposed registration rules, the Commissioner is vested with authority to take disciplinary action, consistent with the provisions of Minnesota Statutes, sections 214.10 and 214.13. Minnesota Statutes, section 214.13, subdivision 3 states that the registration rules may include procedures and standards relating to disciplinary matters. Section 214.13, subdivision 6 and 7 states that the provisions of 214.10, regarding the procedures for examining and licensing boards in the receipt of complaints, investigation and hearing also apply to occupations registered by the Commissioner of Health. Section 214.10 subdivision 3 provides the Commissioner the same authority to issue and serve subpoenas as the licensing and examining boards. The Commissioner's authority to take disciplinary action against individuals is also described in this Statement under part 4666.0010.

The grounds for denial of registration and discipline are reasonable because they are either taken directly from existing registration systems in Minnesota or are based on similar provisions in those registration systems; specifically the registration rules for speech-language

pathologists and audiologists, the registration rules for respiratory care practitioners, and the statute for physical therapists.

A. INTENTIONALLY SUBMITTED FALSE OR MISLEADING INFORMATION TO THE COMMISSIONER OR THE ADVISORY COUNCIL;

This item allows the Commissioner to discipline individuals who fail to provide information or purposely provide false or misleading information in order to become registered, to renew registration or for any other purpose. It is necessary because meaningful regulatory procedures cannot be enforced without truthful information. This provision is reasonable because individuals should expect to provide truthful information to the Commissioner and doing so should not be a burden to individuals.

B. FAILED, WITHIN 30 DAYS, TO PROVIDE INFORMATION IN RESPONSE TO A WRITTEN REQUEST BY THE COMMISSIONER OR ADVISORY COUNCIL;

This item allows for a 30-day period to submit information requested by the Commissioner or advisory council. It is necessary to inform individuals that they will have a certain amount of time to comply with a request for information once the request is made. This 30-day period is reasonable because it allows an individual an adequate amount of time to gather information and submit it to the Commissioner or advisory council.

C. PERFORMED SERVICES OF AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT IN AN INCOMPETENT MANNER OR IN A MANNER THAT FALLS BELOW THE COMMUNITY STANDARD OF CARE;

It is necessary for the Commissioner to discipline registered occupational therapy

practitioners who perform services in an incompetent manner or in a manner that falls below the community standard of care in order to protect the public. One of the reasons the registration system is proposed is to address the potential for harm which is "highly likely to occur when OT services are incompetently delivered." Determination of the Commissioner of Health at 2, Attachment A. This rule is reasonable because it serves the primary purpose of the registration system, consumer protection. This rule is also reasonable because the registration system requires that minimum qualifications are met, and maintained through continuing education, as a prerequisite for use of the protected titles. Incompetent or negligent performance of services is equivalent to failing to meet these qualifications, therefore it is reasonable that registrants acting in the ways listed are subject to discipline.

D. FAILED TO SATISFACTORILY PERFORM OCCUPATIONAL THERAPY SERVICES DURING A PERIOD OF PROVISIONAL REGISTRATION;

It is necessary to provide the Commissioner with authority to revoke or limit the registration of a provisional registrant under the circumstances described in order to protect the public. A provisional registrant does not possess the qualifications of other registrants. For example, a provisional registrant may not have completed the academic work of an approved educational program, may not have completed the fieldwork of an approved educational program and will not have passed the certification examination. Under provisional registration, an individual is qualified to use the protected titles for a limited period until they pass the certification examination based on skills gained in employment as an occupational therapist or occupational therapy assistant. Therefore, it is necessary that the Commissioner have authority to revoke, condition or take other disciplinary action if the

Commissioner determines that the provisional registrant has failed to satisfactorily demonstrate the skills necessary to provide occupational therapy services. Once the provisional registrant passes the certification examination, they will qualify for full registration status and the higher standard for imposing discipline, as stated in item C, will apply.

E. VIOLATED PARTS 4666.0010 TO 4666.1400;

It is necessary to provide grounds for the Commissioner to discipline individuals who have violated these rules. The basic intent of the registration system is to protect the public. A violation of any of these rules by an individual could represent a risk of harm to the citizens of Minnesota, therefore, it necessary and reasonable to include this item.

F. FAILED TO PERFORM SERVICES WITH REASONABLE JUDGMENT, SKILL, OR SAFETY DUE TO THE USE OF ALCOHOL OR DRUGS, OR OTHER PHYSICAL OR MENTAL IMPAIRMENT;

It is necessary that the Commissioner have the authority to impose discipline when harm has occurred due to the registrant's physical or mental impairment, in order to protect the public from additional harm. It is reasonable that the Commissioner have the authority to deny use of a protected title under these circumstances because use of the title implies state recognition of the registrant's competence and qualification.

G. BEEN CONVICTED OF VIOLATING ANY STATE OR FEDERAL LAW, RULE, OR REGULATION WHICH DIRECTLY RELATES TO THE PRACTICE OF OCCUPATIONAL THERAPY;

This rule is necessary to enable the Commissioner to fulfill her statutory obligation to

protect the health, safety and well-being of the public which is set out in Minnesota Statutes, section 214.001. As part of that function, it is essential that the Commissioner have the authority to impose any discipline provided for in the rules if an applicant or registrant has been convicted of violating any federal, state, or territorial law which is a felony or misdemeanor if an essential element of the law is dishonesty or violation of the law is directly related to the practice of occupational therapy. It is reasonable to expect that a person involved in the practice of occupational therapy who seeks the use of the titles under the registration system, or is already registered, has not and will not violate the laws described. The use of the titles is equivalent to state recognition of minimum competency for the practice of occupational therapy. The title may represent to the public a "stamp of approval" by the state. It would not be reasonable that a person be given such recognition if the laws mentioned had been violated.

H. AIDED OR ABETTED ANOTHER PERSON IN VIOLATING ANY PROVISION OF PARTS 4666.0010 TO 4666.1400;

This provision allows the Commissioner to discipline an individual if he or she aided or abetted another person in violating provisions of these rules. It is necessary because assisting another person in violating these rules may be as harmful to the public as personally violating the rules, and the Commissioner must have sanctions available to deter such activity. It is just as reasonable to expect an individual to personally refrain from violating laws directly related to honesty and the practice of occupational therapy as it is to expect an individual to refrain from assisting another to violate similar laws.

I. BEEN DISCIPLINED FOR CONDUCT IN THE PRACTICE OF AN

OCCUPATION BY THE STATE OF MINNESOTA, ANOTHER JURISDICTION, OR A NATIONAL PROFESSIONAL ASSOCIATION, IF ANY OF THE GROUNDS FOR DISCIPLINE ARE THE SAME OR SUBSTANTIALLY EQUIVALENT TO THOSE IN PARTS 4666.0010 TO 4666.1400;

This rule recognizes that a Minnesota occupational therapy practitioner may have been disciplined by the state of Minnesota, another jurisdiction or a national professional association. This rule also recognizes that the applicant or registrant may have been disciplined as an occupational therapy practitioner or as a practitioner of a different occupation. It is necessary in each of these circumstances to provide for discipline under these rules to promote the main function of the rules, which is to protect the public. The Minnesota public would not be adequately protected if an occupational therapy practitioner were not responsible for his or her conduct outside of Minnesota, or as a practitioner of another occupation, which is evidence of his or her qualifications for registration as an occupational therapy practitioner.

J. NOT COOPERATED WITH THE COMMISSIONER OR ADVISORY COUNCIL IN AN INVESTIGATION CONDUCTED ACCORDING TO SUBPART 2;

This rule is necessary to inform individuals that they must cooperate with the Commissioner or advisory council during an investigation. It is necessary to require that applicants and registrants cooperate with the Commissioner and advisory council in order to obtain all the information required for a fair decision. The Commissioner must be able to discipline an occupational therapy practitioner for failing to cooperate with an investigation as a means of enforcing these rules. It is reasonable to expect an applicant or registrant to

cooperate with an investigation because they are seeking the use of the protected title and should be willing to expend the effort to show why they should be registered, become registered, or remain registered.

K. ADVERTISED IN A MANNER THAT IS FALSE OR MISLEADING;

L. ENGAGED IN DISHONEST, UNETHICAL, OR UNPROFESSIONAL CONDUCT IN CONNECTION WITH THE PRACTICE OF OCCUPATIONAL THERAPY THAT IS LIKELY TO DECEIVE, DEFRAUD, OR HARM THE PUBLIC;

M. DEMONSTRATED A WILLFUL OR CARELESS DISREGARD FOR THE HEALTH, WELFARE, OR SAFETY OF A CLIENT;

N. PERFORMED MEDICAL DIAGNOSIS OR PROVIDED TREATMENT, OTHER THAN OCCUPATIONAL THERAPY, WITHOUT BEING LICENSED TO DO SO UNDER THE LAWS OF THIS STATE;

It is necessary to include items K through N to put individuals on notice of specific behaviors which are viewed as harmful to the public and may be considered grounds for discipline under the registration rules. Each of the grounds described in items K through N are reasonable to include as grounds for discipline because one of the goals of the registration system is to protect the public and each of the grounds listed in items K through N describe activity that would be harmful to the public.

O. PAID OR PROMISED TO PAY A COMMISSION OR PART OF A FEE TO ANY PERSON WHO CONTACTS THE OCCUPATIONAL THERAPIST FOR CONSULTATION OR SENDS PATIENTS TO THE OCCUPATIONAL THERAPIST FOR TREATMENT;

P. ENGAGING IN AN INCENTIVE PAYMENT ARRANGEMENT, OTHER THAN THAT PROHIBITED BY ITEM R, THAT PROMOTES OCCUPATIONAL THERAPY OVERUTILIZATION, WHEREBY THE REFERRING PERSON OR PERSON WHO CONTROLS THE AVAILABILITY OF OCCUPATIONAL THERAPY SERVICES TO A CLIENT PROFITS UNREASONABLY AS A RESULT OF CLIENT TREATMENT;

Q. ENGAGED IN ABUSIVE OR FRAUDULENT BILLING PRACTICES, INCLUDING VIOLATIONS OF FEDERAL MEDICARE AND MEDICAID LAWS, FOOD AND DRUG ADMINISTRATION REGULATIONS, OR STATE MEDICAL ASSISTANCE LAWS;

R. OBTAINED MONEY, PROPERTY, OR SERVICES FROM A CONSUMER THROUGH THE USE OF UNDUE INFLUENCE, HIGH PRESSURE SALES TACTICS, HARASSMENT, DURESS, DECEPTION, OR FRAUD;

It is necessary to include items O through R to put individuals on notice of types of fraudulent or deceptive billing and reimbursement practices that are prohibited under the rules. The Human Service Occupations Advisory Council (HSOAC) identified one example of fraud when it reviewed the application for regulation of occupational therapy practitioners. The HSOAC reviewed a 1986 report of the Attorney General's Office, titled "Medicaid Strike Force Report." According to that report, nursing homes earned unreasonable profits from physical therapy and other ancillary services (including occupational therapy). Ancillary services are paid for in addition to the daily rate paid for each day's care of a patient. Therapists told state investigators they were pressured to meet quotas and encouraged to treat nursing home residents regardless of their medical need. It is necessary

that a broad spectrum of fraudulent practices are prohibited under the rules in order that the Commissioner will have authority to discipline persons for abuses the State is now aware and those that are not known at this time. It is reasonable to discipline persons in violation of items O through R in order to protect consumers.

S. PERFORMED SERVICES FOR A CLIENT WHO HAD NO POSSIBILITY OF BENEFITING FROM THE SERVICES;

This item is necessary to inform individuals that performing services for a client when the client had no possibility of benefiting from the services is a ground for discipline. This item is reasonable in order to protect the public from financial or other types of harm that may occur from inappropriate or unnecessary services.

T. FAILED TO REFER A CLIENT FOR MEDICAL EVALUATION WHEN APPROPRIATE OR WHEN A CLIENT INDICATED SYMPTOMS ASSOCIATED WITH DISEASES THAT COULD BE MEDICALLY OR SURGICALLY TREATED;

It is necessary to put individuals on notice that they must be aware of the appropriate instances in which to refer a client for medical evaluation. This item is reasonable to include because individuals subject to these proposed rules are expected to know when a client must be referred for medical evaluation. Failure to refer a client for medical evaluation, when circumstances indicate that such referral should be made, is therefore, a reasonable ground for discipline to include in the proposed rules.

U. ENGAGED IN CONDUCT WITH A CLIENT THAT IS SEXUAL OR MAY REASONABLY BE INTERPRETED BY THE CLIENT AS SEXUAL, OR IN ANY VERBAL BEHAVIOR THAT IS SEDUCTIVE OR SEXUALLY DEMEANING TO A

PATIENT;

It is necessary that the Commissioner be able to discipline an occupational therapy practitioner who has engaged in sexual conduct with a client in order to protect the public. The Commissioner is directed by Minnesota Statutes, section 214.10, subdivision 8, to assure investigation and appropriate disciplinary action in matters involving allegations of sexual contact between a member of a regulated health occupation and a patient or client. It is reasonable that such conduct be subject to discipline because of the position of trust which the practitioner occupies and the vulnerability of patients.

V. VIOLATED A FEDERAL OR STATE COURT ORDER, INCLUDING A CONCILIATION COURT JUDGMENT, OR A DISCIPLINARY ORDER ISSUED BY THE COMMISSIONER, RELATED TO THE INDIVIDUAL'S OCCUPATIONAL THERAPY PRACTICE; OR

This rule is necessary to inform the applicant and registrant that compliance with any federal court order, state court order or disciplinary order issued by the Commissioner is required. It is reasonable that the Commissioner have the ability to further discipline an individual who has been subject to a court order or a Commissioner's order if that individual fails to comply with the initial mandate of the court or Commissioner, in order to protect the public from unqualified practitioners.

W. ANY OTHER JUST CAUSE RELATED TO THE PRACTICE OF OCCUPATIONAL THERAPY.

It is necessary and reasonable that the Commissioner have the authority to discipline practitioners who demonstrate an inability to meet the standard of care expected of a

registered occupational therapy practitioner.

SUBP. 2. INVESTIGATION OF COMPLAINTS. THE COMMISSIONER, OR THE ADVISORY COUNCIL WHEN AUTHORIZED BY THE COMMISSIONER, MAY INITIATE AN INVESTIGATION UPON RECEIVING A COMPLAINT OR OTHER ORAL OR WRITTEN COMMUNICATION THAT ALLEGES OR IMPLIES THAT AN INDIVIDUAL HAS VIOLATED PARTS 4666.0010 TO 4666.1400. IN THE RECEIPT, INVESTIGATION, AND HEARING OF A COMPLAINT THAT ALLEGES OR IMPLIES AN INDIVIDUAL HAS VIOLATED PARTS 4666.0010 TO 4666.1400, THE COMMISSIONER SHALL FOLLOW THE PROCEDURES IN MINNESOTA STATUTES, SECTION 214.10.

The Commissioner of Health is authorized to enforce the registration rules for human service occupations according to the procedures set out in Minnesota Statutes, section 214.10. Minn. Stat. § 214.13, subd. 6 & 7 (1994). The proposed rule sets out the procedure for investigating individuals when complaints have been received, consistent with Minnesota Statutes, section 214.10. It is necessary that the rules notify individuals of these procedures in the event they become the subject of an investigation. It is reasonable that the Commissioner utilize her authority to initiate investigations regarding violations of parts 4666.0010 to 4666.1400 by an individual because if the Commissioner did not utilize this authority, the registration system would not provide protection to the public. Only persons meeting the standards established in the rules can use the protected titles, and these rules must establish reasonable enforcement mechanisms to protect the public from incompetent and unqualified occupational therapy practitioners.

It is necessary to specify that the advisory council may have a role in the investigation of complaints in order to put individuals subject to an investigation on notice of the advisory council's role in investigations. It is reasonable that the advisory council have a role in investigations because the advisory council will have specialized knowledge about the practice of occupational therapy. Therefore, it is reasonable that the rules provide the Commissioner the option of utilizing the advisory council's expertise.

SUBP. 3. DISCIPLINARY ACTIONS. IF THE COMMISSIONER FINDS THAT AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT SHOULD BE DISCIPLINED ACCORDING TO SUBPART 1, THE COMMISSIONER MAY TAKE ANY ONE OR MORE OF THE FOLLOWING ACTIONS:

This section defines the disciplinary options available to the Commissioner if it is determined that disciplinary action is warranted. It is necessary that individuals know that registration may be denied or action may be brought against them when conduct does not meet the parameters established by these rules. It is reasonable because a discipline mechanism in the registration system will strengthen it by creating standards for denying registration and penalties for registrants who do not meet the requirements of the registration rules.

A. REFUSE TO GRANT OR RENEW REGISTRATION;

B. APPROVE REGISTRATION WITH CONDITIONS;

C. REVOKE REGISTRATION;

D. SUSPEND REGISTRATION;

E. ANY REASONABLE LESSER ACTION INCLUDING, BUT NOT

LIMITED TO, REPRIMAND OR RESTRICTION ON REGISTRATION; OR

F. ANY ACTION AUTHORIZED BY STATUTE.

It is necessary that the Commissioner have the discretion to take the listed disciplinary actions because the Commissioner is charged with protecting the health, safety and welfare of the public. It is necessary and reasonable to provide discipline options varying in degree of severity because violations may vary in degree of severity. It is also necessary that the Commissioner have discretion, as indicated by the word "may," to decide which, if any disciplinary action is appropriate in each case. The Commissioner, with the advise of the advisory council as needed, is in the best position to determine whether discipline is needed and, if so what discipline will best serve the public in each case. It is more likely than not that each violation of parts 4666.0010 to 4666.1400 will have distinctive characteristics that need to be considered on an individual basis.

The options set forth above are reasonable because they are standard disciplinary options available to licensing and registration systems. The physician assistant rules allow the Board of Medical Practitioners several options as set out in Minnesota Rules, part 5600.2660 subpart 2:

> The board shall refuse to grant or renew a registration, or shall suspend or revoke a registration, or use any reasonable lesser remedy against a physician assistant....

The registration rules for environmental health specialists/sanitarians allows the Commissioner of Health several disciplinary options as set out in Minnesota Rules, part 4695.3000 subpart 2:

> The commissioner may refuse to grant or renew registration, suspend or revoke registration, or use any reasonable lesser remedy against a registrant for the following reasons....

It is reasonable that disciplinary options be listed because the listing will give the Commissioner guidelines to follow when disciplinary action decisions need to be made. It is reasonable that the disciplinary options are known to individuals because features of the registration system should be known to those who seek to participate in the system, to those who are registered, and to those who use one of the protected titles without being registered.

It is necessary to specify that the Commissioner may take any disciplinary actions authorized by statute in the event that the legislature determines that the commissioner is authorized to take disciplinary actions in addition to those actions specifically named in this part. For example, in 1993, the legislature authorized the Commissioner to issue cease and desist orders and to assess civil penalties for violations of a statute, rule or order the Commissioner is authorized to enforce. 1993 Minn. Laws, chapter 201, § 6 (amending Minn. Stat. § 214.131). It is reasonable to include legislative initiatives in the rules in order to notify individuals that such changes may occur and avoid rulemaking to provide notice of any changes.

SUBP. 4. EFFECT OF SPECIFIC DISCIPLINARY ACTIONS ON USE OF TITLE. UPON NOTICE FROM THE COMMISSIONER DENYING REGISTRATION RENEWAL OR UPON NOTICE THAT DISCIPLINARY ACTIONS HAVE BEEN IMPOSED AND THE INDIVIDUAL IS NO LONGER ENTITLED TO USE THE REGISTERED TITLES, THE INDIVIDUAL SHALL CEASE TO USE TITLES PROTECTED BY PARTS 4666.0010 TO 4666.1400 AND SHALL CEASE TO REPRESENT TO THE PUBLIC THAT THE INDIVIDUAL IS REGISTERED BY THE COMMISSIONER.

If it becomes necessary to deny registration renewal or to suspend or revoke registration, it is necessary to require the disciplined person to refrain from using the protected title or titles he or she has been using and to refrain from representing himself or herself to the public as a registered person. These procedures are necessary to ensure that there is no misunderstanding by the public, intentional or otherwise, about the disciplined person's registration status. It is a reasonable rule because it can be easily complied with and the disciplined person should not use the title, titles or documents of registration once the status of registration is removed.

SUBP. 5. REINSTATEMENT REQUIREMENTS AFTER DISCIPLINARY ACTION. AN INDIVIDUAL WHO HAS HAD REGISTRATION SUSPENDED MAY REQUEST AND PROVIDE JUSTIFICATION FOR REINSTATEMENT FOLLOWING THE PERIOD OF SUSPENSION SPECIFIED BY THE COMMISSIONER. THE REQUIREMENTS OF PARTS 4666.0300 AND 4666.0400 FOR RENEWING REGISTRATION AND ANY OTHER CONDITIONS IMPOSED WITH THE SUSPENSION MUST BE MET BEFORE REGISTRATION MAY BE REINSTATED.

A person who has had his or her registration suspended must wait the period of time specified by the Commissioner before applying for registration. This is a necessary requirement for several reasons. First, the provision allows the Commissioner to vary the amount of time in relation to the severity of discipline called for by specific circumstances. Second, the disciplinary actions are necessary to support the competency standards in the practice of occupational therapy. Persons who have been found in violation of these standards must show they are able to meet these standards before registration is reinstated.

Some period of time may be required to give the disciplined individual an opportunity to do coursework or training or otherwise demonstrate competency and good conduct during the period of suspension. Because removal from the registration roster does not preclude practice, it is possible for an occupational therapist to demonstrate the competence necessary to regain authorized use of the protected titles. It is also necessary that the requirements of parts 4666.0300 and 4666.0400 for renewing registration be met before reinstatement or renewal to have assurances that all registrants are held to the same standard. This subpart is reasonable because the Commissioner is responsible for upholding the standards associated with the titles protected by the registration system.

4666.1400 OCCUPATIONAL THERAPY PRACTITIONERS ADVISORY COUNCIL.

SUBPART 1. MEMBERSHIP. THE COMMISSIONER SHALL APPOINT SEVEN PERSONS TO AN OCCUPATIONAL THERAPY PRACTITIONERS ADVISORY COUNCIL CONSISTING OF THE FOLLOWING;

Minnesota Statutes, section 214.13, subdivision 4, states:

> The commissioner of health may establish an advisory council to advise the commissioner or the appropriate health-related licensing board on matters relating to the registration and regulation of an occupation. A council shall have seven members appointed by the commissioner of which five are members of the registered occupation or related registered or licensed occupations, and two are public members. A council shall expire, and the terms, compensation and removal of members shall be as provided in section 15.059.

Minnesota Statutes, section 214.13, subdivision 4, gives the Commissioner the option of appointing an advisory council. It is necessary and reasonable to appoint an advisory council in order to have an established resource to advise the Commissioner on technical matters related to the practice of occupational therapy. It is necessary and reasonable to appoint a

seven-person advisory council to fulfill the requirements of Minnesota Statutes, section 214.13, subdivision 4.

A. TWO PUBLIC MEMBERS, AS DEFINED IN MINNESOTA STATUTES, SECTION 214.02. THE PUBLIC MEMBERS SHALL BE EITHER PERSONS WHO HAVE RECEIVED OCCUPATIONAL THERAPY SERVICES OR FAMILY MEMBERS OF OR CAREGIVERS TO SUCH PERSONS.

It is necessary that the advisory council consist of two public members in order to meet Minnesota Statutes, section 214.13, subdivision 4, which requires two public members. It is reasonable to require that each of the public members be either persons who have received occupational therapy services or family members of or caregivers to such persons because such a person is likely to be familiar with the concerns of consumers in regard to occupational therapy services. Therefore, public members will promote better understanding of issues to be considered by the advisory council.

B. TWO MEMBERS WHO ARE OCCUPATIONAL THERAPISTS AND TWO OCCUPATIONAL THERAPY ASSISTANTS REGISTERED UNDER PARTS 4666.0010 TO 4666.1400 EACH OF WHOM IS EMPLOYED IN A DIFFERENT PRACTICE AREA INCLUDING, BUT NOT LIMITED TO, LONG-TERM CARE, SCHOOL THERAPY, EARLY INTERVENTION, ADMINISTRATION, GERONTOLOGY, INDUSTRIAL REHABILITATION, CARDIAC REHABILITATION, PHYSICAL DISABILITY, PEDIATRICS, MENTAL HEALTH, HOME HEALTH, AND HAND THERAPY. THREE OF THE FOUR OCCUPATIONAL THERAPY PRACTITIONERS WHO SERVE ON THE ADVISORY COUNCIL MUST BE CURRENTLY, AND FOR

THE THREE YEARS PRECEDING THE APPOINTMENT, ENGAGED IN THE PRACTICE OF OCCUPATIONAL THERAPY OR EMPLOYED AS AN ADMINISTRATOR OR AN INSTRUCTOR OF AN OCCUPATIONAL THERAPY PROGRAM. AT LEAST ONE OF THE FOUR OCCUPATIONAL THERAPY PRACTITIONERS WHO SERVE ON THE ADVISORY COUNCIL MUST BE EMPLOYED IN A RURAL AREA.

C. ONE MEMBER WHO IS A LICENSED OR REGISTERED HEALTH CARE PRACTITIONER, OR OTHER CREDENTIALED PRACTITIONER, WHO WORKS COLLABORATIVELY WITH OCCUPATIONAL THERAPY PRACTITIONERS.

Minnesota Statutes, section 214.13, subdivision 4, requires advisory council membership to include "five...members of the registered occupation or related registered or licensed occupations...." Therefore, the provisions of the rule setting out the types of practitioners on the advisory council is necessary, in part, to fulfill the requirements of the statute.

The proposed rule requires an equal number of occupational therapists and occupational therapy assistants. It is necessary and reasonable that the regulated occupations have equal representation on the advisory council in order to assure that the Commissioner is receiving balanced input from both occupations. It is necessary that each of the occupational therapy practitioners are employed in a different practice area in order to have the perspective of occupational therapists from different settings to give a broader base of knowledge and experience to the advisory council. The practice settings named in the rules are reasonable because they are the primary work settings for both occupations, as identified

by the group of occupational therapy practitioners that advised department staff drafting the rules. It is reasonable and necessary to require that three of the four occupational therapy practitioners on the advisory council have current work experience because this knowledge will be essential in advising the Commissioner on issues related to standards of practice. It is reasonable and necessary that one of the occupational therapy practitioners on the advisory council be a practitioner in a rural area because rural practitioners may have a different perspective on many of the issues which will be brought to the advisory council.

It is necessary to have one member of the advisory council be a licensed or registered health care practitioner, or other credentialed practitioner, who works collaboratively with occupational therapy practitioners in order to gain the perspective of a credentialed practitioner who shares a client base with other occupational therapy practitioners but who will contribute a different knowledge base in advising the Commissioner on issues related to consumer protection and the provision of occupational therapy services. This item is reasonable because it was developed in collaboration with the group of occupational therapy practitioners that advised department staff who were drafting the rules. The practitioners felt that this item should allow the Commissioner to choose from a variety of professions that interface with occupational therapy practitioners, including physicians and special education teachers.

SUBP. 2. DUTIES. AT THE COMMISSIONER'S REQUEST, THE ADVISORY COUNCIL SHALL:

It is necessary that the advisory council act at the Commissioner's request and direction because the Commissioner is responsible for administering the registration system

consistent with state laws and rules. It is also necessary that the advisory council act at the Commissioner's request in order to efficiently and effectively administer the registration system. It is reasonable that the advisory council act at the Commissioner's request because the statute authorizes, but does not mandate, the creation of an advisory council. See Minn. Stat. § 214.13 subd. 4.

A. ADVISE THE COMMISSIONER REGARDING THE OCCUPATIONAL THERAPY PRACTITIONER REGISTRATION STANDARDS;

B. ADVISE THE COMMISSIONER ON ENFORCEMENT OF PARTS 4666.0010 TO 4666.1400;

The statutory authority for creating the advisory council states in part, "[t]he commissioner of health may establish an advisory council to advise the commissioner ... on matters relating to the registration and regulation of an occupation." Minnesota Statutes, section 214.13, subdivision 4. It is reasonable that the advisory council advise the Commissioner on 1) registration standards because those standards are "matters relating to the registration ... of an occupation" and 2) enforcement issues because those issues are "matters relating to ... regulation of an occupation." In addition, it is reasonable that the Commissioner have the option of consulting the advisory council on technical matters for additional information on issues that may arise.

C. PROVIDE FOR DISTRIBUTION OF INFORMATION REGARDING OCCUPATIONAL THERAPY PRACTITIONERS REGISTRATION STANDARDS;

It is necessary that information regarding the occupational therapy practitioners registration standards be distributed to the public to promote a successful registration system.

In order for the registration system to serve the purpose of protecting the public, the public will need to be informed of the significance of the protected titles. Potential applicants and practitioners in professions that interface with occupational therapy practitioners must also know the significance of the protected titles and the prerequisites for use of protected titles. It is reasonable to require the advisory council to provide assistance in distributing this information because they will be able to provide the Commissioner with advice on the best method to convey this information to consumers, potential applicants and related occupations. It is also reasonable for the advisory council to suggest how to best distribute this information because their experience may provide insight into problem areas and where information regarding registrants and these rules is most needed.

D. REVIEW APPLICATIONS AND MAKE RECOMMENDATIONS TO THE COMMISSIONER ON GRANTING OR DENYING REGISTRATION OR REGISTRATION RENEWAL;

It is necessary that the advisory council be available to review applications when the Commissioner determines she does not have the information necessary to evaluate an applicant's qualifications or other information provided in the application. The rule is reasonable because the composition of the advisory council will provide a fair review mechanism of applications.

E. REVIEW REPORTS OF INVESTIGATIONS RELATING TO INDIVIDUALS AND MAKE RECOMMENDATIONS TO THE COMMISSIONER AS TO WHETHER REGISTRATION SHOULD BE DENIED OR DISCIPLINARY ACTION TAKEN AGAINST THE INDIVIDUAL; AND

It is necessary that the advisory council be available to review investigations and make recommendations when the Commissioner determines she does not have the information or expertise necessary to make a determination. Following review by the advisory council, the Commissioner would be responsible to make the final decision.

F. PERFORM OTHER DUTIES AUTHORIZED FOR ADVISORY COUNCILS BY MINNESOTA STATUTES, CHAPTER 214, AS DIRECTED BY THE COMMISSIONER.

It is necessary to include this rule to cover additional situations, not known at this time, that may arise wherein the Commissioner is given the option of directing the advisory council to act. It is reasonable to include this item because the practice of occupational therapy is constantly developing and, therefore, it is likely that new problems may arise. It is also reasonable that the Commissioner be given the option of calling on the advisory council to perform additional tasks, because their expertise and experience with the rules will give them a valuable perspective on dealing with new issues and problems.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

DATE

ANNE M. BARRY
COMMISSIONER OF HEALTH

that a broad spectrum of fraudulent practices are prohibited under the rules in order that the Commissioner will have authority to discipline persons for abuses the State is now aware and those that are not known at this time. It is reasonable to discipline persons in violation of items O through R in order to protect consumers.

S. PERFORMED SERVICES FOR A CLIENT WHO HAD NO POSSIBILITY OF BENEFITING FROM THE SERVICES;

This item is necessary to inform individuals that performing services for a client when the client had no possibility of benefiting from the services is a ground for discipline. This item is reasonable in order to protect the public from financial or other types of harm that may occur from inappropriate or unnecessary services.

T. FAILED TO REFER A CLIENT FOR MEDICAL EVALUATION WHEN APPROPRIATE OR WHEN A CLIENT INDICATED SYMPTOMS ASSOCIATED WITH DISEASES THAT COULD BE MEDICALLY OR SURGICALLY TREATED;

It is necessary to put individuals on notice that they must be aware of the appropriate instances in which to refer a client for medical evaluation. This item is reasonable to include because individuals subject to these proposed rules are expected to know when a client must be referred for medical evaluation. Failure to refer a client for medical evaluation, when circumstances indicate that such referral should be made, is therefore, a reasonable ground for discipline to include in the proposed rules.

U. ENGAGED IN CONDUCT WITH A CLIENT THAT IS SEXUAL OR MAY REASONABLY BE INTERPRETED BY THE CLIENT AS SEXUAL, OR IN ANY VERBAL BEHAVIOR THAT IS SEDUCTIVE OR SEXUALLY DEMEANING TO A

PATIENT;

It is necessary that the Commissioner be able to discipline an occupational therapy practitioner who has engaged in sexual conduct with a client in order to protect the public. The Commissioner is directed by Minnesota Statutes, section 214.10, subdivision 8, to assure investigation and appropriate disciplinary action in matters involving allegations of sexual contact between a member of a regulated health occupation and a patient or client. It is reasonable that such conduct be subject to discipline because of the position of trust which the practitioner occupies and the vulnerability of patients.

V. VIOLATED A FEDERAL OR STATE COURT ORDER, INCLUDING A CONCILIATION COURT JUDGMENT, OR A DISCIPLINARY ORDER ISSUED BY THE COMMISSIONER, RELATED TO THE INDIVIDUAL'S OCCUPATIONAL THERAPY PRACTICE; OR

This rule is necessary to inform the applicant and registrant that compliance with any federal court order, state court order or disciplinary order issued by the Commissioner is required. It is reasonable that the Commissioner have the ability to further discipline an individual who has been subject to a court order or a Commissioner's order if that individual fails to comply with the initial mandate of the court or Commissioner, in order to protect the public from unqualified practitioners.

W. ANY OTHER JUST CAUSE RELATED TO THE PRACTICE OF OCCUPATIONAL THERAPY.

It is necessary and reasonable that the Commissioner have the authority to discipline practitioners who demonstrate an inability to meet the standard of care expected of a

registered occupational therapy practitioner.

SUBP. 2. INVESTIGATION OF COMPLAINTS. THE COMMISSIONER, OR THE ADVISORY COUNCIL WHEN AUTHORIZED BY THE COMMISSIONER, MAY INITIATE AN INVESTIGATION UPON RECEIVING A COMPLAINT OR OTHER ORAL OR WRITTEN COMMUNICATION THAT ALLEGES OR IMPLIES THAT AN INDIVIDUAL HAS VIOLATED PARTS 4666.0010 TO 4666.1400. IN THE RECEIPT, INVESTIGATION, AND HEARING OF A COMPLAINT THAT ALLEGES OR IMPLIES AN INDIVIDUAL HAS VIOLATED PARTS 4666.0010 TO 4666.1400, THE COMMISSIONER SHALL FOLLOW THE PROCEDURES IN MINNESOTA STATUTES, SECTION 214.10.

The Commissioner of Health is authorized to enforce the registration rules for human service occupations according to the procedures set out in Minnesota Statutes, section 214.10. Minn. Stat. § 214.13, subd. 6 & 7 (1994). The proposed rule sets out the procedure for investigating individuals when complaints have been received, consistent with Minnesota Statutes, section 214.10. It is necessary that the rules notify individuals of these procedures in the event they become the subject of an investigation. It is reasonable that the Commissioner utilize her authority to initiate investigations regarding violations of parts 4666.0010 to 4666.1400 by an individual because if the Commissioner did not utilize this authority, the registration system would not provide protection to the public. Only persons meeting the standards established in the rules can use the protected titles, and these rules must establish reasonable enforcement mechanisms to protect the public from incompetent and unqualified occupational therapy practitioners.

It is necessary to specify that the advisory council may have a role in the investigation of complaints in order to put individuals subject to an investigation on notice of the advisory council's role in investigations. It is reasonable that the advisory council have a role in investigations because the advisory council will have specialized knowledge about the practice of occupational therapy. Therefore, it is reasonable that the rules provide the Commissioner the option of utilizing the advisory council's expertise.

SUBP. 3. DISCIPLINARY ACTIONS. IF THE COMMISSIONER FINDS THAT AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT SHOULD BE DISCIPLINED ACCORDING TO SUBPART 1, THE COMMISSIONER MAY TAKE ANY ONE OR MORE OF THE FOLLOWING ACTIONS:

This section defines the disciplinary options available to the Commissioner if it is determined that disciplinary action is warranted. It is necessary that individuals know that registration may be denied or action may be brought against them when conduct does not meet the parameters established by these rules. It is reasonable because a discipline mechanism in the registration system will strengthen it by creating standards for denying registration and penalt' for registrants who do not meet the requirements of the registration rules.

A. REFUSE TO GRANT OR RENEW REGISTRATION;

B. APPROVE REGISTRATION WITH CONDITIONS;

C. REVOKE REGISTRATION;

D. SUSPEND REGISTRATION;

E. ANY REASONABLE LESSER ACTION INCLUDING, BUT NOT

LIMITED TO, REPRIMAND OR RESTRICTION ON REGISTRATION; OR

F. ANY ACTION AUTHORIZED BY STATUTE.

It is necessary that the Commissioner have the discretion to take the listed disciplinary actions because the Commissioner is charged with protecting the health, safety and welfare of the public. It is necessary and reasonable to provide discipline options varying in degree of severity because violations may vary in degree of severity. It is also necessary that the Commissioner have discretion, as indicated by the word "may," to decide which, if any disciplinary action is appropriate in each case. The Commissioner, with the advise of the advisory council as needed, is in the best position to determine whether discipline is needed and, if so what discipline will best serve the public in each case. It is more likely than not that each violation of parts 4666.0010 to 4666.1400 will have distinctive characteristics that need to be considered on an individual basis.

The options set forth above are reasonable because they are standard disciplinary options available to licensing and registration systems. The physician assistant rules allow the Board of Medical Practitioners several options as set out in Minnesota Rules, part 5600.2660 subpart 2:

> The board shall refuse to grant or renew a registration, or shall suspend or revoke a registration, or use any reasonable lesser remedy against a physician assistant....

The registration rules for environmental health specialists/sanitarians allows the Commissioner of Health several disciplinary options as set out in Minnesota Rules, part 4695.3000 subpart 2:

> The commissioner may refuse to grant or renew registration, suspend or revoke registration, or use any reasonable lesser remedy against a registrant for the following reasons....

It is reasonable that disciplinary options be listed because the listing will give the Commissioner guidelines to follow when disciplinary action decisions need to be made. It is reasonable that the disciplinary options are known to individuals because features of the registration system should be known to those who seek to participate in the system, to those who are registered, and to those who use one of the protected titles without being registered.

It is necessary to specify that the Commissioner may take any disciplinary actions authorized by statute in the event that the legislature determines that the commissioner is authorized to take disciplinary actions in addition to those actions specifically named in this part. For example, in 1993, the legislature authorized the Commissioner to issue cease and desist orders and to assess civil penalties for violations of a statute, rule or order the Commissioner is authorized to enforce. 1993 Minn. Laws, chapter 201, § 6 (amending Minn. Stat. § 214.131). It is reasonable to include legislative initiatives in the rules in order to notify individuals that such changes may occur and avoid rulemaking to provide notice of any changes.

SUBP. 4. EFFECT OF SPECIFIC DISCIPLINARY ACTIONS ON USE OF TITLE. UPON NOTICE FROM THE COMMISSIONER DENYING REGISTRATION RENEWAL OR UPON NOTICE THAT DISCIPLINARY ACTIONS HAVE BEEN IMPOSED AND THE INDIVIDUAL IS NO LONGER ENTITLED TO USE THE REGISTERED TITLES, THE INDIVIDUAL SHALL CEASE TO USE TITLES PROTECTED BY PARTS 4666.0010 TO 4666.1400 AND SHALL CEASE TO REPRESENT TO THE PUBLIC THAT THE INDIVIDUAL IS REGISTERED BY THE COMMISSIONER.

If it becomes necessary to deny registration renewal or to suspend or revoke registration, it is necessary to require the disciplined person to refrain from using the protected title or titles he or she has been using and to refrain from representing himself or herself to the public as a registered person. These procedures are necessary to ensure that there is no misunderstanding by the public, intentional or otherwise, about the disciplined person's registration status. It is a reasonable rule because it can be easily complied with and the disciplined person should not use the title, titles or documents of registration once the status of registration is removed.

SUBP. 5. REINSTATEMENT REQUIREMENTS AFTER DISCIPLINARY ACTION. AN INDIVIDUAL WHO HAS HAD REGISTRATION SUSPENDED MAY REQUEST AND PROVIDE JUSTIFICATION FOR REINSTATEMENT FOLLOWING THE PERIOD OF SUSPENSION SPECIFIED BY THE COMMISSIONER. THE REQUIREMENTS OF PARTS 4666.0300 AND 4666.0400 FOR RENEWING REGISTRATION AND ANY OTHER CONDITIONS IMPOSED WITH THE SUSPENSION MUST BE MET BEFORE REGISTRATION MAY BE REINSTATED.

A person who has had his or her registration suspended must wait the period of time specified by the Commissioner before applying for registration. This is a necessary requirement for several reasons. First, the provision allows the Commissioner to vary the amount of time in relation to the severity of discipline called for by specific circumstances. Second, the disciplinary actions are necessary to support the competency standards in the practice of occupational therapy. Persons who have been found in violation of these standards must show they are able to meet these standards before registration is reinstated.

Some period of time may be required to give the disciplined individual an opportunity to do coursework or training or otherwise demonstrate competency and good conduct during the period of suspension. Because removal from the registration roster does not preclude practice, it is possible for an occupational therapist to demonstrate the competence necessary to regain authorized use of the protected titles. It is also necessary that the requirements of parts 4666.0300 and 4666.0400 for renewing registration be met before reinstatement or renewal to have assurances that all registrants are held to the same standard. This subpart is reasonable because the Commissioner is responsible for upholding the standards associated with the titles protected by the registration system.

4666.1400 OCCUPATIONAL THERAPY PRACTITIONERS ADVISORY COUNCIL.

SUBPART 1. MEMBERSHIP. THE COMMISSIONER SHALL APPOINT SEVEN PERSONS TO AN OCCUPATIONAL THERAPY PRACTITIONERS ADVISORY COUNCIL CONSISTING OF THE FOLLOWING;

Minnesota Statutes, section 214.13, subdivision 4, states:

> The commissioner of health may establish an advisory council to advise the commissioner or the appropriate health-related licensing board on matters relating to the registration and regulation of an occupation. A council shall have seven members appointed by the commissioner of which five are members of the registered occupation or related registered or licensed occupations, and two are public members. A council shall expire, and the terms, compensation and removal of members shall be as provided in section 15.059.

Minnesota Statutes, section 214.13, subdivision 4, gives the Commissioner the option of appointing an advisory council. It is necessary and reasonable to appoint an advisory council in order to have an established resource to advise the Commissioner on technical matters related to the practice of occupational therapy. It is necessary and reasonable to appoint a

seven-person advisory council to fulfill the requirements of Minnesota Statutes, section 214.13, subdivision 4.

A. TWO PUBLIC MEMBERS, AS DEFINED IN MINNESOTA STATUTES, SECTION 214.02. THE PUBLIC MEMBERS SHALL BE EITHER PERSONS WHO HAVE RECEIVED OCCUPATIONAL THERAPY SERVICES OR FAMILY MEMBERS OF OR CAREGIVERS TO SUCH PERSONS.

It is necessary that the advisory council consist of two public members in order to meet Minnesota Statutes, section 214.13, subdivision 4, which requires two public members. It is reasonable to require that each of the public members be either persons who have received occupational therapy services or family members of or caregivers to such persons because such a person is likely to be familiar with the concerns of consumers in regard to occupational therapy services. Therefore, public members will promote better understanding of issues to be considered by the advisory council.

B. TWO MEMBERS WHO ARE OCCUPATIONAL THERAPISTS AND TWO OCCUPATIONAL THERAPY ASSISTANTS REGISTERED UNDER PARTS 4666.0010 TO 4666.1400 EACH OF WHOM IS EMPLOYED IN A DIFFERENT PRACTICE AREA INCLUDING, BUT NOT LIMITED TO, LONG-TERM CARE, SCHOOL THERAPY, EARLY INTERVENTION, ADMINISTRATION, GERONTOLOGY, INDUSTRIAL REHABILITATION, CARDIAC REHABILITATION, PHYSICAL DISABILITY, PEDIATRICS, MENTAL HEALTH, HOME HEALTH, AND HAND THERAPY. THREE OF THE FOUR OCCUPATIONAL THERAPY PRACTITIONERS WHO SERVE ON THE ADVISORY COUNCIL MUST BE CURRENTLY, AND FOR

THE THREE YEARS PRECEDING THE APPOINTMENT, ENGAGED IN THE PRACTICE OF OCCUPATIONAL THERAPY OR EMPLOYED AS AN ADMINISTRATOR OR AN INSTRUCTOR OF AN OCCUPATIONAL THERAPY PROGRAM. AT LEAST ONE OF THE FOUR OCCUPATIONAL THERAPY PRACTITIONERS WHO SERVE ON THE ADVISORY COUNCIL MUST BE EMPLOYED IN A RURAL AREA.

C. ONE MEMBER WHO IS A LICENSED OR REGISTERED HEALTH CARE PRACTITIONER, OR OTHER CREDENTIALED PRACTITIONER, WHO WORKS COLLABORATIVELY WITH OCCUPATIONAL THERAPY PRACTITIONERS.

Minnesota Statutes, section 214.13, subdivision 4, requires advisory council membership to include "five...members of the registered occupation or related registered or licensed occupations...." Therefore, the provisions of the rule setting out the types of practitioners on the advisory council is necessary, in part, to fulfill the requirements of the statute.

The proposed rule requires an equal number of occupational therapists and occupational therapy assistants. It is necessary and reasonable that the regulated occupations have equal representation on the advisory council in order to assure that the Commissioner is receiving balanced input from both occupations. It is necessary that each of the occupational therapy practitioners are employed in a different practice area in order to have the perspective of occupational therapists from different settings to give a broader base of knowledge and experience to the advisory council. The practice settings named in the rules are reasonable because they are the primary work settings for both occupations, as identified

by the group of occupational therapy practitioners that advised department staff drafting the rules. It is reasonable and necessary to require that three of the four occupational therapy practitioners on the advisory council have current work experience because this knowledge will be essential in advising the Commissioner on issues related to standards of practice. It is reasonable and necessary that one of the occupational therapy practitioners on the advisory council be a practitioner in a rural area because rural practitioners may have a different perspective on many of the issues which will be brought to the advisory council.

It is necessary to have one member of the advisory council be a licensed or registered health care practitioner, or other credentialed practitioner, who works collaboratively with occupational therapy practitioners in order to gain the perspective of a credentialed practitioner who shares a client base with other occupational therapy practitioners but who will contribute a different knowledge base in advising the Commissioner on issues related to consumer protection and the provision of occupational therapy services. This item is reasonable because it was developed in collaboration with the group of occupational therapy practitioners that advised department staff who were drafting the rules. The practitioners felt that this item should allow the Commissioner to choose from a variety of professions that interface with occupational therapy practitioners, including physicians and special education teachers.

SUBP. 2. DUTIES. AT THE COMMISSIONER'S REQUEST, THE ADVISORY COUNCIL SHALL:

It is necessary that the advisory council act at the Commissioner's request and direction because the Commissioner is responsible for administering the registration system

consistent with state laws and rules. It is also necessary that the advisory council act at the Commissioner's request in order to efficiently and effectively administer the registration system. It is reasonable that the advisory council act at the Commissioner's request because the statute authorizes, but does not mandate, the creation of an advisory council. See Minn. Stat. § 214.13 subd. 4.

A. ADVISE THE COMMISSIONER REGARDING THE OCCUPATIONAL THERAPY PRACTITIONER REGISTRATION STANDARDS;

B. ADVISE THE COMMISSIONER ON ENFORCEMENT OF PARTS 4666.0010 TO 4666.1400;

The statutory authority for creating the advisory council states in part, "[t]he commissioner of health may establish an advisory council to advise the commissioner ... on matters relating to the registration and regulation of an occupation." Minnesota Statutes, section 214.13, subdivision 4. It is reasonable that the advisory council advise the Commissioner on 1) registration standards because those standards are "matters relating to the registration ... of an occupation" and 2) enforcement issues because those issues are "matters relating to ... regulation of an occupation." In addition, it is reasonable that the Commissioner have the option of consulting the advisory council on technical matters for additional information on issues that may arise.

C. PROVIDE FOR DISTRIBUTION OF INFORMATION REGARDING OCCUPATIONAL THERAPY PRACTITIONERS REGISTRATION STANDARDS;

It is necessary that information regarding the occupational therapy practitioners registration standards be distributed to the public to promote a successful registration system.

In order for the registration system to serve the purpose of protecting the public, the public will need to be informed of the significance of the protected titles. Potential applicants and practitioners in professions that interface with occupational therapy practitioners must also know the significance of the protected titles and the prerequisites for use of protected titles. It is reasonable to require the advisory council to provide assistance in distributing this information because they will be able to provide the Commissioner with advice on the best method to convey this information to consumers, potential applicants and related occupations. It is also reasonable for the advisory council to suggest how to best distribute this information because their experience may provide insight into problem areas and where information regarding registrants and these rules is most needed.

D. REVIEW APPLICATIONS AND MAKE RECOMMENDATIONS TO THE COMMISSIONER ON GRANTING OR DENYING REGISTRATION OR REGISTRATION RENEWAL;

It is necessary that the advisory council be available to review applications when the Commissioner determines she does not have the information necessary to evaluate an applicant's qualifications or other information provided in the application. The rule is reasonable because the composition of the advisory council will provide a fair review mechanism of applications.

E. REVIEW REPORTS OF INVESTIGATIONS RELATING TO INDIVIDUALS AND MAKE RECOMMENDATIONS TO THE COMMISSIONER AS TO WHETHER REGISTRATION SHOULD BE DENIED OR DISCIPLINARY ACTION TAKEN AGAINST THE INDIVIDUAL; AND

It is necessary that the advisory council be available to review investigations and make recommendations when the Commissioner determines she does not have the information or expertise necessary to make a determination. Following review by the advisory council, the Commissioner would be responsible to make the final decision.

F. PERFORM OTHER DUTIES AUTHORIZED FOR ADVISORY COUNCILS BY MINNESOTA STATUTES, CHAPTER 214, AS DIRECTED BY THE COMMISSIONER.

It is necessary to include this rule to cover additional situations, not known at this time, that may arise wherein the Commissioner is given the option of directing the advisory council to act. It is reasonable to include this item because the practice of occupational therapy is constantly developing and, therefore, it is likely that new problems may arise. It is also reasonable that the Commissioner be given the option of calling on the advisory council to perform additional tasks, because their expertise and experience with the rules will give them a valuable perspective on dealing with new issues and problems.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

11/3/95
DATE

Barbara C Nixon for
ANNE M. BARRY
COMMISSIONER OF HEALTH

DETERMINATION OF THE COMMISSIONER OF HEALTH

Regarding the Need to Regulate Occupational Therapy Practitioners
August 31, 1989

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Minnesota Statutes Section 214.001 requires the Commissioner of Health to review the need to regulate human services occupations, and if regulation is needed, to determine the appropriate mode of regulation. In recognition of the fact that regulation is not costless to consumers, the statute directs that when a need to regulate has been determined, the least restrictive mode of regulation consistent with the need to regulate shall be adopted or recommended for adoption.

The Human Services Occupations Advisory Council (HSOAC) and Health Department Staff in the Health Occupations Program have reviewed a request for regulation of Occupational Therapy (OT) practitioners. The Minnesota Occupational Therapy Association (MOTA) requested the regulation of registered occupational therapists (OTR) and certified occupational therapy assistants (COTA). The terms "registered" and "certified" refer to private association credentialing. MOTA is seeking state regulation of OTR's and COTA's in the form of registration, as defined in Minnesota Statutes Section 214.001, Subd. 3(c), for both levels of therapists.

Occupational therapists work with individuals in three major disability areas: psycho-social dysfunctions, physical dysfunctions, and congenital dysfunctions. Occupational therapists and occupational therapy assistants are employed by hospitals, nursing homes, public schools and home health agencies. In Minnesota, there are approximately 1,498 registered occupational therapists and 1,242 occupational therapy assistants. MOTA has approximately 975 members.

Based upon the record, HSOAC's and Staff's review of the application, and their findings and conclusions, I have determined that the record supports regulation of OT practitioners and that registration is the appropriate mode of regulation. Minnesota Statutes Section 214.13, Subd. 1, authorizes the Commissioner of Health to recommend and establish registration systems. Under a registration system, which will be administered by the Health Department, OT practitioners who meet predetermined qualifications will be placed on a roster maintained by the state and will be permitted to use a specific occupational title(s). The protected titles will be "occupational therapist" and "occupational therapy assistant" and close variations of these titles. Registration will not prohibit practice, as licensing does, but will prohibit use of protected titles by persons not meeting the qualifications set by the state.

FINDINGS AND CONCLUSIONS

1. **Public Harm Criterion.** Minnesota Statutes Section 214.001, Subd. 2, requires that HSOAC and Health Department staff consider "whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of the citizens of the state and whether the potential for harm is recognizable and not remote."

Both HSOAC and Staff concluded that there is actual and potential public harm occurring from the unregulated practice of occupational therapy. However, HSOAC and Staff also concluded that the harm may be remote in that it often may not be immediately recognizable. Harm from incompetently delivered OT services is not generally immediate in nature, but is typically evidenced over time. In addition, when the harm is lost productivity and unrealized rehabilitative progress, it may be difficult to declare that harm is due to improperly or poorly delivered OT services. Staff found that extensive efficacy studies demonstrate that properly delivered OT services are beneficial and cost effective. Thus, if OT services are poorly delivered, it could be concluded that patients suffer harm when services are not maximally beneficial.

HSOAC and Staff found that the primary clientele of OT practitioners are vulnerable persons because they are physically and/or mentally handicapped infants, children, adults, and seniors. HSOAC perceived that most of the examples of harm occurred in settings where the OT practitioner would be under supervision. However, MOTA and others provided examples of harm resulting from lack of skill or training of the OT practitioner, and these harms occurred in "supervised" situations. OT practitioners work independently when formulating plans of care and when delivering services and treatments. Many recipients of OT services are now in community-based settings instead of institutions, or they are in their homes earlier than in previous years due to early discharges and shorter hospitalizations. I agree with HSOAC and Staff conclusions that though harm may not be proximate, the potential for harm is real, serious and highly likely to occur when OT services are incompetently delivered.

2. **Specialized Skills and Training Criterion.** Minnesota Statutes Section 214.001, Subd. 2, requires that HSOAC and Health Department staff consider "whether the practice of an occupation requires specialized skills or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability."

Staff and HSOAC concluded that the practice of occupational therapy requires specialized skill and training. Further, it appears that the training is most comprehensively provided through formal academic programs as opposed to on-the-job training. Formal training is particularly necessary at the OT level

because the OT supervises the COTA and is responsible for evaluation, assessment and program planning for the client. Staff found that the delivery of OT services to educationally handicapped students is growing, requiring new and specialized skills. There is a basis for demonstrating initial and continuing competency in both the medical and educational models of OT service delivery.

The functions performed by occupational therapists require a detailed knowledge and understanding of how each function will improve or ameliorate the condition being treated. This is true especially in the medical setting. For example, therapy could be permanently damaging if not properly administered to burn patients, accident victims, patients recovering from strokes (i.e. incorrect positioning of splints, burn masks, contraindicated exercise program, etc.). While the absence of specialized skills may not produce immediate and irreparable harm, treatments which have little or no value can, over time, deprive the patient/client of an opportunity to improve his or her medical or educational rehabilitation effort. For some patients/clients, the time lost may mean that "the window of opportunity" for improvement no longer exists.

The record indicates extensive skills involving independently performed functions are required to competently provide OT services, new techniques are emerging, and that it is important that OT practitioners remain current in their field.

3. **Other Means of Protection Criterion.** Minnesota Statutes Section 214.001, Subd. 2, requires that HSOAC and Health Department staff consider "whether the citizens of this state are or may be effectively protected by other means."

HSOAC and Staff agreed that Minnesotans are not currently protected by existing or other means of protection. Staff concluded that the only effective protection may be in hospitals where OT practitioners work as members of a health care team. In many practice locations, such as in some nursing homes, school districts and in private homes, OT practitioners may have no direct supervision. In Home Health Care rules currently being promulgated by the Minnesota Department of Health, the State will establish the minimum standards practitioners must meet in order to provide services in home care settings. Currently, there are no minimum training and competency requirements for OT practitioners who provide services in the home or elsewhere. There is evidence in the record that the lack of minimum hiring standards established by the state has resulted in some confusion by health care and educational providers as to appropriate credentials for OT practice.

MOTA presented evidence that mechanisms for ensuring competence and sanctioning unprofessional practice are deficient or absent. In an example of harm to the public, parents of a child abused by an OT practitioner (who contracted to provide services in a cooperative special education school district) could not obtain redress against the practitioner. The parents

complained to state and local human service agencies, state and local education agencies and boards and sought legal advice in attempting to sanction the OT practitioner's conduct.

While there is a strong private and national credentialing organization that helps ensure entry level competence, there are no mechanisms for promoting continuing competence either nationally or within Minnesota, and there is no mechanism for investigating incompetent or unprofessional conduct in Minnesota. In addition, there is no authority or means to sanction such conduct.

4. **Cost and Economic Impact Criterion.** Minnesota Statutes Section 214.001, Subd. 2, requires that HSOAC and Health Department staff consider "whether the overall cost effectiveness and economic impact (of regulation) would be positive for the citizens of the state."

HSOAC and Staff disagreed in their conclusions concerning the economic impact and cost effectiveness of regulation in the form of registration. HSOAC took the view that any additional regulation would have a negative impact and would primarily benefit the occupation. Staff concluded that because additional regulation was needed to protect the public, this public benefit outweighed costs associated with implementing and administering a regulatory system. In addition, on the basis of research and study reports, Staff concluded that direct lifestyle and employment productivity benefits accrue to individuals receiving OT services from competently trained OT practitioners, and that costs attributable to imposing minimum standards for entry and competence in OT practice would be more than offset by individual and societal benefits. Finally, Staff found that there would be no changes to public programs or third party reimbursement systems if regulation was implemented.

On the basis of Staff's analysis, I am persuaded that benefits to the public from regulation will outweigh costs that may result, and I conclude that the overall economic impact of registration will be positive for Minnesotans.

RECOMMENDATIONS

In summary, after reviewing both the HSOAC and Staff reports and the record, I find that:

1. There is a potential for actual harm which is recognizable from the unregulated practice of occupational therapy;

2. OT practitioners require specialized skill and training in the delivery of OT services, and the public will benefit by demonstrated initial and continuing occupational ability;

3. Registration of OT practitioners would provide the citizens of Minnesota with an additional means of identifying practitioners who

have met predetermined qualifications of training and education in the delivery of occupational therapy services, as well as a means of consumer protection for the filing and resolution of complaints and sanctioning incompetent practice; and

4. A registration system for OT practitioners will provide the citizens of Minnesota the necessary regulation in a cost effective manner consistent with the legislative intent of Minnesota Statutes Section 214.001. Costs associated with the implementation of a registration system will provide a public benefit that is at least commensurate with costs to the public.

Therefore, I recommend registration as a sufficient mode of regulation to protect the public. It will offer consumers some way of identifying providers of OT services who met established training and education standards, and it will provide greater assurance of competency in the delivery of often technical and complex services. These benefits are of increasing importance in community-based settings and schools. For this reason, I also recommend that the registration system be coordinated with proposed new rules governing home health services which are now being developed within the Health Department.

Sr. Mary Madonna Ashton

Sister Mary Madonna Ashton
Commissioner of Health

9-12-89
Date

October 27, 1988
Final Report

Human Services Occupations Advisory Council Recommendations on the Regulation of Occupational Therapists and Occupational Therapy Assistants

The Minnesota Occupational Therapy Association (MOTA) is requesting the regulation of registered occupational therapists (OTR) and certified occupational therapy assistants (COTA). The terms "registered" and "certified" refer to private association credentialing, not "registration" as it is defined in Minn. Stat. Sec. 214. MOTA is seeking regulation in the form of registration, as defined in Minn. Stat. Sec. 214, for both levels of therapists.

Occupational therapists represent one discipline on the medical or educational team. Other members of the team, such as physical therapists, social workers, nurses, psychologists and physicians work with occupational therapists to promote complete or optimal rehabilitation of patients who are medically or educationally handicapped. As a team member, the occupational therapist provides information regarding the patient's physical and psychological adaptation in the performance of daily living skills and functional activities.

According to information contained in the application, occupational therapy treatment refers to the use of specific activities or methods to develop, improve, and/or restore the performance of necessary functions; compensate for dysfunction; and/or minimize debilitation; and the planning for and documenting of treatment performance.

Occupational therapists and occupational therapy assistants are employed by hospitals, nursing homes, public schools and home health care agencies. In Minnesota, there are approximately 1,498 registered occupational therapists and 1,242 certified occupational therapy assistants. The Minnesota Occupational Therapy Association has approximately 975 members.

Occupational therapists work with individuals in three major areas: psychosocial dysfunctions, physical dysfunctions, and congenital dysfunctions. In the schools, occupational therapists work with infants, children and youth to overcome, minimize or eliminate handicaps which interfere with learning. In hospitals and nursing homes, occupational therapists work with individuals of all ages to maximize independent living skills, including self-care, which are physical and psychological in nature. The independent living skills are maximized to a level appropriate to age, life space (cultural background, value orientation, physical and social environment) and disability.

The Human Services Occupations Advisory Council (HSOAC) has reviewed the request for regulation using the four review criteria in Minnesota Statutes Section 214.01 et. seq.. The review criteria, findings, recommendations, and rationale form the basis of this report. The HSOAC recommendations comply with the legislative directive that regulation shall not be imposed upon

occupations unless necessary to protect the health, welfare and safety of Minnesotans.

CRITERION 1: RECOGNIZABLE PUBLIC HARM

Minnesota Statutes Section 214.001, subdivision 2, requires that the HSOAC consider "whether the unregulated practice of an occupation may harm or endanger the health, safety or welfare of citizens of the state and whether the potential for harm is recognizable and not remote."

Findings: Currently, the American Occupational Therapy Certification Board (AOTCB) has a credentialing process with established entry level criteria for occupational therapy personnel that choose to meet those requirements. The requirements are established by the American Occupational Therapy Association (AOTA).

Occupational therapists who have not passed the private professional credentialing examinations offered by the American Occupational Therapy Certification Board (AOTCB) may practice, and in fact do practice in Minnesota. The applicant group has expressed concerns about individuals who have not had the required education and training necessary to take the certification exam, or have failed the exam, and are practicing occupational therapy. The applicant group is concerned about the adequate preparation of foreign trained therapists and the quality of occupational therapy services delivered by non-certified practitioners. Non-certified therapists are employed, particularly in the long-term care area.

Other examples of public harm included cases of medicaid fraud and over utilization of treatment. According to a 1986 Medicaid Strike Force Report by the Attorney General's Office, "nursing homes are earning unreasonable profits from physical therapy and other ancillary services", of which occupational therapy is one such service. Ancillary services are paid for in addition to the daily rate paid for each day's care of a person with medicaid coverage. Most nursing homes contract out for ancillary services, typically with a rehabilitation agency or clinic, and for many nursing homes the process of contracting out has become very profitable. According to that report, many therapists have told state investigators they were pressured to meet quotas and encouraged to treat nursing home residents regardless of their medical need. The applicant group noted that the physical therapy advisory council has had some success in disciplining physical therapists who have financially abused the medical assistance program. Disciplinary measures are possible, the applicant group contends, because physical therapists are regulated by the state.

The applicant group reported one instance of physical abuse of a client in a state hospital and noted that the therapist is now employed in long-term care. In Greater Minnesota there have been cases of facilities misusing the title of occupational therapy for services that are occupational therapy in nature but are being delivered by persons who are not trained as occupational therapists but are representing themselves and the program services as such.

The applicant group noted instances in which lack of state regulation has contributed to the omission of occupational therapy services when insurance or health benefits laws are changed. For example, under state comprehensive insurance, occupational therapy services were omitted because occupational therapists were not regulated by the state. The lack of a state definition of a "qualified" occupational therapist has contributed to problems of identifying who is considered a qualified practitioner for purposes of delivering the services.

Occupational therapists provide home health care services. A law licensing home health care agencies was recently passed. It is certain that occupational therapists delivering services in the home setting will have to meet some training and education standards in order to provide those services.

There have been recent changes in federal medicare rules and Joint Commission on the Accreditation of Hospital guidelines with respect to occupational therapists and other allied health care personnel. Requirements for occupational therapists are now left to facilities to determine. The applicant group's professional association is concerned about how economic situations might impact the hiring decisions. In the absence of regulation a decision may be made to hire a person at lower wages, without training, to perform occupational therapy services.

Additionally, physical harm can be incurred by a patient who is recovering from an injury or trauma and receives services from untrained therapists applying inappropriate treatments. The Council was shown a slide presentation about occupational therapy treatments for burn patients. The presentation stressed the need for specialized skills in this therapy area. The slides and presentation highlighted actual and potential harm to the burn patients, resulting from inadequately trained therapists or therapists who had mismanaged patient care.

The applicant group also has concerns about chemically dependent occupational therapists. Currently there is no effective way to deal with therapists who practice while under the influence of drugs.

In educational occupational therapy, the main goal is learning. An unqualified or inappropriately trained therapist will give inappropriate treatment that may hinder learning. Three examples of inappropriate treatment were provided.

The first example involved a person representing herself as an occupational therapist. The person had not passed the OTR exam. The person was hired to work with non-verbal students who were also severely physically handicapped. The teachers in the building observed that the therapist had "no understanding of high muscle tone". High muscle tone is associated with individuals who have a great deal of spasticity. The therapist tended to pry open the arms and fingers of these children. The students were unable to communicate the pain they were likely feeling.

The second example of harm involved another individual who had not passed the OTR exam. The individual was hired to work in a pre-school with children.

The individual used inappropriate programing and as a result the children were frustrated. The pre-school teachers reported the children were exhibiting behavior problems after occupational therapy. The harm in this situation was that the children lost valuable learning time, time which was critical for their age and reaching developmental milestones.

The third incident of harm involved a certified occupational therapy assistant who misrepresented herself as an occupational therapist. The COTA developed inappropriate programs, and evaluated and assessed children, which are not COTA functions. The programs, according to the applicant group, were poor and the children were not given optimal services.

One example of potential harm was provided regarding delivery of occupational therapy services in the mental health area. The example involved a crisis intervention center for elderly persons in which the client would likely come from a home setting in to a hospital demonstrating areas of deficit. At the hospital an evaluation would be done to determine what placement or program would be appropriate to meet the client's needs. The occupational therapist plays a major role in the evaluation. Inaccurate or poor information could impact a person's discharge.

Conclusion: The Human Services Occupations Advisory Council voted that the unregulated practice of occupational therapy may harm the health, safety or welfare of Minnesotans. The vote was 5 yes, 1 no, 2 abstentions.

The HSOAC voted unanimously that the potential for harm is recognizable.

The HSOAC unanimously defeated the motion that the potential for harm is proximate.

Rationale: The Council heard testimony of physical harm and problems that occur as a consequence of inappropriate therapy intervention, especially after injuries. Further, it appears there is a demonstrative potential of physical harm directly related to lack of practitioner qualifications.

Harm is recognizable as seen in those cases in which burn victims had inappropriate splinting of the hands and masking of the face, resulting in deformities.

No evidence was provided in either written or public testimony that the potential for harm was immediate or proximate.

The Council perceived that most of the examples of harm were in settings in which the therapist would be under supervision. However, assessment of individuals in a home care or private setting was of concern to some Council members, but the potential for harm was considered remote.

CRITERION 2: SPECIALIZED SKILLS NEEDED

Minnesota Statutes Section 214.001, subdivision 2, requires that the HSOAC consider "whether the practice of an occupation requires specialized skills or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability."

Occupational therapists (OT's) obtain a baccalaureate degree and occupational therapy assistants (OTA's) receive training in two year professional programs. The baccalaureate programs require a minimum of 6 months supervised clinical experience and the occupational therapist assistant programs require a two month supervised clinical experience. The occupational therapist does the patient or client evaluation and occupational therapy assistant administers directives and is more involved in the activities areas, especially in long-term care. Nationally, occupational therapists are trained at a uniform level; a national standardized evaluation form exists to which all therapists are trained. The standards for approved two year occupational therapy programs provide for transfer to four year occupational therapy programs.

Occupational therapists are trained to respond to and initiate patient referrals, conduct occupational therapy assessments, conduct program planning for clients, administer occupational therapy treatments, recognize when termination of occupational therapy services should occur, and provide ongoing service management to clients.

Occupational therapy assistants are trained in the same areas as occupational therapists but administer the directives of occupational therapists and work under the supervision of occupational therapists. The difference between the two and four year programs is in the depth and breadth of knowledge.

The promotion of independent and daily living skills are a large focus of occupational therapy. Proper training to conduct evaluation of clients is critical to the provision of appropriate occupational therapy services.

There are two models of occupational therapy - medical and educational. The provision of occupational therapy services under the medical model requires a physician referral. Educationally-related occupational therapy services may only be provided when there is a handicap which interferes with learning. Referral for educational occupational therapy services is determined by the special education team. This team usually consists of the regular education teacher, a special education teacher, and occupational therapist perhaps a parent or social workers, speech language clinician, physical therapist, psychologist, etc., depending on the child's needs. The team collaborates to develop the child's educational plan. The team is governed by state and federal law in terms of whether or not a child is to receive therapy. Federal law requires that special education services be provided to individuals in need from birth through 21 years.

The special education team relies on the occupational therapist's assessment and professional judgment in determining the child's level of motor function. The occupational therapist is frequently the only person with a medical back-

ground on the team. In the schools, both occupational therapists and physical therapists have training in normal and abnormal growth and development and gross and fine motor control. Occupational therapists have additional expertise in the areas of fine motor function, sensory motor/perceptual motor function, daily living skills (feeding, hygiene, dressing), and the psycho-social area. Physical therapists have additional skills in gait training, posture, cardio-respiratory problems and orthopedic needs.

Occupational therapists in mental health settings are concerned primarily with an individual's ability to perform competently in daily living tasks. People with psycho-social impairment may lack social and personal skills and experience organizational problems. Functional capacity or functional performance is limited.

Psycho-social problems treated by occupational therapy include impaired social skills, poor self care, disorganized habits and disrupted routines, deficits in task skills, and poor self image. Short and long term care services are provided to help reduce dysfunctional symptoms and strengthen deficit skills through the learning of new skills.

Occupational therapists in mental health must assess clients' level of functioning, plan and administer treatment and evaluate client programs.

Occupational therapists working in a physical rehabilitation setting assist trauma patients and patients suffering from congenital and degenerative diseases in restoration and maintenance of functional abilities. For example, occupational therapists construct hand splints and orthoses to protect joints and increase function with diagnoses such as arthritis, severe burns and hand trauma. Occupational therapists also provide treatment programs for the remediation of perceptual dysfunctions that can occur after stroke and traumatic brain injury.

Working with patients who have degenerative diseases, occupational therapists evaluate and suggest environmental adaptations that enable the patient to perform daily activities more easily and that limit the amount of physical and emotional energy required.

Occupational therapists also work in the acute care setting with premature babies. Occupational therapists screen premature babies and may make recommendations on the activities needed to help the child attain their developmental level.

All occupational therapists receive the same coursework and complete two types of internships (physical disability and psycho-social). A career choice, in terms of which area of occupational therapy a therapist will practice, is made after graduation from the four year program.

Registration and certification by the American Occupational Therapy Association requires graduation from an accredited program and passing the national examination. Continuing education was not a requirement for registration or certification.

Conclusion: The HSOAC voted unanimously that the practice of occupational therapy requires specialized skill or training.

The Council voted 7 yes, 0 no, and 1 abstention that the public needs and will benefit by assurances of initial and continuing occupational ability.

Rationale: The applicant group had presented their curriculum showing that they have a unique service that they offer something that cannot be done with a self-training manual, that the practice is well-defined and a generally-recognized ancillary service of a professional health care delivery system.

Some members thought the professional association's national standards contributed to the existence of initial and continuing occupational ability. Others thought occupational therapists needed to upgrade their services through continuing education because of advances in medicine resulting in new therapies, techniques, knowledge, etc. Applicant group members expressed concerns that therapists in Greater Minnesota may not be maintaining their skills through continuing education.

CRITERION 3: OTHER MEANS OF PROTECTION

Minnesota Statutes Section 214.001, subdivision 2, requires that the HSOAC consider "whether the citizens of this state are or may be effectively protected by other means."

Findings: Thirty-eight states and territories regulate occupational therapists. Thirty-five states license occupational therapists, one has a registration law, and two have trademark laws. Trademarks laws protect only the title and the registration law protected the title and had accompanying rules and standards.

The national professional association offers entry level competency tests for occupational therapists and occupational therapy assistants. Occupational therapists who pass the test are known as registered occupational therapists (OTR's) and occupational therapy assistants who pass are referred to as certified occupational therapy assistants (COTA's). The exams are designed to test occupational therapy knowledge and clinical base. Information on eligibility requirements to take the exam, as well as information pertaining to test composition and construction was provided by the applicant group. Therapists who pass the exam are considered, by the applicant group, to be competent entry level practitioners.

Medically indicated occupational therapy services are prescribed by a physician. Educationally indicated occupational therapy services are provided after the special education team recommends therapy. Theoretically, the physician supervises occupational therapists in hospitals and nursing homes. Occupational therapists in the schools may be supervised by the special education teacher and principals.

The public schools do not license occupational therapists as they do other school personnel. The Department of Education has developed guidelines for the provision of occupational therapy in special education programs.

Occupational therapy which is identified in the individual education plan (IEP) as "direct service" requires that therapy be provided by a registered occupational therapist or a certified occupational therapy assistant. The Department of Education used to require a copy of current AOTA registration from the occupational therapist. AOTA used to require annual recertification. In July of 1986, AOTA dropped its mandatory annual recertification. As a result, there is no listing of who is currently AOTA certified in Minnesota and no requirement that an occupational therapist prove annual recertification.

The Medical Assistance Program has standards for occupational therapists and will pay for occupational therapy services if it is medically related and individually prescribed. Often occupational therapy types of services are billed as a part of "staff costs", and the state reimburses for services under this umbrella heading. Many types of staffing costs could be incorporated under the umbrella heading "staff costs".

The possibility of having occupational therapists file with the Board of Unlicensed Mental Health Practitioners (BUMP) was raised by Council members. The possibility was raised because occupational therapists provide treatment in the area of psycho-social dysfunction, which may be perceived as mental health services. Staff noted that a decision to include occupational therapists in the filing requirements would be made by BUMP, and counsel from the Attorney General staff.

Occupational therapists who are eligible to take the AOTA registration examination are considered qualified as occupational therapists under federal regulations. These individuals may never take the registration exam and would remain eligible for reimbursement of occupational therapy services (furnished by occupational therapists in independent practice as providers from Medicare Part B) without additional credentials. (Information provided by Marlene Deschler to HSOAC).

The 1988 Legislature enacted special legislation permitting reimbursement of occupational therapy services by a foreign-trained therapist who had not met reimbursement criteria (passing AOTA national registration examination). The sunset repealer to this special legislation was removed prior to enactment. Removal of the repealer has the effect of allowing other foreign trained therapists who have not met the national AOTA standards to practice in Minnesota. The applicant group did not know how many therapists this might include because there was a provision in the legislation requiring ten years of occupational therapy practice in the United States.

According to the applicant group, it is customary to have a physician refer a patient for occupational therapy evaluation and treatment. Treatment is typically not supervised or monitored other than through physician re-evaluation of the patient or chart review. Many occupational therapists do not work under the supervision of another occupational therapist or another health professional.

Conclusion: The HSOAC defeated the motion that Minnesotans are effectively protected by other means for the practice of the occupation of occupational therapy personnel. The vote was 0 yes, 5 no, and 3 abstentions.

The HSOAC defeated the motion that Minnesotans may be protected more effectively and efficiently by other means. The vote was 3 yes, 4 no, 1 abstention.

Rationale: The applicant group was applying for a regulatory modality. In the absence of a regulatory modality the occupational therapists are practicing a sophisticated health care delivery function without being obligated to meet certain standards. Some Council members perceived that the current modalities of protection, essentially nothing, were not enough.

Other members thought there were some factors in schools, clinics and hospitals which offered means of protection to the public such as the presence of other members of the education or health care team. The national certification examination was also viewed as a means of protection.

Some members remained concerned about lack of supervision and practitioner requirements in home health care settings. Medicare and Medicaid do have some criteria for occupational therapists who practice and are reimbursed by the State. Home health care agencies who are voluntarily Medicare certified are responsible for care delivered on behalf of the agency. However, not all agencies are certified. Council members were reminded that there are cases of medicaid fraud in occupational therapy services that aren't being effectively dealt with. Medicaid fraud by physical therapists is more effectively dealt with because physical therapists have a regulatory mechanism, registration.

Members remained concerned about the lack of protection in home health care settings and the confusion surrounding the Department of Education's standards for occupational therapists in the schools, and the school systems' apparent failure to check credentials when hiring.

One member thought that occupational therapy personnel are trained to acceptable standards and that standards are being adhered to. What appeared to be lacking was the public's ability to obtain recourse. Recourse could be available if home health agencies had to answer to an entity for poor, or inappropriate delivery of services by an occupational therapist in those agencies employment.

CRITERION 4: COST EFFECTIVENESS OF REGULATING

Minnesota Statutes Section 214.001, subdivision 2, requires that the HSOAC consider "whether the overall cost effectiveness and economic impact would be positive for the citizens of the state."

Findings: The applicant group does not expect regulation to have a measurable impact on the existing supply of practitioners or cost of services. The proposed regulatory mode, registration, does not raise entry level requirements which are identical to the minimum requirements recognized by the AOTA

for 50 years. Most currently practicing occupational therapy personnel meet those requirements.

Registration, the applicant group contends, will be an effective mode to be used in decreasing costs to consumers by discouraging harmful, inappropriate or unnecessary treatment. Individuals without the necessary training and qualifications would no longer be able to present themselves to the public as occupational therapy personnel.

Recent changes in Medicare law may affect direct reimbursement for occupational therapy services because occupational therapists can obtain provider numbers and may have direct reimbursement for services. This will allow for direct reimbursement of independent practitioners, including home care of Medicare practitioners.

Occupational therapy is recognized as a medically necessary reimbursable service by the following programs:

- Medicare (Title XVIII, Social Security Act)
- Medicaid (Title XIX Social Security Act)
- Public school education for the handicapped (P.L.94-142, The Education of All Handicapped Children Law)
- Maternal and Child Health (Title V SAA)
- Vocational Rehabilitation Services (Vocational Rehabilitation Act)
- Blue Cross

According to the applicant group, studies have been conducted which demonstrate the benefits (cost effectiveness and educational, retraining, etc.) of good occupational therapy services.

Conclusion: The HSOAC defeated a motion that the overall cost effectiveness and economic impact of any regulation would be positive for Minnesotans. The vote was 1 yes, 2 no, and 4 abstentions.

Rationale: The applicant group is well-defined and identified and is currently fairly well reimbursed for services. Additional regulation would not likely alter the current reimbursement structure.

One member stated that any time a state sanctions an occupation there will be an impact on cost by increasing costs. Another member thought that there would be no negative economic impact on practitioners. Regulation would not appear to adversely affect current occupational therapy personnel or minorities or establish additional entry barriers into the occupation.

MODE OF REGULATION

Conclusion: The Council defeated a motion to regulate the heretofore unregulated practice of occupational therapy personnel by implementing a registration system to restrict the use of the occupational title, to create an official roster and establish qualifications. The vote was 3 yes, 3 no, 2 abstentions.

Rationale: The issue was not concern over the necessary requirements to practice occupational therapy. The therapists currently practicing were well trained. The issue appeared to be one of availability of redress for poor or fraudulent services from practitioners. But because Occupational Therapists are doing good and competent work, the aegis of credibility afforded by registration will not be forthcoming.

Several Council members thought schools and home health care agencies could ask for proof that occupational therapy personnel had passed the appropriate national certification examination. Standards for this examination have been established and there is a way to prove that the therapist has met those standards.

One member was uncertain that registration would address the ethics of not practicing within a defined scope of practice. If the issue was one of practice and the inappropriate delivery of services requiring sanctions, then perhaps licensure was the appropriate regulatory mode. Another member stated that the number of persons harmed and needing redress was not great, and that evidence was not presented which warranted licensure.

RECOMMENDATIONS

The Council voted to not regulate the occupation by means of registration on a divided vote and made no specific recommendations with respect to the regulation of occupational therapy personnel at the occupational therapist or occupational therapy assistant levels by any other means.

November 18, 1988

Health Occupations Program
Staff Recommendations on the Regulation of
Occupational Therapists and Occupational Therapy Assistants

The Minnesota Occupational Therapy Association (MOTA) is requesting the regulation of registered occupational therapists (OTR) and certified occupational therapy assistants (COTA). The terms "registered" and "certified" refer to private association credentialing, not "registration" as it is defined in Minn. Stat. Sec. 214. MOTA is seeking regulation in the form of registration, as defined in Minn. Stat. Sec. 214, for both levels of therapists.

Occupational therapists represent one discipline on the medical or educational team. Other members of the team, such as physical therapists, social workers, nurses, psychologists and physicians work with occupational therapists to promote complete or optimal rehabilitation of patients who are medically or educationally handicapped. As a team member, the occupational therapist provides information regarding the patient's physical and psychological adaptation in the performance of daily living skills and functional activities.

According to information contained in the application, occupational therapy treatment refers to the use of specific activities or methods to develop, improve, and/or restore the performance of necessary functions; compensate for dysfunction; and/or minimize debilitation; and the planning for and documenting of treatment performance.

Occupational therapists and occupational therapy assistants are employed by hospitals, nursing homes, public schools and home health care agencies. In Minnesota, there are approximately 1,498 registered occupational therapists and 1,242 certified occupational therapy assistants. The Minnesota Occupational Therapy Association has approximately 975 members.

Occupational therapists work with individuals in three major disability areas: psycho-social dysfunctions, physical dysfunctions, and congenital dysfunctions. In the schools, occupational therapists work with infants, children and youth to overcome, minimize or eliminate physical and mental handicaps which interfere with learning. In hospitals and nursing homes, occupational therapists work with individuals of all ages to maximize independent living skills, including self-care, which are physical and psychological in nature. The independent living skills are maximized to a level appropriate to age, life space (cultural background, value orientation, physical and social environment) and disability.

The Health Occupations Program staff have reviewed the request for regulation using the four review criteria in Minnesota Statutes Section 214.01 et. seq.. The review criteria, findings, recommendations, and rationale form the basis of this report. The staff recommendations comply with the legislative

directive that regulation shall not be imposed upon occupations unless necessary to protect the health, welfare and safety of Minnesotans.

CRITERION 1: RECOGNIZABLE PUBLIC HARM

Minnesota Statutes Section 214.001, subdivision 2, requires that staff consider "whether the unregulated practice of an occupation may harm or endanger the health, safety or welfare of citizens of the state and whether the potential for harm is recognizable and not remote."

Findings: Currently, the American Occupational Therapy Certification Board (AOTCB) has a credentialing process with established entry level criteria for occupational therapy personnel that choose to meet those requirements. The requirements are established by the American Occupational Therapy Association (AOTA).

Occupational therapists who have not passed the private professional credentialing examinations offered by the AOTCB may practice, and in fact do practice in Minnesota. The applicant group has expressed concerns about individuals who have not had the required education and training to take the certification exam, and are practicing occupational therapy. The applicant group is concerned about the adequate preparation of foreign trained therapists and the quality of occupational therapy services delivered by non-certified practitioners. Non-certified therapists are employed, particularly in the long-term care area.

Other examples of public harm included cases of medicaid fraud and over-utilization of treatment. According to a 1986 Medicaid Strike Force Report by the Minnesota Attorney General's Office, "nursing homes are earning unreasonable profits from physical therapy and other ancillary services", of which occupational therapy is one such service. Ancillary services are paid for in addition to the daily rate paid for each day's care of a person with medicaid coverage. Most nursing homes contract out for ancillary services, typically with a rehabilitation agency or clinic, and for many nursing homes the process of contracting out has become very profitable. According to that Report, many therapists have told state investigators they were pressured to meet quotas and encouraged to treat nursing home residents regardless of their medical need. The applicant group noted that the physical therapy advisory council has had some success in disciplining physical therapists who have financially abused the medical assistance program. Disciplinary measures against practitioners are possible, the applicant group contends, because physical therapists are regulated by the state.

The applicant group reported one instance of physical abuse of a client in a state hospital and noted that the therapist is now employed in long-term care. In Greater Minnesota, there have been cases of facilities misusing the title of occupational therapy. Services that are occupational therapy in nature are being delivered by persons who are not trained as occupational therapists, but are representing themselves and the program as such.

The Minnesota Occupational Therapy Association (MOTA) does receive complaints about its members. The Association reviews and investigates when appropriate

and when possible. According to a representative of MOTA, MOTA is unable to investigate facility complaints because the facilities will not allow the professional association to investigate complaints that involve the facility. The AOTA is now writing rules to suspend member registration if a member has action taken against his or her license or certification in a regulated state. Presently, MOTA's role in handling complaints is basically limited to being a repository of that information.

The applicant group noted instances in which lack of state regulation has contributed to the omission of occupational therapy services when insurance or health benefits laws are changed. For example, under the Minnesota Comprehensive Health Association insurance, occupational therapy services were omitted because occupational therapists were not regulated by the state. The lack of a state definition of a "qualified" occupational therapist has contributed to problems of identifying who is considered a qualified practitioner for purposes of delivering services.

There have been recent changes in federal medicare rules and Joint Commission on the Accreditation of Hospital guidelines with respect to occupational therapists and other allied health care personnel. Requirements for occupational therapists are now left to facilities to determine. The applicant group's professional association is concerned about how economic situations might impact the hiring decisions. In the absence of regulation, an employer may decide to hire a less qualified person (for example a COTA) at lower wages, rather than an OTR, to perform occupational therapy services.

Additionally, physical harm can be incurred by a patient who is recovering from an injury or trauma and receives services from untrained or inadequately trained therapists applying inappropriate treatments. The Council and staff were shown a slide presentation about occupational therapy treatments for burn patients. The presentation stressed the need for specialized skills in this therapy area. The slides and presentation highlighted actual and potential harm to the burn patients, resulting from inadequately trained therapists or therapists who had mismanaged patient care.

The applicant group also has concerns about chemically dependent occupational therapists. Currently there is no effective way to deal with therapists who practice while under the influence of drugs.

In educational occupational therapy, the main goal is learning. An unqualified or inappropriately trained therapist will give inappropriate treatment that may hinder learning. Three examples of inappropriate treatment were provided. While writing this staff report, staff learned of a fourth example of public harm involving an occupational therapist working in a school.

The first example involved a person representing herself as an occupational therapist. The person had not passed the OTR exam. The person was hired to work with non-verbal students who were severely physically handicapped. The teachers in the building observed that the therapist had "no understanding of high muscle tone". High muscle tone is associated with cerebral palsied individuals who have a great deal of spasticity. The therapist tended to pry

open the arms and fingers of these children. The students were unable to communicate the pain they were likely feeling.

The second example of harm involved another individual who had not passed the OTR exam. The individual was hired to work with pre-school children. The individual used inappropriate programming and as a result the children were frustrated. The pre-school teachers reported the children were exhibiting behavior problems after occupational therapy. The harm in this situation was that the children lost valuable learning time, time which was critical for their age and reaching developmental milestones.

The third incident of harm involved a certified occupational therapy assistant who misrepresented herself as an occupational therapist. The COTA developed inappropriate programs, and evaluated and assessed children, which are not COTA functions. The programs, according to the applicant group, were poor and the children were not given optimal services. The applicant group noted this is an example where an employer may require a COTA to perform functions beyond the scope of the COTA's training, therefore, placing the client at risk for inappropriately delivered services.

The fourth incident of harm involved an occupational therapist practicing in a Southern Minnesota school district. The occupational therapist bit a six year old child with mental and physical disabilities who had no verbal means of communication. The bite was discovered by the child's mother and reported to the school principal. The biting incident was witnessed by two school aids, and the occupational therapist admitted she bit the child. The parent was stunned and upset to learn that she had no available means of recourse, other than through the school district. Human Services said the situation was not within their jurisdiction, law enforcement could not prosecute for assault because the situation was "one of bad judgment on the therapist's part", and legal council advised that a civil suit would require proof of psychological damages. Because the child has no communication skills, there would be no way to assess psychological damage. Although the school district had jurisdiction over the occupational therapist, no assurances could be made that any training or inservice would occur to address the issue of this kind of harm, or prevent it form occurring again.

One example of potential harm was provided regarding delivery of occupational therapy services in the mental health area. The example involved a crisis intervention center for elderly persons in which the client would likely come from a home setting in to a hospital demonstrating areas of deficit. At the hospital, an evaluation would be done to determine what placement or program would be appropriate to meet the client's needs. The occupational therapist plays a major role in the evaluation. Inaccurate or poor information could impact a person's discharge.

Three additional cases of harm to clients were submitted to staff from the AOTA. All three incidents involved occupational therapists from other states. The first incident involved an individual employed as an occupational therapist at an Ohio hospital. The occupational therapist was responsible for delivery of services to a burn patient who was transferred to the hospital at which the occupational therapist worked. The hospital which

transferred the burn patient sent a complete description of the program the patient had been on, including exercises and splinting. According to the complaint, the occupational therapist discontinued the splints, and the exercises, advising the patient "to let nature take its course". As a result of the discontinuation of these services, the patient suffered permanent physical damage which left him totally dependent on others. The complainant, a physician, alleged that the burn patient would have remained completely independent with no significant debilitation, if the original occupational therapy program would have been administered. No mention was made of any disciplinary action taken against the occupational therapist. The patient was admitted to the first hospital on August 9, 1975.

The second incident involved a licensed occupational therapist in Texas. The occupational therapist, while working under contract to a facility, failed to deliver to the facility evaluations for which she billed at the rate of $110 each and for which she was paid a total sum of $1,210. Further, the occupational therapist failed to keep copies of the evaluations, failed to write a discharge summary, falsified dates in her progress notes, and billed for services on dates on which she was not present at the facility. The Texas Board of Occupational Therapy issued the occupational therapist a reprimand, placing it in her official file for a year. If, after a year, no further complaints are issued against the therapist, and there is no evidence that the therapist is non-compliant with the Board's rules and regulations, the reprimand will be removed from the official file and destroyed.

The third incident involved an occupational therapist at a hospital in Maine. The complaint stated that on August 21, 1979, a patient at the hospital, who was undergoing occupational therapy treatment for a cardiovascular accident, was allowed by the occupational therapist to play ping-pong and stand alone while playing. The patient did not have sufficient stability to stand alone, and the area around the ping-pong table was not cleared (chairs, etc.). As a consequence, the patient fell, injuring his left hip and knee. The patient subsequently charged the occupational therapist and hospital with negligence. The charge noted that the occupational therapist was negligent in allowing the patient to play ping-pong, and the hospital was negligent in the selection, supervision and control of employees in the occupational therapy department. The patient incurred hospital and medical expenses, and lost employment. The final disposition of the negligence suit was not provided.

Conclusion: Staff concludes the potential for harm is recognizable, but that it may not be recognizable immediately, and that harm may be physical, financial, intellectual and emotional in nature. Harm is not proximate, although it may be serious in terms of lost productivity, and unrealized rehabilitative progress.

Rationale: Staff finds that there is potential for harm to the patients of occupational therapy services if the services are delivered poorly or improperly. The harm is not generally immediate in nature, but is evidenced over a period of time. The difficulty in assessing the degree of harm is related to the fact that services may not be delivered in a manner that would promote the maximum outcome, and one could not necessarily declare, with certainty, that the services were improperly or poorly delivered. Efficiency

and efficacy studies, mentioned under criterion four, demonstrate that properly delivered occupational therapy services are beneficial and cost effective. Therefore, if a service is poorly delivered it could be concluded that the patient has suffered some degree of harm because the service was not maximally beneficial.

There were examples of actual harm, and a few of these examples, particularly those involving occupational therapists in the schools, seemed to occur as a result of lack of training and skills. Other examples were more directly related to the occupational therapist's moral or judgment deficiencies (billing fraud, practicing beyond the scope of training).

Occupational therapists exercise an observable degree of independent judgment when formulating a plan for care, and delivering services and treatments. In addition, the clientele which occupational therapists work with are vulnerable. Clientele are physically and/or mentally handicapped infants, adults, and seniors. Many of these patients are in community-based settings as a result of deinstitutionalization. Others are in their homes earlier than in previous years due to early discharges and shorter hospitalizations.

CRITERION 2: SPECIALIZED SKILLS

Minnesota Statutes Section 214.001, subdivision 2, requires that staff consider "whether the practice of an occupation requires specialized skills or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability."

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Occupational therapists are trained to respond to and initiate patient referrals, conduct occupational therapy assessments, conduct program planning for clients, administer occupational therapy treatments, recognize when termination of occupational therapy services should occur, and provide ongoing service management to clients.

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The promotion of independent and daily living skills are a large focus of occupational therapy. Proper training to conduct evaluation of clients is critical to the provision of appropriate occupational therapy services.

There are two models of occupational therapy - medical and educational. The provision of occupational therapy services under the medical model requires a physician referral. Educationally-related occupational therapy services may only be provided when there is a handicap which interferes with learning. Referral for educational occupational therapy services is determined by the special education team. This team usually consists of the regular education teacher, a special education teacher, an occupational therapist, and perhaps a parent, social worker, speech-language clinician, physical therapist, psychologist, etc., depending on the child's needs. The team collaborates to develop the child's educational plan. The team is governed by state and federal law in terms of whether or not a child is to receive therapy. State law requires that special education services be provided to individuals in need from birth through 21 years.

The special education team relies on the occupational therapist's assessment and professional judgment in determining the child's level of motor function. The occupational therapist is frequently the only person with a medical background on the team. In the schools, both occupational therapists and physical therapists have training in normal and abnormal growth and development and gross and fine motor control. Occupational therapists have additional expertise in the areas of fine motor function, daily living skills (feeding, hygiene, dressing), and the psycho-social area. Physical therapists have additional skills in gait training, posture, cardio-respiratory problems and orthopedic needs.

Occupational therapists in mental health settings are concerned primarily with an individual's ability to perform competently in daily living tasks. People with psycho-social impairment may lack social and personal skills and experience organizational problems. Functional capacity or functional performance is limited.

Psycho-social problems treated by occupational therapists include impaired social skills, poor self care, disorganized habits and disrupted routines, deficits in task skills, and poor self image. Short and long term care services are provided to help reduce dysfunctional symptoms and strengthen deficit skills through the learning of new skills.

Occupational therapists in mental health must assess clients' level of functioning, plan and administer treatment and evaluate client programs.

Occupational therapists working in a physical rehabilitation setting assist trauma patients suffering from congenital and degenerative diseases in restoration and maintenance of functional abilities. For example, occupational therapists construct hand splints and orthoses to protect joints and increase function with diagnoses such as arthritis, severe burns and hand trauma. Occupational therapists also provide treatment programs for the remediation of perceptual dysfunctions that can occur after stroke and traumatic brain injury.

Working with patients who have degenerative diseases, occupational therapists evaluate and suggest environmental adaptations that enable the patient to perform daily activities more easily and that limit the amount of physical and emotional energy required.

Occupational therapists also work in the acute care setting with premature babies. Occupational therapists screen premature babies and may make recommendations on the activities needed to help the child attain their developmental level.

All occupational therapists receive the same coursework and complete two types of internships (physical disability and psycho-social). A career choice, in terms of which area of occupational therapy a therapist will practice, is made after graduation from the four year program. Additional training beyond the four year baccalaureate program is available and includes such areas as neurodevelopmental (the Bobath Technique, which is eight weeks of full time theory and hands on training in delivering occupational therapy services to infants), sensory integration (in dealing with facilitation/inhibition techniques) and burn therapy (masking).

Registration and certification by the American Occupational Therapy Association requires graduation from an accredited program and passing the national examination. Continuing education was not a requirement for registration or certification.

Conclusion: Staff finds that the practice of occupational therapy requires specialized skill or training, particularly at the OTR level, because that level is responsible for the evaluation, assessment and program planning of the client. In addition, the OTR supervises the COTA.

Further, staff finds that the delivery of occupational therapy services to educationally handicapped students is growing, requiring new and specialized skills. There is a basis for demonstrating initial and continuing competency in both the medical and educational models of OT service delivery.

Rationale: The functions performed by occupational therapists require a detailed knowledge and understanding of how the function will improve or ameliorate the condition being treated. This is true especially in the medical setting. For example, the therapy could be permanently damaging if not properly administered to burn patients, accident victims, patients recovering from strokes (i.e. incorrect positioning of splints, burn masks, contraindicated exercise program, etc.). While the absence of specialized skills may not produce immediate and irreparable harm, treatments which have little or no value will, over time, deprive the patient/client of an opportunity to improve his or her medical or educational rehabilitation effort. For some patients/clients, the time lost may mean that "the window of opportunity" for improvement no longer exists.

New techniques are emerging, and it is important that occupational therapists remain current in their field.

CRITERION 3: OTHER MEANS OF PROTECTION

Minnesota Statutes Section 214.001, subdivision 2, requires that staff consider "whether the citizens of this state are or may be effectively protected by other means."

Findings: Thirty-eight states and territories regulate occupational therapists. Thirty-five states license occupational therapists, one has a registration law, and two have trademark laws. Trademark laws protect only the title, and the registration law protects the title and has accompanying rules and standards.

The national professional association offers entry level competency tests for occupational therapists and occupational therapy assistants. Occupational therapists who pass the test are known as registered occupational therapists (OTR's) and occupational therapy assistants who pass are referred to as certified occupational therapy assistants (COTA's). The exams are designed to test occupational therapy knowledge and clinic base. Information on eligibility requirements to take the exam, as well as information pertaining to test composition and construction was provided by the applicant group. Therapists who pass the exam are considered, by the applicant group, to be competent entry level practitioners.

Medically indicated occupational therapy services are prescribed by a physician. Educationally indicated occupational therapy services are provided after the special education team recommends therapy. Theoretically, the physician supervises occupational therapists in hospitals and nursing homes. According to a member of the applicant group, occupational therapists in the schools are often part of teams comprised of special education service providers and may work on an itinerant basis in a number of schools. Under this situation, supervision, if any, is very remote.

The public schools do not license occupational therapists as they do other school personnel. In fact, occupational therapy is the only specialist position in education which is not licensed by the Board of Teaching. The Department of Education has recently developed guidelines for the provision of occupational therapy in special education programs. At this time the guidelines are simply guidance for school districts and do not have to be adhered to. Under the guidelines, occupational therapy which is identified in the individual education plan (IEP) as "direct service" requires that the therapy be provided by a registered occupational therapist or a certified occupational therapist. The Department of Education used to require a copy of current AOTA registration from the occupational therapist and the AOTA used to require annual recertification. In July of 1986, the AOTA dropped its mandatory annual recertification. As a result, there is no listing of who is currently AOTA certified in Minnesota and no requirement that an occupational therapist prove annual recertification.

School occupational therapists are concerned about the occupational therapists who are re-entering the workforce for employment in educational settings, after a several year furlough. The main concern is about the "datedness" of skills these occupational therapists possess. Schools are now

mandated to service children to adults with special needs from birth thru 21 years. The clientele being serviced has changed over the past 10 -20 years. There is a greater need for skills to handle medically fragile children.

According to a representative of school occupational therapists, the Department of Education will likely consider some form of licensure for occupational therapists. The committee looking into the regulation of occupational therapists (on behalf of the Department of Education) has been aware of the Health Department's review process, and has opted to consider the findings of the review in terms of recommended regulation of occupational therapists. The representative felt it is not appropriate for the Department of Education to regulate occupational therapists, and that the entire occupation should be regulated at some minimum level. This representative also noted that it would be desirable to require occupational therapists in the schools to have had some coursework in education that is required of special education teachers, but not to the extent it is required of special education teachers (for example, 4 credit courses vs. 12).

The Medical Assistance Program has standards for occupational therapists and will pay for occupational therapy services if it is medically related and individually prescribed. Often, occupational therapy types of services are billed as a part of "staff costs", and the state reimburses for services under this umbrella heading. Many types of staffing costs can be incorporated under the umbrella heading "staff costs".

The possibility of having occupational therapists file with the Board of Unlicensed Mental Health Practitioners was raised by Council members. The possibility was raised because occupational therapists provide treatment in the area of psycho-social dysfunction, which may be perceived as mental health services. Staff noted that any decision to include occupational therapists in the filing requirements would be made by that Board, with advice and counsel from the Attorney General staff.

Occupational therapists who are eligible to take the AOTA registration examination are considered qualified as occupational therapists under federal regulations. These individuals may never take the registration exam and would remain eligible for reimbursement of occupational therapy services (furnished by occupational therapists in independent practice as providers from Medicare Part B) without additional credentials. (Information provided by Marlene Deschler to staff and HSOAC).

The 1988 Minnesota Legislature enacted special legislation permitting reimbursement of occupational therapy services provided by a foreign-trained therapist who had not met reimbursement criteria (passing AOTA national registration examination). The sunset repealer to this special legislation was removed prior to enactment. Removal of the repealer has the effect of allowing other foreign-trained therapists who have not met the AOTA standards to practice in Minnesota. The applicant group did not know how many therapists this might include because there was a provision in the legislation requiring ten years of occupational therapy practice in the United States.

Supervision of occupational therapists is not direct supervision. According to the applicant group, it is customary to have a physician refer a patient for occupational therapy evaluation and treatment. Treatment is typically not supervised or monitored other than through physician re-evaluation of the patient or chart review. Many occupational therapists do not work under the supervision of another occupational therapist or another health professional. Theoretically, COTA's are supposed to work under the supervision and direction of an OTR. It is not clear that this is occurring in those facilities which hire both OTR's and COTA's.

Conclusion: For the most part, Minnesotans may only be effectively protected by existing means of regulation of occupational therapy practice in hospitals. However, there are practice locations such as in some nursing homes, school districts, and in private homes, where the occupational therapist has minimal or no direct supervision. In addition, mechanisms for ensuring competence and sanctioning unprofessional practice are lacking or deficient.

Rationale: Those individuals who have taken and passed the AOTA exam have demonstrated entry level competency. Facilities which choose to hire OTR's and COTA's, and verify those credentials (such as checking references, requesting that the OT show proof of passing the AOTA exam), may be reasonably assured that the therapist possesses entry level competence. However, continuing competence and requirements for continuing education do not exist. As noted in the discussion of public harm, MOTA is unable to investigate complaints. In the case of the physical abuse of a child with multiple disabilities by an occupational therapist, the parents could not obtain redress against the occupational therapist from the human services, education or legal systems.

Issue: There are, however, some hiring areas in which it is not clear that employers adequately check credentials, such as the schools and home health settings. Currently, in both of those settings, there are no minimum hiring standards established. Additionally, both the home health care rule writers and staff member of the Department of Education have expressed an interest in the outcome of the Chapter 214 review process with respect to any regulatory recommendations. Home health care rules will need to incorporate some training and education standards for occupational therapists in the home care settings. It is likely the schools may also set some standards, at some future date, for occupational therapists in the schools. The potential exists for adoption of conflicting or inconsistent standards by different regulating entities (Health and Education) in state government. This potential difficulty could be avoided by adoption of a single set of credentialing standards.

CRITERION 4: COST EFFECTIVENESS OF REGULATING

Minnesota Statutes Section 214.001, subdivision 2, requires that the staff consider "whether the overall cost effectiveness and economic impact would be positive for the citizens of the state."

Findings: The applicant group does not expect regulation to have a measurable impact on the existing supply of practitioners or costs of services. The proposed regulatory mode, registration, does not raise entry level requirements which are identical to the minimum requirements recognized by the AOTA for fifty years. Most currently practicing occupational therapy personnel meet those requirements. Registration, as defined in Minnesota statute, is a voluntary mode of regulation, whereby practitioners who have met certain predetermined qualifications, who opt to register themselves, may use a designated title which is protected by law.

Registration, the applicant group contends, will be an effective mode to be used in decreasing costs to consumers by discouraging harmful, inappropriate or unnecessary treatment. Individuals without the necessary training and qualifications would no longer be able to present themselves to the public as occupational therapy personnel.

Occupational therapy is already recognized as a medically necessary reimbursable service by the following programs:

- Medicare (Title XVIII, Social Security Act)
- Medicaid (Title XIX Social Security Act)
- Public school education for the handicapped (P.L.94-142, The Education of All Handicapped Children Law)
- Maternal and Child Health (Title V SAA)
- Vocational and Rehabilitation Services (Vocational Rehabilitation Act)
- Blue Cross

According to the applicant group, studies have been conducted which demonstrate the benefits (cost effectiveness and educational, retraining, etc.) of good occupational therapy services. Synopses of these studies were submitted to staff upon request. According to the synopses, occupational therapy has demonstrated efficacy and effectiveness in a variety of treatment settings. Efficacy refers to what can be achieved, and is demonstrated by research. Effectiveness refers to what is actually being achieved in a given clinical setting, and is demonstrated by program evaluation and quality assurance.

Some examples in which OT has demonstrated at least some degree of efficacy include: occupational therapy adds significantly to the benefits of anti-psychotic drugs in the care of chronic schizophrenics - day treatment was a cost-effective adjunct to drug therapy; occupational therapy was found to be among significant predictor of long-term outcomes in spinal cord injury - the occupational therapist met clients needs in eliminating and reducing barriers (transportation, living arrangements, etc.) which caused restrictive environments and diminished independence and productivity; rehabilitation, including occupational therapy, improves function and may reduce costs in multiple sclerosis care; elderly treated in a special hospital unit which included occupational therapy services in the care, had more community placements and fewer readmissions; occupational therapy activities with mental health patients has demonstrated better outcome with activity therapy than with verbal therapy; occupational therapy is associated with greater return to independent living of stroke patients; use of splints and pressure

garments is related to decreased incidence of contractures and surgery in burn patients; and occupational therapy treatments for sensory integration is associated with higher motor, academic and language achievement; patients with learning disabilities, mental retardation, aphasia, all benefit from sensory integration. These examples suggest rather direct productivity benefits by individuals receiving occupational therapy services from competently trained occupational therapists.

Conclusion: Staff concludes that the overall cost-effectiveness of regulating occupational therapists and occupational therapy assistants, via a registration mechanism, would be positive for Minnesotans. There is evidence that occupational therapy is a cost effective service when rendered by appropriately trained individuals. The ability of employers and consumers to recognize and choose a state registered occupational therapist would be

beneficial to Minnesotans by ensuring the practitioner had obtained a minimum level of training and education.

Rationale: The supply of practitioners would not be appreciably impacted since most occupational therapists already meet the proposed training and education requirements. Persons wishing to practice occupational therapy services could still do so, but would be precluded from using protected titles unless registered.

There are currently third party payors, both public and private, which reimburse for authorized occupational therapy services. Additional costs for reimbursement of services would not be expected to increase appreciably.

Studies exist which support the cost-effectiveness of OT services which are properly administered. Regulation would provide the public with additional benefits. The public would have a mechanism available to seek redress for injury, and the occupation would have a means to discipline practitioners who exhibit unprofessional conduct.

RECOMMENDATION

Staff conclude that it is necessary to regulate the occupations of occupational therapist and occupational therapy assistant, by implementing a registration system to restrict use of occupational titles, create an official roster and establish qualifications for voluntary registration of individuals practicing these occupations.

Even though there is a very high level of professionalism among OT's (education and training and supervision in medical settings), there is evidence that inappropriate treatment delivered by untrained or incompetent therapists does cause physical harm to patients; that public harm has occurred because of fraudulent billing, and evidence of some instances of poor or inappropriate hiring decisions perhaps because of lack of legally recognized credentials.

The applicant group has demonstrated that specialized skills and training are necessary to practice occupational therapy, that continuing education and

specialized training is probably beneficial since many aspects of the occupation are developing (medically - more seriously debilitated individuals are surviving premature births, strokes, accidents. Educationally - increasing numbers of medically fragile children are being educated in the public schools).

Home health care licensure and Department of Education staff will be developing standards for occupational therapists employed to work in those settings. Individuals associated with the development of standards in both of those settings have expressed an interest in modeling standards on anything the Department of Health recommends. Staff and the applicant group believe there is justification for establishing a common, minimum set of training requirements for all occupational therapists. If the Minnesota Department of Health does not recommend additional regulation, in the form of registration, it is possible that the Department might contribute to consumer confusion over differing definitions of a minimally qualified occupational therapist or occupational therapy assistant. Department staff believe that equivalent minimum training and education standards should exist for occupational therapists and occupational therapy assistants in medical, school and home-based service delivery settings.

Occupational therapy appears to be cost-effective when competently administered. Regulation in the form of registration would not reduce the public's access to therapists, nor increase costs of services appreciably. Registration would give the public some means of identifying those therapists who have met established criteria for the safe and competent practice of occupational therapy. Members of the occupation would also have some means of disciplining registered individuals who defraud clients, or practice incompetently or unprofessionally.

CONCEPT PAPER

ON

DELEGATION

Concept Paper on Delegation

Purpose

The purpose of the National Council formulating this concept paper is to provide to Member Boards a conceptual basis for delegation from a regulatory perspective. It is the position of the National Council that licensed nurses, in accordance with board of nursing requirements, determine the appropriateness of delegating acts from their scopes of practice. Each person involved in the delegation process is accountable for his/her own actions in this process. There is potential liability if competent, safe care is not the outcome of the delegation.

Premises

1. Performance of non-nurse delegated and non-nurse supervised nursing activities by unlicensed persons constitutes practicing nursing without a license and is not in the interest of the health, safety, and welfare of the public.
2. Pieces of care cannot be provided in isolation by unlicensed persons functioning independently of the nurse if the health, safety, and welfare of the public is to be assured.
3. Boards of nursing need to work to assure evidence of adequate nurse involvement where nursing services are being provided and delegated.
4. Boards should promulgate clear rules for delegation in all settings where nursing care is delivered.
5. Boards need to clearly define delegation in regulation.
6. A limited supply of nurses must not be used as an excuse for inappropriate delegation to unlicensed persons.
7. Regulations regarding the delegation of nursing functions must be linked to the disciplinary process.
8. Boards need to pursue criminal prosecution when there is clear evidence that unlicensed persons are performing nursing activities not delegated by nurses.

Premises 1-8 from 1987 "Position Statement on Nursing Activities of Unlicensed Persons."

9. While tasks and procedures may be delegated, the functions of assessment, evaluation and nursing judgement should not be delegated.
10. While non-nurses may suggest which nursing acts may be delegated, it is the licensed nurse who ultimately decides the appropriateness of delegation.
11. The unlicensed person cannot redelegate a delegated act.
12. Boards of nursing must develop clear rules on determination of competence of persons to perform delegated nursing tasks or procedures, the level of supervision necessary, and which acts may be delegated.

Definitions

Delegation

Transferring to a competent individual authority to perform a selected nursing task in a selected situation.

Delegator

The person making the delegation.

Delegate

The person receiving the delegation.

Supervision

"Provision of guidance by a qualified nurse for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity. Total nursing care of an individual remains the responsibility and accountability of the nurse." 1987 "Position Statement on Activities of Unlicensed Persons."

Liability

As used in this paper, the term is limited to the regulatory accountability of a licensee to the licensing agency. Other types of liability (i.e. civil liability) are beyond the scope of this paper.

Background

In 1987, the Nursing Practice and Standards (NP&S) Committee developed a "Statement on the Nursing Activities of Unlicensed Persons." (1987 Statement) The Statement presented an overview of the following: 1) use of unlicensed persons to deliver nursing care since the early 1900s; 2) a rationale for board of nursing involvement in the oversight of activities of unlicensed persons; 3) documentation on the frequency and nature of the use of unlicensed persons; 4) operational definitions of key terms used in describing the frequency and nature of the use of unlicensed persons; and 5) conclusions for Member Board consideration in the state-by-state discussion of the frequency and nature of the use of unlicensed persons. The position statement was adopted by the August 1987 Delegate Assembly and has received wide acclaim, distribution and discussion by the nursing and health care community.

In 1989, the Nursing Practice and Education Committee identified a need for further study of this topic and developed this statement on delegation.

Regulatory Perspective - A Framework for Managerial Policies

Nursing is defined in a statutory mandate which requires an individual to have a license to practice. Two nurse roles (RN/LPN) exist and, though there is a legal relationship between the two, each is held accountable for carrying out its role. RNs may delegate professional nursing acts to LPNs and unlicensed persons. LPNs may, in some jurisdictions, delegate acts within the scope of the practice of practical nursing to unlicensed persons. The statutory mandate may also set forth requirements for supervision when nursing acts are delegated. Boards of nursing should provide guidance regarding which acts may or may not be delegated by the nurse. Direction must be provided by boards of nursing regarding supervision, including the proximity of the supervising nurse to the delegate. The nurse who delegates an act to another assumes responsibility for the supervision of the act, whether the nurse is physically present or not.

Nurses traditionally carry out the role of nurse in an employment context and act as agents of the employer. The relationship is complex and is usually carried out in a setting in which the employer controls the nature of both the work of the nurse and the circumstances of the nurse role enactment. The licensed nurse is responsible to the employer for employment activities. The licensed nurse is accountable to the board of nursing for nursing practice.

Though employers vary greatly in approaches to nursing care delivery, there are issues for the nurse that are common to all management styles. Those issues center on four common areas of concern:

1. Who determines the degree of allocation of resources, both human and fiscal?
2. Where does the focus of decision-making related to allocation of resources rest?
3. What level of supervision is required by the employer for the enacting of the role of nurse?
4. What control does the nurse have in determining the nature of the work and the setting/conditions of the work?

Employers of nurses are equally concerned about these issues, but primarily from a management context. It is understandable that there are different approaches by employers and nurses themselves related to these four major concerns and the overall issue of delegation and supervision. Numerous scenarios may develop as a result of different perspectives on delegation and supervision. The employer as the hiring agent is primarily responsible for allocation of all resources. Therefore, policies requiring working in any setting based on organizational need is something that appears reasonable in a managerial context. From a regulatory context, however, assignment to a

practice area without current competence creates concern about client safety and welfare that is even more critical. The managerial understanding is that the nurse is hired to carry out a specific role on behalf of the employer and that the employer has the authority to assign the nurse as desired. The regulatory perspective holds the nurse accountable for all nursing actions. The licensed nurse has a responsibility not to accept an assignment which the nurse is unable to perform safely. It is important to distinguish the uncomfortable situation where a nurse is expected to work in an unfamiliar setting within the nurse's usual area of practice from the unsafe situation where a nurse is expected to work in a new setting, outside the nurse's usual area of practice, without adequate orientation, education and supervision.

The regulatory perspective should serve as a framework for managerial policies related to the employment and utilization of nurses. Employers may attempt to require nurses to delegate, especially when faced with staffing problems. This is inappropriate when the nurse is not willing to delegate. While employers and administrators may suggest which nursing acts should be delegated and to whom the delegation may be made, it is the nurse who ultimately decides and who is accountable for deciding whether the delegation occurs. If the nurse decides that the delegation may not appropriately or safely take place, then the nurse should not engage in such delegation. In fact, if the nurse decides that delegation may not appropriately or safely take place, but nevertheless delegates, he/she may be disciplined by the board of nursing.

Acceptable Use of the Authority to Delegate

The decision to delegate should be based on the following:

- Determination of the task, procedure or function that is to be delegated.
- Staff available.
- Assessment of the client needs.
- Assessment of the potential delegate's competency.
- Consideration of the level of supervision available and a determination of the level and method of supervision required to assure safe performance.

Nurses should avoid delegating practice pervasive functions of assessment, evaluation and nursing judgment. Sometimes there is a differentiation made between the terms "delegation" and "assignment." Delegation involves giving to someone else a task from the delegator's practice. Assignment involves giving to someone else a task within his/her own practice. Based upon this differentiation, the RN would assign acts to other RNs who have the same scope of practice. The RN would delegate to others, e.g, LPNs and unlicensed persons, acts which are within the scope of professional nursing practice. Similarly, the LPN would assign acts within the scope of practice of practical nursing to other LPNs. However, the LPN would, if allowed under the State Nurse Practice Act, delegate practical nursing acts to unlicensed persons.

Licensure Accountability

Every nurse is accountable as an individual for practicing according to the statutory mandate in the nurse's jurisdiction of practice. The delegating nurse is accountable for assessing the situation and is responsible for the decision to delegate. Monitoring, outcome evaluation and follow-up are necessary supervisory activities that follow delegation. The delegator is accountable for the act delegated, and may incur liability if found to be negligent in the process of delegating and supervising.

The delegate is accountable for accepting the delegation and for his/her own actions in carrying out the act. If licensed, this person may incur liability if he/she deviates from safe practice through no fault of the delegating nurse.

Boards of nursing may review situations where a delegating nurse made an acceptable delegation to a competent delegate who erred in the performance of the delegated act. Clearly, the delegate is accountable for his/her actions in performing the delegated act. The delegator would be expected to provide supervisory follow-up such as intervention on behalf of the client and corrective action. The delegator would be accountable for the delegation and supervision provided.

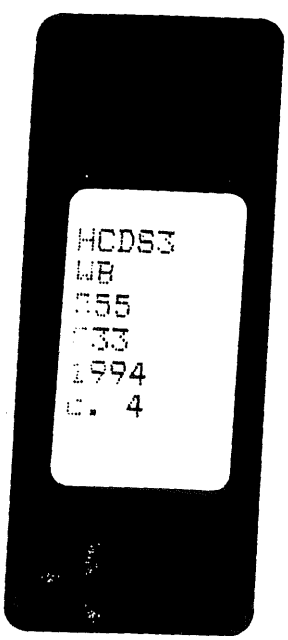
Conclusion

From a regulatory perspective, the nurse is held accountable for both acts directly carried out and acts delegated. This regulatory perspective should serve as the framework for managerial policies related to the employment and utilization of nurses. Where nurse practice acts permit, RNs and LPNs may delegate certain acts within their respective practices. They may be involved in either delegation or assignment, depending upon interpretation of the definitions of these terms. Both the delegating nurse and delegate are accountable for their own actions in the delegation process. Furthermore, the delegating nurse has a responsibility to determine that the delegate is indeed competent to perform the delegated act. Finally, the delegating nurse must provide appropriate supervision. The nurse must be the person who ultimately decides when and under what circumstances delegation is to occur. Non-nursing and managerial persons must not coerce the nurse into compromising client safety by requiring the nurse to delegate. While tasks and procedures may be delegated, the nurse should not delegate practice pervasive functions of assessment, evaluation and nursing judgement.

Occupational Therapy Roles

and

Career Exploration and Development: A Companion Guide to the Occupational Therapy Roles *Document*



Note: Copy of publication on file in Department for review. Contact Annette Spencer (612) 282-5624 for further information.

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AOTA The American Occupational Therapy Association, Inc.

Guide for Supervision
The American Occupational Therapy Association

GUIDE FOR SUPERVISION OF OCCUPATIONAL THERAPY PERSONNEL

The intent of this document is to clarify the supervisory relationships and responsibilities between registered occupational therapists (OTRs), certified occupational therapy assistants (COTAs), and other personnel involved in the provision of occupational therapy services. Supervision is a process in which two or more people participate in a joint effort to promote, establish, maintain, and/or elevate a level of performance and service. Supervision is a mutual undertaking between the supervisor and the supervisee that fosters growth and development; assures appropriate utilization of training and potential; encourages creativity and innovation; and provides guidance, support, encouragement, and respect while working toward a goal. As described here, supervision helps promote quality occupational therapy and fosters professional development of the individuals involved.

The American Occupational Therapy Association holds and maintains the principle that those persons not trained and qualified as occupational therapy practitioners[1] are not acceptable to supervise occupational therapy practice. It is recognized that occupational therapy practitioners may be administratively supervised by others, such as principals, facility administrators, or physicians. During the supervision of occupational therapy practice, it is the supervisor who is responsible for setting, encouraging, and evaluating the standard of work performed by the supervisee. The amount of supervision required varies, depending upon the occupational therapy practitioner's clinical experience, responsibilities, and level of expertise. Supervision occurs along a continuum that includes close, routine, general, and minimal.

- **Close supervision** requires daily, direct contact at the site of work.
- **Routine supervision** requires direct contact at least every 2 weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.
- **General supervision** requires at least monthly direct contact, with supervision available as needed by other methods.
- **Minimal supervision** is provided only on a need basis, and may be less than monthly. (AOTA, 1993a, p.1088)

[1]"Occupational therapy practitioners" refers to both registered occupational therapists and certified occupational therapy assistants.

The amount, degree, and pattern of supervision a practitioner requires varies depending on the employment setting, method of service provision, the practitioner's competence, and the demands of service (i.e., facility standards, state laws and regulations, diagnoses served, techniques used). The method of supervision is determined by the supervising registered occupational therapist. The method should be the one most suitable to the situation. Methods of supervision should be determined before the individual enters into a supervisor/supervisee relationship and should be reevaluated regularly for effectiveness. In all cases, it is the occupational therapy practitioner's ethical responsibility to ensure that the amount, degree, and pattern of supervision are consistent with the level of role performance. As changes in the practice situation occur, the intensity of required supervision may also change to reflect new demands.

The OTR has the ultimate responsibility for service provision. By virtue of their education and training, OTRs are able to provide services independently. Nevertheless, the American Occupational Therapy Association recommends that entry-level OTRs receive close supervision and that intermediate-level OTRs receive routine or general supervision. COTAs at all levels require at least general supervision by an OTR. The level of supervision is related to the ability of the COTA to safely and effectively provide those interventions delegated by an OTR. Typically, entry-level COTAs and COTAs new to a particular practice environment will require close supervision, intermediate-level practitioners routine supervision, and advanced-level practitioners general supervision. When occupational therapy aides are delegated selected, routine tasks in specific situations, they must work under the close supervision of an occupational therapy practitioner.

These supervision guidelines are to assist occupational therapy practitioners in the delivery of occupational therapy services. The guidelines themselves cannot be interpreted to constitute a standard of supervision in any particular locality; rather, they indicate ideal patterns and types of supervision. All practitioners are expected to meet state and federal regulatory mandates, adhere to relevant Association policies regarding supervision standards, and participate in continuing professional development.

Guide for Supervision
The American Occupational Therapy Association

Occupational Therapy Personnel	Supervision	Supervises:
Entry-level OTR*	Not required. Close supervision by an intermediate- level or an advanced-level OTR recommended.	Occupational therapy aides, technicians, care extenders, all levels of COTAs, volunteers, Level I fieldwork students.
Intermediate-level OTR*	Not required. Routine or general supervision by an advanced-level OTR recommended.	Occupational therapy aides, technicians, care extenders, all levels of COTAs, volunteers, Level I and II fieldwork students, entry-level OTRs.
Advanced-level OTR*	Not required. Minimal supervision by an advanced-level OTR is recommended.	Occupational therapy aides, technicians, care extenders, all levels of COTAs, volunteers, Level I and II fieldwork students, entry-level and intermediate-level OTRs.
Entry-level COTA*	Close supervision by all levels of OTRs, or an intermediate or an advanced-level COTA, who is under the supervision of an OTR.	Occupational therapy aides, technicians, care extenders, volunteers.
Intermediate-level COTA*	Routine or general supervision by all levels of OTRs, or an advanced-level COTA, who is under the supervision of an OTR.	Occupational therapy aides, technicians, care extenders, entry-level COTAs, volunteers, Level I occupational therapy (OT) fieldwork students, Level I and II occupational therapy assistant (OTA) fieldwork students.
Advanced-level COTA* **	General supervision by all levels of OTRs, or an advanced-level COTA, who is under the supervision of an OTR.	Occupational therapy aides, technicians, care extenders, entry-level and intermediate-level COTAs, volunteers, Level I OT fieldwork students, Level I and II OTA fieldwork students.
Personnel other than occupational therapy practitioners assisting in occupational therapy intervention***	Close supervision by all levels of occupational therapy practitioners.	No supervisory capacity.

* Refer to the *Occupational Therapy Roles* document for descriptions of entry-level, intermediate-level, and advanced-level OTRs and COTAs (AOTA, 1993a).

** Although specific state regulations may dictate the parameters of certified occupational therapy assistant practice, the American Occupational Therapy Association supports the autonomous practice of the advanced certified occupational therapy assistant practitioner in the independent living setting (AOTA, 1993b, p.1079).

*** Students are not addressed in this category. The student role as a supervisor is addressed in the *Essentials and Guidelines of an Accredited Educational Program for the Occupational Therapist* and *Essentials and Guidelines of an Accredited Educational Program for the Occupational Therapy Assistant* (AOTA, 1991a,b).

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Commission on Practice
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Approved by the Representative Assembly 3/81, edited 7/88
Revised in 1994 and adopted by the Representative Assembly 7/94

NOTE: This replaces the 1981 document, *Guide for Supervision of Occupational Therapy Personnel*, which was rescinded by the 1994 Representative Assembly.

AOTCB

CERTIFICATION REQUIREMENTS

I. REQUIREMENTS FOR GRADUATES FROM SCHOOLS IN THE U.S. AND PUERTO RICO

A. OCCUPATIONAL THERAPIST, REGISTERED (OTR)

To become an OTR, an individual must:

1. Be a graduate of an accredited occupational therapist educational program and have successfully completed all therapist level fieldwork required by the educational program (but not less than six months).

2. Have successfully completed the Certification Examination for Occupational Therapist, Registered.

B. CERTIFIED OCCUPATIONAL THERAPY ASSISTANT (COTA)

To become a COTA, an individual must:

1. Be a graduate of an accredited/approved occupational therapy assistant educational program and have successfully completed all assistant level fieldwork required by the educational program (but not less than two months).

2. Have successfully completed the Certification Examination for Occupational Therapy Assistant.

II. REQUIREMENTS FOR GRADUATES FROM FOREIGN SCHOOLS TO BECOME OTRs

Graduates from foreign schools are required to pass the Certification Examination for Occupational Therapist, Registered. The eligibility requirements for taking the certification examination are as follows:

A. GRADUATES OF APPROVED OCCUPATIONAL THERAPY PROGRAMS

1. Successful completion of all academic and clinical/fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists (WFOT).

2. Recommendation by candidate's occupational therapy program director.

B. OCCUPATIONAL THERAPISTS EDUCATED IN COUNTRIES THAT ARE NOT MEMBERS OF THE WORLD FEDERATION OF OCCUPATIONAL THERAPISTS

Eligibility for writing the examination shall be determined for each individual by the AOTCB after evaluation of each individual's education as compared to the educational standards for U.S. and WFOT-approved schools.

III. ISSUANCE OF CERTIFICATES

A. Certificates verifying certification are issued to all individuals who have met the certification requirements.

B. Certificates are reissued every five years except to those OTRs and COTAs whose certification has been suspended or revoked.

Occupational Therapy Reimbursement Survey

1. Type of health care plan(s): HMO_____ Indemnity_____
   PPO _____

   If your company offers more than one type of plan, please indicate any differences between the plans on each question below.

2. Are occupational therapy services reimburseable under your plan?
   _____ yes _____ no

3. Please provide a copy of your contract language pertaining to the qualifications required of Occupational Therapists and Occupational Therapy Assistants.

4. Are occupational therapy services provided by Occupational Therapy Assistants reimburseable? _____ yes _____ no

   a. If yes to 4, does your plan require that Occupational Therapy Assistants be supervised? _____ yes _____ no

   b. What supervision is required?

5. Is a physician's referral required for reimbursement? _____ yes _____ no

6. Is prior authorization required for reimbursement? _____ yes _____ no

7. Are there any other limitations (other than personnel qualifications, physician referral, or prior approval) that apply to reimbursement of occupational therapy services?

Would you like to be on our mailing list to receive a copy of the draft rules for registration of Occupational Therapy Practitioners? _____ yes _____ no

****Thank you for your participation****

MN Department of Health, Health Occupations Program
717 Delaware St. SE, P.O. Box 9441
Minneapolis, MN 55440-9272

Attachment I

Essentials and Guidelines

for an Accredited Educational Program for the Occupational Therapist

Essentials initially adopted 1935; revised 1943 1949, 1965, 1973, 1983 and 1991
adopted by the

American Occupational Therapy Association, Inc.

and the

American Medical Association

The Committee on Allied Health Education and Accreditation (CAHEA) accredits programs upon the recommendation of the Accreditation Committee of the American Occupational Therapy Association (AOTA).

These Essentials are the minimum standards of quality used in accrediting programs that prepare individuals to enter the occupational therapy profession. The extent to which a program complies with these standards determines its accreditation status; the Essentials therefore constitute the minimum requirements to which an accredited program is held accountable. Essentials are printed in regular typeface in outline form.

The Guidelines accompanying the Essentials provide examples intended to assist in interpreting the Essentials. Guidelines are printed in italic typeface in narrative form.

Sections I and III of these Essentials are common to all educational programs accredited by CAHEA. Section II contains a description of the profession and the specific requirements for preparing Occupational Therapists.

Preamble

Objective

The American Occupational Therapy Association, Inc. and the American Medical Association cooperate to establish, maintain, and promote appropriate standards of quality for educational programs in occupational therapy and to provide recognition for educational programs that meet or exceed the minimum standards outlined in these Essentials. Lists of accredited programs are published for the information of students, employers, educational institutions and agencies, and the public.

These standards are to be used for the development, evaluation, and self-analysis of baccalaureate and postbaccalaureate occupational therapy entry-level professional programs. On-site review teams assist in the evaluation of a program's relative compliance with the Essentials.

Section I: General Requirements for Accreditation

A. Sponsorship

1. The sponsoring institution and affiliates, if any, must be accredited by recognized agencies or meet equivalent standards.

2. Sponsoring institutions must be authorized under applicable law or other acceptable authority to provide a program of postsecondary education.

3. In programs in which academic and clinical didactic and supervised practice are provided by two or more institutions, responsibilities of the sponsoring institutions and of each fieldwork center must be clearly documented as a formal affiliation agreement or memorandum of understanding. The time schedule for periodic review shall be documented.

4. Accredited educational programs may be established in:

a. Senior colleges and universities.

b. Medical schools.

5. The sponsoring institution assumes primary responsibility for student admission, curriculum planning, selection of course content, coordination of classroom teaching and supervised clinical practice, appointment of faculty, receiving and processing applications for admission, and granting the certificate or degree documenting satisfactory completion of the educational program. The sponsoring institution shall also be responsible for providing assurance that the practice activities assigned to students in a clinical setting are appropriate to the program.

B. Resources

1. Personnel

a. Administrative Personnel

The program must have a program director and faculty who possess the necessary qualifications to perform the functions identified in documented descriptions of roles and responsibilities.

(1) Program Director

(a) Responsibilities

The director of the educational program shall be responsible for the management and administration of the program including planning, evaluating, budgeting, selecting faculty and staff, and maintaining accreditation.

(b) Qualifications

The director of the educational program shall be an occupational therapist who has relevant experience in occupational therapy administration, teaching, and practice. The director shall hold a minimum of a master's degree, or have equivalent educational qualifications.

b. Faculty and/or Instructional Staff

(1) Responsibilities

Faculty responsibilities shall be consistent with the mission of the institution.

(2) Qualifications

(a) The faculty shall include certified occupational therapists.

(b) Faculty members shall have documented expertise in the area(s) of teaching responsibility and shall demonstrate effectiveness in teaching their assigned subjects.

(c) The academic faculty must collectively have academic and experiential qualifications and background appropriate to meet program objectives.

(3) Faculty/student Ratio

The faculty/student ratio shall:

(a) Permit the achievement of the purpose and stated objectives of the program.

(b) Be compatible with accepted practices of the institution.

(c) Ensure student and/or consumer safety and quality education in laboratory and clinical experiences, by adjustment of faculty/student ratios when required.

c. Clerical and Support Staff

Clerical and program support staff shall be provided to meet program and administrative requirements.

d. Professional Development

(1) The program shall have a documented plan for continued professional growth to ensure that program faculty can fulfill their assigned responsibilities.

(2) Each faculty member shall have a written plan for continuing professional development.

2. Financial Resources

A budget of regular institutional funds allocated to the program shall be sufficient to develop and maintain the stated objectives of the program and to fulfill its obligations to matriculating and enrolled students.

3. Physical Resources

a. Facilities

(1) Classrooms and laboratories shall be provided consistent with the program's educational objectives, teaching methods, number of students, and safety standards of the institution, and shall allow for efficient operation of the program.

(2) Laboratory space shall be assigned to the occupational therapy program on a priority basis.

(3) Space shall be provided to store and secure equipment and supplies.

(4) The program director and faculty shall have office space.

(5) Space shall be provided for the private advising of students.

b. Equipment and Supplies

(1) Appropriate and sufficient equipment and supplies shall be provided for student use and for teaching the didactic and supervised clinical practice components of the curriculum.

(2) Students shall be given access to the evaluative and treatment technologies that reflect current practice.

c. Learning Resources

(1) Library

Students shall have ready access in time and location to an adequate supply of current books, journals, periodicals, computers, and other reference materials related to the curriculum.

(2) Instructional aids and resources shall be available in sufficient number and quality to be consistent with the program objectives and teaching methods.

C. Students

1. Admission Policies and Procedures

a. Admission of students shall be made in accordance with clearly defined and published practices of the institution.

b. Policies regarding standards for admission, advanced placement, transfer of credit, credit for experiential learning (if applicable), and requirements for previous education or work experience shall be provided and readily accessible to prospective students and the public.

2. Evaluation of Students

a. Criteria for successful completion of each segment of the educational program and for graduation shall be given in advance to each student.

b. Evaluation content and methods shall be consistent with the objectives and competencies described for the educational program in both didactic and supervised clinical education components. Evaluation shall be employed frequently enough to provide students and program officials with timely indications of the students' progress and academic standing.

3. Health

Students must be informed of and have access to the health services provided to other students in the institution.

4. Guidance

a. Advising related to professional coursework and fieldwork education shall be the responsibility of the occupational therapy faculty.

b. Advising during and pertaining to fieldwork experience shall be a collaborative process between the faculty and fieldwork educators.

c. Referral by program faculty to other institutional or community resources shall be provided for students with problems that may interfere with the students' progress through the program.

D. Operational Policies

1. Fair Practices

a. Program description, publications, announcements, and advertising must accurately reflect the program offered.

b. Student and faculty recruitment and student admission and faculty employment practices shall be nondiscriminatory with respect to race, color, creed, sex, age, disabling conditions, and national origin.

c. Graduation requirements, tuition and fees shall be accurately stated, published, and made known to all applicants.

d. The program or sponsoring institution shall have a defined and published policy and procedure for processing student and faculty grievances.

e. Policies and processes for student withdrawal and for refunds of tuition and fees shall be published and made known to all applicants.

f. Policies and procedures regarding student probation, suspension, and dismissal shall be published and made known.

g. Provision shall be made for the health and safety of patients, students, and faculty associated with educational activities.

h. A program admitting students on the basis of ability to benefit must publicize its objectives, assessment measures, and means of evaluating ability to benefit.

i. Documentation of all graduation and credentialing requirements, to include certification/licensure, shall be published and made known to applicants.

2. Student Records

Satisfactory records shall be maintained regarding student admission, enrollment, and achievement. Grades and credits for courses shall be recorded on students' transcripts and permanently maintained by the sponsoring institution.

E. Program Evaluation

The program must have a continuing system for reviewing the effectiveness of the educational program especially as measured by student achievement and must prepare timely self-study reports to aid the staff, the sponsoring institution and the accrediting agencies in assessing program qualities and needs.

1. Outcomes

Programs shall routinely secure sufficient qualitative and quantitative information regarding the program graduates to demonstrate an ongoing evaluation of outcomes consistent with the graduate competencies specified by the educational program.

The manner in which programs seek to comply with this criterion may vary. However, there should be timely efforts made to document the data and analysis provided. These sources of data may include, but should not be limited to, surveys of graduates and employers on such matters as employment settings, type and scope of practice, salary, job satisfaction, and adequacy of the educational program in addressing education and skills; interviews with program graduates and employers of graduates; and data on the evaluation of student performance on the national certification examination and other nationally recognized standardized tests.

Section I
continued

2. Results of Ongoing Program Evaluation

The results of ongoing evaluation must be appropriately reflected in the curriculum and other dimensions of the program. In particular, the program must systematically use the information obtained in its evaluation to foster student achievement with respect to the certificate or degree offered.

Program evaluation should be a continuing systematic process with internal and external curriculum validation in consultation with employers, faculty, preceptors, students and graduates, with follow-up studies of their employment and national examination performance. Other dimensions of the program merit consideration as well, such as the admission criteria and process, the curriculum design, and the purpose and productivity of the advisory committee.

Section II: Specific Requirements for Accreditation

Description of the Profession

Occupational therapy is the art and science of directing an individual's participation in selected tasks to restore, reinforce, and enhance performance; facilitate learning of those skills and functions essential for adaption and productivity; diminish or correct pathology; and promote and maintain health. Reference to occupation in the title is in the context of individual's goal-directed use of time, energy, interest, and attention. Its fundamental concern is the development and maintenance of the capacity throughout the life span to perform with satisfaction to self and others those tasks and roles essential to productive living and to the mastery of self and the environment.

Since the primary focus of occupational therapy is the development of adaptive skills and performance capacity, its concern is with factors that promote, influence or enhance performance as well as those that serve as barriers or impediments to the individual's ability to function.

Occupational therapy provides service to those individuals whose abilities to cope with tasks of living are threatened or impaired by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological and social disability.

Occupational therapy serves a diverse population in a variety of settings such as hospitals and clinics, rehabilitation facilities, long-term care facilities, extended care facilities, sheltered workshops, schools and camps, private homes, and community agencies. Occupational therapists both receive from and make referrals to appropriate health, educational, or medical specialists. Delivery of occupational therapy services involves several levels of personnel including the certified occupational therapist, the certified occupational therapy assistant, and aides.

Entry-level occupational therapy professional educational programs prepare the occupational therapist to:

1. Evaluate and assess performance areas and their components.

2. Provide occupational therapy services to maintain or improve function and to prevent deficits in activities of daily living, work, play/leisure, and in the underlying performance components, e.g., sensorimotor, cognitive, and psychosocial, including cultural performance components.

3. Manage occupational therapy service.

4. Incorporate values and attitudes congruent with the profession's standards and ethics.

5. Demonstrate an attitude of inquiry and nurture the capacity for creative analysis and problem-solving.

Entry-level professional education lays a foundation for other roles of the experienced therapist, e.g., administrator, consultant, educator, researcher, and health planner. The American Occupational Therapy Association maintains an entry-level role delineation.

A. Curriculum

1. Description of the Program

a. Mission

The statement of the mission of the occupational therapy program shall be consistent with that of the sponsoring institution.

b. Philosophy

The statement of philosophy of the program shall reflect:

(1) The current published philosophy of the profession.

(2) A view of humanity.

(3) An approach to learning/instruction.

c. Curriculum Design

The curriculum design shall provide the basis for program planning, implementation, and evaluation; documentation of the design must:

(1) Reflect the mission of the occupational therapy program and of the institution.

(2) Identify educational goals of the program that are consistent with its mission and philosophy statements.

(3) Describe the set of organizing ideas that explains the selection of the content, scope, and sequencing of coursework.

2. Instruction must follow a plan which documents:

a. Appropriate learning experiences and curriculum sequencing to develop the competencies necessary for graduation, including appropriate instructional materials, classroom presentations, discussions, demonstrations and supervised practice.

b. Clearly written course syllabi which describe learning objectives and competencies to be achieved for both didactic and supervised clinical education components.

c. Frequent, documented evaluation of students to assess their acquisition of knowledge, problem identification and problem-solving skills, psychomotor, behavioral, and clinical competencies.

B. Content Requirements

Program content shall be based on a broad foundation of liberal arts, sciences, and professional education and shall include:

1. Liberal arts content that will be prerequisite to, or concurrent with, professional education and shall facilitate the development of:

a. Oral and written communications skills.

b. Logical thinking, critical analysis, problem-solving, and creativity.

c. Knowledge and appreciation of multicultural factors.

d. Ability to make judgments in the context of historical, social, economic, scientific, and political information.

2. Biological, behavioral, and health sciences content that will be prerequisite to, or concurrent with, professional education and that encompasses normal and abnormal conditions across the life span (infants, children, adolescents, adults, and older adults):

a. Structure and function of the human body including anatomy, kinesiology, physiology, and neurosciences.

b. Human development throughout the life span including the interaction of environmental factors with sensorimotor, cognitive, psychosocial, and physiological components.

c. Human behavior in the context of sociocultural systems to include beliefs, ethics, and values.

d. The etiology, clinical course, management, and prognosis of congenital, developmental, acute, and chronic disease processes and traumatic injuries; and the effect of such conditions human functioning throughout the life span.

Effects of health and disability on individual, family, and society including the promotion of health and prevention of disease.

3. Occupational Therapy Theory and Practice

a. Foundations, history, and philosophical base of the profession and its personnel.

b. Theoretical base and models of practice including, but not limited to:

(1) Theories underlying the use of purposeful activity (occupation).

(2) Analysis of the theories of human adaptation and life satisfaction across the life span, including a multicultural perspective.

(3) Meaning and dynamics of purposeful activity, including activities of daily living, work, and play/leisure, to enhance role function.

(4) Importance of a balance of the areas of occupation (activities of daily living, work, play/leisure) to the achievement of physical and mental health.

(5) Age appropriate roles, life tasks, developmental issues, and activities across the life span.

c. Fundamentals of Activity

(1) Analysis of activities of daily living, work, and play/leisure.

(2) Performance and teaching of selected life tasks and activities.

(3) Grading and adapting purposeful activity (occupation) for therapeutic intervention.

d. Occupational Therapy Process

The occupational therapy process shall be based on frames of reference or theoretical perspectives and shall include:

(1) Screening and Assessment

(a) Assessment of the need for occupational therapy intervention based on skilled observation, histories, and interviews of patient, family, and other professionals.

(b) Selection, administration, and interpretation of representative standardized and non-standardized tests and evaluations.

(c) Interpretation of assessment in relation to performance areas and performance components, activities, and age-appropriate theoretical frameworks.

(d) Appropriate use of the certified occupational therapy assistant (COTA) in the screening and assessment process.

(2) Formulation of Intervention Plans

(a) Identification of appropriate models of practice, treatment approaches, and underlying principles of treatment to use for problems identified.

(b) Specification for purposeful activities that incorporate treatment goals and principles and that are specific to the patient.

Section II
continued

(c) Collaboration with patients, caregivers, COTAs, and other professionals.

(3) Implementation

(a) Provision of therapeutic intervention related to occupational performance areas and their components.

(b) Use of self, dyadic, and group interaction.

(c) Collaboration with the COTA on treatment implementation.

(d) Fostering of prevention, health maintenance, and safety programs that are age-appropriate for daily living activities, work, and play/leisure.

(e) Demonstration of effective written, oral, and nonverbal communication with patients and their families, colleagues, other health providers, and the public.

(f) Application of therapeutic adaptation for accomplishment of purposeful activities (occupation): family/caretaker training, environmental adjustments, orthotics, prosthetics, assistive devices, equipment, and other technologies.

(4) Reassessment for effect of occupational therapy intervention and need for continued and/or changed treatment.

(5) Termination of occupational therapy services including determination of discharge, summary of occupational therapy outcome, and appropriate recommendations and referrals to maximize treatment gains.

e. Documentation of occupational therapy services that addresses principles of record keeping to ensure accountability in occupational therapy service provision and adequate documentation for the reimbursement of services.

4. Management of occupational therapy services. Application of principles of management in the provision of occupational therapy services to individuals and organizations, including:

a. Planning.

b. Organizing.

c. Staffing.

d. Coordinating or directing.

e. Controlling.

f. Understanding of environmental and policy issues which impact provision of occupational therapy services.

g. Use of technology in service delivery and analysis of data when indicated.

h. Use of a variety of service models including, but not limited to, medical, community, and school system.

i. Knowledge of social, economic, political, and demographic factors that influence the delivery of health care in the U.S.

j. Knowledge of applicable national and sta requirements for credentialing.

5. Research

a. Necessity for and value of research for clinical practice and professional development.

b. Essential components of a research protocol.

c. Interpretation of studies related to occupational therapy.

d. Application of research results to occupational therapy services.

6. Professional Ethics

a. AOTA standards and ethics policies and their effect on the therapist's conduct and patient treatment.

b. Functions of national, state, and local occupational therapy associations, and other professional associations and human service organizations.

c. Recognition of the necessity to participate in the promotion of occupational therapy through educating other professionals, consumers, third party payers, and the public.

d. Individual responsibility for planning for future professional development in order to maintain level of practice consistent with accepted standards

7. Fieldwork Education

a. Fieldwork experience is crucial to the preparation of an occupational therapist. The experience should provide the students with the opportunity for carrying out professional responsibilities under appropriate supervision and professional role modeling.

(1) Objectives for each phase of fieldwork shall be:

(a) Collaboratively developed by the academic and fieldwork program representatives to prepare students for practice.

(b) Documented.

(c) Known to the student.

(2) The ratio of fieldwork educators to students shall be such as to ensure proper supervision and frequent assessment in achieving fieldwork objectives.

(3) Fieldwork shall be conducted in settings equipped to provide clinical application of principles learned in the academic program and appropriate to the learning needs of the student.

(4) Evidence will be provided that communication has occurred between academic and fieldwork educators in planning for this dimension of the program.

Section II: *continued*

b. Level I Fieldwork shall be required and includes those experiences designed to enrich didactic coursework through directed observation and participation in selected aspects of the occupational therapy process. These experiences are not intended to emphasize independent performance.

(1) Level I Fieldwork shall be supervised by qualified personnel including, but not limited to, certified occupational therapists, certified occupational therapy assistants, teachers, social workers, nurses, physical therapists, etc.

(2) Level I Fieldwork shall not substitute for any part of Level II Fieldwork.

c. Level II Fieldwork shall be required and designed to promote clinical reasoning and reflective practice, to transmit the values and beliefs that enable the application of ethics related to the profession, to communicate and model professionalism as a developmental process and a career responsibility, and to develop and expand a repertoire of occupational therapy assessments and treatment interventions related to human performance.

(1) A minimum of six months of Level II Fieldwork shall be required.

The purpose of Level II Fieldwork is to provide an in-depth experience in delivering occupational therapy services to clients. At least three months of the sustained fieldwork experience is desirable on a full-time basis. A minimum of 940 hours is acceptable to meet this six month requirement. Flexibility is permitted through stipulation of the minimum number of hours. Time should be appropriate to the setting selected, student needs, and continuity of client services, e.g., consecutive half days.

(2) Fieldwork experience shall be provided with various groups across the life span, persons with various psychosocial and physical performance deficits, and various service delivery models reflective of current practice in the profession.

(3) Learning objectives will support development of entry-level competency.

(4) Supervision shall be provided by a certified occupational therapist with a minimum of one year's experience in a practice setting.

(5) International fieldwork experience may be provided when:

(a) Approved by the academic program.

(b) Direct supervision is provided by an AOTCB certified occupational therapist.

(c) There is no language barrier between student, supervisor, and client population.

(d) Student's safety and rights are reasonably assured.

(6) To ensure continuity of application of academic concepts, all fieldwork shall be completed within 24 months following completion of academic preparation.

C. Program Length

The length of the educational program shall be adequate to meet:

1. The requirements for entry-level credentialing.

2. The academic requirements of the sponsoring institution.

Section III: Maintaining and Administering Accreditation

A. Program and Sponsoring Institution Responsibilities

1. Applying for Accreditation

a. The accreditation review process conducted by the Accreditation Committee, American Occupational Therapy Association and the Committee on Allied Health Education and Accreditation (CAHEA), can be initiated only at the written request of the chief executive officer or an officially designated representative of the sponsoring institution and the occupational therapy program director.

b. This process is initiated by submitting a letter of intent to seek accreditation to the:

Accreditation Division
American Occupational Therapy Association, Inc
1383 Piccard Drive
P.O. Box 1725
Rockville, Maryland 20849-1725

with a copy to:

Division of Allied Health Education and Accreditation
American Medical Association
515 North State Street
Chicago, Illinois 60610

c. At any time before the final accreditation action is made by CAHEA, a program or sponsoring institution may withdraw its request for initial or continuing accreditation.

Section III:
continued

2. Administrative Requirements for Maintaining Accreditation

To maintain accreditation, the following actions are required:

a. The program must submit a Self-Study Report and other required reports within a period of time determined by the Accreditation Committee and provided to the programs.

b. The program must agree to a reasonable site visit date before the end of the period for which accreditation was previously awarded.

c. The program must inform the Accreditation Committee within a reasonable period of time of a change in program director.

d. The sponsoring institution must inform CAHEA and the Accreditation Committee of the transfer of program sponsorship, in accord with CAHEA policy.

e. The program and the sponsoring institution must pay accreditation fees within a reasonable period of time, as determined by the Accreditation Committee.

f. The program must complete and return by the established deadline the Annual Report provided by CAHEA, to ensure an accurate listing of the program and its sponsoring institution in the annual publication of the **Allied Health Education Directory.**

Failure to meet these administrative requirements for maintaining accreditation may lead to being placed on Administrative Probation and ultimately to having accreditation withdrawn.

B. CAHEA and Accreditation Committee Responsibilities

1. Administering the Accreditation Review Process

a. At the written request of the chief executive officer or other officially designated representative, CAHEA and the Accreditation Committee assess an applicant program's relative compliance with the **Essentials.**

The accreditation review process includes an on-site evaluation of the program. If the performance of a site visit team is unacceptable, the institution may request a second site visit.

Before the Accreditation Committee formulates its accreditation recommendation to CAHEA, the sponsoring institution is given an opportunity to comment in writing on the report of the site visit team and to correct factual errors.

b. Before recommending Probationary Accreditation to CAHEA, the Accreditation Committee provides the sponsoring institution with an opportunity to respond in writing to the cited deficiencies in the program's relative compliance with the **Essentials.** The Accreditation Committee reconsideration of a recommendation for Probationary Accreditation is made on the basis of conditions existing when the Accreditation Committee arrived at its recommendation to CAHEA and on subsequent documented evidence of corrected deficiencies provided by the applicant.

An accredited program not on probation may be moved to probationary status upon verification of a written complaint deemed sufficient to warrant this action, or to administrative probation should administrative requirements not be fulfilled.

c. CAHEA assignments of Probationary Accreditation, including those following Accreditation Committee reconsideration, are final and are not eligible for further appeal.

2. Withholding or Withdrawing Accreditation

a. Before recommending Accreditation Withheld or Accreditation Withdrawn to CAHEA, the Accreditation Committee provides the sponsoring institution opportunity to request reconsideration. Decisions to withhold or withdraw accreditation may be appealed. A copy of the CAHEA appeals procedures for Accreditation Withheld or Withdrawn accompanies the letter notifying the sponsoring institution of one of these actions. When accreditation is withdrawn, the institutional sponsor's chief executive officer is provided with a clear statement of each deficiency in the program's relative compliance with the **Essentials** and is informed that application for accreditation as a new applicant may be made whenever the program considers itself to be in compliance with the **Essentials.**

b. All students successfully completing a program that holds accreditation at any point during their enrollment are regarded as graduates of a CAHEA-accredited program.

3. Inactive Programs

a. The sponsoring institution may request inactive status for a program that does not enroll students for up to two years. Such a program and sponsoring institution must continue to pay required annual fees.

b. Should a program be inactive for two years, and determine not to reactivate, it will be considered discontinued and accreditation will be withdrawn.

THE WORLD FEDERATION OF OCCUPATIONAL THERAPISTS

History

The World Federation of Occupational Therapists (WFOT) began with formal discussions at a meeting of occupational therapists held in England in June of 1951, at which there were 28 representatives from various countries. There was a continued discussion in September of the same year at the Congress of the International Society of the Rehabilitation of the Disabled held in Stockholm, Sweden. A Preparatory Commission was held in Great Britain in 1952 attended by representatives from seven countries with occupational therapy associations or organizations and written approval for the organization of such an association from three other countries. These ten associations from the United States of America, Great Britain (England and Scotland), South Africa, Sweden, New Zealand, Australia, Israel, India and Denmark inaugurated the WFOT. At this meeting, Miss Helen Willard of the United States, served as temporary chairman until the officers were elected. The first elected officers were:

President, Miss Margaret B. Bulton of Scotland
First Vice-President, Miss Gillian Crawford of Canada
Second Vice-President, Miss Ingrid Pahlsson of Denmark
Secretary-Treasurer, Miss Clare S. Spackman of the USA
Assistant Secretary-Treasurer, Mrs. Glyn Owens of England

Objectives

The objectives of the Federation are:

- to act as the official international organization for the promotion of occupational therapy; to hold international congresses;
- to promote international cooperation among occupational therapy associations, occupational therapists, and between them and other allied professional groups;
- to maintain the ethics of the profession and to advance the practice and standards of occupational therapy;
- to promote internationally recognized standards for education of occupational therapists;
- to facilitate the international exchange and placement of therapists and students;
- to facilitate the exchange of information and publications and to promote research; and
- to be involved in matters where occupational therapy expertise can contribute to policy-making in general, preventative, curative, and rehabilitative health matters.

Meetings of WFOT Continued

1962	Congress and Council Meeting	Philadelphia, Pennsylvania
1964	Council Meeting	Ramat-Gan, Israel
1966	Congress and Council Meeting	London, England
1968	Council Meeting	Gothenburg, Sweden
1970	Congress and Council Meeting	Switzerland
1972	Council Meeting	Norway
1974	Congress and Council Meeting	Victoria & Vancouver, Canada
1976	Council Meeting	Paris, France
1978	Congress and Council Meeting	Jerusalem, Israel
1980	Council Meeting	South Africa
1982	Congress Meeting	Hamburg, Fed. Rep. of Germany
1982	Council Meeting	Netherlands
1984	Council Meeting	Queensland, New Zealand
1986	Council Meeting	Exeter, Devon, United Kingdom
1988	Council Meeting	Sintra, Lisbon, Portugal
1990	Congress Meeting	Melbourne, Australia
1990	Council Meeting	Canberra, Australia
1992	Council Meeting	Satin, Hong Kong
1994	Congress Meeting	London, England
1994	Council Meeting	London, England

Representatives are sent by WFOT to meetings of other international organizations, such as the World Health Organization; Council of World Organizations Interested in the Handicapped; Rehabilitation International; International Commission on Technical Aides; Council for International Organizations of Medical Sciences; International Federation of Physical Medicine and Rehabilitation, etc.

Delegates

Three Delegates are elected by the membership of the AOTA to serve a five year term. The duties of the primary Delegate are to report on Federation matters to the membership of the organization and to represent the United States in WFOT. Within the U.S., the Delegate is the Chair of the AOTA International Committee, a voting member of the AOTA Executive Board, reports to the membership and to the Representative Assembly. The role of the First Alternate Delegate is to assist the Delegate in WFOT affairs and assume the WFOT duties of the Delegate in case of vacancy or absence. Within the AOTA structure, the First Alternate is a voting member of the Representative Assembly representing AOTA members residing outside of the United States. The Second Alternate Delegate has specific responsibilities in regard to the International Committee.

The International Committee of the AOTA is composed of the three Delegates, past Delegates, the Regional Representative to WHO for WFOT, the National Office International Liaison, and the International State Liaisons interested in international affairs.

WFOT CONGRESS AND COUNCIL MEETINGS

1952	Preparatory Commission	Liverpool, England
1954	1st Congress and 1st Council Meeting	Edinburgh, Scotland
1956	2nd Council Meeting	Philadelphia, PA, USA
1958	2nd Congress & 3rd Council Meeting	Copenhagen, Denmark
1960	4th Council Meeting	Sydney, Australia
1962	3rd Congress and 5th Council Meeting	Philadelphia, PA, USA
1964	6th Council Meeting	Ramat-Gan, Israel
1966	4th Congress and 7th Council Meeting	London, England
1968	8th Council Meeting	Gothenburg, Sweden
1970	5th Congress & 9th Council Meeting	Zurich, Switzerland
1972	10th Council Meeting	Oslo, Norway
1974	6th Congress and 11th Council Meeting	Vancouver, B.C., Canada
1976	12th Council Meeting	Paris, France
1978	7th Congress and 13th Council Meeting	Jerusalem, Israel
1980	14th Council Meeting	Johannesburg, South Africa
1982	8th Congress	Federal Republic of Germany
1982	15th Council Meeting	Netherlands
1984	16th Council Meeting	Queenstown, New Zealand
1986	9th Congress (CANCELLED Per Executive Committee)	
1986	17th Council Meeting	Exeter, Devon, United Kingdom
1988	18th Council Meeting	Sintra, Lisbon, Portugal
1990	10th World Congress Meeting	Melbourne, Australia
1990	19th Council Meeting	Canberra, Australia
1992	20th Council Meeting September 7-11	Hong Kong Regal Riverside Hotel, Satin

1994	11th Congress Meeting April 18-22	London, England
1994	21st Council Meeting	London, England
1996	22nd Council Meeting	Kenya

Membership

There are three categories of active membership in WFOT. Organizational Membership is open in each sovereign state or city state to one national professional organization of occupational therapists which meets the Federation's requirements for Full or Associate Membership as set out in its Standing Orders at the date of application. (A sovereign state shall be defined as that governmental unit which has ambassadorial and consular rights. A city state shall be defined as one which is governed by its own legislative council although it may retain links with the country of its former allegiance.)

A second type of membership is the Individual Professional Membership. This category is for those occupational therapists who are qualified professional members of national Member Organizations. This provides financial backing to the Federation.

A third type of membership is a Contributing Membership given to persons, professional associations or corporations interested in the development of occupational therapy in all parts of the world.

Responsibilities of members and Member Organizations are described in the Constitution and Standing Orders of the World Federation of Occupational Therapists. In 1985 there were 29 Member Associations and 5 Associate Member Associations.

Meetings and Congresses

The WFOT holds a Council Meeting every two years and a Congress and Council Meeting every four years. The Council Meeting is a week long, and consists of General Sessions and Committee Meetings. The General Sessions are attended by all the Delegates and deal with agenda items submitted by member countries and issues of common concern. It is run by parliamentary procedures, presided over by the WFOT President, and each member country has one vote. The standing committees are: Executive, Congress, Professional Practice, Publications, International Relations, Education, and Legislation. The work of the committees is done by correspondence over the preceding two years and the work accomplished at the committee meetings is reported in the General Sessions.

The Congresses, held every four years, invite exchange of OT information through presentation of papers, film programs, and professional and commercial exhibits. Social activities promote friendship and communication. The location of these meetings is determined by the Congress Committee four years in advance. Minutes and Proceedings are published.

Meetings of the World Federation of Occupational Therapists

1952	Preparatory Commission	Liverpool, England
1954	Congress and Council Meeting	Edinburgh, Scotland
1956	Council Meeting	Philadelphia, Pennsylvania
1958	Congress and Council Meeting	Copenhagen, Denmark
1960	Council Meeting	Sydney, Australia

The International Focus Day is scheduled during the AOTA Annual Conference. It includes an education-social event, an International Luncheon and Panel Presentation and a meeting of the International Committee.

Additional Information

Information on WFOT, travel opportunities, WFOT Approved Schools, the role of International State Liaisons, lists of WFOT publications, etc., are available through the International State Liaison Network or from the National Office International Liaison. The International Exchange is a quarterly publication produced by AOTA and available for all AOTA WFOT Members. Other WFOT publications must be ordered through the WFOT Secretary, Mrs. Barbara Posthuma, Occupational Therapy, Health Sciences Centre, The University of Western Ontario, London, Ontario, Canada N6A 5C1.

United States Delegates and Alternate Delegates to WFOT

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AOTA 2nd Alternate Delegate to WFOT
5767 Weld County Road, #26
Longmont, CO 80504

EXAMINATIONS FOR STATE REGULATORY BOARD PURPOSES ONLY

At times state regulatory laws require that OTRs, COTAs, and/or persons who do not meet the requirements for eligibility to take the Certification Examination for Occupational Therapist, Registered/Certified Occupational Therapy Assistant take an examination for state board purposes only. If you are in a position to use AOTCB's examination for state board purposes only, please submit the completed form entitled, Application for Certification Examination for State Board Purposes Only (copy enclosed) for each examination candidate.

The procedure for administering the examination is as follows:

1. The state regulatory board should send the American Occupational Therapy Certification Board the completed form entitled, Application for Certification Examination for State Regulatory Board Purposes Only for each examination candidate.

2. The American Occupational Therapy Certification Board will send each candidate an application to take the Certification Examination for OTR/COTA with a cover letter (see attached sample) explaining that the examination will be administered for state regulatory purposes only.

3. The examinations for state regulatory purposes only will be administered on a regular scheduled date of the Certification Examination for OTR/COTA.

4. The examinations will be scored by the testing agency with which the AOTCB has a contract. Score reports will be forwarded to each candidate, and the score report will indicate that the examination was taken for state regulatory purposes only.

5. The regulatory board will receive the scores of all persons who indicated that their score should be sent to that regulatory board (and have paid the appropriate fee associated with such a request).

Attachments: Requirements for Eligibility to take the Certification Examination for OTR/COTA

Sample letter from AOTCB to state regulatory board purposes examination candidates

Application for Certification Examination for State Regulatory Purposes Only

11/90

Sample letter: Sent to candidates who are already certified with the AOTCB as OTRs/COTAs

Dear

You have been approved by the _____ State Regulatory Board to take the January/July Occupational Therapy Certification Examination for OTR/COTA. Once you pass the examination, you should contact your state regulatory board for instructions concerning you state.

The deadline for receipt of applications by the testing agency, Professional Examination Service, is _____.

Best wishes on the examination and with you career in occupational therapy.

Sincerely,

Madelaine Gray
Executive Director

Enclosure: Candidate Handbook

cc: State Regulatory Board

Sample Letter: Sent to candidates who do not meet AOTCB requirements

Dear

Congratulations! You have been approved by the _____ State Regulatory Board to take the January/July Occupational Therapy Certification Examination. Please realize that you do not meet the AOTCB's requirements to take the examination for AOTCB certification purposes. However, because the state regulatory board uses AOTCB's examination for state regulatory purposes, we are permitting you to sit for the examination for state regulatory purposes only.

Once you pass the examination, you should contact your state regulatory board for instructions concerning your state. Passing the examination does not make you eligible for AOTCB certification as an Occupational Therapist, Registered (OTR) or Certified Occupational Therapy Assistant (COTA).

The deadline for receipt of applications by the testing agency, Professional Examination Service is _____.

Enclosed is a copy of the AOTCB certification requirements in case at some point you would like to become certified by the AOTCB as an OTR or COTA.

Best wishes for your career in occupational therapy and good luck on the examination.

Sincerely,

Madelaine Gray, MA, MPA, OTR
Executive Director

Enclosures: Candidate Handbook
AOTCB Certification Requirements

THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD, INC.

APPLICATION FOR CERTIFICATION EXAMINATION FOR STATE REGULATORY BOARD PURPOSES ONLY

This form must be completed by the state regulatory board for candidates who have been approved to sit for the certification examination for state regulatory board purposes only. Please return this form to the AOTCB.

NOTE: We must receive this form by October 1st for candidates taking the January exam and April1st for candidates taking the July exam.

Candidate's Name: _____

Previous Name: _____

Candidate's Address : _____

_____

Exam Level: _____ OTR _____ COTA

Is the Candidate already certified by AOTCB ? _____ YES _____ NO

If yes, please give candidate's certification number _____

Please indicate reason this candidate is taking exam:

_____

_____

Name of State Regulatory Board: _____

Address: _____

_____

Telephone: _____

12/90

1383 PICCARD DRIVE, P.O. BOX 1725, ROCKVILLE, MD 20850-4375
301) 990-7979

Essentials and Guidelines

Attachment L

for an Accredited Educational Program for the Occupational Therapy Assistant

Essentials initially adopted by the American Occupational Therapy Association, Inc. 1958; revised 1962, 1967, 1970, 1975, and 1983
Revised and Adopted 1991 by the

American Occupational Therapy Association, Inc.

and the

American Medical Association

The Committee on Allied Health Education and Accreditation (CAHEA) accredits programs upon the recommendation of the Accreditation Committee of the American Occupational Therapy Association (AOTA).

These Essentials are the minimum standards of quality used in accrediting programs that prepare individuals to enter the occupational therapy profession. The extent to which a program complies with these standards determines its accreditation status; the Essentials therefore constitute the minimum requirements to which an accredited program is held accountable. Essentials are printed in regular typeface in outline form.

The Guidelines accompanying the Essentials provide examples intended to assist in interpreting the Essentials. Guidelines are printed in italic typeface in narrative form.

Sections I and III of these Essentials are common to all educational programs accredited by CAHEA. Section II contains a description of the profession and the specific requirements for preparing Occupational Therapy Assistants.

Preamble

Objective

The American Occupational Therapy Association, Inc. and the American Medical Association cooperate to establish, maintain, and promote appropriate standards of quality for educational programs in occupational therapy and to provide recognition for educational programs that meet or exceed the minimum standards outlined in these **Essentials.** Lists of accredited programs are published for the information of students, employers, educational institutions and agencies, and the public.

These standards are to be used for the development, evaluation, and self-analysis of associate degree or certificate entry-level programs for the occupational therapy assistant. On-site review teams assist in the evaluation of a program's relative compliance with the **Essentials.**

Section I: General Requirements for Accreditation

A. Sponsorship

1. The sponsoring institution and affiliates, if any, must be accredited by recognized agencies or meet equivalent standards.

2. Sponsoring institutions must be authorized under applicable law or other acceptable authority to provide a program of postsecondary education.

3. In programs in which academic and clinical didactic and supervised practice are provided by two or more institutions, responsibilities of the sponsoring institutions and of each fieldwork center must be clearly documented as a formal affiliation agreement or memorandum of understanding. The time schedule for periodic review shall be documented.

4. Accredited educational programs may be established in:

a. Community, technical and junior colleges, senior colleges and universities.

b. Medical schools.

c. Postsecondary vocational/technical schools and institutions.

5. The sponsoring institution assumes primary responsibility for student admission, curriculum planning, selection of course content, coordination of classroom teaching and supervised clinical practice, appointment of faculty, receiving and processing applications for admission, and granting the certificate or degree documenting satisfactory completion of the educational program. The sponsoring institution shall also be responsible for providing assurance that the practice activities assigned to students in a clinical setting are appropriate to the program.

Section I
continued

B. Resources

1. Personnel

a. Administrative Personnel

The program must have a program director and faculty who possess the necessary qualifications to perform the functions identified in documented descriptions of roles and responsibilities.

(1) Program Director

(a) Responsibilities

The director of the educational program shall be responsible for the management and administration of the program including planning, evaluating, budgeting, selecting faculty and staff, and maintaining accreditation.

Program directors of developing programs should be hired and on staff for a minimum of six months prior to the enrollment of students and the assumption of any teaching responsibilities.

(b) Qualifications

The director of the educational program shall be an occupational therapist who has relevant experience in occupational therapy education, administration, and practice. The director shall hold a baccalaureate or higher degree.

b. Faculty and/or Instructional Staff

(1) Responsibilities

Faculty responsibilities shall be consistent with the mission of the institution.

(2) Qualifications

(a) The faculty shall include either certified occupational therapists and/or certified occupational therapy assistants.

(b) Faculty members shall have documented expertise in the area(s) of teaching responsibility and shall demonstrate effectiveness in teaching their assigned subjects.

(c) The academic faculty must collectively have academic and experiential qualifications and background appropriate to meet program objectives.

(3) Faculty/student Ratio

The faculty/student ratio shall:

(a) Permit the achievement of the purpose and stated objectives of the program.

(b) Be compatible with accepted practices of the institution.

(c) Ensure student and/or consumer safety and quality education in laboratory and clinical experiences by adjustment of faculty/student ratios when required.

c. Clerical and Support Staff

Clerical and program support staff shall be provided to meet program and administrative requirements.

d. Professional Development

(1) The program shall have a documented plan for continued professional growth to ensure that program faculty can fulfill their assigned responsibilities.

(2) Each faculty member shall have a written plan for continuing professional development.

2. Financial Resources

A budget of regular institutional funds allocated to the program shall be sufficient to develop and maintain the stated objectives of the program and to fulfill its obligations to matriculating and enrolled students.

3. Physical Resources

a. Facilities

(1) Classrooms and laboratories shall be provided consistent with the program's educational objectives, teaching methods, number of students, and safety standards of the institution and shall allow for efficient operation of the program.

(2) Laboratory space shall be assigned to the occupational therapy assistant program on a priority basis.

(3) Space shall be provided to store and secure equipment and supplies.

(4) The program director and faculty shall have office space.

(5) Space shall be provided for the private advising of students.

b. Equipment and Supplies

(1) Appropriate and sufficient equipment and supplies shall be provided for student use and for teaching the didactic and supervised clinical practice components of the curriculum.

(2) Students shall be given access to the evaluative and treatment technologies that reflect current practice.

c. Learning Resources

(1) Library

Students shall have ready access in time and location to an adequate supply of current books, journals, periodicals, computers, and other reference materials related to the curriculum.

(2) Instructional aids and resources shall be available in sufficient number and quality to be consistent with the program objectives and teaching methods.

C. Students

1. Admission Policies and Procedures

a. Admission of students shall be made in accordance with clearly defined and published practices of the institution.

b. Policies regarding standards for admission, advanced placement, transfer of credit, credit for experiential learning (if applicable), and requirements for previous education or work experience shall be provided and readily accessible to prospective students and the public.

2. Evaluation of Students

a. Criteria for successful completion of each segment of the educational program and for graduation shall be given in advance to each student.

b. Evaluation content and methods shall be consistent with the objectives and competencies described for the educational program in both didactic and supervised clinical education components. Evaluation shall be employed frequently enough to provide students and program officials with timely indications of the students' progress and academic standing.

3. Health

Students must be informed of and have access to the health services provided to other students in the institution.

Guidance

...dvising related to occupational therapy ...tant coursework and fieldwork education ...hall be the responsibility of the occupational therapy assistant faculty.

b. Advising during and pertaining to fieldwork experience shall be a collaborative process between the faculty and fieldwork educators.

c. Referral by program faculty to other institutional or community resources shall be provided for students with problems that may interfere with the students' progress through the program.

D. Operational Policies

1. Fair Practices

a. Program description, publications, announcements, and advertising must accurately reflect the program offered.

b. Student and faculty recruitment and student admission and faculty employment practices shall be nondiscriminatory with respect to race, color, creed, sex, age, disabling conditions, and ...onal origin.

c. Graduation requirements, tuition and fees shall be accurately stated, published, and made known to all applicants.

d. The program or sponsoring institution shall have a defined and published policy and procedure for processing student and faculty grievances.

e. Policies and processes for student withdrawal and for refunds of tuition and fees shall be published and made known to all applicants.

f. Policies and procedures regarding student probation, suspension, and dismissal shall be published and made known.

g. Provision shall be made for the health and safety of patients, students and faculty associated with educational activities.

h. A program admitting students on the basis of ability to benefit must publicize its objectives, assessment measures, and means of evaluating ability to benefit.

i. Documentation of all graduation and credentialing requirements, to include certification/licensure, shall be published and made known to applicants.

2. Student Records

Satisfactory records shall be maintained regarding student admission, enrollment, and achievement. Grades and credits for courses shall be recorded on students' transcripts and permanently maintained by the sponsoring institution.

E. Program Evaluation

The program must have a continuing system for reviewing the effectiveness of the educational program especially as measured by student achievement and must prepare timely self-study reports to aid the staff, the sponsoring institution and the accrediting agencies in assessing program qualities and needs.

1. Outcomes

Programs shall routinely secure sufficient qualitative and quantitative information regarding the program graduates to demonstrate an ongoing evaluation of outcomes consistent with the graduate competencies specified by the educational program.

The manner in which programs seek to comply with this criterion may vary. However, there should be timely efforts made to document the data and analysis provided. These sources of data may include, but should not be limited to, surveys of graduates and employers on such matters as employment settings, type and scope of practice, salary, job satisfaction, and adequacy of the educational program in addressing education and skills; interviews with program graduates and employers of graduates; and data on the evaluation of student performance on the national certification examination and other nationally recognized standardized tests.

Section I
continued

2. Results of Ongoing Program Evaluation

The results of ongoing evaluation must be appropriately reflected in the curriculum and other dimensions of the program. In particular, the program must systematically use the information obtained in its evaluation to foster student achievement with respect to the certificate or degree offered.

Program evaluation should be a continuing systematic process with internal and external curriculum validation in consultation with employers, faculty, preceptors, students and graduates, with follow-up studies of their employment and national examination performance. Other dimensions of the program merit consideration as well, such as the admission criteria and process, the curriculum design, and the purpose and productivity of the advisory committee.

Section II: Specific Requirements for Accreditation

Description of the Profession

Occupational therapy is the art and science of directing an individual's participation in selected tasks to restore, reinforce, and enhance performance; facilitate learning of those skills and functions essential for adaption and productivity; diminish or correct pathology; and promote and maintain health. Reference to occupation in the title is in the context of individuals' goal-directed use of time, energy, interest, and attention. Its fundamental concern is the development and maintenance of the capacity throughout the life span to perform with satisfaction to self and others those tasks and roles essential to productive living and to the mastery of self and the environment.

Since the primary focus of occupational therapy is the development of adaptive skills and performance capacity, its concern is with factors that promote, influence or enhance performance as well as those that serve as barriers or impediments to the individual's ability to function.

Occupational therapy provides service to those individuals whose abilities to cope with tasks of living are threatened or impaired by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological and social disability.

Occupational therapy serves a diverse population in a variety of settings such as hospitals and clinics, rehabilitation facilities, long-term care facilities, extended care facilities, sheltered workshops, schools and camps, private homes, and community agencies. Occupational therapists both receive from and make referrals to appropriate health, educational, or medical specialists. Delivery of occupational therapy services involves several levels of personnel including the certified occupational therapist, the certified occupational therapy assistant, and aides.

Entry-level occupational therapy technical educational programs prepare the occupational therapy assistant to:

1. Collaborate in providing occupational therapy services with appropriate supervision to prevent deficits and to maintain or improve function in activities of daily living, work, and play/leisure and in the underlying components, e.g., sensorimotor, cognitive, and psychosocial.

2. Participate in managing occupational therapy service.

3. Direct activity programs.

4. Incorporate values and attitudes congruent with the profession's standards and ethics. The American Occupational Therapy Association maintains an entry-level role delineation.

A. Curriculum

1. Description of the Program

a. Mission

The statement of the mission of the occupational therapy assistant program shall be consistent with that of the sponsoring institution.

b. Philosophy

The statement of philosophy of the program shall reflect:

(1) The current published philosophy of the profession.

(2) A view of humanity.

(3) An approach to learning/instruction.

c. Curriculum Design

The curriculum design shall provide the basis for program planning, implementation, and evaluation; documentation of the design must:

(1) Reflect the mission of the occupational therapy assistant program and of the institution.

(2) Identify educational goals of the program that are consistent with its mission and philosophy statements.

(3) Describe the set of organizing ideas that explains the selection of the content, scope, and sequencing of coursework.

2. Instruction must follow a plan which documents:

a. Appropriate learning experiences and curriculum sequencing to develop the competencies necessary for graduation, including appropriate instructional materials, classroom presentations, discussions, demonstrations and supervised practice.

b. Clearly written course syllabi which describe learning objectives and competencies to be achieved for both didactic and supervised clinical education components.

c. Frequent, documented evaluation of students to assess their acquisition of knowledge, problem identification and problem-solving skills, psychomotor, behavioral, and clinical competencies.

B. Content Requirements

Documentation of content of all curriculum courses shall consist of instructional objectives, course outlines, teaching methods, and specific learning experiences. Program content shall be based on a foundation of liberal arts, sciences and technical education and shall include:

1. General education which will be prerequisite to, or concurrent with, technical education and shall facilitate the development of:

a. Oral and written communication skills.

b. Problem-solving processes.

c. Knowledge and appreciation of multicultural factors.

2. Biological, behavioral, and health sciences that will be prerequisite to, or concurrent with, technical education and that encompasses normal and abnormal conditions across the life span (infants, children, adolescents, adults, and older adults):

a. Structure and function of the normal human body.

b. Sensorimotor, psychosocial and cognitive development throughout the life span.

c. Human behavior in the context of sociocultural systems.

d. Environmental and community effects on the individual.

e. Basic influences contributing to health.

f. Conditions commonly referred to occupational therapy.

3. Occupational Therapy Principles and Practice Skills

a. Foundations, history, and philosophical base f the profession and its personnel.

b. Occupational therapy principles which emphasize the use of purposeful activities and occupation to enhance role function.

c. Fundamentals of Activity

(1) Analysis of activities of daily living, work, and play/leisure.

(2) Performance and teaching of selected life tasks and activities.

(3) Grading and adapting purposeful activity (occupation) for therapeutic intervention.

d. Occupational Therapy Process

(1) Screening and Assessment

(a) Screening and assessment of the need for occupational therapy intervention based on skilled observation, histories, and interviews of patient and families appropriate to the role of the certified occupational therapy assistant.

(b) Administration of standardized and nonstandardized tests and evaluations appropriate to the role of the certified occupational therapy assistant under the direction of the certified occupational therapist.

(c) Use of assessment results in relation to performance areas, activities, and adaptation principles which are age appropriate.

(d) Understanding the need for and use of demonstrating service competencies in screening and assessment.

(2) Treatment Planning

(a) Participation in program planning of therapeutic intervention related to daily living skills, work, and play/leisure with their underlying performance components, e.g., sensorimotor, cognitive, and psychosocial.

(b) Contribution to the formulation of occupational therapy goals and objectives based on assessment data.

(c) Collaboration with patients, caregivers, certified occupational therapists and other professionals.

(3) Implementation

(a) Provision of therapeutic intervention related to occupational performance areas to include activities of daily living, work activities, and play/leisure.

(b) Use of self and dyadic and group interaction.

(c) Collaboration with the certified occupational therapist on treatment implementation.

(d) Fostering of prevention, health maintenance, and safety programs that are age-appropriate for daily living activities, work, and play/leisure.

Section II
continued

(e) Demonstration of effective written, oral, and nonverbal communication with patients and their families, colleagues, other health providers, and the public.

(f) Application of therapeutic adaptation for accomplishment of purposeful activities (occupation): family/caretaker training, environmental adjustments, basic orthotics and prosthetics, assistive devices, equipment, and other technologies.

(4) Reassessment for effect of intervention and a recommendation of a need for continued and/or changed treatment.

(5) Program termination including assisting in summarizing occupational therapy outcomes and contributing recommendations to maximize treatment gains.

e. Documentation of occupational therapy services that addresses principles of record keeping to ensure accountability in occupational therapy service provision and adequate documentation for the reimbursement of services.

f. Assist in the management of occupational therapy services including:

(1) Departmental operations: scheduling, record keeping, safety/maintenance of supplies and equipment.

(2) Supervisory requirements: facility, state and national requirements for the profession.

(3) Personnel training and supervision.

(4) Data collection for quality assurance.

(5) Compliance with regulations and reimbursement requirements.

(6) Applicable national and state credentialing requirements.

g. Direction of activity programs

(1) Assessment of individual needs, functional skills, and interests.

(2) Planning and implementation of group and individual programs to promote health, function, and quality of life.

(3) Management of activity service.

h. Develop values, attitudes, and behaviors congruent with:

(1) The profession's standards and ethics.

(2) Individual responsibility for continued learning.

(3) Interdisciplinary and supervisory relationships within the administrative hierarchy.

(4) Participation in the promotion of occupational therapy through involvement in professional organizations, governmental bodies, and human service organizations.

(5) Understanding of the importance of and the role of the occupational therapy assistant in occupational therapy research, [illegible]cation, program evaluation, and documentation of services.

4. Fieldwork Education

a. Fieldwork experience is crucial to the preparation of an occupational therapy assistant. The experience should provide the student with the opportunity for carrying out professional responsibility under appropriate supervision and professional role modeling. Supervised fieldwork shall be an integral part of the technical educational program.

(1) Objectives for each phase of fieldwork shall be:

(a) Collaboratively developed by the academic and fieldwork program representative to prepare students for practice and the fieldwork program that provides the practice setting.

(b) Documented.

(c) Known to the student.

(2) The ratio of fieldwork educators to students shall be such as to ensure proper supervision and frequent assessment in achieving fieldwork objectives.

(3) Fieldwork shall be conducted in settings equipped to provide clinical application of principles learned in the curriculum and appropriate to the learning needs of the student.

(4) Evidence shall be provided that communication has occurred between academic and fieldwork education in planning for this dimension of the program.

b. Level I Fieldwork shall be required and includes those experiences designed to enrich didactic coursework through directed observation and participation in selected aspects of the occupational therapy process. These experiences are not intended to emphasize independent performance.

(1) Level I Fieldwork shall not substitute for any part of Level II Fieldwork.

(2) Level I Fieldwork shall be supervised by qualified personnel including but not limited to certified occupational therapists, certified occupational therapy assistants, teachers, social workers, nurses, physical therapists, etc.

c. Level II Fieldwork shall be required and designed to provide in-depth experiences in delivering occupational therapy services and to develop and expand a repertoire of occupational therapy practice.

(1) A minimum of twelve weeks of Level II Fieldwork shall be required.

A minimum of 440 hours is acceptable to meet this twelve week Level II Fieldwork requirement.

(2) Fieldwork experience shall be provided with various groups across the life span, various psychosocial and physical performance deficits, and various service delivery models reflective of current practice in the profession.

(3) Learning objectives will support development of entry-level competencies.

(4) Level II Fieldwork shall be supervised by a certified occupational therapist or a certified occupational therapy assistant with a minimum of one year experience in a practice setting.

(5) To ensure continuity of application of academic concepts, all fieldwork should be completed within 18 months following completion of academic preparation.

C. Program Length

The length of the educational program shall be adequate to meet:

1. The requirements for entry-level credentialing.
2. The academic requirements of the sponsoring institution.

Section III: Maintaining and Administering Accreditation

A. Program and Sponsoring Institution Responsibilities

1. Applying for Accreditation

a. The accreditation review process conducted by the Accreditation Committee, American Occupational Therapy Association, and the Committee on Allied Health Education and Accreditation (CAHEA) can be initiated only at the written request of the chief executive officer or an officially designated representative of the sponsoring institution and the occupational therapy assistant program director.

b. This process is initiated by submitting a letter of intent to seek accreditation to the:

Accreditation Division
American Occupational Therapy Association, Inc
1383 Piccard Drive
P.O. Box 1725
Rockville, Maryland 20849-1725

with a copy to:

Division of Allied Health Education and Accreditation
American Medical Association
515 North State Street
Chicago, Illinois 60610

c. At any time before the final accreditation action is made by CAHEA, a program or sponsoring institution may withdraw its request for initial or continuing accreditation.

2. Administrative Requirements for Maintaining Accreditation

To maintain accreditation, the following actions are required:

a. The program must submit a Self-Study Report and other required reports within a period of time determined by the Accreditation Committee and provided to the programs.

b. The program must agree to a reasonable site visit date before the end of the period for which accreditation was previously awarded.

c. The program must inform the Accreditation Committee within a reasonable period of time of a change in program director.

d. The sponsoring institution must inform CAHEA and the Accreditation Committee of the transfer of program sponsorship, in accord with CAHEA policy.

e. The program and the sponsoring institution must pay accreditation fees within a reasonable period of time, as determined by the Accreditation Committee.

f. The program must complete and return by the established deadline the Annual Report provided by CAHEA, to ensure an accurate listing of the program and its sponsoring institution in the annual publication of the **Allied Health Education Directory**.

Failure to meet these administrative requirements for maintaining accreditation may lead to being placed on Administrative Probation and ultimately to having accreditation withdrawn.

3. An institution sponsoring a program may voluntarily withdraw from the CAHEA accreditation system at any time.

Section III:
continued

B. CAHEA and Accreditation Committee Responsibilities

1. Administering the Accreditation Review Process

a. At the written request of the chief executive officer or other officially designated representative, CAHEA and the Accreditation Committee assess an applicant program's relative compliance with the **Essentials**.

The accreditation review process includes an on-site evaluation of the program. If the performance of a site visit team is unacceptable, the institution may request a second site visit.

Before the Accreditation Committee formulates its accreditation recommendation to CAHEA, the sponsoring institution is given an opportunity to comment in writing on the report of the site visit team and to correct factual errors.

b. Before recommending Probationary Accreditation to CAHEA, the Accreditation Committee provides the sponsoring institution with an opportunity to respond in writing to the cited deficiencies in the program's relative compliance with the **Essentials**. The Accreditation Committee reconsideration of a recommendation for Probationary Accreditation is made on the basis of conditions existing when the Accreditation Committee arrived at its recommendation to CAHEA and on subsequent documented evidence of corrected deficiencies provided by the applicant.

An accredited program not on probation may be moved to probationary status upon verification of a written complaint deemed sufficient to warrant this action, or to administrative probation should administrative requirements not be fulfilled.

c. CAHEA assignments of Probationary Accreditation, including those following Accreditation Committee reconsideration, are final and are not eligible for further appeal.

2. Withholding or Withdrawing Accreditation

a. Before recommending Accreditation Withheld or Accreditation Withdrawn to CAHEA, the Accreditation Committee provides the sponsoring institution opportunity to request reconsideration. Decisions to withhold or withdraw accreditation may be appealed. A copy of the CAHEA appeals procedures for Accreditation Withheld or Withdrawn accompanies the letter notifying the sponsoring institution of one of these actions. When accreditation is withdrawn, the institutional sponsor's chief executive officer is provided with a clear statement of each deficiency in the program's relative compliance with the **Essentials** and is informed that application for accreditation as a new applicant may be made whenever the program considers itself to be in compliance with the **Essentials**.

b. All students successfully completing a program that holds accreditation at any point during their enrollment are regarded as graduates of a CAHEA-accredited program.

3. Inactive Programs

a. The sponsoring institution may request inactive status for a program that does not enroll students for up to two years. Such a program and sponsoring institution must continue to pay required annual fees.

b. Should a program be inactive for two years, and determine not to reactivate, it will be considered discontinued and accreditation will be withdrawn.

The American Occupational Therapy Certification Board

POLICY

003-86

SUBJECT: ADMISSION TO THE CERTIFICATION EXAMINATION FOR OCCUPATIONAL THERAPIST, REGISTERED

CODE: AOTCB Motion 12/86

SUPERSEDES:

EFFECTIVE DATE: 12/86

AMENDS:

REVISED DATE: 2/87

REFERENCE: AOTA Policy #3.2
AOTA Resolution 612-85

PURPOSE: To explain eligibility requirements to write the Certification Examination for Occupational Therapist, Registered

IT SHALL BE THE POLICY OF THE AOTCB THAT:

To write the Certification Examination for Occupational Therapist, Registered, the candidate must meet one of the following eligibility requirements:

I. Graduates of Basic Baccalaureate, Post-Degree and Master's Degree Programs for Occupational Therapists in the United States of America, its Possessions and Territories.

Successful completion of all academic and fieldwork requirements of the AMA/AOTA accredited educational program in occupational therapy as verified by the candidate's program director. The individual must have paid the examination fee.

II. Certified Occupational Therapy Assistants via Career Mobility Program*

A. Current certification by an registration with the AOTCB as an Occupational Therapy Assistant.

B. Accumulation of not less than four years of occupational therapy practice as a Certified Occupational Therapy Assistant; that is, full-time or part-time equivalent of not less than four years.

C. Evidence of having fulfilled current fieldwork experience requirements, stipulated in the ESSENTIALS OF AN ACCREDITED EDUCATION PROGRAM FOR THE OCCUPATIONAL THERAPIST.

D. The above facts must be verified by the Career Mobility Review Committee and the individual must have paid the examination fee.

*Program closed to new candidates as of November 1982.

III. Persons Who Have Received Their Professional Education Outside the United States of America and its Possessions and Territories.

A. Graduates of Approved Occupational Therapy Programs.

1. Successful completion of all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists.

2. Verification by the candidate's occupational therapy program director.

3. The above facts must be verified by the AOTCB and the individual must have paid the examination fee.

B. Occupational Therapy Students

1. Successful completion of the academic requirements of an occupational therapy program approved by a member nation of the World Federation of Occupational Therapists or directly by WFOT.

2. Successful completion of a minimum of six months' fieldwork experience under the affiliation program of an accredited occupational therapy educational program in the United States of America.

a. Experience to be secured at various centers in the United States of America in accordance with the ESSENTIALS OF AN ACCREDITED EDUCATIONAL PROGRAM FOR THE OCCUPATIONAL THERAPIST.

b. Fieldwork Performance Reports to be submitted by the supervisor(s) as for students from AMA/AOTA accredited curricula.

3. Verification by the director of the occupational therapy educational program in the USA who has enrolled the student in the fieldwork experience program.

C. Occupational Therapists Educated in Countries that are not Members of the World Federation of Occupational Therapists

Eligibility for writing the examination shall be determined for each individual by the AOTCB on the basis of the applicant's education and practice experience. The individual must have paid the examination fee.

Attachment N

LEGAL ADVOCACY FOR PERSONS
WITH DEVELOPMENTAL DISABILITIES
MINNESOTA DISABILITY LAW CENTER

430 FIRST AVENUE NORTH, SUITE 300
MINNEAPOLIS, MN 55401-1780
(612) 332-1441 • TDD (612) 332-4668
Toll Free 1-800-292-4150

June 1, 1992

Michelle Strangis
Rule Development Specialist
Minnesota Department of Health
717 Delaware Street, S.E.
P.O. Box 9441
Minneapolis, MN 55440-9441

RE: **Draft Rules for Registration System for Occupational Therapists**

Dear Ms. Strangis:

Anne Henry gave me your letter to her of April 27, 1992 and the copy of the outline of selected portions of a draft rule governing registration of occupational therapists. I have shared the information you sent to Anne with others in our office. We have three general comments at this time.

First, in Part III, A of the outline, it is stated that "an occupational therapist may delegate patient treatment procedures only to an occupational therapy assistant." Since "treatment procedures" are not defined in the draft outline, it is not clear what procedures may be delegated only to an occupational therapy assistant. Nevertheless, we believe that this limitation on delegation is potentially a problem.

Based on our experience in working with occupational therapists in the public school system, in the state institutions, and in the adult service system throughout the state, we are aware that there are certain procedures which occupational therapists use which should only be done by occupational therapists, or, possibly, an occupational therapy assistant found to be competent to implement those procedures. On the other hand, we have worked to encourage occupational therapists to integrate treatment procedures into functional activities which occur throughout the person's normal daily routine. A requirement that treatment procedures could only be delegated to an occupational therapy assistant raises the distinct possibility that this practical approach would not be possible.

Our clients need persons who are not trained occupational therapy assistants to implement occupational therapy treatment procedures which are legitimately within their competence. We expect occupational therapists to train direct service staff to that end. This indirect

provision of service or "rule release" is, as a practical matter, essential if our clients are going to get the services they need.

We urge that you look at the delegation of duties section in the rule very carefully with these comments in mind.

While we are concerned about the delegation of duties paragraph, we are also concerned with the supervision section on page 2 of the draft rules. We have also seen circumstances in which occupational therapists may initially be involved, but as a practical matter, delegate everything to the occupational therapy assistant and never see the person again. It is not inconsistent with our concern that the indirect service model be incorporated in this rule to request that the rule provide some time period in which the occupational therapist will actually see the person for whom treatment procedures are devised.

Finally, our third point relates to the coordination of service section. Most of our clients have a case manager or a service coordinator either in the county or public school system. These individuals have the responsibility to ensure that there is coordinated service provided. We believe it would be appropriate for a rule establishing certain professional requirements for occupational therapists to impose upon them the obligation to participate in coordinated service provision under the general direction of a case manager or a service coordinator. We do not suggest, of course, that an occupational therapist or any other person with professional background and experience would be required by such a rule to take any action inconsistent with their best professional judgment. Cooperation with other professionals, however, certainly can be expected.

We appreciate the opportunity to comment on these rules. Please add me to your mailing list for other information regarding the rulemaking process.

Very truly yours,

Luther A. Granquist

Luther A. Granquist

LAG:dld

MINNESOTA DEPARTMENT OF HEALTH

Survey of Occupational Therapy Practice Groups

Minnesota Department of Health
Health Care Delivery Systems Division
717 Delaware Street, Southeast
Minneapolis, Minnesota 55440
(612) 623-5365

The Minnesota Department of Health is in the process of developing rules that will establish a registration system for occupational therapists and occupational therapy assistants. We are conducting this survey to obtain information on access to occupational therapy services with and without referrals by other health care practitioners. The information obtained from this survey will be used to draft a rule provision on that subject.

Participation in the survey is strictly voluntary, and you are not required by law to furnish any of the information requested in the survey. The only consequence of not furnishing the requested information is that Department staff will not have the benefit of your expertise in developing this rule provision and may not receive input from an occupational therapy practitioner in your practice area.

The Minnesota Department of Health considers the completed survey to be public information. The information provided in the responses will be summarized and shared with other persons, including occupational therapy practitioners, who are assisting Department staff to develop the rules. The survey and information provided in the responses will be available to the public upon request.

INSTRUCTIONS

1. Please complete each question of this survey based on your experience working in the practice area indicated below.

____ *Long term care*	____ *Cardiac rehabilitation*
____ *School therapy*	____ *Physical disability*
____ *Early intervention*	____ *Pediatrics*
____ *Administration*	____ *Mental health*
____ *Gerontology*	____ *Home health*
____ *Industrial rehabilitation*	____ *Hand therapy*

2. Please read through the entire survey before you begin. If you have any questions, call Michelle Strangis, Minnesota Department of Health Rule Development Specialist, at 623-5296.

3. Please return the completed survey to the Minnesota Department of Health by November 27, 1991, in the enclosed postage paid envelope.

DEFINITIONS

The following terms are used in this survey as defined:

"Diagnosis" means the identification of disease, illness or other specific medical condition or mental or emotional disorder by a licensed health care practitioner authorized by statute to make a diagnosis.

"Direct Access" to occupational therapy means a consumer's ability to obtain evaluation, consultation and treatment without first obtaining a referral from a physician or other licensed health care practitioner authorized by statute to make a diagnosis.

"Licensed health care practitioner authorized by statute to make a diagnosis" means a person licensed to practice medicine, osteopathy, podiatry, dentistry, or psychiatry.

"Referral" means authorization, order or other requirement necessary to obtain health services, including occupational therapy.

"Reimburser" means anyone obligated to assume financial responsibility, in whole or in part, for health or health related services, other than the recipient of the service, including a school district, health insurance indemnity plan, health maintenance organization, workers compensation insurance, Medicare and Medical Assistance.

BACKGROUND INFORMATION OF SURVEY RESPONDENT

1. How long have you worked in the practice area indicated at the top of page 3?

____ less than one year
____ one to two years
____ three to four years
____ five years or more

2. If you have worked in this practice area less than five years, please indicate the number of years you have worked as an occupational therapist.

____ less than one year
____ one to two years
____ three to four years
____ five years or more

3. What is your employment setting (e.g. hospital, client's home, school)?

4. Please describe briefly the therapy procedures used in this practice area.

REFERRALS AND REIMBURSEMENT

The following questions seek information on current practices and the extent to which current practices reflect reimbursement requirements.

5. Please indicate the source of referrals for your practice and the approximate percent of clients from each referral source.

REFERRAL SOURCE	% OF CLIENTS
Physician	_____
Osteopath	_____
Podiatrist	_____
Dentist	_____
Psychiatrist	_____

Other professionals that are licensed or registered in the state of Minnesota (e.g., chiropractor, optometrist, physical therapist, teacher, speech-language pathologist, school counselor, licensed social worker, psychologist).

_____	_____
_____	_____
_____	_____
_____	_____

Professionals that are not licensed or registered in Minnesota (e.g. other occupational therapists, nutritionist, unlicensed mental health practitioner, clergy, chemical dependency counselor).

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Client self-referral	_____
TOTAL	100%

6. Are you aware of any reimbursement sources that will reimburse for occupational therapy without a referral from a "licensed health care practitioner authorized by statute to make a diagnosis," as defined on page 3 this survey?

_____ YES _____ NO

If yes, please list the reimbursement sources.

7. Do you see clients that "self-pay" for occupational therapy services?

_____ YES _____ NO

a. If yes, approximately what percentage of these clients came to you initially without a referral from a "licensed health care practitioner authorized by statute to make a diagnosis," as defined on page 3?

b. What percentage of self pay clients initially received occupational therapy services based on a referral from a "licensed health care practitioner authorized by statute to make a diagnosis," and subsequently resumed receiving services without a referral?

8. What percentage of your clients receive occupational therapy services for a <u>lifelong and ongoing</u> condition?

9. What is the period of time from the date of initial treatment to the date treatment is discontinued for most of your clients?

____ 1 - 5 calendar days

____ 6 - 30 calendar days

____ 30 - 90 calendar days

____ 90 days - 6 months

____ 6 months - 1 year

____ Other (please specify)

REFERRAL PROCEDURES

10. What type of referral is generally required by reimbursers prior to treatment (e.g. physician's written order; written evaluation by school district special education team)? If reimbursement requirements vary, please summarize the typical requirements for your practice area.

11. Describe the referral process in your setting. In other words, how do you receive the information that reimbursers require prior to treatment and in what form do you receive the information? Please be specific. If the referral process varies according to the type of reimbursement involved (e.g. services covered by school district funds as compared to private insurance and medical assistance) please explain the process for each type of reimburser.

12. How long does it usually take to receive the referral?

13. When reimbursers require a referral, does that requirement cause delays in providing treatment?

_____ YES _____ NO

If yes, please identify specific factors associated with referral requirements that cause delays in providing occupational therapy services to clients (e.g. off site location of referring health care practitioners).

INTERVENTION PLANNING

** Diagnosis **

14. Is a diagnosis necessary for you to develop an occupational therapy intervention plan? Please refer to the definition of diagnosis on page 3. Explain your answer.

15. When a diagnosis is not provided, on what basis do you develop an occupational therapy intervention plan?

** Access to Medical Information **

16. What medical information do you need before you conduct an evaluation?

17. Where do you obtain this information?

18. What medical information do you need before you begin treatment? Please be specific and describe the information you need and in what form you prefer the information (e.g. Doctor's written order indicating condition to be treated, precautions, significant client history).

19. Where do you obtain this information?

20. How often do you receive the information you described in question 18?

____ Always
____ Sometimes
____ Most of the time
____ Rarely or never

21. If you treat a client without a referral from a "licensed health care practitioner authorized by statute to make a diagnosis," how do you know whether treatment for a specific client is contraindicated due to a medical condition other than the condition for which the client is receiving occupational therapy?

22. Are there other types of harm (e.g. other than treatment that may be contraindicated due to a medical condition) that you might be concerned about when treating a client without a referral from a "licensed health care practitioner authorized by statute to make a diagnosis?" Please explain.

IMPLICATIONS OF DIRECT ACCESS AND REFERRAL REQUIREMENT

23. If occupational therapy practitioners could provide consultation and evaluation services without a referral from a "licensed health care practitioner authorized by statute to make a diagnosis," would a referral requirement for treatment cause delays? Please explain.

24. How would direct access expedite the provision of treatment?

25. Would requiring a referral by a "licensed health care practitioner authorized by statute to make a diagnosis" add to the cost of treatment? Please explain.

26. How would direct access reduce the cost of treatment?

27. If you believe your employment setting does not accurately reflect other employment settings in this practice area for the purposes of this survey, please indicate how other employment settings in this practice area may be different.

28. Please provide any additional information or comments on the subject of access to occupational therapy services with and without referrals by other health care practitioners that you believe would be helpful to Department of Health staff that are researching and drafting the rules. You may attach additional sheets of paper.

29. If you are willing to continue to serve as a resource for questions on this and other subjects that arise during the course of the rule drafting process concerning your practice area, please provide your name, address and phone.

Thank you for your time in completing this survey. Please return the survey in the enclosed envelope by November 27, 1991.

THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, INC.

STATEMENT OF OCCUPATIONAL THERAPY REFERRAL

The American Occupational Therapy Association, Inc., presents this statement to clarify the position of the profession in regard to referral for services.

Referral is the practice of requesting occupational therapy services and delegating the responsibility for, or the application of the practice of Occupational Therapy to a qualified occupational therapist and subsequent staff.

The American Occupational Therapy Association, Inc., does not mandate a referral for the delivery of occupational therapy services, but maintains that the requirements of state law and individual facilities should be followed.

Occupational therapy shares with physicians and other professionals a dedication to the general health of individuals and protection of their welfare. Through the application of professional knowledge and skills, its contribution extends beyond restorative measures and acute treatment concerns, to the maintenance of health and prevention of disease and disability.

I. The Registered Occupational Therapist responds to a request for services, whatsoever its source, and enters a case at his/her own professional discretion, and on his/her own cognizance; the occupational therapy assistant enters as authorized by a supervising registered therapist, and each:

- recognizes that a physician or other professional, duly licensed to practice within an area of specialization, is the person who holds full responsibility for the medical management of the client;

- implements occupational therapy's concepts and provides judgement and skill in the evaluation of a client, and formulation of a comprehensive therapeutic program directed toward the restoration and/or maintenance of health and freedom from disease, disability or dependence;

- treats within the client management plan, collaboratively with others who are involved with the client, documents services in the client's record;

- guides the client in the utilization of the concepts of occupational therapy where applicable, to the improvement of his/her general welfare;

- refers a client who, in the therapist's professional judgement appears to require additional services, to an individual qualified to provide the appropriate specialized service;

- practices in compliance with all standards, policies and guidelines of The American Occupational Therapy Association, Inc., within the limits of competency and the supervisory pattern commensurate with his/her level of qualification (professional or assistant).

II. The Registered Occupational Therapist on his/her own cognizance responds to requests of qualified agencies, facilities, programs and personnel for collaboration in activities directed to the general health of society and:

- contributes to the evaluation of health factors, the development, the utilization and interpretation of health knowledge and its dissemination, especially as it pertains to the use of absence of activity, and its influence upon individuals and societal health;

- provides occupational therapy service or consultation, as appropriate, for the client in his/her particular environment to increase the understanding and utilization of occupational therapy service;

- practices in compliance with all standards, policies and guidelines of The American Occupational Therapy Association, Inc., within the limits of personal expertise and competency.

III. The Registered Occupational Therapist involved in a program of leisure-time, social or recreation programming with individuals who may or may not be health problems should:

- consult to the activity program and its supporting facility to provide a therapeutic approach utilizing the therapeutic value of activity to enrich participant involvement;

- identify those individuals among the participants who are in need of specific referral for occupational therapy or supportive services and refer them to an individual qualified to provide the appropriate specialized service;

- practice in compliance with all standards, policies, and guidelines of The American Occupational Therapy Association, Inc., within the limits of personal expertise and competency.

Adopted 1969

Revised 1980

OCCUPATIONAL THERAPY CODE OF ETHICS

The American Occupational Therapy Association's Code of Ethics is a public statement of the values and principles used in promoting and maintaining high standards of behavior in occupational therapy. The American Occupational Therapy Association and its members are committed to furthering people's ability to function within their total environment. To this end, occupational therapy personnel provide services for individuals in any stage of health and illness, to institutions, to other professionals and colleagues, to students, and to the general public.

The Occupational Therapy Code of Ethics, is a set of principles that applies to occupational therapy personnel at all levels. The roles of practitioner (registered occupational therapist and certified occupational therapy assistant), educator, fieldwork educator, supervisor, administrator, consultant, fieldwork coordinator, faculty program director, researcher/scholar, entrepreneur, student, support staff, and occupational therapy aide are assumed.

Any action that is in violation of the spirit and purpose of this Code shall be considered unethical. To ensure compliance with the Code, enforcement procedures are established and maintained by the Commission on Standards and Ethics. Acceptance of membership in the American Occupational Therapy Association commits members to adherence to the Code of Ethics and its enforcement procedures.

Principle 1. Occupational therapy personnel shall demonstrate a concern for the well-being of the recipients of their services. (beneficence)

A. Occupational therapy personnel shall provide services in an equitable manner for all individuals.

B. Occupational therapy personnel shall maintain relationships that do not exploit the recipient of services sexually, physically, emotionally, financially, socially or in any other manner. Occupational therapy personnel shall avoid those relationships or activities that interfere with professional judgment and objectivity.

C. Occupational therapy personnel shall take all reasonable precautions to avoid harm to the recipient of services or to his or her property.

D. Occupational therapy personnel shall strive to ensure that fees are fair, reasonable, and commensurate with the service performed and are set with due regard for the service recipient's ability to pay.

Principle 2. Occupational therapy personnel shall respect the rights of the recipients of their services. (e.g., autonomy, privacy, confidentiality)

A. Occupational therapy personnel shall collaborate with service recipients or their surrogate(s) in determining goals and priorities throughout the intervention process.

B. Occupational therapy personnel shall fully inform the service recipients of the nature, risks, and potential outcomes of any interventions.

C. Occupational therapy personnel shall obtain informed consent from subjects involved in research activities indicating they have been fully advised of the potential risks and outcomes.

D. Occupational therapy personnel shall respect the individual's right to refuse professional services or involvement in research or educational activities.

E. Occupational therapy personnel shall protect the confidential nature of information gained from educational, practice, research, and investigational activities.

Principle 3. Occupational therapy personnel shall achieve and continually maintain high standards of competence. (duties)

A. Occupational therapy practitioners shall hold the appropriate national and state credentials for providing services.

B. Occupational therapy personnel shall use procedures that conform to the Standards of Practice of the American Occupational Therapy Association.

C. Occupational therapy personnel shall take responsibility for maintaining competence by participating in professional development and educational activities.

D. Occupational therapy personnel shall perform their duties on the basis of accurate and current information.

E. Occupational therapy practitioners shall protect service recipients by ensuring that duties assumed by or assigned to other occupational therapy personnel are commensurate with their qualifications and experience.

F. Occupational therapy practitioners shall provide appropriate supervision to individuals for whom the practitioners have supervisory responsibility.

G. Occupational therapists shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required.

Principle 4. Occupational therapy personnel shall comply with laws and Association policies guiding the profession of occupational therapy. (justice)

A. Occupational therapy personnel shall understand and abide by applicable Association policies; local, state, and federal laws; and institutional rules.

B. Occupational therapy personnel shall inform employers, employees, and colleagues about those laws and Association policies that apply to the profession of occupational therapy.

C. Occupational therapy practitioners shall require those they supervise in occupational therapy related activities to adhere to the Code of Ethics.

D. Occupational therapy personnel shall accurately record and report all information related to professional activities.

Principle 5. Occupational therapy personnel shall provide accurate information about occupational therapy services. (veracity)

A. Occupational therapy personnel shall accurately represent their qualifications, education, experience, training, and competence.

B. Occupational therapy personnel shall disclose any affiliations that may pose a conflict of interest.

C. Occupational therapy personnel shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, or unfair statements or claims.

Principle 6. Occupational therapy personnel shall treat colleagues and other professionals with fairness, discretion, and integrity. (fidelity, veracity)

A. Occupational therapy personnel shall safeguard confidential information about colleagues and staff.

B. Occupational therapy personnel shall accurately represent the qualifications, views, contributions, and findings of colleagues.

C. Occupational therapy personnel shall report any breaches of the Code of Ethics to the appropriate authority.

Author:
Commission on Standards and Ethics (SEC)
Ruth Hansen, PhD, OTR, FAOTA, Chairperson

Approved by the Representative Assembly: 4/77
Revised: 1979, 1988, 1994
Adopted by the Representative Assembly: 7/94

NOTE: This document replaces the 1988 *Occupational Therapy Code of Ethics* which was rescinded by the 1994 Representative Assembly.

Position Paper: Physical Agent Modalities

The American Occupational Therapy Association, Inc. (AOTA), asserts that "physical agent modalities may be used by occupational therapy practitioners when used as an adjunct to or in preparation for purposeful activity to enhance occupational performance and when applied by a practitioner who has documented evidence of possessing the theoretical background and technical skills for safe and competent integration of the modality into an occupational therapy intervention plan" (1991a, p. 1075). The purpose of this paper is to clarify the parameters for the appropriate use of physical agent modalities in occupational therapy. Physical agent modalities are defined as those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities include, but are not limited to, paraffin baths, hot packs, cold packs, Fluidotherapy, contrast baths, ultrasound, whirlpool, and electrical stimulation units (e.g., functional electrical stimulation [FES]/neuromuscular electrical stimulation [NMES] devices, and transcutaneous electrical nerve stimulator [TENS]) (AOTA, 1991b).

Physical agent modalities can be categorized as "adjunctive methods" (Pedretti & Pasquinelli, 1990, pp. 3–4). An adjunctive method is one that is used in conjunction with or in preparation for patient involvement in purposeful activity. Adjunctive methods support and promote the acquisition of the performance components necessary to enable an individual to resume or assume the skills that are a part of his or her daily routine. As such, the exclusive use of physical agent modalities as a treatment method during a treatment session without application to a functional outcome is not considered occupational therapy. Physical agent modalities can be appropriately integrated into an occupational therapy program only when they are used to prepare the patient for better performance and prevention of disability through self-participation in work, self-care, and play and leisure activities (AOTA, 1979).

The safe selection, application, and adjustment of physical agent modalities, however, is not considered entry-level practice. The specialized learning necessary for proper use of these modalities typically requires appropriate postprofessional education, such as continuing education, in-service training, or graduate education. Documentation of the theoretical and technical education necessary for safe and appropriate use of any physical agent modalities should include, but not be limited to: course(s) in human anatomy; principles of chemistry and physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by the selected modality; physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of the selected modality; the response of normal and abnormal tissue to the application of the modality; indications and contraindications related to the selection and application of the modality; guidelines for treatment and administration of the modality; guidelines for preparation of the patient, including education about the process and possible outcomes of treatment (i.e., risks and benefits); and safety rules and precautions related to the selected modality. Education should also include methods for documenting the effectiveness of immediate and long-term effects of treatment and characteristics of the equipment, including safe operation, adjustment, indications of malfunction, and care. Supervised use of the physical agent modality should continue until service competency and professional judgment in selection, modification, and integration into an occupational therapy program are assured (AOTA, 1991b). As with all media, when a registered occupational therapist delegates the use of a physical agent modality to a certified occupational therapy assistant, both shall comply with appropriate supervision requirements and ensure that their use is based on service competency (AOTA, 1991c).

The Occupational Therapy Code of Ethics (AOTA, 1988) supports safe and competent practice in the profession and provides principles that can be applied to physical agent modality use. Principle 2 (Competence) states that "occupational therapy personnel shall actively maintain high standards of professional competence" (p. 795) and places expectations on practitioners to demonstrate competency by meeting competency-based standards. Principle 2B states that "the individual shall recognize the need for competence and shall participate in continuing professional development" (p. 795), which obliges practitioners to maintain competency by involvement in continuing education. In particular, therapists who choose to use physical agent modalities must stay abreast of current research findings regarding the efficacy of physical agent modality use. In addition, Principle 3A states that "the individual shall be acquainted with applicable local, state, federal, and institutional rules and Association policies and shall function accordingly" (p. 795) and requires

practitioners to comply with all rules, regulations, and laws. All state laws and regulations related to physical agent modality use have precedence over AOTA policies and positions. ▲

References

American Occupational Therapy Association. (1979). Policy 1.12. Occupation as the common core of occupational therapy. In *Policy Manual of the American Occupational Therapy Association, Inc.* Rockville, MD: Author.

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American Occupational Therapy Association. (1991a). Official: AOTA statement on physical agent modalities. *American Journal of Occupational Therapy, 45,* 1075.

American Occupational Therapy Association. (1991b). *Physical Agent Modality Task Force report.* Rockville : Author.

American Occupational Therapy Association. (1991c). Registered occupational therapists and certified occupational therapy assistants and modalities [Policy 1.25]. *American Journal of Occupational Therapy, 45,* 1112–1113.

Pedretti, L. W., & Pasquinelli, S. (1990). A frame of reference for occupational therapy in physical dysfunction. In L. W. Pedretti & B. Zoltan (Eds.), *Occupational therapy practice skills for physical dysfunction* (3rd ed., pp. 1–17). St. Louis: Mosby.

Prepared by Mary Jo McGuire, MS, OTR, for the Commission on Practice (Jim Hinojosa, PhD, OTR, FAOTA, Chair).

Approved by the Representative Assembly March 1992.

THE ASSOCIATION

Policies Adopted or Amended by the 1992 Representative Assembly

Subject: **Proactive Positioning of Occupational Therapy for Long-Term Care Delivery System**
Code: RA Resolution 4/90, RA Motion 3/92
Effective Date: 3/92
Purpose: To be responsive to the changing demographic profile as reflected in: the aging imperative, the prevalence of chronic disabling conditions of all age groups, the increased demand for long term care services across the age continuum, and the cultural diversity of the entire population. In response to these changes, active participation is needed in the evolving consumer oriented programs which enable people to remain in their homes and community.

It shall be the policy of the AOTA that

1. The profession develop consumer oriented and responsive service delivery models which maximize the skills of OTRs and COTAs in meeting the consumer needs.
2. Members will be made aware of the potential for significant changes in occupational therapy reimbursement by public and private payers.
3. Occupational therapy practitioners will be prepared to assume effective roles in emerging consumer responsive models of long term care.
4. Members will be educated to better understand the importance and critical need for active participation in local, state, and national policy formation and implementation.
5. Educators will be encouraged to address the service delivery issues for the increasing numbers of people who will require long term services and are seeking home and community based models of delivery.

Subject: **Definition of Occupational Therapy Practice for State Legislation**
Code: RA Resolution #642–92 (Rescinds Resolution #572–81)
Purpose: To provide a recommended guide for state regulation definition.

It shall be the policy of the AOTA that

1. A uniform definition of occupational therapy is desirable for occupational therapists to use in state regulatory laws for professional mobility and uniform standards.
2. The following definition is a recommended guide for state regulatory definition:
   Occupational therapy is the use of purposeful activity or interventions to achieve functional outcomes. *Achieving functional outcomes* means to maximize the independence and the maintenance of health of any individual who is limited by a physical injury or illness, a cognitive impairment, a psychosocial dysfunction, a mental illness, a developmental or learning disability, or an adverse environmental condition. Assessment means the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services.

   Occupational therapy services include but are not limited to
   a. The assessment, treatment and education of or consultation with the individual, family or other persons; or
   b. Interventions directed toward developing daily living skills, work readiness, or work performance, play skills or leisure capacities, or enhancing educational performance skills; or
   c. Providing for the development of sensory-motor, perceptual, or neuromuscular functioning; or range of motion; or emotional, motivational, cognitive, or psychosocial components of performance.

   These services may require assessment of the need for use of interventions, such as the design, development, adaptation, application, or training in the use of assistive technology devices; the design, fabrication, or application of rehabilitative technology such as selected orthotic devices; training in the use of assistive technology; orthotic or prosthetic devices; the application of physical agent modalities as an adjunct to or in preparation for purposeful activity; the use of ergonomic principles; the adaptation of environments and processes to enhance

functional performance; or the promotion of health and wellness.

Subject: **Use of Gender Neutral Language**
Code: RA Motion 5/91
Effective Date: 5/91
Revised/Amended Date: 3/92
Purpose: To assure that official documents contain only gender neutral language.

It shall be the policy of the AOTA that

1. AOTA shall not discriminate on the basis of gender.
2. Gender neutral language shall be used in all official documents.
3. Gender neutral language shall be encouraged of all authors of AOTA publications.
4. Gender neutral language shall be encouraged of all presenters at AOTA sponsored conferences and workshops.
5. The term Chairperson shall be used in place of Chairman throughout the Association and Association documents, by authority of Article XXIII, AOTA Bylaws.

Subject: **Association Planning Process**
Code: RA Motion 4/88
Effective Date: 4/88
Revised/Amended Date: 3/92
Purpose: To identify the various steps in the planning process and the integration of these various steps.

It shall be the policy of the AOTA that

1. The Association shall have a planning process which is integrated and links the Association Bylaws, policies, goals, objectives and activities. The process based upon the Association's mission and values includes the development and implementation of a strategic plan and its operational objectives.
2. The strategic plan is defined as a 3 year management plan outlining goals and operational objectives of the Association based upon emerging issues and priorities identified by the membership through its elected leaders.
   a. The Representative Assembly, as the policy making body, has the authority and responsibility for monitoring and revising the goals and directions of the Association through the strategic plan. This plan shall be reviewed annually, and updated as needed.
   b. The Strategic Plan Committee, a committee of the Representative Assembly, is responsible for the development and implementation of a process which assures broad membership input into the development and ongoing review of the plan.
   c. The Executive Board, as the management body, is responsible for the development, prioritization and implementation of the strategic plan.
3. The Operational Objectives as component of the strategic plan identify the activities that can be accomplished in one year. The operational objectives link budget allocations to the activities which will ultimately accomplish the goals established in the strategic plan.

Subject: **Publication of Items for Action to the Representative Assembly**
Code: RA Motion 5/84
Effective Date: 4/85
Revised/Amended Date: 3/92
Purpose: To establish policy concerning publication of proposed resolutions which will provide membership with adequate information to assist the representatives in making informed decisions.

It shall be the policy of the AOTA that

1. All items for action, including but not limited to proposed resolutions, previously referred resolutions, commission and committee items for action and proposed policies shall be printed in an official publication.
2. The publication containing items for action to the Representative Assembly shall be mailed to the membership two months prior to the meeting of the Representative Assembly.
3. The Agenda Committee Chairperson annually shall establish the deadline date for receipt of proposed resolutions.
4. The format for publication of proposed and referred resolutions shall be
   a. Topic and originator
   b. Intent
   c. Each "Whereas" and "Resolve" Statement
   d. Fiscal implications
   e. Legal implications
5. The format for publication of all other items for action shall be
   a. Topic and originator
   b. Intent and justification
   c. Fiscal implications
   d. Legal implications
6. The publication also shall include a current listing of all representatives, their addresses and phone numbers, and a response form for membership comment.
7. The response form shall be large enough for written comments and be published without news items on the back of the form.

DEFINITION OF OCCUPATIONAL THERAPY PRACTICE FOR STATE REGULATION

"Occupational Therapy" is the use of purposeful activity or interventions to achieve functional outcomes. "Achieving functional outcomes" means to maximize the independence and the maintenance of health of any individual who is limited by a physical injury or illness, a cognitive impairment, a psychosocial dysfunction, a mental illness, a developmental or learning disability, or an adverse environmental condition. Assessment means the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services.

Occupational therapy services include but are not limited to:

1. the assessment, treatment and education of or consultation with the individual, family or other persons; or

2. interventions directed toward developing daily living skills, work readiness or work performance, play skills or leisure capacities, or enhancing educational performances skills; or

3. providing for the development of sensory-motor, perceptual or neuromuscular functioning, or range of motion, or emotional, motivational, cognitive, or psychosocial components of performance.

These services may require assessment of the need for and use of interventions such as the design, development, adaptation, application, or training in the use of assistive technology devices; the design, fabrication, or application of rehabilitative technology such as selected orthotic devices; training in the use of assistive technology, orthotic, or prosthetic devices; the application of physical agent modalities as an adjunct to or in preparation for purposeful activity; the use of ergonomic principles; the adaptation of environments and processes to enhance functional performance; or the promotion of health and wellness.

March 28, 1992

American Occupational Therapy Association, Inc. (AOTA)

FI-00399-02

Department of Finance

Departmental Earnings: Reporting/Approval

Part A: Explanation

Earnings Title: Occupational Therapists Registration	***Statutory Authority:M.S. 214.13,Subd.1 & 3***	***Date:07-Sep-95***

Brief Description of Item: Regulation of the Occupational Therapy Providers through a Registration System. Fees established to recover the costs of operating the Registration System.

Earnings Classification (check one):

1. ____ Service/User 2. ____ Business/Industry Regulating 3. __X__ Occupational Licensure
4. ____ Special Tax/Assessment 5. ____ Other (specify):

Submission Purpose (check one):

1. __X__ Chap. 14 Review and Comment 2. ____ Approval of Allowable Inflationary Adjustment
3. ____ Reporting of Agency Initiated Change in Departmental Earnings Rate 4. ____ Other (specify):

If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts? ____ Yes ____ No

If yes, cite pertinent statutes:

Impact of Proposed Change *(For rate changes included in the biennial budget, reference page number. For rate changes not included in the biennial budget, reference authority to make such changes.)*

Current Unit Rate(s):	***Proposed Unit Rate(s):***

Attachment T

FI-00399-02

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 40000:55-17, 40300:62-17	AID:384222	Rev. Source Code(s):	___ Dedicated __X__ Non-Dedicated ___ Both				
Item	F.Y. 1993	F.Y. 1994	F.Y. 1995	F.Y. 1996 As Shown in Biennial Budget	F.Y. 1997 As Shown in Biennial Budget	F.Y. 1996 As Currently Proposed	F.Y. 1997 As Currently Proposed
REVENUES:							
BALANCE FORWARD	(76)	(103)	(115)			(157)	(195)
REVENUES	0	0	0			141	215
TOTAL CURRENT REVENUE	0	0	0			141	215
TOTAL AVAILABLE REVENUE	(76)	(103)	(115)			(16)	20
EXPENDITURES:							
Direct	24	11	37			155	143
Indirect	3	1	5			24	23
Total	27	12	42			179	166
Current Deficit/Excess	(27)	(12)	(42)			(38)	49
Accumulated Excess/Deficit*	(103)	(115)	(157)			(195)	(146)

Agency Signature:

Executive Budget Officer:
Approval Date:

OCCUPATIONAL THERAPY PRACTITIONER BUDGET NARRATIVE

FORMAT:

The attached budget document spans the period FY 1991 to FY 2002. The budget separates rulemaking and registration development costs (FY 1991 through approximately 3rd quarter FY 1996) from operational or registration administration costs (approximately 4th quarter FY 1996 through FY 2002).

INFORMATION SOURCES, JUSTIFICATIONS & BASIC ASSUMPTIONS:

1. Operations budgets and fiscal year expenditures for Speech Language Pathologist, Audiologist and Hearing Instrument Dispenser credentialing systems.

2. MDH Financial Managment Division for salary and fringe inflation rate of 3% and indirect costs rate of 16.0%. An annual inflation rate is not factored into supply and expense figures.

3. Supply and Expense Costs attributed to rulemaking in FY 1996 on the page titled Budget for Setting Surcharge Fees include the following items and costs:
   - Printing and Duplicating ($2400) and Mailing ($1,500 postage) of proposed rules and SONAR when requested.
   - Professional services of $14,000 includes:
     State Register Publication - 26 pages x $80./page = $2,000.
     Office of Administrative Hearings - 1/2 day hearing = $12,000.
   - Attorney General Costs of $3,000 for preparation, representation at hearing and post-hearing review and submission of documents.

4. Salary Costs in FY 1996 related to startup and administration of the registration system include the following activities after rulemaking is completed:
   - Advisory Council appointments and orientation, training and at least monthly meetings;
   - Creation of forms, documents and instructional materials for applicants;
   - Creation of databases and data entry of applicant - registrant information;
   - Create renewal schedules, prorate fees, mail application materials.
   - Review applications, deposit fees, issue registrations, request supplementary information, deny applications when appropriate.
   - Respond to phone calls and written correspondence concerning registration requirements and procedures.

INFORMATION SOURCES, JUSTIFICATIONS & BASIC ASSUMPTIONS, Cont'd.:

5. Supply and Expense Costs in FY 1996 related to startup and administration of the registration system include the following:
   - Printing and Duplicating ($5,000) and Mailing ($4,500 phones, postage) of adopted rules application packets, supplemental information correspondence and notices related to advisory council appointments.

6. Advisory Council costs were calculated based upon the assumption that monthly meetings would be held the first year of operation, with quarterly meetings to follow thereafter. It was assumed that three of the members would be from outstate Minnesota and four members would be from the metro area.

7. Indirect costs calculation = (Subtotal of Supply & Expense, excluding Capital Equipment) x 16%.

8. In general, administrative costs assume steady increases in the number of registrants beginning in FY 1996 and continuing until FY 1998. The work during first one and one-half years will almost entirely involve receiving and processing new applications for registration. Continuing education reports will become a requirement for renewal of registration in FY 1998. In FY 1999, Minnesota Statutes, §214.13 requires the Department to evaluate the registration system and make recommendations concerning its effectiveness to the legislature.

9. Attorney General attendance at Advisory Council meetings was estimated to be eight hours per meeting to include preparation and follow up, with monthly meetings the first year of operation and quarterly meetings thereafter.

NUMBER OF REGISTRANTS:

The estimated number of registrants is based upon comparison of the Minnesota Department of Labor and Industry's Minnesota Regional Employment Outlook to 1996 for occupational therapists and occupational therapy assistants with the American Occupational Therapy Certification Board's numbers of Minnesota occupational therapy personnel credentialed by that organization.

EXPLANATION OF FEES:

Surcharge and registration fees are different for occupational therapists and occupational therapy assistants for several reasons. Surcharge fees to recover the cost of rulemaking recognize that substantial portions of the rules pertain only to therapists. An example of provisions which do not apply to assistants is the regulations governing use of

physical agent modalities by therapists. In addition, administrative costs related to continuing education will be higher for therapists than for assistants. Finally, there is, according to American Occupational Therapy Association research, an approximate 40 percent salary differential in the employment market between therapists and assistants. The total of the surcharge fee and the registration fee for assistants recognizes ~~recognises~~ this and is about 44 percent less than the combined fee for therapists.

Fee amounts compare favorably to physical therapy registration fees as follows:

Physical Therapists		Occupational Therapists	
Application	$100.	Application/Biennial Renewal	
Annual renewal	$60.	OT $180. OTA $100.	
90 day permit	$25.	180 day Temporary Registration	$50.
Exam	$50.	Late fee	$25.
Verifications:		Verifications:	
other states	$25.	other states	$25.
institutions	$10.	institutions	$10.
		Provisional Registration Fee	$647.

The OT provisional registration fee of $647 is based on the estimated number of staff hours that will be needed to process this type of application. Provisional registration recognizes work experience rather than academic coursework, and verification of this information will be more difficult. The assumption is that each application for provisional registration will require 28 hours of professional staff time and 3 hours of supervisory staff time.

The category entitled "other fees" includes anticipated fee receipts from temporary registration, limited registration, and provisional registration renewal. These receipts are included from FY 1998 onward.

HEALTH OCCUPATIONS PROGRAM — 07/12/95
OCCUPATIONAL THERAPY REGISTRATION SYSTEM — N:otpfees
Budget for Setting Registration Fees

	FY1996*	FY1997*	FY1998*	FY1999*	FY2000*	FY2001*	FY2002*
RESOURCES:							
State Govt. Spec. Rev.	100,000	151,000	151,000	151,000	151,000	151,000	151,000
EXPENDITURES:	Estimated/Projected Expenditures for Registration System						
Salaries/Fringe**	$75,519	$113,955	$94,979	$90,586	$73,170	$73,170	$73,170
Salary/Fringe Infltn 3%	$77,784	$117,374	$97,829	$93,303	$75,366	$75,366	$75,366
Repairs	$600	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Printing/Duplication	$5,000	$3,000	$3,500	$4,000	$3,000	$3,000	$3,000
Professional Services	$1,000	$5,000	$4,000	$4,000	$4,000	$4,000	$4,000
Enforcement Activities	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000
Advisory Cncl Expenses	$2,500	$3,500	$2,500	$2,500	$2,500	$2,500	$2,500
Communictns Pstg/Phones	$4,500	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000
Travel	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000
Training	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Publications/Membership	$300	$300	$300	$300	$300	$300	$300
Supplies	$600	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Attorney General Costs	$1,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000
TOTAL EXPENDITURES	$98,284	$142,174	$121,129	$117,103	$98,166	$98,166	$98,166
Direct Cost	$98,284	$142,174	$121,129	$117,103	$98,166	$98,166	$98,166
Indirect Cost	$15,725	$22,748	$19,381	$18,737	$15,706	$15,706	$15,706
Office, Computer Equipment	$3,000	$1,000	$3,000	$1,000	$1,000	$1,000	$1,000
TOTAL COST	$117,010	$165,921	$143,509	$136,840	$114,872	$114,872	$114,872
Est. # OT Registrants	450	675	563	563	563	563	563
Est. # OTA Registrants	190	285	238	238	238	238	238
Biennial OT Fee	$180	$180	$180	$180	$180	$180	$180
Biennial OTA Fee	$100	$100	$100	$100	$100	$100	$100
Biennial OT Surcharge Fee	$62	$62	$62	$62	$62	$62	$0
Biennial OTA Surcharge Fee	$36	$36	$36	$36	$36	$36	$0
Est. Temporary Regis Fee	$50	$50	$50	$50	$50	$50	$50
Est. Provisional Regis Fee	$647	$647	$647	$647	$647	$647	$647
Late Fee	$25	$25	$25	$25	$25	$25	$25
Verification Fees	$10/$25	$10/$25	$10/$25	$10/$25	$10/$25	$10/$25	$10/$25
Estimated Fee Receipts:							
Initial Application Fee	$100,000	$150,000	$4,950	$4,950	$4,950	$4,950	$4,950
Biennial Fee	$0	0	$125,000	$125,000	$125,000	$125,000	$125,000
Surcharge Fee	$34,740	$52,110	$43,425	$43,425	$21,713	$21,713	$0
Other Fees	$6,470	$13,650	$13,650	$13,650	$13,650	$13,650	$13,650
Total Fee Revenue	$141,210	$215,760	$187,025	$187,025	$165,313	$165,313	$143,600
BALANCE: Revenues - costs	$24,200	$49,839	$43,516	$50,185	$50,440	$50,440	$28,728
BALANCE CARRYFORWARD	($195,901)	($146,063)	($102,547)	($52,362)	($1,921)	$48,519	$77,247

* Estimated Expenditures
**Salary agreements as of 1995.

HEALTH OCCUPATIONS PROGRAM — 07/12/95
OCCUPATIONAL THERAPY REGISTRATION SYSTEM — N:otpfees2
Budget for Setting Surcharge Fees

	FY1991	FY1992	FY1993	FY1994	FY1995*	FY1996*
RESOURCES:						
State Govt. Spec. Rev.	105,000	105,000	105,000	105,000	105,000	51,000
EXPENDITURES:	Actual and Estimated Rulemaking Expenditures: FY 1991 - FY 1996					
Salaries/Fringe**	$16,732	$44,687	$21,950	$5,171	$31,536	$30,968
Salary/Fringe Infltn 3%						$31,897
Repairs	$0	$0	$588	$0	$0	$400
Printing/Duplication	$0	$0	$22	$0	$2,500	$2,500
Professional Services	$0	$0	$36	$0	$0	$14,000
Enforcement Activities	$0	$0	$0	$0	$0	$0
Advisory Cncl Expenses	$0	$0	$0	$0	$0	$0
Communictns Pstg/Phones	$0	$0	$48	$0	$2,000	$1,500
Travel	$0	$0	$959	$0	$0	$0
Training	$0	$0	$0	$0	$0	$0
Publications/Membership	$0	$0	$100	$0	$0	$0
Supplies	$3,282	$1,381	$418	$631	$500	$400
Attorney General Costs		$396	$0	$0	$0	$3,000
TOTAL EXPENDITURES	$20,014	$46,464	$24,121	$5,802	$36,536	$53,697
Direct Cost	$20,014	$46,464	$24,121	$5,802	$36,536	$53,697
Indirect Cost	$2,781	$6,413	$3,522	$1,581	$5,846	$8,591
Office, Computer Equipment	$0	$0	$0	$4,734	$0	$0
TOTAL COST	$22,795	$52,877	$27,643	$12,117	$42,382	$62,288
Est. # OT Registrants	1,125	1,125	1,125	1,125	1,125	1,125
Est. # OTA Registrants	475	475	475	475	475	475
Biennial OT Fee						
Biennial OTA Fee						
Biennial OT Surcharge Fee						
Biennial OTA Surcharge Fee						
Est. Temporary Regis Fee						
Est. Provisional Regis Fee						
Late Fee						
Verification Fees						
Estimated Fee Receipts:						
Initial Application Fee						
Biennial Fee						
Surcharge Fee						
Other Fees						
Total Fee Revenue	$0	$0	$0	$0	$0	$0
BALANCE: Revenues - costs	($22,795)	($52,877)	($27,643)	($12,117)	($42,382)	($62,288)
BALANCE CARRYFORWARD	($22,795)	($75,672)	($103,315)	($115,432)	($157,814)	($220,102)

* Estimated Expenditures
**Salary agreements as of 1995.