

**LAWS AND REGULATIONS RELATING TO  
LICENSURE AS AN OCCUPATIONAL THERAPIST**



Published By  
The Kentucky Board of Licensure for Occupational Therapy  
P.O. Box 1360  
Frankfort, KY 40602  
<http://bot.ky.gov>

October 2020 Edition



## DISCLAIMER

The statutes and regulations provided in this booklet are an *unofficial* version of the Kentucky Revised Statutes and Kentucky Administrative Regulations and are intended for informational purposes only. The official or certified versions of the Kentucky Revised Statutes and Kentucky Administrative Regulations should be consulted for all matters requiring reliance on the statutory text. For the official copies of the statutes and regulations pertaining to this profession, please visit <http://legislature.ky.gov>.

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# KENTUCKY REVISED STATUTES

## 319A.010 Definitions for chapter.

As used in this chapter:

- (1) "Board" means the Kentucky Board of Licensure for Occupational Therapy appointed by the Governor;
- (2) "Practice of occupational therapy" means the therapeutic use of purposeful and meaningful occupations (goal-directed activities) to evaluate and treat individuals who have a disease or disorder, impairment, activity limitation, or participation restriction that interferes with their ability to function independently in daily life roles, and to promote health and wellness. Occupational therapy intervention may include:
  - (a) Remediation or restoration, through goal-directed activities, of those performance abilities that are limited due to impairment in biological, physiological, or neurological processes;
  - (b) Adaptation of task, process, or the environment or the teaching of compensatory techniques to enhance performance;
  - (c) Disability prevention methods and techniques that facilitate the development or safe application of performance skills; and
  - (d) Health promotion strategies and practices that enhance performance abilities;
- (3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter;
- (4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the supervision of an occupational therapist;
- (5) "Aide" means a person who is not licensed by the board who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function under the guidance and responsibility of a licensed occupational therapist and is supervised by an occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competence. The aide shall comply with supervision requirements developed by the board that are consistent with prevailing professional standards;
- (6) "Occupational therapy services" include but are not limited to:
  - (a) Evaluating, developing, improving, sustaining, or restoring skills in basic and instrumental activities of daily living (BADLs and IADLs), work or productive activities, and play and leisure activities;
  - (b) Evaluating, developing, remediating, or restoring components of performance as they relate to sensorimotor, cognitive, or psychosocial aspects;
  - (c) Designing, fabricating, applying, and training in the use of assistive technology or orthotic devices and training in the use of prosthetic devices for functional mobility and activities of daily living;
  - (d) Adapting environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;
  - (e) Applying superficial physical agent modalities as an adjunct to or in preparation for engagement in occupations;
  - (f) Applying deep physical agent modalities as an adjunct to or in preparation for engagement in occupations, in accordance with KRS 319A.080;
  - (g) Evaluating and providing intervention in collaboration with the client, family, caregiver, or others;

- (h) Educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions; and
  - (i) Consulting with groups, programs, organizations, or communities to provide population-based services;
- (7) "Person" means any individual, partnership, or unincorporated organization, or corporation;
  - (8) "Deep physical agent modalities" means any device that uses sound waves or agents which supply or induce an electric current through the body, which make the body a part of the circuit, including iontophoresis units with a physician's prescription, ultrasound, transcutaneous electrical nerve stimulation units and functional electrical stimulation, or microcurrent devices; and
  - (9) "Superficial physical agent modalities" means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 1, effective July 15, 2002. -- Amended 1994 Ky. Acts ch. 405, sec. 84, effective July 15, 1994. -- Amended 1988 Ky. Acts ch. 311, sec. 1, effective July 15, 1988. -- Created 1986 Ky. Acts ch. 78, sec. 1, effective July 15, 1986.

### **319A.020 Board of Licensure for Occupational Therapy -- Appointment.**

- (1) There is hereby created the Kentucky Board of Licensure for Occupational Therapy which shall consist of seven (7) members to be appointed by the Governor. Four (4) members shall be licensed occupational therapists with at least five (5) years' experience; one (1) member shall be a licensed occupational therapy assistant with at least five (5) years' experience in the practice of occupational therapy; and two (2) members shall be members of the public with an interest in the rights of consumers of health services.
- (2) Appointments for the occupational therapists and occupational therapy assistant positions may be made from recommendations submitted to the Governor by the Kentucky Occupational Therapy Association.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 2, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 325, sec. 2, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 311, sec. 2, effective July 15, 1988. -- Created 1986 Ky. Acts ch. 78, sec. 2, effective July 15, 1986.

### **319A.030 Terms -- Vacancies -- Removal -- Reimbursement for expenses.**

The terms of the members shall be for three (3) years and until their successors are appointed and qualified, except of those first appointed one (1) shall serve for one (1) year, two (2) shall serve for two (2) years and two (2) shall serve for three (3) years. Vacancies shall be filled in the manner of the original appointment for the unexpired portion of the term only. The Governor, after notice and opportunity for a hearing, may remove any member of the board for malfeasance, neglect of duty, incompetency, or revocation or suspension of a license. Members of the board shall receive no salary but shall be allowed usual mileage, subsistence and per diem as provided by law for members of state boards, commissions, and committees. No member shall serve more than two (2) consecutive terms.

**Effective:** July 15, 1986

**History:** Created 1986 Ky. Acts ch. 78, sec. 3, effective July 15, 1986.

### **319A.040 Meetings -- Quorum -- Officers.**

The board shall meet at least annually and may meet at such other times as necessary to complete the business required. A majority of the members of the board shall constitute a quorum for the transaction of business. Annually the board shall elect from its membership a chairman, a vice chairman, and a secretary to serve for one (1) year terms.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 3, effective July 15, 2002. -- Created 1986 Ky. Acts ch. 78, sec. 4, effective July 15, 1986.

### **319A.050 Executive secretary and assistants -- Expenditure of funds.**

The board may employ an executive secretary and such clerical or other assistants as are necessary for the proper performance of its work and may make expenditures of its funds for any purpose which in the opinion of the board is necessary for proper performance of its duties, including compensation of the executive secretary and the premium on his bond.

**Effective:** July 15, 1986

**History:** Created 1986 Ky. Acts ch. 78, sec. 5, effective July 15, 1986.

### **319A.060 Duties of executive secretary -- Bond.**

The executive secretary or any other person so designated by the board shall give bond to the state in such sum as determined by the board to be approved by the State Treasurer for the faithful performance of his duties. The secretary shall receive and account for all moneys derived under the provisions of this chapter and shall pay such moneys to the State Treasurer who shall keep them in the manner provided for other such agencies and boards of the Commonwealth.

**Effective:** July 15, 1986

**History:** Created 1986 Ky. Acts ch. 78, sec. 6, effective July 15, 1986.

### **319A.070 Powers and duties of board.**

- (1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure.
- (2) The board may issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter.
- (3) The board may:
  - (a) Promulgate administrative regulations, pursuant to KRS Chapter 13A, relating to professional conduct to carry out the provisions of this chapter, including but not limited to administrative regulations relating to professional licensure and holding a license to practice occupational therapy or assist in the practice of occupational therapy in the Commonwealth;
  - (b) Conduct administrative hearings in accordance with KRS Chapter 13B;
  - (c) Evaluate the qualifications and authorize the issuance of licenses to qualified occupational therapists and occupational therapy assistants;
  - (d) Issue and renew licenses based on evidence of initial and continued competence of persons subject to this chapter;
  - (e) Suspend or revoke licenses;

- (f) Require the continuing professional education of persons subject to this chapter;
- (g) Keep a record of its proceedings and a register of all persons licensed as occupational therapists or occupational therapy assistants. The register shall show the name of every licensee, the licensee's last known place of business and last known place of residence, and the date and number of the license of each licensed occupational therapist or occupational therapy assistant. The board shall, during the month of January of every year, compile and make available a list of licensed occupational therapists and occupational therapy assistants authorized to practice in the Commonwealth. Any citizen of the Commonwealth may obtain a copy of the list upon application to the board and payment of an amount to be fixed by the board, which shall not exceed its cost;
- (h) Make an annual report to the Governor and the General Assembly which shall contain an account of duties performed, actions taken, and appropriate recommendations;
- (i) Institute and maintain actions to restrain or enjoin any violation of this chapter and administrative regulations notwithstanding the existence or pursuit of other civil or criminal penalties;
- (j) Approve an examination for occupational therapists and occupational therapy assistants and establish standards for acceptable performance;
- (k) Seek an injunction in Franklin Circuit Court against any individual who practices occupational therapy in the Commonwealth without a license; and
- (l) Promulgate administrative regulations to define appropriate supervision of assistants, aides, and unlicensed personnel that are delivering occupational therapy services.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 4, effective July 15, 2002. -- Amended 1996 Ky. Acts ch. 318, sec. 278, effective July 15, 1996. -- Created 1986 Ky. Acts ch. 78, sec. 7, effective July 15, 1986.

**319A.080 License required for practice of occupational therapy or use of title "occupational therapist" -- Training requirements for use of deep physical agent modalities.**

- (1) It shall be unlawful for any person to practice occupational therapy, assist in the practice of occupational therapy, or render services designated as occupational therapy in the Commonwealth of Kentucky, unless licensed under the provisions of this chapter.
- (2) The licensure of occupational therapists and occupational therapy assistants shall extend only to individuals. A license shall not be issued to a partnership, unincorporated association, corporation, or similar business organization.
- (3) It shall be unlawful for a person to act or represent himself or herself as an occupational therapist or occupational therapy assistant, use the title "occupational therapist" or "occupational therapy assistant," or use the letters OT or OTA or any abbreviation or acronym that would imply licensing under this chapter, unless the person is licensed and is in good standing in accordance with the requirements of this chapter. A person, health care institution, health care service, health plan, or other entity holding itself out to the public as providing occupational therapy services shall not use the title unless the occupational therapy services are provided by a person licensed under this chapter.
- (4) (a) It shall be unlawful for a person licensed under this chapter to utilize occupational therapy interventions involving deep physical agent modalities, unless the following requirements are met:
  - 1. The person is an occupational therapist licensed under this chapter who has successfully completed a minimum of thirty-six (36) hours of training or instruction that meets the requirements specified in administrative regulations promulgated by the board, as well as five (5) treatments under supervision;

2. The person is an occupational therapist licensed under this chapter who has successfully completed the certified hand therapist examination approved by the Hand Therapy Certification Commission, and who has successfully completed a minimum of twelve (12) hours of training or instruction that meets the requirements specified in administrative regulations promulgated by the board, as well as five (5) treatments under supervision; or
  3. The person is an occupational therapy assistant licensed under this chapter who has successfully completed a minimum of seventy-two (72) hours of training or instruction that meets the requirements specified in administrative regulations promulgated by the board, as well as five (5) treatments under supervision.
- (b) The board shall promulgate administrative regulations setting forth content guidelines for the training and instruction required in this subsection. Guidelines shall be based on policies and positions adopted by the American Occupational Therapy Association.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 5, effective July 15, 2002. -- Created 1986 Ky. Acts ch. 78, sec. 8, effective July 15, 1986.

### **319A.090 Construction of chapter.**

- (1) The provisions of this chapter shall not be construed as preventing or restricting the practices, services, or activities of:
  - (a) A person licensed in accordance with the provisions of another law of the Commonwealth from engaging in the profession or occupation for which licensed;
  - (b) A person employed as an occupational therapist or an occupational therapy assistant by the United States government, provided that person provides occupational therapy solely under the direction or control of the organization by which the person is employed;
  - (c) A person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, provided the activities and services are part of a supervised course of study and the person is designated by a title which clearly indicates the status of student or trainee and not licensed occupational therapist or occupational therapy assistant;
  - (d) A person fulfilling the supervised fieldwork experience requirements of this chapter, provided such activities and services constitute a part of the experience necessary to meet the requirements of that program;
  - (e) Any person performing occupational therapy services in the Commonwealth, if these services are performed for no more than sixty (60) days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:
    1. The person is licensed under the law of another state which has licensure requirements at least as stringent as the requirements of this chapter; or
    2. The person meets the requirements for current certification as an occupational therapist or an occupational therapy assistant, as established by the National Board for Certification in Occupational Therapy or its equivalent; or
  - (f) Any person employed as an occupational therapy aide.
- (2) Occupational therapy services shall not include gait training, spinal or pelvic adjustment or manipulation, and the use of deep physical agent modalities, except as provided in KRS 319A.080.
- (3) Occupational therapy services shall also not include independent diagnostic evaluation for the determination of visually related rehabilitative treatment plans or the testing and prescription of optical, electronic, or assistive technology low-vision devices. Occupational therapists may only

provide low-vision or visual therapy services, as defined in administrative regulation, under the direct supervision of an optometrist, ophthalmologist, or physician, or by written prescription from an optometrist, ophthalmologist, or physician. These services shall be provided in accordance with a written evaluation and clinical treatment plan from an optometrist, ophthalmologist, or physician. The board shall promulgate administrative regulations pursuant to this subsection in collaboration with the Kentucky Board of Optometric Examiners.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 6, effective July 15, 2002. -- Created 1986 Ky. Acts ch. 78, sec. 9, effective July 15, 1986.

### **319A.100 Temporary permit.**

A temporary permit to practice as an occupational therapist or occupational therapy assistant may be granted to a person who has completed the education and experience requirements of this chapter and has applied for licensure under the provisions of this chapter. The temporary permit shall allow the applicant for licensure to practice occupational therapy under the supervision of a licensed occupational therapist. The temporary permit shall be valid until the applicant for licensure is issued or denied a license under the provisions of this chapter, but in no instance shall the temporary permit extend for more than sixty (60) days following the second examination offered after the applicant has applied to take the examination required for licensure or certification. Not more than one (1) temporary permit shall be granted per applicant.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 325, sec. 1, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 311, sec. 3, effective July 15, 1988. -- Created 1986 Ky. Acts ch. 78, sec. 10, effective July 15, 1986.

### **319A.110 Application for license.**

- (1) An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on a form provided by the board, showing to the satisfaction of the board that the person:
  - (a) Is of good moral character; and
  - (b) Has successfully completed the academic requirements of an educational program in occupational therapy or for occupational therapy assistants accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education or its equivalent.
- (2) An applicant shall submit to the board evidence of successful completion of a period of supervised fieldwork experience arranged by the recognized educational institution where the applicant met the academic requirements. To be considered for licensure, the following minimum amount of supervised fieldwork experience shall have been completed:
  - (a) The equivalent of twenty-four (24) weeks for an occupational therapist; and
  - (b) The equivalent of sixteen (16) weeks for an occupational therapy assistant.
- (3) An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination as provided for in KRS 319A.120.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 7, effective July 15, 2002. -- Amended 1988 Ky. Acts ch. 311, sec. 4, effective July 15, 1988. -- Created 1986 Ky. Acts ch. 78, sec. 11, effective July 15, 1986.



### **319A.120 Written or computer-based examination.**

Individuals applying for licensure shall be required to pass a written or computer-based examination approved by the board, which is designed to test the knowledge and experience necessary to the safe, effective, and professional practice of occupational therapy in Kentucky. The examination shall test the applicant's knowledge of the basic and clinical sciences related to the occupational therapy theory, research, practice, ethics, and professional behavior, and such other subjects as the board may require to determine the applicant's fitness to practice.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 8, effective July 15, 2002. -- Created 1986 Ky. Acts ch. 78, sec. 12, effective July 15, 1986.

### **319A.140 Issuance of license.**

On the payment to the board of fees required by this chapter and on submission of a written application on forms provided by the board, the board shall issue a license to:

- (1) A person who presents evidence satisfactory to the board of being a registered occupational therapist or a certified occupational therapy assistant through the National Board for Certification in Occupational Therapy or its equivalent, and who has met the academic and fieldwork requirements of KRS 319A.110 and the examination requirement of KRS 319A.120; or
- (2) A person who presents evidence satisfactory to the board of being currently licensed, certified, or registered as an occupational therapist or occupational therapy assistant by another state, territory of the United States, or the District of Columbia, where the requirements for licensure, registration, or certification are equal to or greater than the requirements set forth in this chapter.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 9, effective July 15, 2002. -- Created 1986 Ky. Acts ch. 78, sec. 14, effective July 15, 1986.

### **319A.150 License fee -- Use of title.**

The board shall issue a license to an individual who has met the requirements of this chapter upon the payment of the applicable license fee. An individual who is issued a license as an occupational therapist under the provisions of this chapter may use the title "occupational therapist licensed," or use the letters "O.T.R./L." in connection with the title or place of business to denote his licensure. A person who is issued a license as an occupational therapy assistant may use the words "certified occupational therapy assistant licensed" or may use the letters "C.O.T.A./L." in connection with the person's name or place of business to denote licensure.

**Effective:** July 15, 1988

**History:** Amended 1988 Ky. Acts ch. 311, sec. 5, effective July 15, 1988. -- Created 1986 Ky. Acts ch. 78, sec. 15, effective July 15, 1986.

### **319A.160 License renewal, reinstatement, restoration, and reissuance -- Inactive license status -- Change of licensee's name, address, or employment.**

- (1) Licenses issued under this chapter shall be subject to annual renewal and shall expire unless renewed upon the payment of a renewal fee in the manner prescribed by the rules of the board.
- (2) The board may set a required number of continuing education units for license renewal.

- (3) At least thirty (30) days before the renewal date, the board shall mail an application for renewal to every person to whom a license was issued during the current licensure period.
- (4) A sixty (60) day grace period shall be allowed during which time licenses may be renewed on payment of a late renewal fee as set forth in administrative regulations promulgated by the board.
- (5) The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no such renewal of a license may be granted more than five (5) years after its expiration.
- (6) Licenses not renewed in a timely manner or by the end of the grace period shall be considered expired. Expired licenses may be restored in accordance with the requirements set forth by the board in administrative regulation. A person who fails to restore his license within five (5) years after its expiration may not restore it, and it shall not be restored, reissued, or reinstated thereafter. The person may apply for and obtain a new license if current requirements of this chapter are met.
- (7) Any person practicing occupational therapy after the license has expired shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the provisions of this chapter.
- (8) A suspended license is subject to expiration and may be restored as provided in this section, but restoration shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order or judgment by which the license was suspended.
- (9) A license revoked on disciplinary grounds is subject to expiration and may not be renewed. If the license is subsequently reinstated, the licensee, as a condition of reinstatement shall pay a reinstatement fee, the renewal fee, and any late fee that may be applicable.
- (10) Upon petition to the board, licensees may be granted inactive license status for a period of time not to exceed three (3) years. Licensees shall not practice occupational therapy or assist in the practice of occupational therapy while under inactive status. Inactive licensees may apply for an active license after paying a fee provided for by administrative regulation of the board.
- (11) Each occupational therapist and occupational therapy assistant licensed under this chapter shall notify the board in writing of any change in the person's name, home or office address, or employment within thirty (30) days after the change has taken place.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 10, effective July 15, 2002. -- Created 1986 Ky. Acts ch. 78, sec. 16, effective July 15, 1986.

### **319A.170 Fees.**

Fees shall be collected and determined by the board for the following:

- (1) Initial license fee (nonrefundable):
  - (a) Registered occupational therapist, not to exceed fifty dollars (\$50);
  - (b) Certified occupational therapy assistant, not to exceed thirty-five dollars (\$35); and
  - (c) Certification for use of deep physical agent modalities, not to exceed twenty-five dollars (\$25);
- (2) Renewal of license fees, not to exceed fifty dollars (\$50); and
- (3) Late renewal fees, not to exceed seventy-five dollars (\$75).

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 11, effective July 15, 2002. -- Created 1986 Ky. Acts ch. 78, sec. 17, effective July 15, 1986.

### **319A.180 Licensing of foreign-trained therapists.**

Foreign-trained occupational therapists who apply to be licensed by the board shall furnish proof of good moral character and shall present proof indicating the completion of educational requirements equal to or greater than those contained in KRS 319A.110 and examination requirements of KRS 319A.120.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 12, effective July 15, 2002. -- Amended 1996 Ky. Acts ch. 199, sec. 1, effective July 15, 1996. -- Created 1986 Ky. Acts ch. 78, sec. 18, effective July 15, 1986.

### **319A.190 Unprofessional conduct -- Denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license.**

- (1) The board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions where the licensee or applicant for licensure has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct shall include:
  - (a) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
  - (b) Unprofessional conduct as defined by administrative regulations promulgated by the board, or violating the code of ethics promulgated by the board;
  - (c) Being convicted of a felony in any court if the act or acts for which he was convicted are found by the board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of a licensed occupational therapist or licensed occupational therapy assistant;
  - (d) Violating any lawful order or administrative regulation rendered or promulgated by the board; or
  - (e) Violating any provision of this chapter.
- (2) A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license may be ordered by the board in a decision made after an administrative hearing conducted in accordance with KRS Chapter 13B and administrative regulations promulgated by the board. The board shall have discretion to accept or reject an application for reinstatement following an administrative hearing conducted in accordance with KRS Chapter 13B.
- (3) The surrender of a license shall not serve to deprive the board of jurisdiction to proceed with disciplinary actions under this chapter.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 14, sec. 13, effective July 15, 2002. -- Amended 1996 Ky. Acts ch. 318, sec. 279, effective July 15, 1996. -- Created 1986 Ky. Acts ch. 78, sec. 19, effective July 15, 1986.

### **319A.200 Appeals from orders of the board.**

Any person aggrieved by an order of the board denying, suspending or revoking his license may appeal to the Franklin Circuit Court within thirty (30) days after entry of said order, for appropriate relief. On such appeal the scope of review shall be limited to an examination of the record of the board's action for the purpose of determining whether the board abused its discretion. The appellant shall furnish the court with a properly certified transcript of any evidence heard by the board, and the court may refuse to review any

findings of fact made by the board unless such a transcript is filed within sixty (60) days after the filing of the appeal.

**Effective:** July 15, 1986

**History:** Created 1986 Ky. Acts ch. 78, sec. 20, effective July 15, 1986.

**319A.210 Short title.**

KRS 319A.010 to 319A.200 may be cited as the "Kentucky Occupational Therapy Practice Act."

**Effective:** July 15, 1986

**History:** Created 1986 Ky. Acts ch. 78, sec. 21, effective July 15, 1986.

**319A.300 Duty of treating occupational therapist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth". “**

- (1) A treating occupational therapist who provides or facilitates the use of telehealth shall ensure:
  - (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and
  - (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.
- (2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:
  - (a) Prevent abuse and fraud through the use of telehealth services;
  - (b) Prevent fee-splitting through the use of telehealth services; and
  - (c) Utilize telehealth in the provision of occupational therapy services and in the provision of continuing education.
- (3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**Effective:** July 14, 2000

**History:** Created 2000 Ky. Acts ch. 376, sec. 17, effective July 14, 2000.

## KENTUCKY ADMINISTRATIVE REGULATIONS

### 201 KAR 28:010. Definitions for 201 KAR Chapter 28.

RELATES TO: KRS 319A.010-319A.210

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the Kentucky Board of Licensure for Occupational Therapy to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. This administrative regulation establishes the definitions used in 201 KAR Chapter 28.

#### Section 1. Definitions.

- (1) "ACOTE" means the Accreditation Council for Occupational Therapy Education.
- (2) "Act" means the Kentucky Occupational Therapy Practice Act as established in KRS 319A.010 to 319A.990.
- (3) "Adjunctive strategies" means methods or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations.
- (4) "Assistive technology" means identification and use of assistive technologies (high and low tech), application of universal design principles, and recommended changes to the environment of activity to support the client's ability to engage in occupations.
- (5) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those tasks that are performed daily by an individual that pertain to and support one's self-care, mobility, and communication; and includes the following activities:
  - (a) Bathing and showering;
  - (b) Bowel and bladder management;
  - (c) Dressing;
  - (d) Swallowing, eating, and feeding;
  - (e) Functional mobility;
  - (f) Personal device care;
  - (g) Personal hygiene and grooming;
  - (h) Sexual activity;
  - (i) Sleep and rest; and
  - (j) Toileting and toilet hygiene.
- (6) "Board" is defined by KRS 319A.010(1).
- (7) "Components of performance" means activity and occupational demands, client factors, performance skills, context, and environment.
- (8) "COTA" means a certified occupational therapy assistant.
- (9) "COTA/L" means a certified occupational therapy assistant/licensed.
- (10) "Functional mobility" means moving from one (1) position or place to another including in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating transfers, driving, and community mobility.
- (11) "General supervision" means an interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.
- (12) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:
  - (a) Care of others;
  - (b) Care of pets;
  - (c) Child rearing;

- (d) Communication management;
  - (e) Financial management;
  - (f) Health management and maintenance;
  - (g) Home establishment, management, and maintenance;
  - (h) Meal preparation and cleanup;
  - (i) Safety and emergency maintenance;
  - (j) Shopping;
  - (k) Spiritual activities; and
  - (l) Selection and supervision of caregivers.
- (13) "NBCOT" means the National Board for Certification in Occupational Therapy.
- (14) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the individual, society, and culture.
- (15) "OT" means occupational therapy.
- (16) "OT/L" means as occupational therapist/licensed.
- (17) "OTA/L" means an occupational therapist assistant/licensed.
- (18) "OTR" means an occupational therapist registered.
- (19) "OTR/L" means an occupational therapist registered/licensed.
- (20) "Performance abilities" means the utilization of performance skills in the participation of active daily life.
- (21) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.
- (22) "Restoration" means to restore a performance skill or ability that has been impaired. (13 Ky.R. 1175; eff. 1-13-1987; Am. 14 Ky.R. 1847; eff. 4-14-1988; 20 Ky.R. 1050; 1852; eff. 2-10-1994; 30 Ky.R. 79; 849; 1205; eff. 10-15-2003; 37 Ky.R. 1005; Am. 1420; eff. 12-15-2010; 1419; 2073; eff. 5-1-2015.)

**201 KAR 28:030. Short-term practice of occupational therapy for persons practicing under KRS 319A.090(1)(e).**

RELATES TO: KRS 319A.090

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.090 provides that certain persons may be exempt from the licensure requirements of KRS Chapter 319A. This administrative regulation sets forth the requirements for persons who are temporarily practicing in Kentucky and who seek to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year pursuant to KRS 319A.090(1)(e).

**Section 1.**

- (1) Any individual who intends to practice occupational therapy in the Commonwealth of Kentucky, in association with a Kentucky OT/L, under the provisions of KRS 319A.090(1)(e) shall submit to the board the following information:
- (a) The name, permanent address, address in Kentucky, email address, and telephone number where the individual may be reached;
  - (b) The name, business address, and telephone number of the OT/L with whom the individual is associated;
  - (c) The dates on which the individual intends to practice in Kentucky; and
  - (d)
    1. A copy of the current license from the state in which the individual is licensed along with a statement from the licensing authority that the individual is in good standing; or
    2. A letter of verification issued by the NBCOT stating that the individual meets the

current requirements for certification as an OTR or a COTA and is in good standing.

- (2) The information as described in subsection (1) of this section shall be submitted to the board prior to the commencement of practice.
- (3) The applicant's request may be approved by the board chair upon receipt of all items listed in this administrative regulation. (13 Ky.R. 1178; eff. 1-13-87; Am. 20 Ky.R. 1053; 1853; eff. 2-10-94; 30 Ky.R. 82; 851; eff. 10-15-2003; 41 Ky.R. 1422; 2075; eff. 5-1-2015.)

**201 KAR 28:060. Licensure, renewals, and reinstatements.**

RELATES TO: KRS 319A.080, 319A.100, 319A.110, 319A.120, 319A.140, 319A.150, 319A.160, 319A.170

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), 319A.100, 319A.160, 319A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.100 authorizes the board to issue a temporary permit to certain applicants for licensure. KRS 319A.170 requires the board to determine and collect licensure fees. KRS 319A.160 authorizes the board to set fees for renewal, late renewal, reinstatement, and activation of an inactive license. This administrative regulation sets forth the procedure by which applicants shall apply for, renew, or reinstate a temporary permit or license administered by the board under the provisions of KRS Chapter 319A.

Section 1. Initial Licensure. An applicant for licensure administered by the board who has not previously been licensed, certified, or registered in any state shall submit:

- (1) A completed Application Form, Form OTB-1;
- (2)
  - (a) A certified copy of an official academic transcript from an occupational therapy or occupational therapy assistant program accredited by the ACOTE or its equivalent indicating that the applicant successfully completed educational and fieldwork requirements; or
  - (b) For applicants trained at an educational facility outside the United States, evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States;
- (3) Electronic verification by the NBCOT that the applicant:
  - (a) Meets the requirements of certification as an OTR or COTA;
  - (b) Is authorized to take the NBCOT or equivalent exam required by KRS 319A.120; or
  - (c) Has requested an official NBCOT Score Transfer Report be sent to the board.
- (4) The appropriate fee for licensure:
  - (a) Fifty (50) dollars for an OT/L; or
  - (b) Thirty-five (35) dollars for an OTA/L; and
- (5) Evidence of successful completion of the jurisprudence exam.

Section 2. Temporary Licensure.

- (1) An applicant for licensure may request a temporary permit by submitting the materials and fee required in Section 1(1) through 1(5) of this administrative regulation and a completed Supervision Temporary Permit Form, Form OTB-2, signed by a licensed occupational therapist in good standing with the board.
- (2) A temporary permit holder shall be licensed by the board upon successful completion of the jurisprudence exam.
- (3) A temporary permit holder shall have the permit revoked upon two (2) unsuccessful attempts to pass the NBCOT exam.

Section 3. Reciprocal Licensure. An applicant for licensure administered by the board that is or has been licensed, certified, or registered in another state shall submit:

- (1) A completed Application Form, Form OTB-1;
- (2) An official statement from the body responsible for licensure of occupational therapists in every jurisdiction in which the applicant has held a license or credential that the individual is in good standing in that jurisdiction;
- (3) A current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OTR or a COTA;
- (4) Evidence of successful completion of the jurisprudence exam; and
- (5) The appropriate fee for licensure:
  - (a) Fifty (50) dollars for an OT/L; or
  - (b) Thirty-five (35) dollars for an OTA/L.

Section 4. License Renewal and Grace Period.

- (1) An individual licensed by the board shall submit annually, on or before October 31:
  - (a) A completed Annual OT/OTA Renewal Application, Form OTB-3;
  - (b) The appropriate fee for renewal:
    1. Fifty (50) dollars for an OT/L;
    2. Thirty-five (35) dollars for an OTA/L; and
  - (c) Evidence of completion of twelve (12) continuing competence units.
- (2) An individual licensed by the board fewer than (90) days prior to the annual renewal date shall not be required to renew during the first year of licensure.
- (3) An individual licensed by the board who has failed to renew as required by subsection (1) of this section shall be granted a sixty (60) day grace period to submit:
  - (a) All items required by subsection (1) of this section; and
  - (b) A late renewal fee of twenty-five (25) dollars.

Section 5. Expired and Inactive Licenses.

- (1) A license not renewed by the conclusion of the grace period shall expire.
- (2) The board shall send the individual holding a terminated license a notice of expiration with instructions to cease and desist the practice of occupational therapy.
- (3) Pursuant to KRS 319A.160(10), a license may be placed in inactive status for up to three (3) years upon petition to the board on the Annual OT/OTA Renewal Application, Form OTB-3. An individual holding an inactive license shall submit annually on or before October 31:
  - (a) The Annual OT/OTA Renewal Application, Form OTB-3; and
  - (b) An inactive renewal fee of ten (10) dollars.

Section 6. License Reinstatement and Activation.

- (1) An expired license shall be reinstated upon submission of:
  - (a) Completed Reinstatement Application, Form OTB-4;
  - (b) Late renewal fee of twenty-five (25) dollars;
  - (c) Reinstatement fee of seventy-five (75) dollars;
  - (d) Documentation of employment from time of expiration to present;
  - (e) Documentation of current or initial certification by NBCOT or its equivalent;
  - (f) Completion of NBCOT or equivalent exam; and
  - (g) Evidence of completion of continuing competence requirements pursuant to 201 KAR 28:200, Section 2(3).
- (2) An inactive license shall be reactivated upon submission of:
  - (a) Written notification to the board of the licensee's intent to return to active status;



- (b) Identification of the licensee's proposed place of employment;
- (c) Reinstatement fee of seventy-five (75) dollars; and
- (d) Evidence of completion of continuing competence requirements pursuant to 201 KAR 28:200, Section 2(3).

Section 7. License Termination.

- (1) A license not reinstated within five (5) years of expiration shall terminate.
- (2) Terminated licenses shall not be eligible for reinstatement.

Section 8. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application Form", Form OTB-1, (December 2018);
  - (b) "Supervision Temporary Permit Form," Form OTB-2, (September 2018);
  - (c) "Annual OT/OTA Renewal Application," Form OTB-3 (September 2018);
  - (d) "Reinstatement Application", Form OTB-4; (September 2018)
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure of Occupational Therapy, Department of Professional Licensing, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (13 Ky.R. 1181; eff. 1-13-1987; Am. 14 Ky.R. 32; eff. 8-5-1987; 20 Ky.R. 1055; eff. 2-10-1994; 30 Ky.R. 83; 639; eff. 10-15-2003; 41 Ky.R. 1424; 2075; eff. 5-1-2015; 45 Ky.R. 1339, 2080; eff. 2-1-2019; TAm eff. 10-16-2020.)

**201 KAR 28:070. Examination.**

RELATES TO: KRS 319A.120

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), (j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.070(3)(j) authorizes the board to approve an examination for an occupational therapist and an occupational therapy assistant. This administrative regulation establishes those examination requirements.

Section 1. Examination Approved by the Board. The examinations approved for licensure are:

- (1) The NBCOT certification examination for occupational therapists; and
- (2) The NBCOT certification examination for occupational therapy assistants.

Section 2.

- (1) An applicant for licensure shall take the appropriate examination as authorized by the NBCOT and shall receive a passing score on the examination.
- (2) It shall be the responsibility of the applicant to make arrangements to:
  - (a) Sit for the examination;
  - (b) Pay the requisite examination fee to the NBCOT; and
  - (c) Ensure that the board receives electronic evidence from the NBCOT of successful completion of the examination. (13 Ky.R. 1183; eff. 1-13-1987; Am. 20 Ky.R. 1056; 1854; eff. 2-10-1994; 30 Ky.R. 84; eff. 10-15-2003; 41 Ky.R. 1426; 2076; eff. 5-1-2015.)

**201 KAR 28:130. Supervision of occupational therapy assistants, occupational therapy aides, occupational therapy students, and temporary permit holders.**

RELATES TO: KRS 319A.010(4), (5), 319A.100

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(1) authorizes the board to promulgate administrative regulations to define appropriate supervision for persons who are delivering occupational therapy services. This administrative regulation establishes the requirements of that supervision, the documentation required in supervision, and the process for reviewing the supervision process.

Section 1. Definitions.

- (1) "Countersign" means the OT/L signs the client's documentation after actively reviewing the history of the intervention provided to the client and confirming that, in light of the entire intervention plan, the OTA/L's entry is proper.
- (2) "Face-to-face supervision" means being physically present in the room and being able to directly communicate with an individual while observing and guiding the activities of that individual, including:
  - (a) A review of the occupational therapy services being provided to a client that might affect the therapeutic outcomes and the revision of the plan of care for each client; and
  - (b) An interactive process between the supervisor and the individual under supervision involving direct observation, cotreatment, dialogue, teaching, and instruction in a face-to-face setting.
- (3) "Supervisor" means the OT/L who is providing supervision.

Section 2. General Policy Statement for Supervision.

- (1) The OT/L shall have the ultimate responsibility for occupational therapy outcomes. Supervision shall be a shared responsibility.
- (2) The supervising OT/L shall have a legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision.
- (3) Supervision by the OT/L of the supervisee's provision of occupational therapy services shall always be required, even when the supervisee is experienced and skilled in a particular practice area.

Section 3. Supervision of Licensed Occupational Therapy Assistants.

- (1) An OTA/L shall assist in the practice of occupational therapy only under the supervision of an OT/L.
- (2) The supervisor shall provide no less than four (4) hours per month of general supervision for each occupational therapy assistant which shall include no less than two (2) hours per month of face-to-face supervision.
- (3) The amount of supervision time shall be prorated for a part-time OTA/L.
- (4) The supervisor or the OTA/L may institute additional supervision based on the competence and experience of the OTA/L.
- (5) The supervisor shall assign and the OTA/L shall accept only those duties and responsibilities for which the OTA/L has been specifically trained and which the OTA/L is qualified to perform.
- (6) Specific responsibilities for supervising OT/Ls and OTA/Ls.
  - (a) Assessment and reassessment.
    1. Client evaluation is the responsibility of the OT/L.
    2. The OTA/L may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations.

3. The OTA/L may not evaluate independently or initiate therapy prior to the OT/L's evaluation.
- (b) Intervention planning.
  1. The OT/L shall take primary responsibility for the intervention planning.
  2. The OTA/L may contribute to the intervention planning as directed by the OT/L.
- (c) Intervention.
  1. The OT/L shall be responsible for the outcome and delivery of the occupational therapy intervention.
  2. The OT/L shall be responsible for assigning appropriate therapeutic interventions to the OTA/L.
- (d) Discontinuation of intervention.
  1. The OT/L shall be responsible for the discontinuation of occupational therapy services.
  2. The OTA/L may contribute to the discontinuation of intervention as directed by the OT/L.
- (7) Documentation requirements.
  - (a) Notations recorded by an OTA/L to an initial evaluation, plan of care, or discharge summary, that are documented in a client's permanent record, shall be countersigned by the supervisor within fourteen (14) calendar days of the notation.
  - (b) The supervising OT/L and individuals under supervision shall each maintain a log which shall document:
    1. The frequency of the supervision provided;
    2. The observation, dialogue and discussion, and instructional techniques employed;
    3. The type of supervision provided, either general or face-to-face;
    4. The dates on which the supervision occurred; and
    5. The number of hours worked by the OTA/L each month.
  - (c) It shall be the responsibility of the supervising OT/L to maintain a list of any OTA/L that he or she has supervised with the OTA/L's name and license number.
  - (d) It shall be the responsibility of the OTA/L under supervision to maintain a list of his or her supervising OT/L with that individual's name and license number.
- (8) A supervising OT/L shall not have more than the equivalent of three (3) full time OTA/Ls under supervision at any one (1) time.
- (9)
  - (a) In extenuating circumstances, when the OTA/L is without supervision, the OTA/L may continue carrying out established programs for up to thirty (30) calendar days under agency supervision while appropriate occupational therapy supervision is sought.
  - (b) It shall be the responsibility of the OTA/L to notify the board of these circumstances and to submit, in writing, a plan for resolution of the situation.
- (10) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the OTA/Ls under his or her supervision.

#### Section 4. Supervision of Occupational Therapy Aides.

- (1) An occupational therapy aide shall provide supportive services only with face-to-face supervision from an OT/L or OTA/L.
- (2) The supervising OT/L or OTA/L shall be in direct verbal and visual contact with the occupational therapy aide, at all times, for all therapy-related activities.

#### Section 5. Occupational Therapy Students.

- (1) A person practicing occupational therapy and performing occupational therapy services under KRS 319A.090(1)(c) shall be enrolled in an ACOTE accredited occupational therapy or occupational therapy assistant educational program or its equivalent.

- (2) When an occupational therapy student is participating in supervised fieldwork education experiences, the student may, at the discretion of the supervising OT/L or OTA/L, be assigned duties or functions commensurate with his or her education and training.
- (3) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the students under his or her supervision.

#### Section 6. Temporary Permits.

- (1) A temporary permit holder shall be:
  - (a) Supervised by an OT/L; and
  - (b) The OT/L shall be responsible for all occupational therapy outcomes.
- (2) The supervising OT/L shall be available at all times to provide supervision.
- (3) Face-to-face supervision shall be provided for at least thirty (30) minutes daily. The face-to-face supervision shall not occur through electronic means.
- (4) The temporary permit holder who is applying for a license as an OT/L may perform all of the functions of the OT/L, with the exception of supervision.
- (5) A temporary permit holder who is applying for a license as an OTA/L may perform all of the functions of an OTA/L, with the exception of supervision.

#### Section 7. Audit of Supervision Activities.

- (1) The board shall perform a random audit of supervision logs for up to ten (10) percent of all licensees.
- (2) The licensee who is audited shall be required to furnish documentation of the completed supervision log required by Section 3(7) of this administrative regulation.
- (3) The licensee who is audited by the board shall respond to the audit within sixty (60) days of the date of the request.
- (4) A licensee who fails to comply with the supervision requirements of this administrative regulation shall be subject to disciplinary action that may include suspension or revocation of the person's license. (13 Ky.R. 1189; eff. 1-13-87; Am. 20 Ky.R. 1060; 1856; eff. 2-10-94; 30 Ky.R. 640; 852; eff. 10-15-2003; 2173; eff. 6-16-04; 37 Ky.R. 1006; Am. 1422; eff. 12-15-2010; 41 Ky.R. 1430; eff. 5-1-2015.)

#### **201 KAR 28:140. Code of ethics and unprofessional conduct.**

RELATES TO: KRS 319A.160, 319A.190

STATUTORY AUTHORITY: KRS 319A.070(1), (3), 319A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS Chapter 319A provides for the denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license for various violations of the Act and violation of the administrative regulations promulgated pursuant thereto. This administrative regulation sets forth a description of the code of ethics and unprofessional conduct.

Section 1. The following code of ethics consists of general guidelines for occupational therapy practice. The code of ethics shall be as established in this section.

- (1) An OT/L or an OTA/L shall be responsible for providing services without regard to race, creed, national origin, sex, age, handicap, disease, social status, financial status, or religious affiliation.
- (2) An OT/L or an OTA/L shall be acquainted with applicable local, state, federal, and institutional rules and shall function accordingly.
- (3) An OT/L or an OTA/L shall be responsible for informing employers, employees, and colleagues about those laws and policies that apply to the profession of occupational therapy.

- (4) An OT/L or an OTA/L shall not use or participate in the use of any form of communication that contains a false, fraudulent, deceptive, or unfair statement or claim.
- (5) An OT/L or an OTA/L shall report any illegal, incompetent, or unethical practice to the appropriate authority.
- (6) An OT/L or an OTA/L shall hold the appropriate credentials for providing service.
- (7) An OT/L or an OTA/L shall actively maintain high standards of professional competence.
- (8) An OT/L or an OTA/L shall function within the parameters of his or her competence and the standards of the profession.
- (9) An OT/L or an OTA/L shall accurately represent his or her competence and training to the public.
- (10) An OT/L or an OTA/L shall refer clients to other service providers or consult with other service providers when additional knowledge and expertise is required.
- (11) An OT/L or an OTA/L shall protect the confidential nature of information gained from educational, practice, and investigational activities unless sharing the information is necessary to protect the well-being of a third party.
- (12) An OT/L or an OTA/L shall not disclose privileged information when participating in reviews of peers, programs, or systems.
- (13) An OT/L or an OTA/L shall include those people served in the intervention planning process.
- (14) An OT/L or an OTA/L shall maintain goal-directed and objective relationships with all people served.
- (15) An OT/L or an OTA/L shall accurately record and report client information.
- (16) An OT/L or an OTA/L shall inform those people served of the nature and potential outcomes of therapy and shall respect the right of potential recipients of service to refuse therapy.
- (17) An OT/L or an OTA/L shall inform subjects involved in education or research activities of the potential outcome of those activities.
- (18) An OT/L or an OTA/L shall take all reasonable precautions to avoid harm to the recipient of services or detriment to the recipient's property.
- (19) An OT/L or an OTA/L shall establish fees, based on cost analysis, that are commensurate with services rendered.
- (20) An OT/L or an OTA/L shall require those whom they supervise to adhere to ethical standards of conduct.
- (21) An OT/L or an OTA/L who employs or supervises colleagues shall provide appropriate supervision as required by 201 KAR 28:130.
- (22) An OT/L or an OTA/L shall recognize the contributions of colleagues when disseminating professional information.

Section 2. Failure to comply with any of the provisions in this section shall constitute unprofessional conduct in the practice of occupational therapy.

- (1) An OT/L or an OTA/L shall report to the board any violation of KRS Chapter 319A or 201 KAR Chapter 28.
- (2) An OT/L or an OTA/L shall report a change of name or address to the board within thirty (30) days after a change of name or address occurs.
- (3) An OT/L or an OTA/L shall notify the board within thirty (30) days after being adjudged guilty of malpractice by a court of competent jurisdiction.
- (4) An OT/L or an OTA/L shall comply with any subpoena issued by the board.
- (5) An OT/L or an OTA/L shall not permit another person to use his or her license for any purpose.
- (6) An OT/L or an OTA/L shall not delegate to an unlicensed employee or person a service which requires the skill, knowledge, or judgment of an OT/L or an OTA/L.
- (7) An OT/L or an OTA/L shall inform the referring source when any requested occupational therapy service is contraindicated, in the professional judgment of the licensee, and may refuse to carry out that request.

- (8) An OT/L shall competently provide the following minimum services:
- (a) Proper interpretation of all referrals;
  - (b) Proper client evaluations;
  - (c) The identification and documentation of the client's problems and goals;
  - (d) The identification and documentation of an intervention plan;
  - (e) The appropriate occupational therapy services called for by the plan of care;
  - (f) A determination of the appropriate portions of the therapy program to be delegated to assistive personnel;
  - (g) A determination of the assistive personnel's qualifications by training, experience, license, or certification to perform tasks before delegating those tasks;
  - (h) The appropriate supervision of individuals as required by 201 KAR 28:130;
  - (i) Timely client reevaluations; and
  - (j) Maintain timely and adequate client records of all occupational therapy activity and client response.
- (9) An OTA/L shall competently provide the following minimum services as appropriate:
- (a) Seek appropriate supervision as required by 201 KAR 28:130;
  - (b) The appropriate therapy called for by the intervention plan;
  - (c) A determination of the appropriate portions of the therapy program to be delegated to assistive personnel;
  - (d) A determination of the assistive personnel's qualifications by training, experience, license, or certification to perform tasks before delegating those tasks;
  - (e) The appropriate supervision of individuals as required by 201 KAR 28:130; and
  - (f) Maintain timely and adequate client records of all occupational therapy activity and client response.
- (10) (a) An OT/L or an OTA/L shall not provide occupational therapy services in an incompetent manner.
- (b) Incompetent practice includes:
1. A lack of the knowledge, judgment, or skill necessary to perform those modalities, methods, and techniques that come within the practice of occupational therapy;
  2. A deviation below the standard of practice ordinarily possessed and applied by other OT/Ls and OTA/Ls in the Commonwealth of Kentucky acting in the same or similar circumstances; or
  3. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of occupational therapy in the Commonwealth of Kentucky.
- (11) An OT/L or an OTA/L shall address goals identified in the evaluation and intervention plan.
- (12) An OT/L or an OTA/L shall not continue occupational therapy services beyond the point of possible benefit to the client or provide therapy to the client more frequently than necessary to obtain the maximum therapeutic effect.
- (13) An OT/L or an OTA/L shall not engage in false or misleading advertising, betrayal of a professional confidence, or falsification of a client's records.
- (14) (a) An OT/L or an OTA/L shall not seek to obtain payment of a professional fee or compensation of any form through fraudulent means.
- (b) Seeking payment or compensation through fraudulent means includes:
1. Reporting incorrect service dates for the purpose of obtaining payment;
  2. Reporting charges for services not actually rendered other than unkept appointments;
  3. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee or the licensee's employer is entitled;

4. Aiding a recipient of services in fraudulently obtaining payment from a third party; or
  5. Otherwise falsifying a record for the purpose of obtaining a payment.
- (15) An OT/L or an OTA/L shall not directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee or profit by means of a credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of occupational therapy services.
- (16) An OT/L or an OTA/L shall not abuse alcohol or any controlled substance which affects the licensee's ability to engage in the practice of occupational therapy in a safe and competent manner.
- (17) An OT/L or an OTA/L shall not verbally or physically abuse a client.
- (18) (a) An OT/L or an OTA/L shall not engage in acts of sexual misconduct with recipients of their services or in their presence.
- (b) Sexual misconduct includes:
1. Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual; or
  2. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct, physical contact, or acts of a sexual nature. (13 Ky.R. 1189; eff. 1-13-1987; Am. 15 Ky.R. 1288; eff. 1-7-1989; 20 Ky.R. 1062; 1857; 2325; eff. 2-10-1994; 30 Ky.R. 87; 854; eff. 10-15-2003; 41 Ky.R. 1432; 2077; eff. 5-1-2015.)

**201 KAR 28:150. Disciplinary proceedings.**

RELATES TO: KRS 319A.190

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A authorizes the board to promulgate administrative regulations establishing a procedure by which the board will institute actions against an OTR/L or a COTA/L for violation of the Act, and the administrative regulations promulgated thereto or for professional misconduct. This administrative regulation sets forth the procedure and process by which such complaints shall be instituted.

Section 1. Definitions. The following definitions, in conjunction with the provisions of 201 KAR 28:010, shall apply to this administrative regulation as well as 201 KAR 28:160:

- (1) "Chairman" means the chairman of the board.
- (2) "Investigative assistant" means an appropriately licensed individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General.
- (3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 319A or the administrative regulations promulgated thereunder by a licensed individual or other person.
- (4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS Chapter 319A or the administrative regulations promulgated thereunder.
- (5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding.
- (6) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.
- (7) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

## Section 2. Reception of Complaints.

- (1) Complaints may be submitted by an individual, organization or entity. Complaints shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.
- (2) Upon receipt of a complaint, a copy of the complaint shall be sent to the board's attorney for an initial review and preliminary recommendation of subsequent action to the board. A copy of the complaint shall also be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of twenty (20) days from the date of receipt to make a response.

## Section 3. Preliminary Recommendations and Initial Board Review.

- (1) After the receipt of a complaint and the period for the individual's response has concluded, the board shall consider the preliminary recommendation of the board's attorney, the individual's response, and any other relevant material available to the board in the initial review of the complaint. The determination that the board makes at this point is whether or not there is enough evidence to warrant a formal investigation.
- (2) When in the opinion of the board a complaint does not warrant the formal investigation of a complaint against an individual, the board shall notify both the complaining party and the individual of the outcome of the complaint.
- (3) When in the opinion of the board a complaint warrants the formal investigation of a complaint against either a licensed individual or a person who is practicing occupational therapy without a license, the board shall authorize its attorney and a designated investigative assistant to investigate the matter and report their findings and recommendations to the board at their earliest opportunity.

## Section 4. Results of Formal Investigation; Board Decision on Hearing.

- (1) Upon completion of the formal investigation, the board's attorney or the investigative assistant shall report to the board their findings and recommendations as to the proper disposition of the complaint. The determination that the board makes at this point is whether or not there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and that a hearing should be held.
- (2) When in the opinion of the board a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complaining party and the individual of the outcome of the complaint.
- (3) When in the opinion of the board a complaint warrants the issuance of a formal complaint, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 6 of this administrative regulation.
- (4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who is practicing occupational therapy without a license, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. The complaint shall be forwarded to the appropriate county attorney with a request that appropriate action be taken under KRS 319A.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of occupational therapy.

## Section 5. Settlement by Informal Proceedings; Letter of Admonishment.

- (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter. Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board.



- (2) The board may, at any time during this process, issue a letter of admonishment to the individual who is named in the complaint as a means of resolving the complaint. The action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. Such letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual shall have the right to file a written response to the letter and have it attached to the letter of admonishment and placed in the permanent file. The individual shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of admonishment and be granted a full hearing on the complaint. If this appeal is requested, the board shall immediately file a formal complaint in regard to the matter and set a date for a hearing.

Section 6. Notice and Service of Process.

- (1) Any notice required by the Act or this administrative regulation shall be in writing, dated and signed by the chairman of the board.
- (2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or, if known, by such service on the named individual's attorney of record, if appropriate. Refusal of service if by certified mail; or avoidance of service if hand-delivered shall not prevent the board from pursuing proceedings as may be appropriate.
- (3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, the notice shall be sent to the appropriate person at least twenty (20) days prior to the date of the hearing. (13 Ky.R. 1191; eff. 1-13-87; Am. 20 Ky.R. 1063; 1859; eff. 2-10-94; Crt eff. 2-21-2020.)

**201 KAR 28:160. Administrative hearings.**

RELATES TO: KRS 319A.190, 319A.200

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A and KRS 319A.190 provide for promulgation of administrative regulations governing the conduct of administrative hearings authorized by the Act. This administrative regulation sets forth the procedure by which such hearings are to be conducted.

Section 1. Composition of the Board for Purposes of a Hearing.

- (1) Disciplinary actions may be heard by a quorum of the board members eligible to hear that particular case, the board's designated hearing officer, or both.
- (2) The board may appoint a licensed attorney as a hearing officer to preside over the hearing, conduct all prehearing activities, prepare findings of fact and conclusions of law at the direction of the board, and provide legal advice to the board.
- (3) A board member who has participated in the investigation of a disciplinary action or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit as a member of the board hearing that particular action and shall not be considered an eligible member for purposes of determining a quorum.
- (4) Staff members of the board, legal counsel for the board and a court stenographer may also be present for the hearing.

Section 2. Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be present and to be heard at the hearing, to be represented by legal counsel, to present evidence, to cross-examine witnesses presented by the board, and to make both opening and closing statements. The licensee or applicant shall also have the right to have subpoenas issued in accordance with KRS 319A.070(2).

### Section 3. Prehearing Disclosure of Evidence.

- (1) By the board. The names, addresses, and phone numbers of witnesses expected to be called by the board shall be made available upon request of the licensee or applicant. Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefor, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.
- (2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the board by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within his possession or control which he intends to introduce at the hearing.
- (3) Written response. At least ten (10) days prior to the scheduled hearing date, the licensee or applicant shall also file with the board a sworn (under oath) written response to the specific allegations contained in the notice of charges. Allegations not answered shall be deemed admitted. The board may for good cause permit the late filing of a response.
- (4) Sanctions for failure to comply with prehearing disclosure. Should a party fail to comply with this section the board hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make other orders as it deems appropriate.
- (5) Continuing duty to disclose. After disclosure has been completed, each party shall remain under an obligation to disclose any new or additional items of evidence which the party intends to introduce or witnesses the party intends to have testify. Additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

### Section 4. Order of Proceeding.

- (1) The hearing officer or presiding officer shall call the hearing to order and shall identify the parties to the action and the persons present and shall read the letter of notice and charges. The hearing officer shall then ask the parties to state any objections or motions. The hearing officer shall rule upon any objections or motions, subject to being overridden by a majority vote of the members of the board. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive opening statement.
- (2) The taking of proof shall commence with the calling of witnesses on behalf of the board. Such witnesses shall be examined first by the attorney for the board, then by the licensee or applicant or that person's attorney, and finally by members of the board. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.
- (3) Upon conclusion of the case for the board, the licensee or applicant shall call its witnesses. The witnesses shall be examined first by the licensee or applicant or that person's attorney, then by the attorney for the board, and finally by the members of the board. Rebuttal examination of those witnesses shall proceed in the same order. Again, documents or other evidence may be introduced as appropriate.
- (4) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.
- (5) The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 5. Rules of Evidence.

- (1) The board shall not be bound by the technical rules of evidence. The board may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the board is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.
- (2) The board retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the hearing officer but may be overridden by a majority vote of the eligible members of the board.

Section 6. Decisions by the Board.

- (1) Upon the conclusion of the hearing, the board shall retire into closed session for the purpose of deliberations.
- (2) At the conclusion of the board's deliberations it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed order including findings of fact and conclusions of law consistent with the board's deliberations as well as a recommended order to be submitted to the full board.

Section 7. Final Approval by the Board. The board, at its next meeting, or as soon thereafter as may be arranged, shall review the proposed order and consider it for final approval.

Section 8. Continuances; Proceedings in Absentia. It is the policy of the board not to postpone cases which have been scheduled for hearing absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer or chairman of the board. However, the burden is upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled. (13 Ky.R. 1193; eff. 1-13-87; Am. 20 Ky.R. 1066; 1860; 2327; eff. 2-10-94; Crt eff. 2-21-2020.)

**201 KAR 28:170. Deep physical agent modalities.**

RELATES TO: KRS 319A.010(8), 319A.080(4), 319A.170(1)(c)

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), 319A.080(4)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations to administer the provisions of KRS Chapter 319A. KRS 319A.080(4) requires the board to promulgate administrative regulations to set forth content guidelines for the training and instruction necessary for the use of deep physical agent modalities. This administrative regulation establishes the requirements for obtaining certification in deep physical agent modalities.

Section 1. Definition. "DPAM Specialty Certification" means the certification issued to a Kentucky-licensed occupational therapist or licensed occupational therapy assistant who meets the standards set forth in KRS 319A.080 and this administrative regulation and who has been certified by the board.

Section 2. Application. A licensee, before utilizing deep physical agent modalities, shall submit to the board a DPAM Specialty Certification Application.

- (1) The application shall be accompanied by:
  - (a) Payment of the certification fee of twenty-five (25) dollars as required by KRS 319A.170(1)(c); and
  - (b) Proper documentation that the applicant has met all educational and clinical requirements for certification which shall include:
    1. Successful completion of the requisite hours of training and instruction required by KRS 319A.080(4) for the level of licensure held by the applicant; and
    2. Successful completion of the five (5) treatment sessions that are signed off by the DPAM supervisor and meet the requirements specified in Section 4 of this administrative regulation.
- (2) The documentation shall include:
  - (a) The name and address of the person or organization presenting the course, workshop, seminar, or training attended by the applicant;
  - (b) A copy of the course syllabus or a description of the course, workshop, or seminar which includes a summary of the learning objectives and teaching methods employed in the course, workshop, or seminar, a timed agenda of the course, workshop, or seminar with the content areas identified in Section 3(2)(a) to (j) of this administrative regulation clearly detailed within the timeframes, the qualifications of the instructors, and KBL0T course approval documentation provided by the board to the person or organization presenting the course, workshop, or seminar;
  - (c) The name, address, and credentials of the person identified as the DPAM supervisor who supervised the five (5) treatment sessions;
  - (d) Proof of successful completion of the training or course of instruction required by KRS 319A.080(4); and
  - (e) A statement signed by the DPAM supervisor confirming that the applicant has completed five (5) supervised treatment sessions and that the criteria set forth in Section 4 of this administrative regulation have been met.
- (3) A DPAM Specialty Certification shall be issued by the board before the individual can begin using deep physical agent modalities except when a qualified licensee is performing those modalities as part of a supervised program to complete the five (5) supervised treatment sessions required for a DPAM Specialty Certification under this administrative regulation.
- (4) The board shall maintain a roster of persons who have been issued DPAM Specialty Certification for the use of deep physical agent modalities.

Section 3. Training and Instruction.

- (1) The training and instruction shall be earned by direct personal participation in courses, workshops, or seminars.
- (2) The content of the courses, workshops, or seminars shall include hands on training and instruction. Training shall not consist of all on-line courses that do not provide hands on lab instruction. Training shall include the following subject areas:
  - (a) Principles of physics related to specific properties of light, water, temperature, sound, and electricity;
  - (b) Physiological, neurophysiological, and electrophysiological changes which occur as a result of the application of each of the agents identified in KRS 319A.010(8);
  - (c) Theory and principles of the utilization of deep physical agents which includes guidelines for treatment or administration of agents within the philosophical framework of occupational therapy;
  - (d) The rationale and application of the use of deep physical agents;
  - (e) The physical concepts of ion movement;

- (f) Critical thinking and decision making regarding the indications and contraindications in the use of deep physical agents;
  - (g) Types selection and placement of various agents utilized;
  - (h) Methods of documenting the effectiveness of immediate and long-term effects of interventions;
  - (i) Characteristics of equipment including safe operation, adjustment, and care of the equipment; and
  - (j) Application and storage of specific pharmacological agents.
- (3) The training and instruction shall include at a minimum eight (8) hours for an OTA/L and four (4) hours for an OT/L of hands on laboratory experience using DPAMs.
  - (4) All courses, workshops, or seminars utilized for DPAM Specialty Certification shall meet the requirements of subsection (2)(a) to (j) of this section, be at least four (4) hours in length, and be approved by the board.
  - (5) A person or organization who is seeking board approval for training and instruction for DPAM courses, workshops, or seminars which are intended to meet the requirements of KRS 319A.080(4) shall submit a DPAM Course, Workshop, or Seminar Provider Approval Application Form to the board prior to the first occurrence of the DPAM course, workshop, or seminar. Once approved by the board, a DPAM course, workshop, or seminar may occur multiple times throughout the year of approval. A DPAM course, workshop, or seminar approval shall expire one (1) year after the approval date. A new DPAM Course, Workshop, or Seminar Provider Approval Application Form shall be submitted to the board on an annual basis.

#### Section 4. Supervised Treatment Sessions.

- (1) The supervised treatment sessions required for DPAM Specialty Certification shall be sufficiently detailed to allow the DPAM supervisor to determine that the supervisee has demonstrated the following skills:
  - (a) The ability to evaluate or contribute to the evaluation of the client, depending upon the applicant's licensure status as an OT/L or an OTA/L and make an appropriate selection of the deep physical agent to be utilized;
  - (b) A thorough knowledge of the effects of the deep physical agent which is to be utilized;
  - (c) The ability to explain the precaution, contraindication, and rationale of the specific deep physical agent utilized;
  - (d) The ability to formulate and justify the occupational therapy intervention plan specifically delineating the adjunctive strategy associated with the use of each deep physical agent;
  - (e) The capability to safely and appropriately administer the deep physical agent;
  - (f) The ability to properly document the parameters of intervention which include the client's response to treatment and the recommendations for the progression of the intervention process; and
  - (g) The skills identified in paragraphs (d) and (f) of this subsection are not applicable to an OTA/L's practice and an OTA/L is not required to demonstrate the skill in a supervised treatment session.
- (2) The supervised treatment sessions shall include one (1) session for each of the following areas:
  - (a) Iontophoresis;
  - (b) Ultrasound; and
  - (c) Electrical stimulation.
- (3) The remaining two (2) sessions may cover any deep physical agent identified in KRS 319A.010(8) including those identified in subsection (2)(a) to (c) of this section.
- (4) Supervised treatment sessions may be completed in a laboratory portion of an instructional course, provided that the instructor meets the board's requirements for a DPAM supervisor and that all of the requirements of this administrative regulation have been met.

- (5) Treatment sessions shall be completed under the direct supervision of an OT/L who meets the requirements of subsection (6) of this section and is approved by the board.
- (6) Before an OT/L may be a DPAM supervisor for the treatment sessions specified in this administrative regulation, he or she shall:
  - (a) Have a DPAM Specialty Certification issued by the board;
  - (b) Be in good standing with the board;
  - (c) Submit a DPAM Specialty Certification Supervisor Application; and
  - (d) Have one (1) year of clinical experience in the use of deep physical agent modalities.
- (7) Individuals other than OT/Ls who have previously been approved as a DPAM supervisor under this administrative regulation shall maintain the status as a DPAM supervisor until June 1, 2015. After this time, only OT/Ls who meet the requirements of subsection (6) of this section shall remain active DPAM supervisors and be approved by the board.
- (8) The issuance of the DPAM specialty certification by the board only shows that the applicant has met the minimum requirements of KRS 319A.080(4)(a). It shall be the duty of the individual licensee to determine his or her competency to provide a specific DPAM for a client.

Section 5. An OTA/L certified to use DPAMs under this administrative regulation may only use DPAMs when supervised by an OT/L certified to use DPAMs under this administrative regulation.

Section 6. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "DPAM Specialty Certification Application", Form OTB-5, September 2018;
  - (b) "DPAM Course, Workshop, or Seminar Provider Approval Application Form", Form OTB6, September 2018; and
  - (c) "DPAM Specialty Certification Supervisor Application", February 2015.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, Department of Professional Licensing, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (29 Ky.R. 591; Am. 923; eff. 9-18-2002; 30 Ky.R. 976; 1780; 1927; eff. 2-16-2004; 41 Ky.R. 1436; 2080; eff. 5-1-2015; 45 Ky.R. 1341, 1855; eff. 2-1-2019; TAm eff. 10-16-2020.)

**201 KAR 28:190. Occupational therapy low-vision and visual-therapy services.**

RELATES TO: KRS 200.654-200.670, 319A.090(3)

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.090(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.090(3) requires the board to promulgate administrative regulations related to the provision of occupational therapy low-vision and visual-therapy services, in collaboration with the Kentucky Board of Optometric Examiners. This administrative regulation sets forth the requirements for an occupational therapist to provide occupational therapy low-vision and visual-therapy services as authorized by KRS 319A.090(3).

Section 1. Definitions.

- (1) "Clinical treatment plan" means the visually related rehabilitative treatment plan.
- (2) "Independent diagnostic evaluation" means the use of measurement instruments, devices and procedures or administering and interpreting of specialized-vision devices that are utilized to differentiate signs and symptoms, discover or identify a diseased or limiting visual condition. These evaluations pertain to visual functioning of eyesight, eye health, eye teaming and eye motility or the determination of need for glasses, contact lenses, medical treatment or surgery.
- (3) "Low-vision services" means occupational therapy services designed for the purpose of maximizing the use of residual vision in order to maintain or restore function in daily life roles and activities. Low-vision services include:

- (a) Occupational profiling, analysis of occupational performance, and intervention planning that focuses on adapting or altering environments and processes and the implementation of the intervention plan; and
  - (b) Training in the use of assistive technology for the purpose of improving performance skills and performance abilities in basic and instrumental activities of daily living, work or productive activities, play, and leisure.
- (4) "Testing and prescription of optical, electronic, or assistive technology low-vision devices" means the evaluation, assessment, and prescription of devices for achieving the best visual correction and the prescription of low-vision devices that allow an individual with low vision to perform essential tasks, but does not include the training and instruction in the use of nonprescription assistive technology devices.
- (5) "Visual-therapy services" means occupational therapy services designed for the purpose of maximizing visual perceptual components of performance in order to restore or maintain daily life roles and activities.
- (6) "Visually related rehabilitative treatment plan" means a comprehensive vision plan of care for the rehabilitation and treatment of the visually-impaired or legally-blind individual which is developed by the optometrist, ophthalmologist, or physician after the evaluation and diagnosis of the individual client and which includes a general description of the low-vision services and the visualtherapy services that are to be provided by the OT/L. A visually-related rehabilitative treatment plan is periodically reviewed by the optometrist, ophthalmologist, or physician.

## Section 2. Provision of Low-vision and Visual-therapy Services.

- (1) An OT/L shall not develop a visually-related rehabilitation plan, but an OT/L may provide low-vision or visual-therapy services to a client as prescribed in writing by an optometrist, ophthalmologist, or physician who has personally examined and evaluated the client for low vision rehabilitation services and who has referred the client to the OT/L.
- (2) (a) The low-vision or visual-therapy services which an OT/L may provide shall include:
- 1. Adapting environments and processes; and
  - 2. Training in the use of assistive technology for the purpose of improving performance skills and performance abilities in basic and instrumental activities of daily living, work or productive activities and play and leisure.
- (b) Low-vision and visual-therapy services shall not include independent diagnostic vision evaluations or the development of a comprehensive vision plan for the rehabilitation and treatment for individuals with visual impairments.
- (3) An OT/L who is providing low-vision services or visual-therapy services under the direct supervision of an optometrist, ophthalmologist, or physician shall ensure that:
- (a) The optometrist, ophthalmologist, or physician is always available in the OT/L's place of employment or place where the services are offered to a client; or
  - (b) The optometrist, ophthalmologist, or physician is available to the OT/L but not necessarily within the individual's place of employment or place where the services are offered to a client if all of the following conditions are met:
    - 1. A client shall be accepted for treatment only on the order of an optometrist, ophthalmologist, or physician who has the sole authority to develop a visually related rehabilitative treatment plan for the client;
    - 2. A client shall be seen by an optometrist, ophthalmologist, or physician at least once every thirty (30) days unless another time is justified and documented by the optometrist, ophthalmologist, or physician in the client's record;
    - 3. For each client there shall be a written occupational profile, an analysis of occupational performance, and an intervention plan which is developed by the OT/L in consultation with the optometrist, ophthalmologist, or physician making the referral;

4. The intervention plan shall be reviewed by the referring optometrist, ophthalmologist, or physician once every thirty (30) days unless another time is justified and documented by the optometrist, ophthalmologist, or physician in the client's record; and
  5. The optometrist, ophthalmologist, or physician shall be promptly notified of any changes in the client's condition.
- (4) An OT/L who has reason to believe that a client may require independent diagnostic evaluation shall advise the client to return to the referring optometrist, ophthalmologist, or physician and further communicate this information to the optometrist, ophthalmologist, or physician.
  - (5) The OT/L who provides low-vision or visual-therapy services shall not deviate from the referral or written evaluation and clinical treatment plan from the optometrist, ophthalmologist, or physician without consultation, approval from the individual who made the initial referral, and documentation of the same.
  - (6) The OT/L shall notify the referring optometrist, ophthalmologist, or physician of the occupational therapy intervention goals and the client's outcomes from occupational therapy services.
  - (7) An OT/L who provides school-based occupational therapy services may perform tasks as developed in a student's Individual Education Program (IEP) that are developed, reviewed and revised for the student from birth to age twenty-one (21) in accordance with 707 KAR 1:320 or First Steps intervention under KRS 200.654 to 200.670. If there is some indication that a child may have visual impairments, the OT/L shall make a referral to an optometrist, ophthalmologist, or physician. (32 Ky.R. 173; 867; eff. 11-16-2005; Crt eff. 2-21-2020.)

**201 KAR 28:200. Continuing competence.**

RELATES TO: KRS 210.366, 319A.070(3)(d), 319A.160

STATUTORY AUTHORITY: KRS 319A.070(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070 (3) authorizes the board to promulgate administrative regulations and to establish the requirements for continuing competence. This administrative regulation sets forth the requirements for licensees to demonstrate continuing competence.

**Section 1. Definitions.**

- (1) "CCU" means continuing competence unit.
- (2) "Contact hour" means sixty (60) minutes engaged in a learning activity, excluding meal, breaks, and registration.
- (3) "Continuance competence unit" means an assigned unit of measure for each continuing competence activity for which the values are given in Section 3 of this administrative regulation.
- (4) "Continuing competence" means a dynamic, multidimensional process to develop and maintain the knowledge, skills, inter personal abilities, and critical and ethical reasoning necessary to perform occupational therapy professional responsibilities. Continuing competence activity for which the values are given in Section (5) of this administrative regulation.
- (5) "Training program in suicide assessment, treatment, and management" means six (6) or more hours of continuing education pre-approved by the board that contains educational objectives set forth in KRS 210.366.

**Section 2. Continuing Competence Requirements.**

- (1) A licensee applying for license renewal shall complete a minimum of twelve (12) CCUs of qualified activities for maintaining continuing competence during the preceding annual renewal period.
- (2) A licensee who is issued a license for a period less than twelve (12) months shall prorate the number of CCUs to one (1) CCU for each month licensed.



- (3) An applicant for reinstatement or licensure who was previously licensed by the board and whose license has been put on inactive status, revoked, or expired for three (3) years or less from the time the application is filed shall obtain twelve (12) CCUs of qualified activities for maintaining continuing competence for each year in which the license has been in the status prior to receiving the license.
- (4) An applicant for licensure who was previously licensed by the board and whose license has lapsed for more than three (3) years shall obtain thirty-six (36) CCUs of qualified activities for maintaining continuing competence.
- (5) At least once every six (6) years from date of initial license issue or from date of last completed training program in suicide assessment, treatment, and management that is preapproved by the board, each licensee shall complete a training program in suicide assessment, treatment, and management that is pre-approved by the board.

Section 3. Qualified Activities for Maintaining Continuing Competence. The following activities qualify for the continuing competence requirements of this administrative regulation:

- (1) Continuing education courses.
  - (a) A licensee may earn one (1) CCU for each contact hour in continuing education courses including workshops, seminars, conferences, electronic courses, or self-study courses.
  - (b) Documentation for this activity shall include a certificate of completion or similar documentation including:
    - 1. Name of course, date, and the author or instructor;
    - 2. Name of sponsoring organization and the location of the course; and
    - 3. The number of contact hours attended.
  - (c) A training program in suicide assessment, treatment, and management shall meet the requirements established in Section 2(5) of this administrative regulation.
- (2) Employer provided in-service training.
  - (a) A licensee may earn one (1) CCU for each contact hour of in-service training provided to the licensee by the licensee's employer.
  - (b) No more than six (6) CCUs of employer-provided training may be counted towards the total number of required CCUs. If an employer hosts continuing education courses open to practitioners outside of the organization, these courses shall fall under subsection (1) of this section.
  - (c) Training that deals with issues completely unrelated to the practice of occupational therapy that are required for employment compliance standards shall not be counted toward the continuing competence requirements.
  - (d) Documentation for this activity shall include a certificate of completion or similar documentation including:
    - 1. Name of course, date, and the instructor;
    - 2. Name of providing organization and the location of the course; and
    - 3. The number of contact hours attended.
  - (e) In-service training is structured training that is offered to an employee and that is intended to maintain or enhance the employee's job performance or to meet requirements that are imposed on the employer by a credentialing body.
- (3) Academic coursework.
  - (a) Participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy shall be counted towards the requirements of this administrative regulation.
  - (b) A licensee may earn six (6) CCUs per credit hour.
  - (c) Documentation for this activity shall include:

1. An official transcript indicating successful completion of the course and the date on which the course was taken; and
  2. A description of the course from the school catalogue or course syllabus.
- (4) Independent study.
- (a) Independent study may include reading books, journal articles, reviewing videos, and activities of a similar nature.
  - (b) A licensee may earn one (1) CCU for one (1) contact hour spent in an independent study activity.
  - (c) Documentation for this activity shall include:
    1. Title, author, and publisher of the material;
    2. The time spent on the material;
    3. The date of completion; and
    4. A statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.
  - (d) No more than six (6) CCUs from this category shall be counted toward the total.
- (5) Mentorship.
- (a) Credit may be earned by each participant in a formalized mentorship agreement defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities for the participants.
  - (b) A licensee may earn one (1) CCU for five (5) contact hours spent in activities directly related to achievement of goals and objectives under a mentorship agreement.
  - (c) Documentation for this activity shall include:
    1. The name of mentor and mentee;
    2. A copy of a signed agreement;
    3. The dates, hours spent and focus of mentorship activities; and
    4. A statement outlining the outcomes of mentorship agreement.
- (6) Fieldwork supervision.
- (a) Credit may be earned by participation as the primary clinical fieldwork educator for an OT or OTA fieldwork student.
  - (b) A licensee may earn one (1) CCU per forty (40) hours of supervision for each fieldwork student supervised.
  - (c) Documentation shall include:
    1. A written verification from the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form.
    2. Evaluation scores and comments that are deleted or blocked out.
- (7) Professional writing.
- (a) Credit may be earned by the publication of a book, chapter, or article.
  - (b) A licensee may earn:
    1. Twelve (12) CCUs as an author of a book;
    2. Six (6) CCUs as an editor of a book;
    3. Six (6) CCUs as author of a chapter;
    4. Four (4) CCUs as author of a peer reviewed article;
    5. Two (2) CCUs as author of a nonpeer reviewed article;
  - (c) Documentation for this activity shall consist of full reference for publication including, title, author, editor, and date of publication; or copy of acceptance letter if not yet published.
- (8) Professional presentations and instruction.
- (a) Credit may be earned by the presentation of academic guest lectures, state or national workshops or conferences, and employer-provided in-service training for OT/Ls or OTA/Ls.

- (b) A licensee may earn two (2) CCUs for each hour of credit that is awarded for an activity.
  - (c) Documentation for this activity shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of that signed by the sponsor.
- (9) Research.
- (a) Credit may be earned for the development of or participation in extensive scholarly research activities or extensive outcome studies.
  - (b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a research project.
  - (c) Documentation for this activity shall include verification from the primary investigator indicating the name of research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.
- (10) Grants.
- (a) Credit may be earned for the development of a grant proposal.
  - (b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a grant proposal.
  - (c) Documentation for this activity shall include name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.
- (11) Professional meetings and activities.
- (a) Participation in board or committee work with agencies or organizations in professionally related areas to promote and enhance the practice of occupational therapy may be counted toward the requirements of this administrative regulation.
  - (b) A licensee may earn one (1) CCU for five (5) contact hours on a committee or board.
  - (c) Documentation for this activity shall include:
    1. The name of the committee or board, name of the agency or organization, purpose of service, and description of licensee's role; and
    2. The participation shall be validated by an officer or representative of the organization or committee.
  - (d) No more than six (6) CCUs from this category shall be counted toward the total.
- (12) Specialty certifications.
- (a) The board shall recognize completion of activities that result in an advanced competence credential or specialty certification earned or recertified during the current renewal period.
  - (b) A licensee may earn up to twelve (12) CCUs for each advanced competence recognition or specialty certification credential earned or recertified during a renewal period.
  - (c) Documentation for this activity shall include a certificate of completion that identifies satisfactory completion of requirements for obtaining advanced competence recognition or specialty certification.
- (13) Continuing competence plan.
- (a) A licensee may earn two (2) CCUs for completion of activities related to the development and implementation of a continuing competence plan for professional development.
  - (b) Documentation for this activity shall include a signed document by the licensee attesting to the fact that he or she has used a formal assessment process which included the establishment of professional development goals and objectives and a portfolio approach to organize and document continuing competence activities related to the licensee's plan.
- (14) Volunteer services.
- (a) Credit may be earned by participation in volunteer services performed for organizations, populations, or individuals if the services maintain or enhance the licensee's competence in professional skills in the practice of occupational therapy.
  - (b) A licensee may earn one (1) CCU for each five (5) contact hours.

- (c) Documentation for this activity shall include verification letter from organizations and report of outcomes of services provided.
- (d) No more than six (6) CCUs from this category shall be counted toward the total.

Section 4. Approval of Courses for Continuing Education Credit under Section 3(1) of this administrative regulation.

- (1) A continuing education course shall be current in subject matter and relevant to the practice of occupational therapy.
- (2) A continuing education course under Section 3(1) of this administrative regulation shall qualify for credit under this administrative regulation if it is approved by one of the following methods:
  - (a) The board shall approve a course or provider of a course that is administered or approved by:
    - 1. A recognized national, state, or local occupational therapy association;
    - 2. An accredited health care organization or facility; or
    - 3. An accredited college or university.
  - (b) A continuing education course provider who does not come within the provisions of paragraph (a) of this subsection shall submit the following information to the board using the Application for Continuing Education Program Approval (Course Providers), at least ninety (90) days prior to the presentation of the course:
    - 1. A thorough course description;
    - 2. A statement of the projected learning outcomes;
    - 3. A statement of the target audience;
    - 4. The content focus of the course;
    - 5. A detailed agenda for the activity;
    - 6. A statement of the number of contact hours requested;
    - 7. A listing of the presenters and their qualifications; and
    - 8. A sample of the certificate of completion awarded to successful attendees.
  - (c) A licensee who does not come within the provisions of paragraph (a) or (b) of this subsection shall submit the following information to the board using the Application for Continuing Education Program Approval (Course Providers):
    - 1. A thorough course description;
    - 2. A statement of the achieved learning outcomes;
    - 3. The content focus of the course;
    - 4. A detailed agenda for the activity;
    - 5. A statement of the number of contact hours requested;
    - 6. A listing of the presenters and their qualifications; and
    - 7. A sample of the certificate of completion awarded to successful attendees.

Section 5. Waiver of Requirements. Under extenuating circumstances, the board may waive all or part of the continuing competence activity requirements of this administrative regulation if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the board of an illness, injury, family hardship, active military service, or other similar extenuating circumstance which precluded the individual's completion of the requirements on a case-by-case basis.

Section 6. Documentation and Reporting Procedures.

- (1) A licensee shall maintain the required proof of completion for each continuing competence activity as specified in this administrative regulation.
- (2) The required documentation shall be retained by the licensee for a minimum of one (1) year following the last day of the license renewal period for which the continuing competence activities were earned.

- (3) A licensee shall not send his or her continuing competence activity documentation to the board unless audited under Section 7 of this administrative regulation or otherwise requested by the board.

Section 7. Audit of Continuing Competence Activities.

- (1) The board shall perform a random audit of up to ten (10) percent of all licensees who shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period.
- (2) A licensee who is audited shall respond to the audit within sixty (60) days of the date of the request.
- (3) A licensee who fails to comply with the continuing competence activity requirements of this administrative regulation may be subject to disciplinary action that may include suspension or revocation of license.

Section 8. Other Provisions.

- (1) A licensee may not carry over continuing competence activity CCUs from one (1) licensure period to the next.
- (2) A licensee may not receive credit for completing the same continuing competence activity more than once.

Section 9. Incorporation by Reference.

- (1) "Application for Continuing Education Program Approval (Course Providers)", September 2016, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, Department of Professional Licensing, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. (30 Ky.R. 130; 855; eff. 10-15-2003; 41 Ky.R. 1440; 2082; eff. 5-1-2015; 44 Ky.R. 124, 1216; eff. 1-5-2018; TAm eff. 10-16-2020.)

**201 KAR 28:220. Per diem of board members.**

RELATES TO: KRS 319A.030

STATUTORY AUTHORITY: KRS 319A.030, 319A.070(1), (3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.030 authorizes board members to receive a per diem as provided by law for members of state boards, commissions, and committees. This administrative regulation sets out the per diem amount members will receive when required to represent the board or attend its meetings.

Section 1. Each member of the board shall receive a per diem of \$200 for attending each meeting of the board or otherwise representing the board. (33 Ky.R. 1214; eff. 12-11-2006; Am. 41 Ky.R. 1443; eff. 5-1-2015.)

**201 KAR 28:235. Telehealth occupational therapy services.**

RELATES TO: KRS 319A.080, 319A.300

STATUTORY AUTHORITY: KRS 319A.070, 319A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.300(2) requires the board to promulgate an administrative regulation to implement telehealth in occupational therapy, including to establish procedures to prevent abuse and fraud through the use of telehealth, prevent fee-

splitting through the use of telehealth, and utilize telehealth in the provision of occupational therapy services and in the provision of continuing education. Additionally, KRS 319A.300(1) requires an occupational therapist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation establishes the requirements for telehealth for occupational therapy services.

Section 1. Definitions.

- (1) "Client" means the person receiving the services of the occupational therapist.
- (2) "Telehealth is defined by KRS 319A.300(3).
- (3) "Telehealth occupational therapy" means the practice of occupational therapy as defined by KRS 319A.010(2), between the occupational therapist or occupational therapist assistant and the patient that is provided using:
  - (a) An electronic communication technology; or
  - (b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A credential holder using telehealth to deliver occupational therapy services shall, upon initial contact with the client:

- (1) Make attempts to verify the identity of the client;
- (2) Obtain alternative means of contacting the client other than electronically such as by the use of a telephone number or mailing address;
- (3) Provide to the client alternative means of contacting the credential holder other than electronically such as by the use of a telephone number or mailing address;
- (4) Provide contact methods of alternative communication the credential holder shall use for emergency purposes such as an emergency on call telephone number;
- (5) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth provided by the credential holder;
- (6) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications and;
- (7) Inform the client in writing about:
  - (a) The limitations of using technology in the provision of telehealth occupational therapy services;
  - (b) Potential risks to confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telehealth occupational therapy services;
  - (c) Potential risks of disruption in the use of telehealth occupational therapy services;
  - (d) When and how the credential holder will respond to routine electronic messages;
  - (e) In what circumstances the credential holder will use alternative communications for emergency purposes;
  - (f) Who else may have access to client communications with the credential holder;
  - (g) How communications can be directed to a specific credential holder;
  - (h) How the credential holder stores electronic communications from the client; and
  - (i) How the credential holder may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

- (1) Limit the practice of telehealth occupational therapy to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in the practice of telehealth occupational therapy through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

- (3) Document the client's presenting problem, purpose, or diagnosis;
- (4) Follow the record-keeping requirements of 201 KAR 28:140; and
- (5) Ensure that confidential communications obtained and stored electronically shall not be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall comply with:

- (1) State law where the credential holder is credentialed and be licensed to practice occupational therapy where the client is domiciled or adhere to standards set forth in 201 KAR 28:030; and
- (2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

Section 5. Representation of Services and Code of Conduct.

- (1) A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:
  - (a) Not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telehealth occupational therapy;
  - (b) Comply with 201 KAR 28:140; and
  - (c) Not allow fee-splitting through the use of telehealth occupational therapy services.
- (2) Occupational therapy continuing competence educational processes established in 201 KAR 28:200, Section 3(1), (2), (3), (5), (8), and (11), may occur through telehealth services.(44 Ky.R. 164, 1219; eff. 1-5-2018.)