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NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

172 NAC 114

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 114 LICENSURE OF OCCUPATIONAL THERAPY

114-001 SCOPE AND AUTHORITY: These regulations govern the credentialing of occupational therapists and occupational therapy assistants under Neb. Rev. Stat. §§ 38-2501 and 38-2531, and the Uniform Credentialing Act (UCA).

114-002 DEFINITIONS

Act means Neb. Rev. Stat. §§ 38-2501 to 38-2531, known as the Occupational Therapy Practice Act.

Active addiction means current physical or psychological dependence on alcohol or a substance, which develops following the use of alcohol or a substance on a periodic or continuing basis.

Active license means the license of a person who is acting, practicing, functioning and working in compliance with the requirements of a license.

Alcohol or substance abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same 12-month period:

1. Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;
2. Recurrent alcohol or substance use in situations in which it is physically hazardous;
3. Recurrent legal problems related to alcohol or substance use; or
4. Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

Approved supervised field work experience means a period of supervised field work experience at an educational institution approved by the Department and where the occupational therapist's or occupational therapy assistant's academic work was completed or which was part of a training program approved by the educational institution. A minimum of six months of supervised field work experience will be required for an occupational therapist and a minimum of two months of supervised field work experience is required for an occupational therapy assistant.

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

Attest or Attestation means that the individual declares that all statements on the application/petition are true and complete.

Audit means the selection of licensees for verification of satisfactory completion of the continuing education requirements of the act during the biennium.

Basic Educational Program/Educational Program means:

1. A program for the education of occupational therapists which is recognized by the Department and accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association or predecessor organizations.
2. A program for the education of occupational therapy assistants which is recognized by the Department and accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association or predecessor organizations.

Board means the Board of Occupational Therapy Practice.

Certified occupational therapy assistant means a person who is certified pursuant to guidelines established by the National Board for Certification in Occupational Therapy (NBCOT).

Complete application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.

Confidential information means information protected as privileged under applicable law.

Consultation or in association with means providing professional advice.

Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

Continuing education means planned, organized learning activities designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

Continuing education activity means the various methods in which a licensee can obtain the necessary continuing education for license renewal.

Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge, or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof, and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation.

Course of study means a program of instruction necessary to obtain a credential meeting the requirements set out for each profession in the appropriate practice act and rules and regulations and includes a college, a professional school, a vocational school, hours of training, or a program of instruction with a similar designation.

Credential means a license, certificate, or registration.

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

Department means the Division of Public Health of the Department of Health and Human Services.

Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

1. Tolerance as defined by either of the following:
  - a. A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
  - b. A markedly diminished effect with continued use of the same amount of alcohol or the substance;
2. Withdrawal as manifested by either of the following:
  - a. The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association; or
  - b. Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
3. Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;
4. A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;
5. A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance; or to recover from the effects of use of alcohol or the substance;
6. Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or
7. Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.

Director means the Director of Public Health of the Division of Public Health or his/her designee.

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

Hour as it relates to continuing education means at least 60 minutes of participation in an organized learning experience otherwise known as a "contact hour."

1. One academic semester hour is equal to 15 contact hours. An approved three credit hour course provides 45 contact hours of continuing education credit.
2. One academic quarter hour is equal to ten contact hours. An approved three credit hour course would provide 30 contact hours of continuing education credit.

Inactive credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent himself/herself as having an active credential.

Laser means a mechanism for emitting electromagnetic radiation using heat via the process of stimulated emission. This does not include a method where light is applied to tissue in order to influence cell or tissue functions with such low light that heating is negligible.

License means an authorization issued by the Department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

Licensure examination means the National Board for Certification in Occupational Therapy (NBCOT) Examination administered by the Professional Examination Service.

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

Military service means full-time duty in the active military service of the United States, a National Guard call to active service for more than 30 consecutive days, or active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration. Military service may also include any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. (From the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as it existed on January 1, 2007.)

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 114.

National association means the American Occupational Therapy Association or equivalent organization.

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

Occupational therapist registered means a person who is registered pursuant to guidelines established by the National Board for Certification in Occupational Therapy (NBCOT).

Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independent function, prevent further disability, and achieve and maintain health and productivity. Occupational therapy encompasses evaluation, treatment, and consultation and may include:

1. Remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes;
2. Adaptation of task, process, or the environment, or the teaching of compensatory techniques, in order to enhance performance;
3. Disability prevention methods and techniques which facilitate the development or safe

- application of performance skills; and
4. Health promotion strategies and practices which enhance performance abilities.

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

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

Occupational therapy services mean an occupational therapist may perform the following services:

1. Evaluate, develop, improve, sustain, or restore skills in activities of daily living, work activities, or productive activities, including instrumental activities of daily living, and play and leisure activities;
2. Evaluate, develop, remediate, or restore sensorimotor, cognitive, or psychosocial components of performance;
3. Design, fabricate, apply, or train in the use of assistive technology or orthotic devices and train in the use of prosthetic devices;
4. Adapt environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;
5. If certified pursuant to section 38-2530, apply physical agent modalities as an adjunct to or in preparation for engagement in occupations when applied by a practitioner who has documented evidence of possessing the theoretical background and technical skills for safe and competent use;
6. Evaluate and provide intervention in collaboration with the client, family, caregiver, or others;
7. Educate the client, family, caregiver, or others in carrying out appropriate nonskilled interventions; and
8. Consult with groups, programs, organizations, or communities to provide population-based services.

Official means issued by and under the original seal of the issuing institution.

Onsite means the location where the occupational therapy assistant is providing occupational therapy services.

Onsite supervision means the occupational therapist or occupational therapy assistant must be physically present at the practice site to direct all actions when occupational therapy services are being provided

Pattern of incompetent or negligent conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.

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

Profession means any profession or occupation named in subsection (1) or (2) of Neb. Rev. Stat. § 38-121.

Served in the regular armed forces has the same meaning as “military service” in these regulations.

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

Supervision means the process by which the quantity and quality of work of an occupational therapy assistant is monitored. Supervision means the directing of the authorized activities of an occupational therapy assistant by a licensed occupational therapist and will not be construed to require the physical presence of the supervisor when carrying out assigned duties.

Treatment plan means a written statement setting forth the goals, method of treatment, and time frame for goal achievement.

### 114-003 INITIAL CREDENTIAL

114-003.01 Qualifications: To receive a credential to practice as an occupational therapist or an occupational therapy assistant, an individual must meet the following qualifications:

1. Age and Good Character: Be at least 19 years old and of good character;
2. Citizenship/Resident Information: For purposes of Neb. Rev. Stat. §§4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act. For purposes of Neb. Rev. Stat. §38-129, a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act;
3. Education: Have successfully completed the academic requirements of an educational program in occupational therapy for an occupational therapist or occupational therapy assistant;
4. Field Experience: Have successfully completed an approved supervised fieldwork experience for an occupational therapist or for an occupational therapy assistant; and
5. Examination: Have passed the licensure examination with a scaled score of 450 or above for the applicable credential.

114-003.01A License Based on a License in Another Jurisdiction: If an applicant holds a current license in another jurisdiction as an occupational therapist or occupational therapy assistant and is practicing at the time s/he makes application, the applicant must meet the qualifications outlined in 114-003.01 items 1-5.

114-003.01B Passed Licensure Examination But Is Not Practicing An applicant who has met the requirements in accordance with 172 NAC 114-003.01, items 1-5, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure must present proof to the Department, that s/he has within the three years immediately preceding the

application for licensure, completed 50 hours of continuing education pursuant to 172 NAC 114-009.01, as follows:

1. 30 hours related to the clinical practice of occupational therapy; and
2. 20 hours related to the practice of occupational therapy.

114-003.01C Licensed in Another Jurisdiction But Is Not Practicing An applicant who has met the standards for licensure pursuant to 172 NAC 114-003.01, items 1-5, based on licensure in another jurisdiction and who is not practicing at the time of application for licensure must present proof to the Department, that s/he has within the three years immediately preceding the application for licensure, completed 50 hours of continuing education pursuant to 172 NAC 114-009.01, as follows:

1. 30 hours related to the clinical practice of occupational therapy; and
2. 20 hours related to the practice of occupational therapy.

114-003.01D Temporary License: A temporary license allows the applicant to practice only in association with a licensed occupational therapist and is valid until the date the results of the licensure examination are available to the Department. A temporary license may be issued to an applicant who has met all requirements for licensure pursuant to 172 NAC 114-003.01, except passing or failing the licensure examination.

114-003.01D1 Extension of Temporary License: A temporary credential holder who was unable to take the licensure examination may apply for an extension of his/her temporary license. A temporary license may not be extended beyond one year.

114-003.01D1a An applicant for extension of a temporary license must provide documentation showing good cause, which includes but is not limited to:

1. **Military Service:** An applicant who has served in the regular armed forces of the United States during part of the credentialing period immediately or is actively engaged in military service as defined in 172 NAC 114-002. The individual must document his/her military service by submitting to the Department:
  - a. Military identification proving that s/he is in active service;
  - b. Military orders; or
  - c. A letter from his/her Commanding Officer indicating that s/he is on active duty;
2. **Illness:** These circumstances may include proof that the credential holder was suffering from a serious or disabling illness or physical disability. The individual must document his/her illness by submitting to the Department a statement from treating physician(s) stating that the individual were injured or ill, the duration of the illness or injury and of the recovery period; or
3. **Other circumstances:** An applicant who suffered from circumstances beyond his/her control must submit documentation of the circumstances.

114-003.01D1b An applicant is ineligible for an extension if s/he:

1. Failed the licensure examination; or
2. Held a temporary occupational therapy license for one year.

114-003.02 Application: To apply for a credential to practice as an occupational therapist or occupational therapy assistant, the individual must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:

a. Personal Information:

- (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
- (2) Date of birth (month, day, and year);
- (3) Place of birth (city and state or country if not born in the United States);
- (4) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
- (5) The applicant's:
  - (a) Social Security Number (SSN); or
  - (b) Alien Registration Number ("A#"); or
  - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
- (6) The applicant's telephone number including area code (optional);
- (7) The applicant's e-mail address (optional);
- (8) The applicant's fax number (optional);

b. Practice Before Application: The applicant must state:

- (1) That s/he has not practiced occupational therapy in Nebraska before submitting the application; or
- (2) If s/he has practiced occupational therapy in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice; and

c. Attestation: The applicant must attest that:

- (1) S/he has read the application or has had the application read to him/her;
- (2) All statements on the application are true and complete;
- (3) S/he is of good character;
- (4) S/he has not committed any act that would be grounds for denial under 172 NAC 114-011 or if an act(s) was committed, provide an explanation of all such acts;
- (5) S/he is;
  - (a) For purposes of Neb. Rev. Stat. §§ 4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act; and
  - (b) For purposes of Neb. Rev. Stat. §38-129:
    - (i.) A citizen of the United States; or
    - (ii.) An alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act; or
    - (iii.) A nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.



2. Documentation: The applicant must submit the following documentation with the application:
  - a. Evidence of age, such as:
    - (1) Driver's license;
    - (2) Birth certificate;
    - (3) Marriage license that provides date of birth;
    - (4) Transcript that provides date of birth;
    - (5) U.S. State identification card;
    - (6) Military identification; or
    - (7) Other similar documentation;
  - b. Evidence of good character, including:
    - (1) Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed. The applicant must have the licensing agency submit to the Department a certification of his/her credential;
    - (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
    - (3) Denial: If the applicant was denied a credential or denied the right to take an examination, an explanation of the basis for the denial;
    - (4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department:
      - (a) A list of any misdemeanor or felony convictions;
      - (b) A copy of the court record, which includes charges and disposition;
      - (c) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
      - (d) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
      - (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
      - (f) Any other information as requested by the Board/Department;
  - c. Evidence that the applicant is:
    - (1) For purposes of Neb. Rev. Stat. §§4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act; and
    - (2) For purposes of Neb. Rev. Stat. §38-129, a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act;
  - d. Evidence of citizenship, lawful presence, and/or immigration status may include a copy of:
    - (1) A U.S. Passport (unexpired or expired);
    - (2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;

- (3) An American Indian Card (I-872);
- (4) A Certificate of Naturalization (N-550 or N-570);
- (5) A Certificate of Citizenship (N-560 or N-561);
- (6) Certification of Report of Birth (DS-1350);
- (7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);
- (8) Certification of Birth Abroad (FS-545 or DS-1350);
- (9) A United States Citizen Identification Card (I-197 or I-179);
- (10) A Northern Mariana Card (I-873);
- (11) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
- (12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
- (13) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
- (14) A Form I-94 (Arrival-Departure Record);
- e. Documentation of education, including:
  - (1) Name and date of diploma/degree awarded; and
  - (2) Name of school, college or university that awarded the degree;
  - (3) Official transcript from institution awarding the occupational therapy degree; and
  - (4) Dates of supervised field experience;
- f. Documentation of examination, including:
  - (1) Name of examination;
  - (2) Date of examination; and
  - (3) Proof of passing the licensure examination with a scaled score of 450 or above; and
- g. A statement from the applicant:
  - (1) Stating that the examination rating/grades have been requested from the appropriate examination service or State Board Office; and
  - (2) Stating that an official transcript of successful completion of an education program for an occupational therapist or occupational therapy assistant was requested to be sent to the Department.
- h. Documentation of licensure in another jurisdiction, including:
  - (1) Certification from the other jurisdiction (s) verifying licensure, including:
    - (a) Date of initial Licensure;
    - (b) The name of the examination on which licensure was based;
    - (c) The score attained on the examination;
    - (d) Date of the examination;
    - (e) Name of accredited program that the applicant presented a transcript from;
    - (f) The nature of disciplinary actions, if any, taken against the applicant's credential.
  - (2) The applicant must:
    - (a) Attest that s/he has practiced within the three years preceding the application;
    - (b) Provide the dates and locations of practice; and
- i. Documentation of continuing competency if s/he passed the licensure examination but is not practicing; Submit certificates of attendance verifying the 50 hours of continuing competency pursuant to 172 NAC 114-009.01; and

- j. Documentation of continuing competency if s/he is licensed in another jurisdiction but is not practicing; Submit certificates of attendance verifying the 50 hours of continuing competency pursuant to 172 NAC 114-009.01; and
3. Fee: The required license fee according to 172 NAC 2.

114-003.02A Prorated Fee: When a credential will expire within 180 days after its initial issuance date and the initial credentialing fee is \$25 or more, the Department will collect \$25 or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential will be valid until the next subsequent renewal date.

114-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

114-003.04 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential or if the applicant is found to have committed any of the grounds listed in 172 NAC 114-011, the Department will deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

114-003.05 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

114-003.06 Practice Prior to Credential: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 114-014 or such other action as provided in the statutes and regulations governing the credential.

114-003.07 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

114-003.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

114-003.09 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

#### 114-004 EXAMINATION ELIGIBILITY

114-004.01 To be eligible to take the licensure examination, an applicant must have met all the requirements for licensure that are pursuant to 172 NAC 114-003.01 except passage of such examination.

114-004.02 To take the examination, an applicant must submit a complete examination application form and fee to: NBCOT Testing Office, Professional Examination Service, 475 Riverside Drive, New York, NY 10115 or register online at [www.nbcot.org](http://www.nbcot.org)

**114-005 REQUIREMENTS FOR CERTIFICATION TO APPLY PHYSICAL AGENT MODALITIES:**

In order to apply physical agent modalities, a licensed occupational therapist or licensed occupational therapy assistant must be certified by the Department. Any person who wishes to administer the modalities must obtain certification pursuant to Neb. Rev. Stat. § 38-2530. Physical agent modalities may be used by occupational therapy practitioners when used as an adjunct to/or in preparation for purposeful activity to enhance occupational therapy performance. Occupational therapy practitioners must have documented evidence of possessing the theoretical background and technical skills for safe and competent use.

114-005.01 Certification for a Licensed Occupational Therapist/Occupational Therapy Assistant to Apply Physical Agent Modalities: A licensed occupational therapist must obtain a certification to apply superficial thermal agent modalities, deep thermal agent modalities, or electrotherapeutic agent modalities, or a combination thereof. A licensed occupational therapy assistant must obtain a certification to apply superficial thermal agent modalities. An occupational therapist must not delegate evaluation, reevaluation, treatment planning and treatment goals for physical agent modalities to an occupational therapy assistant.

114-005.01A Superficial Thermal Agent Modalities: To receive a certification to apply superficial thermal agent modalities, a licensed occupational therapist or occupational therapy assistant must meet the following qualifications:

1. Successfully complete a minimum of six hours of Board approved training or its equivalent and pass an end of the course written or computer-based examination approved by the Board which tests competency in the use of superficial thermal agent modalities. The training must include the following:
  - a. Biophysical and biophysiological changes which occur with cryotherapy;
  - b. Indications, contraindications and precautions for the application of cold agents;
  - c. Clinical reasoning involved in the application of cold agents;
  - d. Commonly used types of cold agents;
  - e. Application procedures for each cold modality;
  - f. Definition of the term superficial thermal agent;
  - g. Differentiation between the two commonly used methods of heat transfer: conduction and convection;
  - h. The four biophysical effects of heat;
  - i. The physiologic response to tissue secondary to temperature elevation;
  - j. Differentiation between mild, moderate and vigorous dosages of heat;
  - k. Indications, precautions, and contraindications that should be considered when using superficial thermal agents;

- l. Proper clinical applications for hot packs, paraffin bath, fluidotherapy, whirlpool, and contrast bath;
  - m. Guidelines for educating the client and/or family in the purpose, benefit and potential risk(s) of the modality; and
  - n. Universal precautions, sterile techniques, infection control, and the use of modalities; OR
2. Be certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the Board. Any occupational therapist who bases their certificate on their hand therapist certification will receive certification for all three levels of physical agent modalities; OR
3. Have a minimum of five years of experience in the use of the superficial thermal agent modalities and pass the Nebraska Physical Agent Modalities Testing Service Examination titled Superficial Thermal Agents Test; OR
4. Successfully complete education during a basic educational program which includes demonstration of competencies for application of the superficial thermal agent modalities.

114-005.01A1 An occupational therapy assistant may only set up and implement superficial thermal agent modalities under the onsite supervision of an occupational therapist certified to administer superficial thermal agent modalities.

114-005.01B Deep Thermal Agent Modalities: To receive a certification to apply deep thermal agents, a licensed occupational therapist must meet the following qualifications:

1. Successfully complete a minimum of 12 hours of Board approved training or its equivalent and pass an end of the course written or computer-based examination and a practical examination approved by the Board which tests competency in the use of deep thermal agent modalities. The training must include the following:
  - a. Theory and rationale for the application of therapeutic ultrasound;
  - b. Differentiation between the parameters for therapeutic ultrasound;
  - c. Current research trends in the utilization of ultrasound;
  - d. Clinical decision making in the determination of the appropriate treatment parameters for ultrasound;
  - e. Clinical procedures for the application of ultrasound;
  - f. Safe use of ultrasound, contraindications and precautions for treatment; and
  - g. Methods for maximizing therapeutic effect in the use of phonophoresis as a physical agent modality; OR
2. Be certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the Board. Any occupational therapist who bases their certificate on their hand therapist certification will receive certification for all three levels of physical agent modalities; OR
3. Have a minimum of five years of experience in the use of the deep thermal agent

modalities and pass the Nebraska Physical Agent Modalities Testing Service Examination titled Deep Thermal Agents; OR

4. Successfully complete education during a basic educational program which includes demonstration of competencies for application of the deep thermal agent modalities.

114-005.01C Electrotherapeutic Agent Modalities: To receive a certification to apply electrotherapeutic agent modalities, a licensed occupational therapist must meet the following qualifications:

1. Successfully complete a minimum of 22 hours of Board approved training or its equivalent and pass an end of the course written or computer-based examination and a practical examination approved by the Board which tests competency in the use of electrotherapeutic agent modalities. The training must include the following:
  - a. Available parameters of electrical stimulation devices and the principles and concepts of electricity;
  - b. Physiological effects of electrical stimulation;
  - c. Therapeutic goals of electrical therapy;
  - d. Physiological events associated with electrical stimulation;
  - e. Distinguishing characteristic and indications and contraindications of electrical stimulation;
  - f. Physiological effects of various parameters of electrical stimulation (for example voltage, type, dosage, duty cycle, etc.);
  - g. Therapeutic relationship of electrotherapy with other therapeutic procedures;
  - h. Clinical application of electrical stimulation in rehabilitation;
  - i. Clinical reasoning process used to determine selection of Neuromuscular Electrical Stimulation (NMES) and appropriate parameters;
  - j. Parameters of therapeutic electrical currents;
  - k. Biophysiological responses to electrical currents;
  - l. Indications and contraindications for NMES use;
  - m. Appropriate electrode placement for treatment protocols;
  - n. Clinical applications for iontophoresis;
  - o. Definition and differentiation of the clinical application of iontophoresis from phonophoresis;
  - p. Biophysiology and mechanism related to transdermal delivery of medication;
  - q. Common medications used in iontophoresis and their pharmacology;
  - r. Clinical decision making regarding iontophoresis, indications and precautions;
  - s. The processes in pharmacokinetics: absorption, distribution, and metabolism;
  - t. The processes of pharmacodynamics as it pertains to routine drugs used in phonophoresis and iontophoresis;
  - u. Effects of physical agents, exercise, and manual techniques on pharmacokinetics; and
  - v. The aging process as it relates to pharmacokinetics; OR
  - w. Other nationally recognized commercially available technologies; OR
2. Be certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the Board. Any occupational therapist who

bases their certificate on their hand therapist certification will receive certification for all three levels of physical agent modalities; OR

3. Have a minimum of five years of experience in the use of the electrotherapeutic agent modalities and pass the Nebraska Physical Agent Modalities Testing Service Examination titled Electrotherapeutic Agents Test; OR
4. Successfully complete education during a basic educational program which includes demonstration of competencies for application of the electrotherapeutic agent modalities.

114-005.01D The Department will issue to each person who meets the requirements for a physical agent modality a certificate to administer physical agent modalities.

114-005.01D1 The certification to apply physical agent modalities will not expire.

114-004.01D2 The Department with the advice of the Board may discipline or deny a certificate to practice physical agent modalities for any of the grounds pursuant to 172 NAC 114-011

114-005.02 Application: To apply for certification to apply a physical agent modality, the applicant must submit a complete application to the Department. A complete application includes all required documentation and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:
  - a. Personal Information:
    - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
    - (2) Date of birth (month, day, and year);
    - (3) Place of birth (city and state or country if not born in the United States);
    - (4) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
    - (5) The applicant's:
      - (a) Social Security Number (SSN); or
      - (b) Alien Registration Number ("A#"); or
      - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
    - (6) The applicant's telephone number including area code (optional);
    - (7) The applicant's e-mail address (optional);
    - (8) The applicant's fax number (optional);
  - b. Practice Before Application: The applicant must state:
    - (1) That s/he has not practiced occupational therapy in Nebraska before submitting the application; or
    - (2) If s/he has practiced occupational therapy in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting

- the application for a credential and the name and location of practice; and
- c. License number and license type;
  - d. Type of physical agent modality;
    - (1) Superficial thermal agent certification; or
    - (2) Deep thermal agent certification; or
    - (3) Electrotherapeutic agents certification; or
    - (4) Combination of modalities certification;
  - e. Applying for physical agent modality certification by one of the following means:
    - (1) Training course; or
    - (2) Five years' experience and passage of written examination; or
    - (3) Education through basic occupational therapy degree program; or
    - (4) Hand Therapist Certification.
  - f. Attestation: The applicant must attest that:
    - (1) S/he has read the application or has had the application read to him/her;
    - (2) All statements on the application are true and complete;
    - (3) S/he is of good character;
    - (4) S/he has not committed any act that would be grounds for denial under 172 NAC 114-011 or if an act(s) was committed, provide an explanation of all such acts; and
    - (5) S/he is;
      - (a) For purposes of Neb. Rev. Stat. §§ 4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act; and
      - (b) For purposes of Neb. Rev. Stat. §38-129:
        - (i) A citizen of the United States; or
        - (ii) An alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act; or
        - (iii) A nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.
2. Documentation: The applicant must submit the following documentation with the application:
- a. Evidence of age, such as:
    - (1) Driver's license;
    - (2) Birth certificate;
    - (3) Marriage license that provides date of birth;
    - (4) Transcript that provides date of birth;
    - (5) U.S. State identification card;
    - (6) Military identification; or
    - (7) Other similar documentation;
  - b. Evidence of good character, including:
    - (1) Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed. The applicant must have the licensing agency submit to the Department a certification of his/her credential;
    - (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's



- credential and a copy of the disciplinary action(s), including charges and disposition;
- (3) Denial: If the applicant was denied a credential or denied the right to take an examination, an explanation of the basis for the denial;
  - (4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department:
    - (a) A list of any misdemeanor or felony convictions;
    - (b) A copy of the court record, which includes charges and disposition;
    - (c) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
    - (d) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
    - (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
    - (f) Any other information as requested by the Board/Department;
- c. Evidence that the applicant is:
- (1) For purposes of Neb. Rev. Stat. §§4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act; and
  - (2) For purposes of Neb. Rev. Stat. §38-129, a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act;
- d. Evidence of citizenship, lawful presence, and/or immigration status may include a copy of:
- (1) A U.S. Passport (unexpired or expired);
  - (2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
  - (3) An American Indian Card (I-872);
  - (4) A Certificate of Naturalization (N-550 or N-570);
  - (5) A Certificate of Citizenship (N-560 or N-561);
  - (6) Certification of Report of Birth (DS-1350);
  - (7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);
  - (8) Certification of Birth Abroad (FS-545 or DS-1350);
  - (9) A United States Citizen Identification Card (I-197 or I-179);
  - (10) A Northern Mariana Card (I-873);
  - (11) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
  - (12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
  - (13) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
  - (14) A Form I-94 (Arrival-Departure Record);
- e. Applying for physical agent modality certification by one of the following means;
- (1) Training Course;
    - (a) Transcript or certification from one of the Board approved courses or its

equivalent

- (2) Five years' experience and passage of written examination;
  - (a) Start and end dates of employment using physical agent modalities;
  - (b) Name, address and phone number of employer;
  - (c) Name of clinic supervisor or manager;
  - (d) Types of physical agent modalities used during employment; and
  - (e) Nebraska Physical Agent Modalities Testing Service Examination results submitted directly to the Department. To take the examination, you will need to register online at [www.pampca.org](http://www.pampca.org) for the Nebraska Physical Agent Modalities Testing Service and select the appropriate physical agent modality test.
- (3) Education through basic occupational therapy degree program;
  - (a) Application demonstrating competencies for physical agent modalities completed by the following:
    - [1] Applicant;
      - [a] Name;
      - [b] Social Security Number;
      - [c] Name when enrolled in degree program;
      - [d] Name of college or university;
      - [e] Dates of attendance;
      - [f] Date of graduation;
      - [g] Type of degree; and
      - [h] Name of courses to be verified; and
    - [2] University or College Official;
      - [a] Name of university or college official;
      - [b] Title;
      - [c] Name of Institution;
      - [d] Phone number;
      - [e] Date; and
      - [f] Review of course to be verified
  - (4) Hand therapist certification;
    - (a) Hand Therapy Certification Commission Certificate Number

3. Fee: The required license fee according to 172 NAC 2.

114-005.03 Certification Examination: Any occupational therapist or occupational therapy assistant having a minimum of five years of experience with physical agent modalities must pass the certification examination.

114-005.03A Certification Examination Procedures: The Nebraska Physical Agent Modalities Testing Service Examination will be administered by the Physical Agent Modalities Practitioner Credentialing Agency (PAMPCA, LLC), 627 Crofton Park Lane, Franklin TN 37069-6515, (866) 341-4106 or (615) 794-4106. The superficial thermal agents test is the only examination occupational therapy assistants are eligible to take. To register for an examination, the applicant must register online at [www.pampca.org](http://www.pampca.org) for the Nebraska Physical Agent Modalities Testing Service Examination and select one of the following five testing options:

1. Superficial Thermal Agents Test;
2. Deep Thermal Agents Test;
3. Superficial and Deep Thermal Agents Test;
4. Electrotherapeutic Agents Test; or
5. Comprehensive Physical Agents Modalities Test (includes Superficial, Deep and Electrotherapeutic Agents Tests).

If an applicant fails to attain a passing score of 75%, the applicant will be allowed to take a second test. If an applicant fails to attain a passing score on the second attempt, the applicant will not be eligible to receive the physical agent modality certification based on five years' experience and will need to obtain their certification through a Board approved training course pursuant to 172 NAC 114.005.01A, 172 NAC 114-005.01B, 172 NAC 114-005.01C.

114.005.03B Examination Results: The applicant will receive a letter from PAMPCA informing them of their examination results upon the completion of one or a combination of one of the Nebraska Physical Agent Modalities Testing Service Examinations.

114-005.04 Approval of Physical Agent Modality Courses: For a physical agent modality course to be approved by the Board, the course must meet the requirements pursuant to 172 NAC 114-005.01A item 1, 172 NAC 114-005.01B item 1, or 172 NAC 114-005.01C item 1.

114-005.04A Application: To apply for approval of a physical agent modality course, the course provider must submit a complete application to the Department. A complete application includes all required documentation and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written application:
  - a. Application Information:
    - (1) Name of course provider;
    - (2) Mailing address (street, rural route, or post office address' and city, state, and zip code, or country information;
    - (3) Provider's telephone number including area code (optional);
    - (4) Contact person's name;
  - b. Course Information:
    - (1) Name of course;
    - (2) Type of physical agent modality that the course covers;
      - (a) Superficial;
      - (b) Deep thermal; or
      - (c) Electrotherapeutic;
    - (3) Name of primary instructor;
    - (4) Number of contact hours for the physical agent modality that the course covers;
  - c. Answer the following questions:
    - (1) Do you maintain a list of the names of the people who completed your course?
    - (2) Do you maintain the score of each person who completed the end-of-course

- examination?
- (3) If you maintain the scores, how long do you keep the information?
  - (4) Are you able to provide the Department with a list of the candidates who passed the course?
  - (5) How many questions does your bank of examination questions contain?
- d. Attestation: The applicant must attest that:
- (1) S/he has read the application or has had the application read to him/her;
  - (2) All statements on the application are true and complete.
2. Documentation: The providers must submit the following documentation with the application:
- a. A course outline that includes the objectives of the course;
  - b. An example of the end of course examination;
  - c. Instructor(s) curriculum vitae;
  - d. A sample of an official certificate of attendance or transcript. The certificate of attendance must be signed by the provider and the certificate or transcript must contain the following information:
    - (1) Name of course;
    - (2) Types of modalities that the course covers, (for example, superficial, electrotherapeutic, deep thermal);
    - (3) Date of course;
    - (4) Provider of course;
    - (5) Contact hours completed;
    - (6) Name of person attending the course; and
    - (7) The score received on the end-of-course examination; and
  - e. A description of the practicum procedures for the deep thermal and electrotherapeutic training, including the tool used to assess the candidate's competency

114-005.04B The approval of a course provider found to have issued a certificate of course completion to an individual who did not complete a course will be revoked.

114-005.04C Providers must agree that employees of the Department and/or its designees, in an official capacity, may audit classroom course instruction, course materials, instructors' presentations, course records, records of examination, attendance rosters and other aspects of instruction. These auditors will not be hindered, obstructed, delayed, prevented or interfered with while conducting or attempting to conduct an audit. Audits will be conducted with a minimum of disruptions. Providers agree that auditors may attend any Board-approved course offered for the purpose of the audit without paying any fee. Providers grant the Department and/or its designees the right to audit records at the premises of the provider or at the physical location of the records.

114-005.04D Providers must keep all records of attendance, records of examination, course records and requests for duplicate course completion certificates on file for five years. These records must be available to the Department upon request.

114-005.04E Once approved, a course may not be substantially altered without a new application being submitted to the Board. A substantial alteration is any change that would

modify the content or time allocations would change any of the course topics or a change in instructors. If there is a change in instructors, the provider must request approval of the instructor by submitting a curriculum vitae for the new instructor. The Board will evaluate the curriculum vitae and reaffirm or deny the physical agent modality course approval.

114-005.04F A course may not be advertised or otherwise promoted as appropriate for Nebraska physical agent modality certification until the course has been approved by the Board. Advertising a course as being offered for physical agent modality certification before approval of the course is grounds for disqualification as a provider.

114-005.04G The Board will semiannually develop and revise the list of approved physical agent modality certification courses, beginning with the effective date of these regulations, and will act within 150 days of all approved course applications.

114-005.04H Approved courses must be open to all licensees.

114-006 REQUIREMENTS FOR CONSULTING WITH OR SUPERVISING AN OCCUPATIONAL THERAPY ASSISTANT: An occupational therapy assistant may assist in the practice of occupational therapy under the supervision of or in consultation with an occupational therapist.

114-006.01 If an occupational therapist is supervising or consulting with an occupational therapy assistant, s/he must meet the following standards:

1. Evaluate each patient prior to treatment by the occupational therapy assistant;
2. Develop a treatment plan outlining which elements have been delegated to the occupational therapy assistant;
3. Monitor patient's progress;
4. Approve any change in the occupational therapy treatment plan;
5. Ensure that the occupational therapy assistant is assigned only to duties and responsibilities for which s/he has been specifically trained and is qualified to perform;
6. Review all documentation written by the occupational therapy assistant;
7. Interpret the results of tests which are administered by the occupational therapy assistant; and
8. Evaluate the treatment plan and determine termination of treatment.

114-006.02 An occupational therapist supervising an occupational therapy assistant must, in addition to the standards pursuant to 172 NAC 114-006.01, provide the following:

1. A minimum of four hours per month of on-site supervision if an occupational therapy assistant has more than one year satisfactory work experience as an occupational therapy assistant; or
2. A minimum of eight hours per month of on-site supervision if an occupational therapy assistant has less than one year satisfactory work experience as an occupational therapy assistant.

114-007 ROLE DELINEATION FOR OCCUPATIONAL THERAPY ASSISTANT: A licensed occupational therapy assistant may perform the following duties while under the supervision of a licensed occupational therapist or while consulting with a licensed occupational therapist:

1. Explain overall occupational therapy services to client, family, or others who have legitimate interest in the case;
2. Solicit referrals from appropriate sources or acknowledge referrals received before or after initial screening for the purpose of initiating occupational therapy services by:
  - a. Responding to a request for service by relaying information or formal referral to the licensed occupational therapist; and
  - b. Entering cases as appropriate to standards of facility, department and profession when authorized by supervising occupational therapist.
3. Assess the need for, nature of, and estimated time of treatment, determining the needed coordination with other persons involved and documenting the activities by:
  - a. Screening clients to determine client's need for occupational therapy services. This may occur before or after referral by:
    - (1) Obtaining and reviewing written information about the client from medical records, school records, therapist records, etc.;
    - (2) Interviewing client, family, or others with legitimate interest in the case using a structured guide to obtain general history and information about family history, self-care abilities, academic history, vocational history, play history, and leisure interest and experiences; and
    - (3) Organizing, summarizing, and recording data collected by occupational therapy assistant and reporting such data to licensed occupational therapist.
  - b. Observing clients while engaged in individual and/or group activity to collect general data and report on independent living/daily living skills, selected sensorimotor skills, cognitive skills, and psychosocial skills;
  - c. Administering standardized and criterion referenced tests as directed by licensed occupational therapist to collect data on independent living/daily living skills and performance, sensorimotor developmental status, and cognitive skills and performance in the area of orientation;
  - d. Summarizing, recording, and reporting own evaluation data to licensed occupational therapist;
  - e. Assisting with the evaluation of the data collected; and
  - f. Reporting evaluation data as determined by the licensed occupational therapist to other appropriate persons.
4. Assist with the identification and documentation of achievable treatment goals to develop, improve, and/or restore the performance of necessary functions, compensate for dysfunction, and/or minimize debilitation in the areas of:
  - a. Independent living/daily living skills and performance;
  - b. Sensorimotor skills and performance in gross and fine coordination, strength and endurance, range of motion, and tactile awareness;
  - c. Cognitive skills and performance; and
  - d. Psychosocial skills and performance.
5. Assist in the identification and documentation of treatment methods by selecting occupational therapy techniques, media, and determining sequence of activities to attain goals in areas designated pursuant to 172 NAC 114-007.04 item 1 by:
  - a. Analyzing activities in reference to client's interests and abilities, major motor processes, complexity, steps involved, and extent to which it can be modified or adapted;
  - b. Adapting techniques/media to meet client need; and

- c. Discussing occupational therapy treatment plan with client, family, others with legitimate interests and staff.
6. Assist with implementation or modification of a treatment plan by the use of specific activities or methods which improve or restore performance of necessary functions; compensate for dysfunction; and/or minimize debilitation. The occupational therapy assistant, under the direction of a licensed occupational therapist, will:
  - a. Engage client in purposeful activity, in conjunction with therapeutic methods, to achieve goals identified in the treatment plan in the following areas:
    - (1) Independent living/daily living skills which include physical, psychological, emotional, work, and play;
    - (2) Sensorimotor components which include neuromuscular, tactile awareness, and postural balance;
    - (3) Cognitive components which include orientation and conceptualization;
    - (4) Therapeutic adaptation which includes orthotics, and assistive/adaptive equipment; and
    - (5) Prevention which includes energy conservation, joint protection/body mechanics, positioning and coordination of daily living skills.
  - b. Orient family and others about the activities being utilized in the treatment plan;
  - c. Provide instruction to client, family, and others with a legitimate interest in how to implement the home program developed by the licensed occupational therapist; and
  - d. Observe medical and safety precautions.
7. Assist in determining the need to terminate occupational therapy services when the client has achieved the treatment plan goals and/or has achieved maximum benefit from the services. The following steps must be taken:
  - a. Discuss need for treatment plan discontinuation with licensed occupational therapist;
  - b. Assist in preparing occupational therapy discharge plan by recommending adaptations to client's everyday environment;
  - c. Assist in identifying community resources; and
  - d. Assist in summarizing and documenting outcome of the occupational therapy treatment plan.
8. Participate in planning, organizing, and delivery of occupational therapy services by:
  - a. Planning daily schedule according to assigned workload;
  - b. Preparing and maintaining work setting, equipment, and supplies;
  - c. Ordering supplies and equipment according to established procedures;
  - d. Maintaining records according to Department procedure;
  - e. Ensuring safety and maintenance of program areas and equipment; and
  - f. Assisting with compiling and analyzing data of total occupational therapy service.
9. An occupational therapy assistant who is licensed by the State of Nebraska and has one year of practice experience can supervise an occupational therapy assistant student.

114-008 SUPERVISION OF AIDES IN OCCUPATIONAL THERAPY: An aide, as used in occupational therapy practice, is an individual who provides supportive services to the occupational therapist and the occupational therapy assistant. Aides are not primary service providers of occupational therapy in any practice setting. Aides do not provide skilled occupational therapy services. An aide is trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client-related tasks.

1. The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out client and non-client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan.
2. The occupational therapy assistant may supervise the aide.
3. Non-client-related tasks include clerical and maintenance activities and preparation of the work area or equipment.
4. Client-related tasks are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. Onsite supervision of an aide is required by an occupational therapist or an occupational therapy assistant when an aide is performing all client-related tasks. Onsite supervision of an aide means that the occupational therapist or occupational therapy assistant must be physically present at the practice site to direct all actions when occupational therapy services are being provided.

114-008A The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

1. The outcome anticipated for the delegated task is predictable;
2. The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide;
3. The aide has demonstrated some previous performance ability in executing the task; and
4. The task routine and process have been clearly established.

114-008B When performing delegated client-related tasks, the supervisor must ensure that the aide:

1. Is trained and able to demonstrate competency in carrying out the selected task and using equipment, if appropriate;
2. Has been instructed on how to specifically carry out the delegated task with the specific client; and
3. Knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant.

114.008C The supervision of the aide must be documented and include:

1. Information about frequency and methods of supervision used;
2. The content of the supervision; and
3. The names and credential of all persons participating in the supervisory process.

114.008D An occupational therapy aide may not perform evaluation, reevaluation, treatment planning or establish treatment goals.

114-009 CONTINUING COMPETENCY REQUIREMENTS: Each person holding an active credential within the state must, on or before the expiration date of the credential, comply with the



continuing competency requirements for his/her profession, unless the requirements are waived in accordance with 172 NAC 114-010.03 and 114-010.04. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities.

On or before the August 1 of each even numbered year the credential holder must:

1. Complete 20 hours of continuing education during the preceding 24 month period if an occupational therapist;
2. Complete 15 hours of continuing education during the preceding 24 month period if an occupational therapy assistant; and
3. Be responsible for:
  - a. Maintaining until the next renewal period documentation of attendance at, or participation in, continuing education programs/activities and the program outline and/or objectives; and
  - b. Maintaining documentation of presentation of a continuing education program if the licensee is presenting a program.

114-009.01 Acceptable Continuing Education: In order for a continuing education activity to be accepted for renewal or reinstatement of a license, the continuing education activity must relate to occupational therapy and it may focus on research, treatment, documentation, management, or education.

114-009.01A A continuing education activity, except formal and informal self study, student supervision, and participation in research will be acceptable when:

1. It constitutes a formally organized and planned program of learning which directly contributes to the professional competency of the licensee;
2. The objectives of the continuing education activity relate to the practice of occupational therapy;
3. It has a date, location, course title, number of contact hours, signed certificate of attendance and is open to all licensees; and
4. The instructor has specialized experience or training to meet the objectives of the course.

114-009.01B One hour of credit will be awarded for each hour of attendance. Credit will not be awarded for breaks or meals.

114.009.01C The Board does not pre-approve continuing education programs but will accept as continuing education for renewal of a license or reinstatement of a license the following continuing education activities:

1. Programs at State and National association meetings (for example, a meeting of the Nebraska or other state occupational therapy associations and/or the American Occupational Therapy Association) A licensee's documentation must include a certificate of attendance, and a program outline and/or objectives;
2. Workshops, seminars, webinars and/or conferences where the content of the continuing education activity relates to occupational therapy whether the subject is research, treatment, documentation, or education management, which includes

- monitored videotapes, and in-service programs. A licensee's documentation must include a certificate of attendance, and a program outline and/or objectives;
3. University or college sponsored courses where the content of the course relates to occupational therapy whether the subject is research, treatment, documentation, education, or management. A licensee must provide documentation of successfully completing the course. A licensee's documentation must include an official transcript, and a program outline and/or objectives;
  4. Formal self-study where the content of the self-study activity relates to occupational therapy whether the subject is research, treatment, documentation, education, or management (for example, videotapes, internet courses, correspondence courses and/or AOTA self-studies.) The self-study program must have a testing mechanism. A licensee's documentation must include a certificate of completion, and a program outline and/or objectives;
  5. Management courses which pertain to the practice of occupational therapy. An occupational therapist may complete a maximum of ten hours of continuing education utilizing management courses each 24 month renewal period. An occupational therapy assistant may complete a maximum of seven and one half hours of continuing education utilizing management courses each 24 month renewal period. A licensee's documentation must include a certificate of attendance and a program outline and/or objectives;
  6. Student supervision by an occupational therapist or occupational therapy assistant. One contact hour is earned for being a primary direct clinical supervisor for each student's entire level II fieldwork experience. Licensee may receive a maximum of two contact hours of continuing education by supervising a student each 24 month renewal period. A licensee's documentation must include a copy of the signature page of the completed fieldwork evaluation form for each supervised student;
  7. Participation in research or other scholarly activities that result in professional publication or acceptance for publication that relate to occupational therapy. Four contact hours will be received for each publication. Licensees may earn up to a maximum of ten contact hours of continuing education each 24 month renewal period for authorship, editorship, co-authorship, co-editorship, or all of these, of a juried publication relating to occupational therapy. A licensee's documentation must include a copy of the final publication or verification of publication (for example, title page and table of contents);
  8. Informal self-study: A licensee may earn up to a maximum of two contact hours of continuing education each 24 month renewal period for completion of the following activities or a combination of such activities:
    - a. Reading related to occupational therapy practice;
    - b. Observing other occupational therapists;
    - c. Viewing videotapes without a supervisor; and
    - d. Quality assurance or peer review studies.

A licensee's documentation when reading or viewing videotapes must include the name of the article, book or videotape and a brief synopsis of what was learned. Documentation, when observing other therapists and participating in quality assurance and peer review studies, must include a statement from the licensee explaining what was learned; and

9. Nationally recognized specialty certification examinations: A licensee will earn 20 contact hours of continuing education each 24 month renewal period for successful completion of a nationally recognized specialty certification examination related to an area of advanced practice in the field of occupational therapy. A licensee's documentation must include a copy of the certification.

114-009.01E One hour credit will be awarded for each hour of scientific presentation by a licensee at workshops, seminars, in-service training, conferences, or guest lectures which relate to the practice of occupational therapy. A licensee may receive continuing education credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same program. A licensee may complete a maximum of four hours of continuing education credit for presentations in a 24 month renewal period. A licensee's documentation must include the presentation outline, course objectives, date, location, time, and type of audience.

114-009.01F Non-acceptable Continuing Education: Continuing education credit will not be awarded for programs where the content does not relate to occupational therapy whether the subject is research, treatment, documentation, education, or management, including but not limited to:

1. Medical terminology courses;
2. Occupational therapy on-the-job training;
3. Occupational therapy orientation programs, including orientation to new policies, procedures, equipment, forms, responsibilities, services, etc.; or
4. CPR or other related training.

114-010 RENEWAL: An individual who wants to renew his/her occupational therapy license must request renewal as specified in 172 NAC 114-010.02. All occupational therapy licenses issued by the Department will expire on August 1 of each even-numbered year.

114-010.01 Renewal Notice: At least 30 days before the expiration of a license, the Department will notify each license holder by regular mail to the last known address of record. The renewal notice will include:

1. The type of license;
2. The license number;
3. The expiration date;
4. Continuing competency requirements for renewal;
5. The amount of the renewal fee; and
6. Information on how to request renewal and how to place a license on inactive status.

114-010.02 Renewal Procedures: The request for renewal may be submitted in person or by mail or Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application.

1. Application: The applicant on his/her application:
  - a. Must provide the following information:

- (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
  - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
  - (3) The applicant's:
    - (a) Social Security Number (SSN);
    - (b) Alien Registration Number ("A#"); or
    - (c) Form I-94 (Arrival-Departure Record) number.
- Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
- b. May provide the following information about him/herself:
    - (1) The applicant's telephone number including area code;
    - (2) The applicant's e-mail address; and
    - (3) The applicant's fax number;
  - c. Must attest that s/he:
    - (1) Is of good character;
    - (2) Has met the continuing competency requirements specified in 172 NAC 114-009 or has requested a waiver if s/he meets the requirements of 172 NAC 114-010.03 and/or 114-010.04;
    - (3) Has not, since the last renewal of the credential, committed any act which would be grounds for action against a credential as specified in 172 NAC 114-011.01, or if an act(s) was committed, provide an explanation of all such acts; and
    - (4) For purposes of Neb. Rev. Stat. §§4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act; and
    - (5) For purposes of Neb. Rev. Stat. §38-129, a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.
2. Documentation: The applicant must submit the following documentation with the application:
- a. Alien or Non-Immigrant: Evidence of lawful presence, and/or immigration status may include a copy:
    - (1) A Green Card otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
    - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
    - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
    - (4) A Form I-94 (Arrival-Departure Record);
  - b. Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;
  - c. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
  - d. Denial: If the applicant was denied a credential or denied the right to take an

examination, an explanation of the basis for the denial;

- e. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
  - (1) A list of any misdemeanor or felony convictions;
  - (2) A copy of the court record, which includes charges and disposition;
  - (3) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
  - (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
  - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
  - (6) Any other information as requested by the Board/Department; and

3. Fees: The renewal fee according to 172 NAC 2.

114-010.03 Waivers for Military Service: A credential holder who has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 172 NAC 114-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:

1. Military identification proving that s/he is in active service;
2. Military orders; or
3. A letter from his/her Commanding Officer indicating that s/he is on active duty.

Upon receipt of acceptable documentation, the Department will waive the fee and the continuing competency requirements and renew the credential. The credential will remain active until the next renewal period.

114-010.04 Waiver of Continuing Competency Requirements: The Department waives continuing competency requirements for individuals who were first credentialed within the 24-month period immediately preceding the renewal date.

114-010.04A The Department may waive continuing competency requirements, in whole or in part, upon submission by a credential holder of documentation that circumstances beyond his/her control have prevented completion of these requirements. These circumstances may include proof that the credential holder was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the 24 months immediately preceding the license renewal date; or

114-010.04B The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college which contributes to meeting the requirements of an advanced degree in a postgraduate program

relating to occupational therapy.

114-010.05 Audit Of Continuing Competency Requirements: The Department or the Board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit must produce documentation of the continuing competency activities.

114-010.05A The Department will notify each selected credential holder by mail. Failure to notify the Department of a current mailing address will not absolve the credential holder from the requirement for audit.

114-010.05B Within 30 days, each selected credential holder must respond by submitting documentation that s/he has met the requirements for continuing competency. An extension beyond 30 days for submission of the documentation may be granted at the discretion of the Department. Documentation submitted by the credential holder will not be returned.

114-010.05C Acceptable documentation that the credential holder has met the continuing competency requirements includes:

1. Copies of certificates of attendance or participation in a continuing education activity; and
2. Course outlines and/or objectives; or
3. Letters documenting attendance from providers; or
4. Copies of transcripts from educational institutions.

114-010.05D The Department/Board will review the submitted documentation to determine if the credential holder has met the requirements for continuing competency activities for renewal of the credential. Only documented activities/hours that meet the continuing competency requirements will be counted toward the total requirements for renewal.

114-010.05E The Department will notify the credential holder upon satisfactory completion of the audit.

114-010.05F The credential of any person who fails to comply with the conditions of the audit will expire 30 days after notice and an opportunity for a hearing.

114-010.05G The Board reserves the right to audit continuing competency requirements of any credential holder by notifying the credential holder and requesting that s/he produce the required documentation of attendance at or participation in acceptable continuing competency programs within 30 days of mailing.

114-010.06 Department Review: The Department will act within 150 days upon all completed applications for renewal.

114-010.06A False Information: The Department may refuse to renew a credential for falsification of any information submitted for renewal of a credential. The refusal will be made according to 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

114-010.07 Address Information: Each credential holder must notify the Department of any change to the address of record.

114-010.08 Expiration of a Credential: A credential expires if a credential holder fails to:

1. Notify the Department that s/he wants to place his/her credential on inactive status upon its expiration;
2. Meet the requirements for renewal on or before the date of expiration of his/her credential; or
3. Otherwise fails to renew his/her credential.

114-010.08A Failure to Renew: A credential automatically expires without further notice or opportunity for hearing if a credential holder fails by the expiration date of the credential to either:

1. Submit documentation of continuing competency; or
2. Pay the required renewal fee.

114-010.08B Failure to Meet Continuing Competency Requirements: The Department will refuse to renew a credential, after notice and opportunity for hearing, if a credential holder fails to meet the continuing competency requirements for renewal by the expiration date of the credential.

114-010.08C Right to Practice: When an individual's credential expires, the right to represent him/herself as a credential holder and to practice occupational therapy terminates.

114-010.08D Practice After Expiration: An individual who practices after expiration of his/her credential is subject to assessment of an administrative penalty under 172 NAC 114-014 or such other action as provided in the statutes and regulations governing the credential.

114-010.08E Reinstatement of an Expired Credential: If a credential holder wants to resume the practice of occupational therapy after failing to renew his/her credential by the expiration date, s/he must apply to the Department for reinstatement as specified in 172 NAC 114-013.

114-010.09 Inactive Status: When an individual wants to have his/her credential placed on inactive status, s/he must notify the Department in writing. There is no fee to have a credential placed on inactive status and continuing competency is not required.

114-010.09A Request for Inactive Status: When the Department has received notification that an individual wants to have his/her credential placed on inactive status, the Department will notify the credential holder in writing of the acceptance or denial of the request.

114-010.09B Placement on Inactive Status: When an individual's credential is placed on inactive status, the credential holder must not engage in the practice of occupational therapy, but may represent him/herself as having an inactive credential.

114-010.09C Return to Active Status: A credential may remain on inactive status for an indefinite period of time. An individual who wants to have his/her credential returned to active status must apply to the Department for reinstatement and meet the requirements specified in 172 NAC 114-013.

#### 114-011 DISCIPLINARY ACTIONS

114-011.01 Grounds for Action Against a Credential: A credential to practice a profession may have disciplinary actions taken against it on any of the following grounds:

1. Misrepresentation of material facts in procuring or attempting to procure a credential;
2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;
5. Conviction of:
  - a. A misdemeanor or felony under Nebraska law or federal law, or
  - b. A crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;
6. Practice of the profession:
  - a. Fraudulently,
  - b. Beyond its authorized scope,
  - c. With gross incompetence or gross negligence, or
  - d. In a pattern of incompetent or negligent conduct;
7. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
8. Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
9. Illness, deterioration, or disability that impairs the ability to practice the profession;
10. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
11. Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 172 NAC 114-011.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;
12. Use of untruthful, deceptive, or misleading statements in advertisements;
13. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
14. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
15. Violations of the Uniform Credentialing Act or the rules and regulations relating to the



- particular profession;
16. Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
  17. Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;
  18. Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;
  19. Failure to maintain the requirements necessary to obtain a credential;
  20. Violation of an order issued by the Department;
  21. Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;
  22. Failure to pay an administrative penalty; and/or
  23. Unprofessional conduct as defined in 172 NAC 114-011.02.

114-011.02 Unprofessional Conduct: Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, but does not include a single act of ordinary negligence. Unprofessional conduct also means conduct that is likely to deceive or defraud the public or is detrimental to the public interest. Unprofessional conduct includes but is not limited to:

1. Receipt of fees on the assurance that an incurable disease can be permanently cured;
2. Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than:
  - a. With a partner or employee of the applicant or credential holder or his/her office or clinic;
  - b. With a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts; or
  - c. With a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement.
3. Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
4. Cheating on or attempting to subvert the credentialing examination;
5. Assisting in the care or treatment of a consumer without the consent of the consumer or his/her legal representative;
6. Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;
7. Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
8. Knowingly disclosing confidential information except as otherwise permitted by law;
9. Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
10. Failure to keep and maintain adequate records of treatment or service;
11. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;
12. Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with the care;
13. Making use of any advertising statements of a character tending to deceive or mislead the public;

14. Advertising professional superiority or the performance of professional services in a superior manner;
15. Failure to accurately represent his/her skills to a patient/client;
16. Delegating to other personnel those patient/client related services when the clinical skills and expertise of an occupational therapist is required;
17. Failure to decline to carry out occupational therapy services that have been requested when such services are believed to be contraindicated or unjustified;
18. Committing any act which endangers patient/client safety or welfare;
19. Failure to utilize appropriate judgment in administering safe Occupational Therapy practice;
20. Failure to exercise technical competence in carrying out Occupational Therapy;
21. Failure to follow policies or procedures implemented in the practice situation to safeguard patient care;
22. Failure to safeguard the patient's dignity and right to privacy; violating the confidentiality of information or knowledge concerning the patient;
23. Failure to accurately record and report information or falsification or unauthorized destruction of patient records;
24. Misappropriating supplies or personal items of a patient/client or agency;
25. Exercising undue influence on patients/clients to purchase equipment produced or supplied by a company in which the Occupational Therapist owns stock or has any other direct or indirect financial interest;
26. Failure to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional;
27. Verbally or physically abusing patients;
28. Willful betrayal of a professional secret except as otherwise provided by law;
29. Sexual Harassment: An Occupational Therapist must not under any circumstances engage in sexual harassment of patients.
  - a. Sexual Harassment includes making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature as a condition of:
    - (1) The provision or denial of Occupational Therapy to a patient; or
    - (2) For the purpose or effect of creating an intimidating, hostile, or offensive environment for the patient or unreasonably interfering with a patient's ability to recover.
30. Competence: An occupational therapist or occupational therapy assistant must not provide services for which s/he is not trained or experienced. Unprofessional conduct in the practice of occupational therapy includes but is not limited to performing or agreeing to perform procedures when the procedures are known to be a departure from standard or acceptable and prevailing practice as a hearing instrument specialist, but not to include a single act of ordinary negligence.
31. Practicing the profession of Occupational Therapy while his/her license, certificate or registration is suspended or is guilty of practicing such profession while his/her license to do so is suspended or is guilty of practicing such profession in contravention of any limitation placed upon his/her license, certificate, or registration; or
32. Failure of a licensee, who is the subject of a disciplinary investigation, to furnish the Board or its investigator with requested information or requested documents.

114-011.03 Temporary Suspension or Limitation

114-011.03A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 172 NAC 114-011.01 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

114-011.03B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

114-011.03C A temporary suspension or temporary limitation of a credential under 172 NAC 114-011.03 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reinstated unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

114-011.04 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify credential holders of any disciplinary action to be imposed and the time and place of the hearing.

114-011.05 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:

1. Censure;
2. Probation;
3. Limitation;
4. Civil Penalty;
5. Suspension; or
6. Revocation.

114-011.05A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 114-011.05, the Director may, in addition to any other terms and conditions of that discipline:

1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of the combinations of written, oral, practical, and clinical, at the option of the Director;
2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by

- one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

114-012 VOLUNTARY SURRENDER OR LIMITATION: A credential holder may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or constructed by the credential holder, which must include the following information:

1. Personal Information:
  - a. First, middle and last name;
  - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
  - c. Telephone number; and
  - d. Fax number.
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
  - a. List credential(s) and credential number(s) that would be surrendered or limited;
  - b. Indicate the desired time frame for offered surrender or limitation:
    - (1) Permanently;
    - (2) Indefinitely; or
    - (3) Definite period of time (specify);
  - c. Specify reason for offered surrender or limit of credential; and
  - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The credential holder must:
  - a. Attest that all the information on the offer is true and complete; and
  - b. Provide the credential holder's signature and date.

114-012.01 The Department may accept an offer of voluntary surrender or limitation of a credential based on:

1. An offer made by the credential holder on his/her own volition;
2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or
4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

114-012.02 The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

1. Is under investigation;
2. Has a disciplinary action pending but a disposition has not been rendered; or
3. Has had a disciplinary action taken against it.

114-012.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within

30 days after receipt of the offer of voluntary surrender or limitation and will specify:

1. Whether the Department accepts or rejects the offer of voluntary surrender; and
2. The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
  - a. Duration of the surrender;
  - b. Whether the credential holder may apply to have the credential reinstated; and
  - c. Any terms and conditions for reinstatement.

114-012.04 A limitation may be placed on the right of the credential holder to practice a profession or operate a business to the extent, for the time, and under the conditions as imposed by the Director.

114-012.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

114-012.06 Reinstatement following voluntary surrender is set out in 172 NAC 114-013

114-013 REINSTATEMENT: This section applies to individuals previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential. Individuals may apply for reinstatement as follows:

1. An individual whose credential has expired, been placed on inactive status, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons, may apply for reinstatement at any time.
2. An individual whose credential has been voluntarily surrendered for a definite period of time may apply for reinstatement after that period of time has elapsed.
3. An individual whose credential has been revoked may apply for reinstatement only after a period of two years has elapsed from the date of revocation.
4. An individual whose credential has been permanently voluntarily surrendered may not apply for reinstatement.

The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

114-013.01 Reinstatement From Expired or Inactive Status or Following Voluntary Surrender Unrelated to a Disciplinary Matter: The applicant must submit to the Department a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant on his/her application:
  - a. Must provide the following information:
    - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
    - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);

- (3) The applicant's:
    - a. Social Security Number (SSN); or
    - b. Alien Registration Number (A#); or
    - c. Form I-94 (Arrival-Departure Record) number.  
Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
  - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
  - b. If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful presence which may include a copy of:
    - (1) A Green Card otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
    - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
    - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
    - (4) A Form I-94 (Arrival-Departure Record);
  - c. May provide the following information about him/herself:
    - (1) Telephone number including area code;
    - (2) E-mail address;
    - (3) Fax number; and
  - d. Must attest that s/he:
    - (1) Is of good character;
    - (2) Has met the continuing competency requirements specified in 172 NAC 114-004 within the 24 months immediately preceding submission of the application (or other requirements as specified by the practice act);
    - (3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
    - (4) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 114-011 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and
    - (5) For purposes of Neb. Rev. Stat. §§4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act; and
    - (6) For purposes of Neb. Rev. Stat. §38-129:
      - (a) A citizen of the United States;
      - (b) An alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act; or
      - (c) A nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act; and
2. The following fee(s) as determined by 172 NAC 2:
    - a. If the credential is expired or inactive, the reinstatement and renewal fees; or
    - b. If the credential was voluntarily surrendered, the renewal fee.

114-013.01A If an applicant has practiced while his/her credential was expired, inactive, or voluntarily surrendered, the Department may, with the recommendation of the Board, take

one or more of the following actions:

1. Deny the application to reinstate the credential;
2. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstate the credential.

114-013.01B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Deny the application for reinstatement of the credential;
2. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstate the credential.

114-013.01C The Department will act within 150 days on all completed applications.

114-013.01D The Department's decision may be appealed to the Director by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

114-013.02 Reinstatement from Non-Disciplinary Revocation or Lapsed Status: An individual whose credential was placed on non-disciplinary revocation or lapsed status before December 1, 2008 may apply for reinstatement as provided in 172 NAC 114-013.01.

114-013.03 Reinstatement Following Suspension, Limitation, Revocation, or Voluntary Surrender to Resolve a Pending Disciplinary Matter, In Lieu of Discipline, or In Response to a Notice of Disciplinary Action: An individual whose credential was suspended or limited may apply for reinstatement at any time. An individual whose credential has been revoked may apply for reinstatement after a period of two years has elapsed from the date of revocation. An individual whose credential was voluntarily surrendered may apply for reinstatement based on the provisions in the order accepting the voluntary surrender.

The applicant must submit to the Board:

1. Application: The applicant on his/her application:
  - a. Must provide the following information:
    - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
    - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
    - (3) The applicant's:
      - (a) Social Security Number (SSN); or
      - (b) Alien Registration Number (A#); or
      - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
    - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;

- (5) A statement of the reason the applicant believes his/her credential should be reinstated;
- b. If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful presence, and/or immigration status which may include a copy of:
  - (1) A Green Card otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
  - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
  - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
  - (4) A Form I-94 (Arrival-Departure Record);
- c. May provide the following information about him/herself:
  - (1) Telephone number including area code;
  - (2) E-mail address;
  - (3) Fax number; and
- d. Must indicate that s/he:
  - (1) Is of good character;
  - (2) Has met the continuing competency requirements specified in 172 NAC 114-004 within the 24 months immediately preceding submission of the application (or other requirements as specified by the practice act);
  - (3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
  - (4) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 114-006 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and
  - (5) For purposes of Neb. Rev. Stat. §§4-108 to 4-114, a citizen of the United States or qualified alien under the Federal Immigration and Nationality Act; and
  - (6) For purposes of Neb. Rev. Stat. §38-129:
    - (a) A citizen of the United States;
    - (b) An alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act; or
    - (c) A nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act; and

2. Fees: The renewal fee according to 172 NAC 2.

114-013.03A The Board will make a recommendation regarding reinstatement following suspension, limitation, revocation, or voluntary surrender within 180 days of receipt of the application.

114-013.3B The Department, with the recommendation of the Board, may:

- 1. Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. § 38-178;
- 2. Require the applicant to submit to a complete diagnostic examination, at the expense of the applicant, by one or more physician(s) or other professionals



- appointed by the Board. The applicant may also consult a physician(s) or other professionals of his/her own choice for a complete diagnostic examination and make available a report(s) of the examination(s) to the Department and to the Board;
3. Require the applicant to pass a written, oral, or practical examination or any combination of examinations at the expense of the applicant;
  4. Require the applicant to successfully complete additional education at the expense of the applicant;
  5. Require the applicant to successfully pass an inspection of his/her practice site; or
  6. Take any combination of these actions.

114-013.03C On the basis of the written application, materials submitted by the applicant, and the information obtained under 172 NAC 114-013.03B, the Board may:

1. Deny the application for reinstatement; or
2. Recommend to the Department:
  - a. Full reinstatement of the credential;
  - b. Modification of the suspension or limitation; or
  - c. Reinstatement subject to limitations or subject to probation with terms and conditions.

If the applicant has practiced while his/her credential was suspended, limited, revoked, or voluntarily surrendered, the Department may assess an administrative penalty pursuant to 172 NAC 114-014, in which case a separate notice of opportunity for hearing will be sent to the applicant.

114-013.03D An affirmative vote of a majority of the full membership of the Board as authorized by statute is required to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

114-013.03E Full Reinstatement: If the Board recommends full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

114-013.03F Denial, Modification, Limitation, or Probation: If the Board's initial decision is to deny the application for reinstatement, recommend modification of the suspension or limitation, or reinstate the credential subject to limitation or probation with terms and conditions, notification of the Board's decision will be mailed to the applicant by certified mail.

1. The initial decision or recommendation of the Board will become final 30 days after the decision or recommendation is mailed to the applicant unless the applicant requests a hearing within that 30-day period.
  - a. If the applicant requests a hearing before the Board, the Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.
  - b. Following the hearing, the Board may deny the reinstatement or recommend full reinstatement of the credential, or recommend modification of the suspension or limitation, or recommend reinstatement of the credential subject to limitations or probation with terms and conditions.
2. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.

114-013.03G Denial Decision: If the Board's final decision is denial of the application for reinstatement, the applicant will be notified by certified mail. The applicant may appeal the Board's denial to District Court in accordance with the Administrative Procedure Act.

114-013.03H Board Recommendation: If the Board's final recommendation is full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

114-013.03I Director's Review: The Director, upon receipt of the Board's recommendation for full reinstatement, modification, or probation, will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director will enter an order setting forth the decision. The Director may:

1. Affirm the recommendation of the Board and grant reinstatement; or
2. Reverse or modify the recommendation if the Board's recommendation is:
  - a. In excess of statutory authority;
  - b. Made upon unlawful procedure;
  - c. Unsupported by competent, material, and substantial evidence in view of the entire record; or
  - d. Arbitrary and capricious.

The order regarding reinstatement of the applicant's credential will be sent to the applicant by certified mail. The Director's decision may be appealed to District Court by any party to

the decision. The appeal must be in accordance with the Administrative Procedure Act.

114-014 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person or entity practices without a credential. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the reinstatement of a credential.

114-014.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without being credentialed:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice;
6. Government records indicate that the person was engaged in practice; and
7. The person or entity opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

114-014.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess such penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice must specify:
  - a. The total amount of the administrative penalty;
  - b. The evidence on which the administrative penalty is based;
  - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
  - d. That the Department will within 30 days following receipt of payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska;
  - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty; and
  - f. Failure to pay an administrative penalty may result in disciplinary action.

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2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

114-014.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.

114-015 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified.

114-016 METHOD OF IDENTIFICATION: Every person credentialed as an occupational therapist or occupational therapy assistant shall make his/her current credential available upon request. The method of identification shall be clear and easily accessed and used by the consumer. All signs, announcements, stationery, and advertisements of occupational therapists or occupational therapy assistants shall identify the profession. The initials OT and OTA are acceptable as minimum identifiers with the addition of R for registered, C for certified and L for licensed as applicable.

These amended rules and regulations replace Title 172 NAC 114 Regulations Governing the Practice of Occupational Therapy, effective May 6, 2006.

Approved by the Attorney General:	June 5, 2012
Approved by Governor:	July 26, 2012
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Forms may be obtained by contacting the Licensure Unit or by accessing the website at:  
[http://dhhs.ne.gov/publichealth/Pages/crl\\_profindex1.aspx](http://dhhs.ne.gov/publichealth/Pages/crl_profindex1.aspx)