



Advisory Board
on
Occupational
Therapy

Virginia Board of Medicine

September 20, 2022

10:00 a.m.

Advisory Board on Occupational Therapy

Board of Medicine

Tuesday, September 20, 2022 @ 10:00 a.m.

9960 Mayland Drive, Suite 201

Henrico, VA

	Page
Call to Order – Dwayne Pitre, OT, Chair	
Emergency Egress Procedures – William Harp, MD	i
Roll Call – ShaRon Clanton	
Approval of Minutes of May 24, 2022	1 - 3
Adoption of the Agenda	
Public Comment on Agenda Items (15 minutes)	
New Business	
1. Periodic Review of Regulations Governing the Practice of Occupational Therapy Erin Barrett	4 – 20
2. Review of Bylaws for Advisory Board Erin Barrett	21 - 22
3. Update on Implementation of Occupational Therapy Licensure Compact Michael Sobowale	23 - 35
4. Approval of 2023 Meeting Calendar Dwayne Pitre, OT	36
5. Election of Officers Dwayne Pitre, OT	

Announcements:

Next Scheduled Meeting: February 7, 2023 @ 10:00 a.m.

Adjournment

PERIMETER CENTER CONFERENCE CENTER
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS
(Script to be read at the beginning of each meeting.)

PLEASE LISTEN TO THE FOLLOWING INSTRUCTIONS ABOUT EXITING THESE PREMISES IN THE EVENT OF AN EMERGENCY.

In the event of a fire or other emergency requiring the evacuation of the building, alarms will sound.

When the alarms sound, leave the room immediately. Follow any instructions given by Security staff

Training Room 1

Exit the room using one of the doors at the back of the room. **(Point)** Upon exiting the room, turn **LEFT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

ADVISORY BOARD ON OCCUPATIONAL THERAPY

Board of Medicine

Tuesday, May 24, 2022 @ 10:00 a.m.
9960 Mayland Drive, Henrico, Virginia

MEMBERS PRESENT: Dwayne Pitre, OT, Chair
Kathryn Skibek, OT, Vice-Chair
Breshae Bedward, OT
Karen Lebo, Citizen Member

MEMBERS ABSENT: Raziuddin Ali, MD

STAFF PRESENT: Michael Sobowale, Deputy Director for Licensing
Colanthia M. Opher, Deputy Director for Administration
Erin Barrett, JD, DHP Senior Policy Analyst
ShaRon Clanton, Licensing Specialist

GUESTS PRESENT: Heidi Hull, OT, NBCOT

CALL TO ORDER

Dwayne Pitre called the meeting to order at 10:04 a.m.

EMERGENCY EGRESS PROCEDURES

Michael Sobowale announced the Emergency Egress Instructions.

ROLL CALL

Roll was called, and a quorum was declared.

APPROVAL OF MINUTES DATED May 25, 2021

Ms. Skibek moved to approve the minutes dated October 5, 2021. The motion was seconded by Ms. Bedward. The question was called, and the minutes were approved as presented.

ADOPTION OF AGENDA

Ms. Bedward moved to approve the adoption of the agenda. The motion was seconded by Ms. Lebo. The agenda was adopted as presented.

PUBLIC COMMENTS ON AGENDA ITEMS (15 minutes)

None

NEW BUSINESS

1. 2022 Legislative Update and 2023 Proposals

Erin Barrett discussed SB317 from the 2022 Session. It provides a 90-day authorization for a licensed OT or OTA licensed in another state to practice in Virginia without a license under certain conditions. Should the individual apply for a permanent Virginia license, he/she could be granted another 60 days to work on the authorization prior to licensure.

2. Update on Compact Implementation

Mr. Sobowale suggested the members address the issue of a delegate to represent Virginia for the Compact. After discussion, Ms. Bedward nominated Michael Sobowale. The motion was seconded by Ms. Skibek and passed.

3. Discuss Amendment to Guidance Document 85-17

Ms. Barrett presented Guidance Document 85-17 – Guidance o Supervisory Responsibilities of an Occupational Therapist - to the Advisory. Ms. Bedward moved to amend Answer 7 to include occupational therapist assistants. The motion was seconded by Ms. Skibek and approved.

4. Consider Amendment to Bylaws for the Advisory Board

Ms. Barrett recommended to the Advisory that OT be part of a uniform set of bylaws for all 11 Advisory Boards. Ms. Skibek moved this recommendation; it was seconded by Ms. Bedward and approved.

ANNOUNCEMENTS

Ms. Clanton said there are 3,806 current active OT's in Virginia with 51 current inactive. The total number of OTA's in Virginia is 1,587 with 22 inactive.

Next Meeting date: September 20, 2022 @ 10:00 a.m.

Adjournment:

Meeting was adjourned at 10:47 a.m. by Dwayne Pitre.

Dwayne Pitre, Chair

William L. Harp, M.D., Executive Director

ShaRon Clanton, Licensing Specialist

Agenda Items: Recommend periodic review result and potential regulatory changes to full Board

Included in your agenda package are:

- Notice of periodic review
- Recommended revisions to Chapter 80

Action needed:

- Consider any additional changes needed
- Motion to recommend full Board retain and amend Chapter 80 with suggested amendments



Agency Department of Health Professions

Board Board of Medicine

Chapter Regulations for Licensure of Occupational Therapists [18 VAC 85 - 80]

Edit Review

Review 2150

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 6/16/2022

Review Announcement

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, this regulation is undergoing a periodic review.

The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>.

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

In order for you to receive a response to your comment, your contact information (preferably an email address or, alternatively, a U.S. mailing address) must accompany your comment. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information	
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Publication Information and Public Comment Period

Published in the Virginia Register on 7/18/2022 [Volume: 38 Issue: 24]

Comment Period begins on the publication date and ends on 8/17/2022

Comments Received: 0

Review Result

Pending

Attorney General Certification

8/31/22, 8:16 AM

Virginia Regulatory Town Hall View Periodic Review

Pending

This periodic review was created by Erin Barrett on 06/16/2022 at 12:25pm

Commonwealth of Virginia



REGULATIONS

GOVERNING THE LICENSURE OF OCCUPATIONAL THERAPISTS

VIRGINIA BOARD OF MEDICINE

Title of Regulations: 18 VAC 85-80-10 et seq.

**Statutory Authority: § 54.1-2400 and Chapter 29
of Title 54.1 of the *Code of Virginia***

Revised Date: March 5, 2020

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Part I. General Provisions.

18VAC85-80-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board"

"Occupational therapy assistant"

"Practice of occupational therapy"

B. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Active practice" means a minimum of 160 hours of professional practice as an occupational therapist or an occupational therapy assistant within the 24-month period immediately preceding renewal or application for licensure, if previously licensed or certified in another jurisdiction. The active practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

~~"Advisory board" means the Advisory Board of Occupational Therapy.~~

"Contact hour" means 60 minutes of time spent in continued learning activity.

"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented.

"National examination" means the examination prescribed by NBCOT for certification as an occupational therapist or an occupational therapy assistant and approved for licensure in Virginia.

"Occupational therapy personnel" means appropriately trained individuals who provide occupational therapy services under the supervision of a licensed occupational therapist.

~~18VAC85-80-20. Public participation.~~

~~A separate regulation, 18VAC85-10-10 et seq., Public Participation Guidelines, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine~~

18VAC85-80-25. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when sent to the latest address of record provided or served to the licensee. Any change of name or address of

record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be \$130; for the occupational therapy assistant, it shall be \$70.
2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be \$180; for the occupational therapy assistant, it shall be \$90.
3. The fee for active license renewal for an occupational therapist shall be \$135; for an occupational therapy assistant, it shall be \$70. The fees for inactive license renewal shall be \$70 for an occupational therapist and \$35 for an occupational therapy assistant. Renewals shall be due in the birth month of the licensee in each even-numbered year. ~~For 2020, the fee for renewal of an active license as an occupational therapist shall be \$108; for an occupational therapy assistant, it shall be \$54. For renewal of an inactive license in 2020, the fees shall be \$54 for an occupational therapist and \$28 for an occupational therapy assistant.~~
4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50 for an occupational therapist and \$30 for an occupational therapy assistant.
5. The fee for a letter of good standing or verification to another state for a license shall be \$10.
6. The fee for reinstatement of licensure pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.
8. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

Part II. Requirements of Licensure as an Occupational Therapist.

18VAC85-80-30. (Repealed)

18VAC85-80-35. Application requirements.

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-80-26.

2. Verification of professional education in occupational therapy as required in 18VAC85-80-40.
3. Verification of practice as required in 18VAC85-80-60 and as specified on the application form.
4. Documentation of passage of the national examination as required in 18VAC85-80-50.
5. If licensed or certified in any other jurisdiction, verification that there has been no disciplinary action taken or pending in that jurisdiction.

18VAC85-80-40. Educational requirements.

A. An applicant who has received his professional education in the United States, its possessions or territories, shall successfully complete all academic and fieldwork requirements of an accredited educational program as verified by the ACOTE.

B. An applicant who has received his professional education outside the United States, its possessions or territories, shall successfully complete all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists as verified by the candidate's occupational therapy program director and as required by the NBCOT and submit proof of proficiency in the English language by passing the Test of English as a Foreign Language (TOEFL) with a score acceptable to the board. TOEFL may be waived upon evidence of English proficiency.

C. An applicant who does not meet the educational requirements as prescribed in subsection A or B of this section but who has received certification by the NBCOT as an occupational therapist or an occupational therapy assistant shall be eligible for licensure in Virginia and shall provide the board verification of his education, training and work experience acceptable to the board.

18VAC85-80-45. Practice by a graduate awaiting examination results.

A. A graduate of an accredited occupational therapy educational program may practice with the designated title of "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has received a failing score on the licensure examination from NBCOT or for six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

B. A graduate of an accredited occupational therapy assistant educational program may practice with the designated title of "Occupational Therapy Assistant-License Applicant" or "O.T.A.-Applicant" until he has received a failing score on the licensure examination from NBCOT or for six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

18VAC85-80-50. Examination requirements.

A. An applicant for licensure to practice as an occupational therapist shall submit evidence to the board that he has passed the certification examination for an occupational therapist and any other examination required for initial certification from the NBCOT.

B. An applicant for licensure to practice as an occupational therapy assistant shall submit evidence to the board that he has passed the certification examination for an occupational therapy assistant and any other examination required for initial certification from the NBCOT.

18VAC85-80-60. Practice requirements.

An applicant who has been practicing occupational therapy in another jurisdiction and has met the requirements for licensure in Virginia shall provide evidence that he has engaged in the active practice of occupational therapy as defined in 18VAC85-80-10. If the applicant has not engaged in active practice as defined in 18VAC85-80-10, he shall serve a board-approved practice of 160 hours, which is to be completed within 60 consecutive days, under the supervision of a licensed occupational therapist.

18VAC85-80-61. (Repealed.)

18VAC85-80-65. Registration for voluntary practice by out-of-state licensees.

Any occupational therapist or an occupational therapy assistant who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of §54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. ~~Pay a registration fee of \$10; and~~
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

Part III. Renewal of Licensure; Reinstatement.

18VAC85-80-70. Biennial renewal of licensure.

A. An occupational therapist or an occupational therapy assistant shall renew his license biennially during his birth month in each even-numbered year by:

1. Paying to the board the renewal fee prescribed in 18VAC85-80-26;

2. Indicating that he has been engaged in the active practice of occupational therapy as defined in 18VAC85-80-10; and

3. Attesting to completion of continued competency requirements as prescribed in 18VAC85-80-71.

B. An occupational therapist or an occupational therapy assistant whose license has not been renewed by the first day of the month following the month in which renewal is required shall pay an additional fee as prescribed in 18VAC85-80-26.

18VAC85-80-71. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall complete at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities, which shall consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy and approved or provided by one of the following organizations or any of its components:

a. Virginia Occupational Therapy Association;

b. American Occupational Therapy Association;

c. National Board for Certification in Occupational Therapy;

d. Local, state, or federal government agency;

e. Regionally accredited college or university;

f. Health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation; or

g. An American Medical Association Category 1 Continuing Medical Education program.

2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation, or other such experiences that promote continued learning. Up to two of the Type 2 continuing education hours may be satisfied through delivery of occupational therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services as documented by the health department or free clinic.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

Commented [VP1]: Similar to chapter 26 -- consider removing Type 2 and making requirement 10 hours of type 1 only.

C. The practitioner shall retain in his records all supporting documentation for a period of six years following the renewal of an active license.

~~D. The board shall periodically conduct a representative random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.~~

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC85-80-72. Inactive licensure.

A. A licensed occupational therapist or an occupational therapy assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain hours of active practice or meet the continued competency requirements of 18VAC85-80-71 and shall not be entitled to perform any act requiring a license to practice occupational therapy in Virginia.

B. An inactive licensee may reactivate his license upon submission of the following:

1. An application as required by the board;

2. A payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure;

3. ~~If the license has been inactive for two to six years, documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist; and~~

4. Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive.

C. An occupational therapist or an occupational therapy assistant who has had an inactive license for six years or more and who has not engaged in active practice, as defined in 18VAC85-80-10, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of §54.1-2915 of the Code of Virginia or any provisions of this chapter.

Commented [VP2]: Why is this required? An inactive licensee can't perform these things in Virginia. Assumes someone was outside of Virginia, but that may not always be the case.

18VAC85-80-73. Restricted volunteer license.

A. An occupational therapist or an occupational therapy assistant who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with §54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, an occupational therapist or occupational therapy assistant shall submit an application to the board that documents compliance with requirements of §54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-80-26.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-80-26.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than ~~five hours of Type 2 as specified in 18VAC85-80-71.~~

Commented [VP3]: If Type 2 removed above would need to do so here.

18VAC85-80-80. Reinstatement.

A. An occupational therapist or an occupational therapy assistant who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed, and shall pay the fee for reinstatement of his licensure as prescribed in 18VAC85-80-26.

B. An occupational therapist or an occupational therapy assistant who has allowed his license to lapse for two years but less than six years, and who has not engaged in active practice as defined in 18VAC85-80-10, shall serve a board-approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed occupational therapist.

C. An occupational therapist or an occupational therapy assistant who has allowed his license to lapse for six years or more, and who has not engaged in active practice, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. An applicant for reinstatement shall meet the continuing competency requirements of 18VAC85-80-71 for the number of years the license has been lapsed, not to exceed four years.

E. An occupational therapist or an occupational therapy assistant whose license has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of his license as prescribed in 18VAC85-80-26 pursuant to §54.1-2408.2 of the Code of Virginia.

Part IV. Practice of Occupational Therapy.

18VAC85-80-90. General responsibilities.

A. An occupational therapist renders services of assessment, program planning, and therapeutic treatment upon request for such service. The practice of occupational therapy includes therapeutic use of occupations for habilitation and rehabilitation to enhance physical health, mental health, and cognitive functioning. The practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

B. An occupational therapy assistant renders services under the supervision of an occupational therapist that do not require the clinical decision or specific knowledge, skills and judgment of a licensed occupational therapist and do not include the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient.

18VAC85-80-100. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying treatment goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community or educational services, the family and the patient. The services may include but are not limited to education and training in basic and instrumental activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); the design, selection, and use of adaptive equipment and assistive technologies; therapeutic activities to enhance functional performance; vocational evaluation and training; and consultation concerning the adaptation of physical, sensory, and social environments.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

D. An occupational therapy assistant is responsible for the safe and effective delivery of those services or tasks delegated by and under the direction of the occupational therapist. Individual responsibilities of an occupational therapy assistant may include:

1. Participation in the evaluation or assessment of a patient by gathering data, administering tests, and reporting observations and client capacities to the occupational therapist;
2. Participation in intervention planning, implementation, and review;
3. Implementation of interventions as determined and assigned by the occupational therapist;

4. Documentation of patient responses to interventions and consultation with the occupational therapist about patient functionality;

5. Assistance in the formulation of the discharge summary and follow-up plans; and

6. Implementation of outcome measurements and provision of needed patient discharge resources.

18VAC85-80-110. Supervisory responsibilities of an occupational therapist.

A. Delegation to an occupational therapy assistant.

1. An occupational therapist shall be ultimately responsible and accountable for patient care and occupational therapy outcomes under his clinical supervision.

2. An occupational therapist shall not delegate the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient nor shall he delegate any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed occupational therapist.

3. Delegation shall only be made if, in the judgment of the occupational therapist, the task or procedures do not require the exercise of professional judgment, can be properly and safely performed by an appropriately trained occupational therapy assistant, and the delegation does not jeopardize the health or safety of the patient.

4. Delegated tasks or procedures shall be communicated to an occupational therapy assistant on a patient-specific basis with clear, specific instructions for performance of activities, potential complications, and expected results.

B. The frequency, methods, and content of supervision are dependent on the complexity of patient needs, number and diversity of patients, demonstrated competency and experience of the assistant, and the type and requirements of the practice setting. The occupational therapist providing clinical supervision shall meet with the occupational therapy assistant to review and evaluate treatment and progress of the individual patients at least once every tenth treatment session or 30 calendar days, whichever occurs first. For the purposes of this subsection, group treatment sessions shall be counted the same as individual treatment sessions.

C. An occupational therapist may provide clinical supervision for up to six occupational therapy personnel, to include no more than three occupational therapy assistants at any one time.

D. The occupational therapy assistant shall document in the patient record any aspects of the initial evaluation, treatment plan, discharge summary, or other notes on patient care performed by the assistant. The supervising occupational therapist shall countersign such documentation in the patient record at the time of the review and evaluation required in subsection B of this section.

18VAC85-80-111. Supervision of unlicensed occupational therapy personnel.

A. Unlicensed occupational therapy personnel may be supervised by an occupational therapist or an occupational therapy assistant.

B. Unlicensed occupational therapy personnel may be utilized to perform:

1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and
2. Certain routine patient-related tasks that, in the opinion of and under the supervision of an occupational therapist, have no potential to adversely impact the patient or the patient's treatment plan.

Part V. Standards of Professional Conduct.

18VAC85-80-120. (Repealed.)

18VAC85-80-130. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-80-140. Patient records.

A. Practitioners shall comply with provisions of § 32.1-127.1:03 related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible and complete patient records;

D. Practitioners who are employed by a health care institution, school system or other entity, in which the individual practitioner does not own or maintain his own records, shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

- a. Records of a minor child, including immunizations, shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;
- b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. ~~From October 19, 2005, post information or in some manner inform all patients concerning the~~ time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

Commented [VP4]: Where did this posting language originate from?

F. ~~When a practitioner is closing, selling or relocating his practice, he shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.~~

Commented [VP5]: This is in statute and not necessary.

18VAC85-80-150. Practitioner-patient communication; termination of relationship.

A. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or his legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided or directed by the practitioner in the treatment of any disease or condition.

3. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the practitioner/patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-80-160. Practitioner responsibility.

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or their area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

4. Exploit the practitioner/patient relationship for personal gain.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in A 3 of this section.

18VAC85-80-170. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior which:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or
2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the patient-practitioner relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former patient.

Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, key third party of a patient shall mean: spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the

professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC85-80-180. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

**Chapter 29 of Title 54.1 of the Code of Virginia
Medicine**

§ 54.1-2956.1. Powers of Board concerning occupational therapy.

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who practices occupational therapy or claims to be an occupational therapist or occupational therapy assistant or who holds himself out to the public as an occupational therapist or occupational therapy assistant or who engages in the practice of occupational therapy, and to that end it may license practitioners as occupational therapists or occupational therapy assistants who have met the qualifications established in regulation by the Board.

The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as an occupational therapist during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure as an occupational therapist.

(1989, c. 306; 1998, c. 593; 2000, c. 782; 2004, c. 61; 2008, cc. 64, 89; 2011, c. 390.)

§ 54.1-2956.2. Advisory Board of Occupational Therapy.

The Advisory Board of Occupational Therapy, referred to hereinafter as "Advisory Board," shall assist the Board in the manner set forth in this chapter.

(1989, c. 306.)

§ 54.1-2956.3. Advisory Board of Occupational Therapy; composition; appointment.

The Advisory Board shall be comprised of five members appointed by the Governor for four-year terms. Three members shall be, at the time of appointment, licensed occupational therapists who have practiced for not less than three years, one member shall be a physician licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large. Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term.

(1989, c. 306; 2004, c. 61.)

§ 54.1-2956.4. Advisory Board of Occupational Therapy; powers.

The Advisory Board shall, under the authority of the Board:

1. Recommend to the Board, for its promulgation into regulation, the criteria for licensure as an occupational therapist or an occupational therapy assistant and the standards of professional conduct for holders of licenses.
2. Assess the qualifications of applicants for licensure and recommend licensure when applicants meet the required criteria. The recommendations of the Advisory Board on licensure of applicants shall be presented to the Board, which shall then issue or deny licenses. Any applicant who is aggrieved by a denial of recommendation on licensure of the Advisory Board may appeal to the Board.
3. Receive investigative reports of professional misconduct and unlawful acts and recommend sanctions when appropriate. Any recommendation of sanctions shall be presented to the Board, which may then impose sanctions or take such other action as may be warranted by law.
4. Assist in such other matters dealing with occupational therapy as the Board may in its discretion direct.

(1989, c. 306; 1998, c. 593; 2004, c. 61; 2008, cc. 64, 89.)

§ 54.1-2956.5. Unlawful to practice occupational therapy without license; restriction of titles for occupational therapy assistants.

A. It shall be unlawful for any person not holding a current and valid license from the Board to practice occupational therapy or to claim to be an occupational therapist or to assume the title "Occupational Therapist," "Occupational Therapist, Licensed," "Licensed Occupational Therapist," or any similar term, or to use the designations "O.T." or "O.T.L." or any variation thereof. However, a person who has graduated from a duly accredited educational program in occupational therapy may practice with the title "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has received a failing score on any examination required by the Board or until six months from the date of graduation, whichever occurs sooner.

B. It shall be unlawful for any person to practice as an occupational therapy assistant as defined in § 54.1-2900 or to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof unless such person holds a current and valid license from the Board to practice as an occupational therapy assistant. However, a person who has graduated from a duly accredited occupational therapy assistant education program may practice with the title "Occupational Therapy Assistant, License Applicant" or "O.T.A.-Applicant" until he has received a failing score on any examination required by the Board or until six months from the date of graduation, whichever occurs sooner.

(1989, c. 306; 1998, c. 593; 2000, c. 782; 2004, c. 61; 2008, cc. 64, 89; 2014, c. 252.)

§§ 54.1-2956.6. , 54.1-2956.7.

Repealed by Acts 1994, c. 803, effective January 1, 1997.

§ 54.1-2956.7:1. (Effective January 1, 2022) Occupational Therapy Interjurisdictional Licensure Compact.

The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Occupational Therapy Interjurisdictional Licensure Compact with any and all states legally joining therein according to its terms, in the form substantially as follows:

OCCUPATIONAL THERAPY INTERJURISDICTIONAL LICENSURE COMPACT.

Article I. Purpose.

The purpose of this Compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to occupational therapy services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multi-state occupational therapy practice;
4. Support spouses of relocating military members;
5. Enhance the exchange of licensure, investigative, and disciplinary information between member states;
6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and
7. Facilitate the use of telehealth technology in order to increase access to occupational therapy services.

Article II. Definitions.

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

"Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and Section 1211.

"Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an occupational therapist or occupational therapy assistant, including actions against an individual's license or compact privilege such as censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

"Alternative program" means a non-disciplinary monitoring process approved by an occupational therapy licensing board.

"Compact" means the Occupational Therapy Interjurisdictional Licensure Compact.

"Compact privilege" means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

"Continuing competence/education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

"Current significant investigative information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

"Data system" means a repository of information about licensees, including but not limited to license status, investigative information, compact privileges, and adverse actions.

"Encumbered license" means a license in which an adverse action restricts the practice of occupational therapy by the licensee or said adverse action has been reported to the National Practitioners Data Bank (NPDB).

"Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

"Home state" means the member state that is the licensee's primary state of residence.

"Impaired practitioner" means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

"Investigative information" means information, records, and/or documents received or generated by an occupational therapy licensing board pursuant to an investigation.

"Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of occupational therapy in a state.

"Licensee" means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

"Member state" means a state that has enacted the Compact.

"Occupational therapist" means an individual who is licensed by a state to practice occupational therapy.

"Occupational therapy assistant" means an individual who is licensed by a state to assist in the practice of occupational therapy.

"Occupational therapy," "occupational therapy practice," and the "practice of occupational therapy" mean the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the member state's statutes and regulations.

"Occupational Therapy Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the Compact.

"Occupational therapy licensing board" or "licensing board" means the agency of a state that is authorized to license and regulate occupational therapists and occupational therapy assistants.

"Primary state of residence" means the state (also known as the home state) in which an occupational therapist or occupational therapy assistant who is not active duty military declares a primary residence for legal purposes as verified by: driver's license, federal income tax return, lease, deed, mortgage or voter registration or other verifying documentation as further defined by Commission rules.

"Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

"Rule" means a regulation promulgated by the Commission that has the force of law.

"State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy.

"Single-state license" means an occupational therapist or occupational therapy assistant license issued by a member state that authorizes practice only within the issuing state and does not include a compact privilege in any other member state.

"Telehealth" means the application of telecommunication technology to deliver occupational therapy services for assessment, intervention, and/or consultation.

Article III. State Participation in the Compact.

A. To participate in the Compact, a member state shall:

1. License occupational therapists and occupational therapy assistants;
2. Participate fully in the Commission's data system, including but not limited to using the Commission's unique identifier as defined in rules of the Commission;
3. Have a mechanism in place for receiving and investigating complaints about licensees;
4. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;
5. Implement or utilize procedures for considering the criminal history records of applicants for an initial compact privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;
 - a. A member state shall, within a time frame established by the Commission, require a criminal background check for a licensee seeking/applying for a compact privilege whose primary state of residence is that member state, by receiving the results of the Federal Bureau of Investigation criminal record search, and shall use the results in making licensure decisions.
 - b. Communication between a member state, the Commission and among member states regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under P.L. 92-544.
6. Comply with the rules of the Commission;
7. Utilize only a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and
8. Have continuing competence/education requirements as a condition for license renewal.

B. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

C. Member states may charge a fee for granting a compact privilege.

D. A member state shall provide for the state's delegate to attend all Occupational Therapy Compact Commission meetings.

E. Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the compact privilege in any other member state.

F. Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.

Article IV. Compact Privilege.

A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:

1. Hold a license in the home state;
2. Have a valid United States social security number or national practitioner identification number;
3. Have no encumbrance on any state license;
4. Be eligible for a compact privilege in any member state in accordance with subsections D, F, G, and H;
5. Have paid all fines and completed all requirements resulting from any adverse action against any license or compact privilege, and two years have elapsed from the date of such completion;
6. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);
7. Pay any applicable fees, including any state fee, for the compact privilege;
8. Complete a criminal background check in accordance with subdivision A 5 of Article III. The licensee shall be responsible for the payment of any fee associated with the completion of a criminal background check;
9. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and
10. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of subsection A to maintain the compact privilege in the remote state.

C. a licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. Occupational therapy assistants practicing in a remote state shall be supervised by an occupational therapist licensed or holding a compact privilege in that remote state.

E. A licensee providing occupational therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

F. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and
2. Two years have elapsed from the date on which the home state license is no longer encumbered in accordance with subdivision 1.

G. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection A to obtain a compact privilege in any remote state.

H. If a licensee's compact privilege in any remote state is removed, the individual may lose the compact privilege in any other remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;
2. All fines have been paid and all conditions have been met;
3. Two years have elapsed from the date of completing requirements for subdivisions 1 and 2; and
4. The compact privileges are reinstated by the Commission, and the compact data system is updated to reflect reinstatement.

I. If a licensee's compact privilege in any remote state is removed due to an erroneous charge, privileges shall be restored through the compact data system.

J. Once the requirements of subsection H have been met, the license must meet the requirements in subsection A to obtain a compact privilege in a remote state.

Article V. Obtaining a New Home State License by Virtue of Compact Privilege.

A. An occupational therapist or occupational therapy assistant may hold a home state license, which allows for compact privileges in member states, in only one member state at a time.

B. If an occupational therapist or occupational therapy assistant changes primary state of residence by moving between two member states:

1. The occupational therapist or occupational therapy assistant shall file an application for obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new home state license by virtue of compact privilege, the new home state shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in Article IV via the data system, without need for primary source verification except for:

a. An FBI fingerprint based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the Commission in accordance with P.L. 92-544;

b. Other criminal background check as required by the new home state; and

c. Submission of any requisite jurisprudence requirements of the new home state.

3. The former home state shall convert the former home state license into a compact privilege once the new home state has activated the new home state license in accordance with applicable rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in Article IV, the new home state shall apply its requirements for issuing a new single-state license.

5. The occupational therapist or the occupational therapy assistant shall pay all applicable fees to the new home state in order to be issued a new home state license.

C. If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a member state to a non-member state, or from a non-member state to a member state, the state criteria shall apply for issuance of a single-state license in the new state.

D. Nothing in this compact shall interfere with a licensee's ability to hold a single-state license in multiple states; however, for the purposes of this compact, a licensee shall have only one home state license.

E. Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.

Article VI. Active Duty Military Personnel or their Spouses.

Active duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state or through the process described in Article V.

Article VII. Adverse Actions.

A. A home state shall have exclusive power to impose adverse action against an occupational therapist's or occupational therapy assistant's license issued by the home state.

B. In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against an occupational therapist's or occupational therapy assistant's compact privilege within that member state.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

C. For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

D. The home state shall complete any pending investigations of an occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The home state, where the investigations were initiated, shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the OT Compact Commission data system. The occupational therapy compact commission data system administrator shall promptly notify the new home state of any adverse actions.

E. A member state, if otherwise permitted by state law, may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that occupational therapist or occupational therapy assistant.

F. A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action.

G. Joint investigations.

1. In addition to the authority granted to a member state by its respective state occupational therapy laws and regulations or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

H. If an adverse action is taken by the home state against an occupational therapist's or occupational therapy assistant's license, the occupational therapist's or occupational therapy assistant's compact privilege in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an occupational therapist's or occupational therapy assistant's license shall include a statement that the occupational therapist's or occupational therapy assistant's compact privilege is deactivated in all member states during the pendency of the order.

I. If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

J. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

Article VIII. Establishment of the Occupational Therapy Compact Commission.

A. The Compact member states hereby create and establish a joint public agency known as the Occupational Therapy Compact Commission:

1. The Commission is an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, voting, and meetings.

1. Each member state shall have and be limited to one delegate selected by that member state's licensing board.

2. The delegate shall be either:

a. A current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

b. An administrator of the licensing board.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the Commission within 90 days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

6. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

7. The Commission shall establish by rule a term of office for delegates.

C. The Commission shall have the following powers and duties:

1. Establish a code of ethics for the Commission;

2. Establish the fiscal year of the Commission;

3. Establish bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

6. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state occupational therapy licensing board to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

12. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

14. Establish a budget and make expenditures;

15. Borrow money;

16. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

17. Provide and receive information from, and cooperate with, law enforcement agencies;

18. Establish and elect an executive committee; and

19. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of occupational therapy licensure and practice.

D. The executive committee.

The executive committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The executive committee shall be composed of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex-officio, nonvoting member from a recognized national occupational therapy professional association; and

- c. One ex officio, nonvoting member from a recognized national occupational therapy certification organization.
2. The ex officio members will be selected by their respective organizations.
 3. The Commission may remove any member of the executive committee as provided in bylaws.
 4. The executive committee shall meet at least annually.
 5. The executive committee shall have the following duties and responsibilities:
 - a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;
 - b. Ensure Compact administration services are appropriately provided, contractual or otherwise;
 - c. Prepare and recommend the budget;
 - d. Maintain financial records on behalf of the Commission;
 - e. Monitor Compact compliance of member states and provide compliance reports to the Commission;
 - f. Establish additional committees as necessary; and
 - g. Perform other duties as provided in rules or bylaws.
- E. Meetings of the Commission.
1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article X.
 2. The Commission or the executive committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or executive committee or other committees of the Commission must discuss:
 - a. Non-compliance of a member state with its obligations under the Compact;
 - b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
 - c. Current, threatened, or reasonably anticipated litigation;
 - d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

- e. Accusing any person of a crime or formally censuring any person;
- f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- h. Disclosure of investigative records compiled for law enforcement purposes;
- i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or
- j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission.

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the Commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified immunity, defense, and indemnification.

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the grossly negligent, intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel, and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Article IX. Data System.

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. A member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable (utilizing a unique identifier) as required by the rules of the Commission, including:

1. Identifying information;

2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Non-confidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial;
6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission; and
7. Current significant investigative information.

C. Current significant investigative information and other investigative information pertaining to a Licensee in any member state will only be available to other member states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

Article X. Rulemaking.

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. The Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

C. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

D. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission or other publicly accessible platform; and
2. On the website of each member state occupational therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

F. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least 25 persons;
2. A state or federal governmental subdivision or agency; or
3. An association or organization having at least 25 members.

I. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this article.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this article shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or member state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Article XI. Oversight, Dispute Resolution, and Enforcement.

A. Oversight.

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the

Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, technical assistance, and termination.

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal

offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution.

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement.

The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

Article XII. Date of Implementation of the Interstate Commission for Occupational Therapy Practice and Associated Rules, Withdrawal, and Amendment.

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Article XIII. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any member state, the Compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

Article XIV. Binding Effect of Compact and Other Laws.

A. A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

B. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.

C. Any laws in a member state in conflict with the Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.

E. All agreements between the Commission and the member states are binding in accordance with their terms.

F. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Agenda Item: Bylaws for all Advisory Boards

Included in your agenda package are:

- ❖ Copy of Approved Guidance Document 85-3

Action Needed:

- None

**BYLAWS FOR
ADVISORY BOARDS OF THE BOARD OF MEDICINE**

Article I - Members of the Advisory Board

The appointments and limitations of service of the members shall be in accordance with the applicable statutory provision of the advisory board governing such matters.

Article II - Officers

Section 1. Titles of Officers - The officers of the advisory board shall consist of a chairman and vice-chairman elected by the advisory board. The Executive Director of the Board of Medicine shall serve in an advisory capacity.

Section 2. Terms of Office - The chairman and vice-chairman shall serve for a one-year term and may not serve for more than two consecutive terms in each office. The election of officers shall take place at the first meeting after July 1, and officers shall assume their duties immediately thereafter.

Section 3. Duties of Officers.

- (a) The chairman shall preside at all meetings when present, make such suggestions as may deem calculated to promote and facilitate its work, and discharge all other duties pertaining by law or by resolution of the advisory board. The chairman shall preserve order and conduct all proceedings according to and by parliamentary rules and demand conformity thereto on the part of the members. The chairman shall appoint all committees as needed.

The chairman shall act as liaison between the advisory board and the Board of Medicine on matters pertaining to licensing, discipline, legislation and regulation of the profession which the advisory board represents.

When a committee is appointed for any purpose, the chairman shall notify each member of the appointment and furnish any essential documents or information necessary.

- (b) The vice-chairman shall preside at meetings in the absence of the chairman and shall take over the other duties of the chairman as may be made necessary by the absence of the chairman.

Article III - Meetings

Section 1. There shall be at least one meeting each year in order to elect the chairman and vice-chairman and to conduct such business as may be deemed necessary by the advisory board.

Section 2. Quorum - Three members shall constitute a quorum for transacting business.

Section 3. Order of Business - The order of business shall be as follows:

- (a) Calling roll and recording names of members present
- (b) Approval of minutes of preceding regular and special meetings
- (c) Adoption of Agenda
- (d) Public Comment Period
- (e) Report of Officers
- (f) Old Business
- (g) New Business

The order of business may be changed at any meeting by a majority vote.

Article IV - Amendments

Amendments to these bylaws may be proposed by presenting the amendments in writing to all advisory board members prior to any scheduled advisory board meeting. If the proposed amendment receives a majority vote of the members present at that advisory board meeting, it shall be represented as a recommendation for consideration to the Board of Medicine at its next regular meeting.

Agenda Item: Update on Implementation of Occupational Therapy Licensure Compact

Included in your Agenda Package are:

- ❖ Transition Plans
- ❖ Minutes of the OT Compact Inaugural Meeting, August 3 & 4, 2022

Action needed:

- None



Proposed Transition Plan: OT Compact Operations

The following will be completed during the inaugural OT Compact Commission Meeting:

Internal procedures and policies

- Review and adopt code of conduct forms
- Discuss and adopt by-laws
- Adopt Rule on Rulemaking
- Discuss future rules for consideration
- Discussion of committees' structure and function
- Election of OT Compact Executive Committee
- Discuss dates of first Executive Committee and Rules Committee meetings
- Request for committee participants

Introductions and Commission Personnel

- Introduce State Commissioners and Ex-Officio Commissioners
- Governance and legislative review
- Discuss OT Compact Commission finances
 - Receipt of Funding Letters
- Discuss and vote on transition plan
- Discuss interim legal counsel
- Discuss RFP for secretariat services and timeline
 - Interim Secretariat and legal services required beyond Oct. 1, 2022 shall be reimbursed by the Commission through the existing contract between AOTA and CSG to support the enactment of the OT Compact.
- Role of CSG for OT Compact Commission
- Role of CSG under the current contract in support of the joint initiative of the American Occupational Therapy Association (AOTA) and the National Board of Certification in Occupational Therapy (NBCOT)
 - State level technical assistance
 - State legislative technical assistance
 - Legal services
 - Continued outreach on status of state enactments of the OT Compact
 - Continued maintenance of OT Compact website
 - Temporary secretariat services



OCCUPATIONAL THERAPY
LICENSURE COMPACT

Subsequent meetings of the OT Compact Commission and Executive Committee will consider the following items for action:

- Discuss additional rules and policies
- Develop MOU for financial support
- Develop and approve budget, including but not limited to the following items: staff salaries, benefits, travel, meetings, postage, secretariat services, legal services, and insurance.
- Select secretariat for OT Compact Commission
- Discuss OT Compact Commission data system



OCCUPATIONAL THERAPY
LICENSURE COMPACT

Occupational Therapy Compact Inaugural Meeting Minutes

August 3-4, 2022
CSG National Office (Virtual)
1776 Avenue of the States
Lexington, KY 40511

Delegates Present:

Alabama	Ann Cosby	North Carolina	Danielle Ward
Colorado	Nate Brown	Ohio	Missy Anthony
Georgia	Adrienne Price	South Carolina	Lesly James
Iowa	Venus Vendoures-Walsh	Utah	Jana Johansen (Day 1)
Kentucky	Renee Causey-Upton		Larry Marx (Day 2)
Maine	Kathryn Loukas	Virginia	Michael Sobowale
Maryland	Daniel Martin	Washington	Kathy Weed
Missouri	Vanessa Beauchamp	West Virginia	Vonda Malnikoff
Nebraska	Claire Covert-ByBee	Wisconsin	Teri Black
New Hampshire	Olivia Freeman	Wyoming	Nicole Harris

Delegates Present but Not Formally Appointed:

Tennessee: Hollie Simpson

Ex-Officio Delegates Present:

Chuck Willmarth, AOTA
Shaun Conway, NBCOT

Delegates Absent:

Arizona: no delegate appointed

Interim Chair Present:

Wayne Winistorfer

Legal Counsel Present

Nahale Kalfas, Council of State Governments (CSG)

CSG, AOTA, and NBCOT Staff Present

Daniel Logsdon, CSG
Carl Sims, CSG

Isabel Eliassen, CSG
Kristen Neville, AOTA
Barbara Williams, NBCOT

Members of the Public Present

Nathan Sharbaugh, The Children's Institute
Bill Janes, University of Missouri
Scott Tiffin, LCPCM
Jennifer Radziak, A.T. Still University
Ofelia Duran, DORA Office of Occupational Therapy Licensure
Cindy Anderson, University of Mary
Kara Takes, Unified Therapy Services
Mack Williams, South Carolina Board of Occupational Therapy
Lisa Jacobson, University of Iowa Hospitals and Clinics
Megan Boucher, Anne Carlsen Therapy Services

August 3, 2022

Welcome/Call to Order

- I. Eliassen explained that the meeting was being recorded for the purpose of keeping accurate minutes and that the meeting recording would not be distributed publicly.
- D. Logsdon provided opening remarks and introduced the interim chair, Wayne Winistorfer.
- W. Winistorfer called upon the CSG staff members and interim counsel to introduce themselves.
- W. Winistorfer called the meeting to order at 10:11 a.m. ET.

Roll Call

- W. Winistorfer invited the delegates to introduce themselves. Delegates from Arizona and Tennessee had not yet been appointed. Delegates from Maine and Missouri arrived one hour late (after the training on governance structure). All other appointed delegates were present. Ex-officio delegates from AOTA (C. Willmarth) and NBCOT (S. Conway) also introduced themselves.

Overview and Adoption of the Agenda

- W. Winistorfer reviewed the agenda.
- W. Winistorfer called for a motion to adopt the agenda.
- **Motion:** A. Price moved that the commission adopt the agenda. D. Martin seconded the motion. 17 delegates voted in favor, 0 opposed, and 0 abstained. The motion passed.

Training on Governance Structure

- W. Winistorfer called on N. Kalfas to review information on the compact's governance structure.

- N. Kalfas reviewed the entity status of the compact, the governing structure of the compact, and the delegates' responsibilities as commissioners.

Review and Adoption of Delegate Code of Conduct

- W. Winistorfer reminded the delegates that the code of conduct, which they had all signed prior to the meeting, was located on page 22 of their packets for them to review.
- W. Winistorfer called for a motion to adopt the code of conduct policy as distributed and signed.
- **Motion:** J. Johansen moved that the commission adopt the code of conduct. K. Loukas seconded the motion. All present voted in favor and the motion carried.

Discussion of Interim Legal Counsel and Interim Secretariat

- W. Winistorfer invited D. Logsdon to share information regarding the interim secretariat and the interim legal counsel.
- D. Logsdon explained that The Council of State Governments is able to continue serving as the interim secretariat for the OT Compact until the commission is able to hire a secretariat. Similarly, the interim legal counsel, Nahale Kalfas, who works with CSG, is able to serve as interim legal counsel until the commission is able to hire their own. N. Kalfas, interim legal counsel, offered that she would be willing to continue to serve as counsel if the OT Commission so wished.
- W. Winistorfer called for delegate questions on this topic.
- D. Ward asked how long CSG would be able to serve in the interim role. D. Logsdon indicated that CSG would be available to offer support for as long as needed and can also continue to occupy an advisory role after a secretariat is hired, as CSG has done with other compact commissions.
- D. Ward asked for elaboration on CSG's continuing role with other compacts. D. Logsdon stated that CSG would be able to provide consultation if needed but the primary ongoing relationship would likely be with legal counsel.
- C. Willmarth asked if it would be appropriate to have a voting item to officially recognize the interim legal counsel and secretariat. N. Kalfas indicated that a line item could be added to the transition timeline document, which was already a voting matter on the agenda.
- C. Covert-ByBee raised a concern regarding whether it was appropriate to put a timeframe on a transition when the dates of the transition are uncertain. N. Kalfas indicated that the commission could indicate an event to signal the transition rather than a date.

Discussion and Adoption of Compact Bylaws

- W. Winistorfer indicated the commission would move to the discussion of the compact bylaws.
- N. Kalfas discussed the drafted bylaws, which were shown on-screen and had been posted to the website beforehand.
- W. Winistorfer asked if there is occasionally high volume of commissioner turnover which makes the commission difficult to operate. N. Kalfas stated that it can happen, but that it is a greater concern to have commissioners who are not board members because of

issues of communication and state actor immunity, and that states could be given a timeframe within which they must appoint their next delegate in such a situation. N. Kalfas indicated that in the future, staggered terms of office could be established for commission officers so institutional knowledge is retained.

- T. Black suggested switching the first and second sentence of the purpose section of the bylaws. N. Kalfas indicated such a change would be appropriate pending the vote of the commission.
- T. Black asked about who maintains the compact website. D. Logsdon indicated this would be discussed during the discussion of transition issues.
- R. Causey-Upton mentioned three copyediting changes the document needed. The changes were recorded on-screen.
- L. James asked if the two-year term limits included executive committee members and asked what a typical term limit would be for the compact commission. N. Kalfas clarified that delegates may sit out for a term and then come back and run for another term, and that staggered term endings would help prevent problems related to a lack of institutional knowledge. These bylaws were written to strike a balance between retaining institutional knowledge and ensuring interest from newcomers in executive committee participation.
- M. Anthony asked if delegates could decline commission reimbursements. N. Kalfas indicated this would not be a problem.
- W. Winistorfer asked the delegated for further thoughts on T. Black's suggested change. C. Covert-ByBee, M. Sobowale, and D. Ward all indicated they respectfully opposed the changes and would prefer to adopt the document as written.
- **Motion:** V. Beauchamp motioned for the bylaws to be adopted with the copyediting changes. M. Sobowale seconded the motion. All delegates voted in favor and the motion carried.

Election Information Reminder

- I. Eliassen reminded the delegates to submit bios if they wanted to be considered for a position on the executive committee.
- L. James asked if South Carolina could run for a committee position if the delegate appointment had not yet been finalized. N. Kalfas indicated that if South Carolina submitted their nomination form and code of conduct by that evening they would be eligible.

Discussion and Vote for Transition Plan

- D. Logsdon overviewed the transition plan, which was shown on-screen and was available in the meeting packet posted to the website.
- N. Kalfas reminded the delegates of the previous suggestion of adding a line item regarding the method of payment for secretariat services. D. Logsdon clarified that if a secretariat was not in place by a certain date, CSG would continue to work with the commission.
- N. Kalfas suggested that the additional line item should read "interim secretariat and legal services needed beyond October 1, 2022, shall be reimbursed by the Commission through the existing contract between AOTA and CSG to support the enactment of the OT compact."

- O. Freeman asked whether these documents would be posted somewhere or sent out to the delegates. I. Eliassen responded that some would be made available on the website and some would be sent to delegates.
- W. Winistorfer asked if NBCOT would need to be included in the line item addition.
- S. Conway asked if D. Logsdon and N. Kalfas could talk about their previous experiences with commission transitions so they could give the delegates a sense of what to expect. N. Kalfas indicated that funding is often a serious issue for commissions, but that as this commission already has promises of funding from AOTA and NBCOT, they will likely have a shorter transition period. N. Kalfas also indicated that approval of a budget was an important step in the transition process, as RFPs for the secretariat and executive director roles can be posted after that.
- V. Beauchamp reiterated the question of whether NBCOT would need to be included in the additional line item. D. Logsdon indicated that only AOTA would need to be mentioned.
- **Motion:** V. Beauchamp motioned to approve the line item addition. O. Freeman seconded. All present voted in favor and the motion carried.
- W. Winistorfer called for additional discussion on the transition plan.
- T. Black asked if the financial obligations of the commission could be spelled out more specifically on the second page. N. Kalfas stated that a budget would be proffered to the full commission once the executive committee and finance committee have begun meeting.
- T. Black asked if another item could be added to the transition plan. N. Kalfas indicated we could add the phrase “such as” and include a list of items afterward. The final proposed addition read “Develop and approve budget, including but not limited to the following items: staff salaries, benefits, travel, meetings, postage, secretariat services, legal services, and insurance.”
- V. Beauchamp offered a reminder that there are a number of unknown factors at this point in the process and that the group can look at other compacts as models when necessary.
- C. Covert-ByBee asked if the group would need to vote on the transition plan again since it had been amended. N. Kalfas clarified that the previous motion had been to just accept one suggested change.
- W. Winistorfer suggested that as the addition of specific financial obligations was a friendly amendment, the previous motion could be amended. N. Kalfas agreed that if the person who made the initial motion and the person who seconded supported such an amendment to the motion, that would be in order.
- **Amendment:** V. Beauchamp and O. Freeman agreed to amend their initial motion and second.
 - V. Beauchamp asked if there were further points of discussion needed in the document before the document could be voted on.
 - W. Winistorfer asked if the delegates had further comments. Hearing none, he asked for a motion to adopt the transition timeline as amended.
- **Motion:** T. Black moved to accept the transition timeline. D. Martin seconded. All present voted in favor, and the motion carried.

Discussion and Vote on Funding Letters

- C. Willmarth gave an overview of the funding letter from AOTA.
- S. Conway gave an overview of the funding letter from NBCOT.
- W. Winistorfer called for a motion to accept the letters.
- Motion: C. Covert By-Bee motioned to receive the letters. A. Price seconded. All present voted in favor and the motion carried.

Discussion and Vote on Request for Proposal for Executive Director

- N. Kalfas provided an overview of the RFP.
- D. Ward asked if the RFP was modeled on those employed by other compacts. N. Kalfas indicated that it was.
- D. Ward asked if the executive director and secretariat were remote positions. N. Kalfas stated that the commission would make that decision and that there is variety among the existing compacts.
- D. Ward asked if the secretariat would be a company or an individual. N. Kalfas explained that the secretariat is typically a company or a federation of state boards but is not typically an individual person.
- T. Black stated that the RFP should write out “occupational therapist” at least one time instead of using the abbreviation OT throughout.
- W. Winistorfer called for a motion to adopt the RFP with the above change.
- **Motion:** M. Anthony called for the adoption of the RFP as amended. T. Black seconded the motion. W. Winistorfer called for discussion of the motion.
 - C. Willmarth asked if information such as benefits or who the executive director would work for should be detailed further before posting. N. Kalfas indicated that that information would be addressed via the budget and the RFP for secretariat and that the executive committee could provide further information as needed. D. Logsdon emphasized that the executive director would report to the commission and that the secretariat may also have an employee fill the role of interim executive director and that the commission may choose to hire that person as executive director.
 - Hearing no further discussion, W. Winistorfer called for a vote. All voted in favor and the motion carried.

Discussion and Vote on Request for Proposal for Secretariat

- N. Kalfas provided an overview of the RFP.
- D. Ward asked if the contract with the eventual secretariat would indicate their funding was dependent on AOTA and NBCOT. N. Kalfas indicated that the two organizations would provide MOUs.
- V. Vendoures-Walsh asked whether it was possible the dates in the RFP could change. D. Logsdon answered that it would depend on the data system.
- C. Willmarth asked about the difference between the role of the secretariat and the role of executive director. N. Kalfas indicated that there would be significant cooperation between the executive director and the secretariat.
- S. Conway asked whether the RFP for secretariat or for executive director would be posted first. N. Kalfas indicated that the executive committee would make that decision but that

the secretariat was necessary for handling issues such as insurance, paying the executive director, and other HR concerns.

- V. Malnikoff asked about the purpose of including the budget in the RFP. N. Kalfas answered that the funding letters are public record, so applicants for secretariat could already be aware of that number, but that the RFP could list a range rather than a specific number if that is preferred.
- M. Anthony added that the Executive Committee might need some flexibility to decide some of these issues, especially since the cost of the data system is not yet certain, and that the RFP for secretariat may want to include a provision that the secretariat could offer executive director services.
- N. Kalfas suggested the commission could delegate the finalization of this task to the executive committee or could ask the executive committee to finalize the RFP and bring it before the full commission at the next meeting.
- D. Logsdon stated that as the RFPs were unlikely to change radically it would be appropriate for the executive committee to handle them.
- N. Kalfas added that the executive committee meetings where the RFPs would be discussed would be open to the public, so the committee would be able to receive feedback from anyone in attendance.
- W. Winistorfer called for a motion to approve the secretariat RFP with further clarification to be provided by the executive committee as needed.
- **Motion:** A. Price put forward the above motion, D. Martin seconded, and all present voted in favor and the motion carried.

Discussion and Approval of Rule on Rulemaking

- N. Kalfas reminded delegates that their state's board or agency website must have a link to the OT Compact Commission website in accordance with the compact legislation's public notice requirements for full commission meetings and rule promulgation.
- N. Kalfas reviewed the rule on rulemaking.
- M. Anthony suggested adding that the notice of proposed rulemaking must include a deadline by which a hearing for the proposed rule must be requested.
- N. Kalfas stated that this would be in accordance with the compact and suggested that it likely did not constitute a substantive change.
- A. Price stated that she did believe it would constitute a substantive change.
- M. Anthony stated that because the need for a rule on rulemaking was essential to allow business to continue, she would rescind her suggestion.
- N. Kalfas stated she would make a note that the rules committee could propose this amendment in the future.
- T. Black requested clarification regarding whether state boards would need to change their licensure rules as the compact commission created rules for the compact. N. Kalfas answered that all the compact member states would need to follow compact rules once effective without respect to additional state procedure and that, pursuant to the compact, no states would need to formally incorporate them into their rules and regulations, unless they wanted to or had some other non-compact related state directive, because compact rules apply only to licensees planning to utilize the compact.

- M. Sobowale mentioned that some states have a requirement that they can't post a link until the compact implementation is final. N. Kalfas responded that because the compact legislation itself mentions the website posting requirements, posting the link to the compact website would be permissible by state law.
- W. Winistorfer called for a motion to adopt the rule on rulemaking.
- **Motion:** D. Ward moved to adopt the rule on rulemaking. R. Causey-Upton seconded the motion. All present voted in favor and the motion carried.

Discussion of Executive Committee Duties and Elections Process

- N. Kalfas overviewed the information on the roles of the executive committee that had been sent to the delegates.
- I. Eliassen informed the committee that there was one nominee for the role of chair, two for vice chair, two for treasurer, none for secretary, and four for member-at-large.
- N. Kalfas added that delegates could run for multiple positions although they could only accept one position.
- I. Eliassen clarified that if anyone would like to run for a position they should get in touch with her.
- N. Kalfas also clarified that Executive Committee members can be removed by a two-thirds vote of the Commission, while a delegate can be removed by their state.
- I. Eliassen further added that there would be a two-minute speaking period for each candidate prior to the elections the next day. She also noted that the election would take place via a survey sent to the delegates.

Delegate Questions and Public Comment

- O. Freeman asked for clarification as to who audits the compact. N. Kalfas indicated that the audit would be in addition to the commission's annual report, and that it would be conducted by an outside group with assistance from the executive director and the treasurer as needed.
- D. Martin asked for clarification as to the types of meetings and frequency of the meetings the delegates would need to participate in. N. Kalfas stated that typically committee meetings took place monthly, for one hour; the annual meeting yearly, for one or two days; and special commission meetings once or twice a year for a few hours.
- K. Neville briefly introduced herself and stated that it was good to meet the meeting attendees.
- B. Williams briefly introduced herself and expressed enthusiasm for the OT Compact.
- **Motion:** T. Black moved that the commission formally thank AOTA and NBCOT for their support. K. Loukas seconded the motion. All present voted in favor and the motion carried.
- W. Winistorfer indicated that this thank you would be the responsibility of the commission chair.
- D. Logsdon reviewed the agenda for the next day of the meeting.
- I. Eliassen reminded those interested in being considered for a position on the executive committee to get in touch with her by 7 p.m. ET that day.
- W. Winistorfer called for a motion to recess the meeting for the day. W. Winistorfer noted the meeting would be called to order at 10 a.m. ET the following day.

- Motion: O. Freeman motioned to recess the meeting for the day. M. Sobowale seconded the motion. All present voted in favor, and the motion carried.

August 4, 2022

Call to Order and Adoption of Agenda

- W. Winistorfer called the meeting to order at 10:04 a.m. ET.
- W. Winistorfer called the role. C. Covert-ByBee and V. Vendoures-Walsh had emailed I. Eliassen to alert her of their late arrival prior to the start of the meeting. Utah's alternate delegate, L. Marx, was present in place of J. Johansen. All other delegates were present.
- D. Logsdon gave an overview of the agenda and reviewed the commission's activities from the previous day.
- D. Logsdon suggested the break for lunch may not be needed if the commission meeting continued to move quickly.
- N. Kalfas stated the agenda could be adopted without lunch and then amended later if necessary.
- W. Winistorfer called for a motion to adopt the agenda without lunch.
- **Motion:** M. Sobowale motioned for the above. H. Simpson seconded the motion.
 - K. Loukas mentioned that keeping a 15-minute break on the agenda would be useful. W. Winistorfer acknowledged this as a friendly amendment to the motion.
 - All present voted in favor and the motion carried.

Executive Committee Elections

- I. Eliassen stated each candidate would have two minutes to speak on their qualifications for and interest in the role for which they were a candidate. The candidates each introduced themselves.
 - The candidates for chair were L. James and D. Martin.
 - The candidates for vice chair were T. Black and L. James.
 - The candidates for treasurer were M. Anthony and D. Ward.
 - The candidate for secretary was R. Causey-Upton.
 - The candidates for member-at-large were V. Beauchamp, T. Black, R. Causey-Upton, O. Freeman, and L. James.
- N. Kalfas stated that those not elected and those not running could participate in committee work on one of the five other committees outlined in the bylaws.
- N. Kalfas indicated that because each delegate could hold only one position, the election for chair would occur first, and then the ballot for vice chair would be sent out with adjustments made if necessary based on the results of the election for chair. This procedure would occur for all positions on the executive committee.
- I. Eliassen stated that the delegates would receive a link to a Microsoft forms survey for each ballot.
- I. Eliassen sent the delegates a link to the ballot for chair.
- I. Eliassen stated that all the votes had been received, and L. James was elected chair.
- I. Eliassen sent the delegates a link to the ballot for vice chair, updated to remove L. James as an option.

- I. Eliassen stated that all the votes had been received, and that T. Black was elected vice chair.
- N. Kalfas stated that delegates could still nominate themselves or others for the remaining elections.
- I. Eliassen sent the delegates the ballot for treasurer.
- A. Price nominated D. Martin for the member-at-large position. D. Martin accepted the nomination.
- I. Eliassen stated that all the votes had been received, and D. Ward was elected as treasurer.
- I. Eliassen sent the delegates the ballot for secretary.
- A. Cosby nominated M. Anthony for the member-at-large position. M. Anthony accepted the nomination.
- I. Eliassen stated that all the votes had been received, and R. Causey-Upton was elected as secretary.
- I. Eliassen sent out an updated ballot for member-at-large, which included the above nominations.
- I. Eliassen stated that all the votes had been received and the members-at-large elected were M. Anthony, V. Beauchamp, and D. Martin.
- W. Winistorfer recognized L. James as the chair and handed the meeting leadership duties to her.
- W. Winistorfer noted that L. James and CSG would meet briefly in order to prepare L. James for the remainder of the meeting and that the meeting would resume in 14 minutes.

Overview of Future Rules for Consideration

- L. James called an end to the break and noted the agenda would need to be amended to reflect the time of the break.
- N. Kalfas discussed the future rules for consideration and noted that the rules committee would begin working on these definitions when they begin meeting.

Legislative Update

- D. Logsdon provided a legislative update.
- S. Conway discussed the exhibit which AOTA and NBCOT jointly presented at the annual meeting of the National Conference of State Legislatures (NCSL).
- B. Williams stated that many legislators they talked to were interested in the compact.

Amendment of the Agenda

- L. James reminded the commission the agenda would need to be amended to reflect the shortened time of the break.
- **Motion:** D. Ward motioned to accept the revised agenda. A. Price seconded the motion. All present voted in favor and the motion carried.

Overview of Committee Structure and Function

- N. Kalfas explained the different committees of the commission and their respective duties.

- N. Kalfas indicated delegates interested in serving on a committee should email I. Eliassen by August 12.

Information on Next Meeting

- I. Eliassen explained that the next meeting date for a full commission meeting was not certain, but that it would likely take place in a few months based on the work accomplished by the committees.
- I. Eliassen summarized the events of the inaugural meeting.
- N. Kalfas explained the technical details of adding committee meetings to calendars via Zoom.

Delegate Questions and Public Comments

- C. Willmarth requested the presence of a compact commissioner at AOTA's annual conference next year.
- L. James requested that the executive committee receive information about upcoming presentations, especially state association presentations.
- B. Janes mentioned that he was in attendance due to personal and professional interest in the compact and that he wanted to thank everyone for their work so far.

Meeting Closure

- L. James called for a motion to adjourn the meeting.
- **Motion:** K. Loukas motioned to adjourn. A. Price seconded. All present voted in favor and the meeting adjourned at 11:58 a.m. ET.

2023 Board Meeting Dates

Advisory Board on:

Behavioral Analysts			10:00 a.m.
Mon - February 6	June 12	October 2	
Genetic Counseling			1:00 p.m.
Mon - February 6	June 12	October 2	
Occupational Therapy			10:00 a.m.
Tue - February 7	June 13	October 3	
Respiratory Care			1:00 p.m.
Tue - February 7	June 13	October 3	
Acupuncture			10:00 a.m.
Wed - February 8	June 14	October 4	
Radiological Technology			1:00 p.m.
Wed - February 8	June 14	October 4	
Athletic Training			10:00 a.m.
Thurs - February 9	June 15	October 5	
Physician Assistants			1:00 p.m.
Thurs - February 9	June 15	October 5	
Midwifery			10:00 a.m.
Fri - February 10	June 16	October 6	
Polysomnographic Technology			1:00 p.m.
Fri - February 10	June 16	October 7	
Surgical Assisting			10:00 a.m.
Mon - February 13	June 19	October 10	