

Dear Senators LODGE, Broadsword & LeFavour, and
Representatives BLOCK, Nielsen & Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Bureau of Occupational Licenses:

IDAPA 24.06.01 - Rules for the Licensure of Occupational Therapists &
Occupational Therapy Assistants (Docket #24-0601-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the co-chairmen or by two (2) or more members of the subcommittee giving oral or written
notice to Research and Legislation no later than fourteen (14) days after receipt of the rules'
analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no
later than 10-22-10. If a meeting is called, the subcommittee must hold the meeting within forty-
two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a
meeting on the enclosed rules is 11-22-10.

The germane joint subcommittee may request a statement of economic impact with
respect to a proposed rule by notifying Research and Legislation. There is no time limit on
requesting this statement, and it may be requested whether or not a meeting on the proposed rule
is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the
address or FAX number indicated on the memorandum attached.



Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Brooke Murdoch

DATE: October 4, 2010

SUBJECT: Bureau of Occupational Licenses

**IDAPA 24.06.01 – Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants
(Docket No. 24-0601-1001 – Temporary and Proposed Rule)**

The Bureau of Occupational Licenses submits notice of temporary and proposed rulemaking at IDAPA 24.06.01 – Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants. According to the Bureau, the Occupational Therapy Licensure Board of Idaho adopted a rule that caused concern to licensees and providers and limited service to the public. In an effort to address this concern, the Board submits this temporary and proposed rulemaking which clarifies the level of supervision for students, graduates and assistants. This rulemaking also clarifies the level of supervision needed for certain treatment modalities, including deep thermal and electrotherapeutic modalities and wound care. Finally, this rulemaking specifies the process by which an inactive licensee may reinstate to active license status and revises the renewal fees for an active and an inactive license.

The Bureau states that the temporary adoption of the rule is appropriate because it addresses the concerns associated with the Board's rule while still protecting the public. Negotiated rulemaking was not conducted because discussions were held in an open, noticed meeting. There is no negative fiscal impact as a result of this rulemaking.

The temporary and proposed rule is within the authority granted to the Board in Sections 54-3711 and 54-3717, Idaho Code.

cc: Bureau of Occupational Licenses
Tana Cory, Bureau Chief
Cherie Simpson

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 28, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board of Occupational Therapists and Occupational Therapy Assistants in this set of rules is updating previous rules under the Board of Medicine to clarify the inactive status and the requirements to reinstate. Further, the Board adopted a rule that has caused concern to licensees and providers and limited service to the public. In an effort to address this concern while still protecting the public and ensuring their health, safety, and welfare, the Board is clarifying the level of supervision for students, graduates, and assistants. It also clarifies the supervision needed for certain treatment modalities.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) (a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The Board adopted a rule that has caused concern to licensees and providers and limited service to the public. In an effort to address this concern while still protecting the public and ensuring their health, safety, and welfare, the Board is clarifying the level of supervision for students, graduates, and assistants. It also clarifies the supervision needed for certain treatment modalities.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed open meeting.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 24-0601-1001

011. SUPERVISION.

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants, and aides. (3-29-10)

01. Skill Levels. The following skill levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides: ~~(3-29-10)~~(7-28-10)T

a. Entry Level - Working on initial skill development (zero to one (0-1) year experience) or working in a new area of practice; (3-29-10)

b. Intermediate Level - Increased independence and mastery of basic roles and functions. Demonstrates ability to respond to new situations based on previous experience (generally one to five (1-5) years' experience); (3-29-10)

c. Advanced Level - Refinement of skills with the ability to understand complex issues and respond accordingly. (3-29-10)

02. Supervision Levels. The following supervision levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides: ~~(3-29-10)~~(7-28-10)T

a. Direct Line of Site Supervision - An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide; (3-29-10)

b. Direct Supervision - Daily, direct contact at the site of work with the supervisor physically present at all times within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. This supervision is the minimal level of supervision required for students, ~~and~~ for entry or intermediate level occupational therapy assistants applying deep thermal and electrotherapeutic modalities, and for advanced level occupational therapy assistants who apply such modalities while lacking the education and training required in Subsection 012.01 of these rules; ~~(3-29-10)~~(7-28-10)T

c. Close Supervision - Daily, direct contact at the site of work. The occupational therapist provides direction in developing the plan of treatment and periodically inspects the actual implementation of the plan. This supervision is the minimal level of supervision required for entry level occupational therapy assistants and graduate occupational therapy assistants ~~who are working under a temporary license;~~ ~~(3-29-10)~~(7-28-10)T

d. Routine Supervision - Requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as by telephone or written communication. This supervision is the minimal level of supervision required for ~~a temporary occupational therapist or for an~~ graduate occupational

therapists and intermediate level occupational therapy assistant. It also is the minimum level of supervision required for advanced level occupational therapy assistants applying deep thermal and electrotherapeutic modalities while possessing the education and training specified in Subsection 012.01 of these rules; ~~(3-29-10)~~(7-28-10)T

e. General Supervision - Initial direction and periodic review of the following: service delivery, update of treatment plans, and treatment outcomes. The supervisor need not at all times be present at the premises where the occupational therapy assistant is performing the professional services. However, not less than monthly direct contact must be provided, with supervision available as needed by other methods. This supervision is the minimal level of supervision required for an intermediate to advanced occupational therapy assistant. (3-29-10)

03. Supervision Ratios. An occupational therapist may supervise up to three (3) full-time occupational therapy assistants, but never more than two (2) entry level occupational therapy assistants. The total number of supervised occupational therapy assistants, ~~and non-licensed occupational therapy personnel (including any graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants, and aides), and occupational therapists in training to provide deep thermal, electrotherapeutic modalities and wound care~~ may not exceed five (5) without prior Board approval. The Board may permit the supervision of a greater number by an occupational therapist if, in the Board's opinion, there would be adequate supervision and the public's health and safety would be served. It is the supervising occupational therapist's responsibility to notify the Board of any circumstances requiring approval of a greater number and to submit a written plan for resolution of the situation. ~~(3-29-10)~~(7-28-10)T

04. Record Keeping. The occupational therapy assistant, graduate occupational therapist, and graduate occupational therapy assistant must maintain on file at the job site signed documentation reflecting supervision activities. This supervision documentation must contain the following: date of supervision, means of communication, and information discussed. Both the supervising occupational therapist and the ~~occupational therapy assistant / limited permit licensee~~ person being supervised must sign each entry. ~~(3-29-10)~~(7-28-10)T

05. Occupational Therapy Assistants. Occupational Therapy Assistants may deliver occupational therapy services under the supervision of occupational therapists as follows. The occupational therapy assistant: (3-29-10)

a. May only select, implement, and modify therapeutic activities and interventions that are consistent with client goals, the requirements of the practice setting, and the occupational therapy assistant's demonstrated competency levels; (3-29-10)

b. Must not initiate a treatment program until the occupational therapist has evaluated the client and planned treatment for the client, or discharge the client from a treatment program without supervision from the occupational therapist; (3-29-10)

c. Must not perform an evaluation, but may contribute to the evaluation process with the supervision of the occupational therapist; (3-29-10)

d. May participate in the screening process by collecting data, such as records, by general observation and by conducting a general interview, and may communicate the information gathered to the occupational therapist; (3-29-10)

e. May track the need for reassessment, report changes in status that might warrant reassessment or referral, and administer the reassessment under the supervision of the occupational therapist; (3-29-10)

f. Must immediately discontinue any specific treatment procedure which appears harmful to the client, and so notify the occupational therapist; (3-29-10)

g. Is responsible for knowing about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement; (3-29-10)

h. May implement outcome measurements and provide needed client discharge resources. (3-29-10)

06. Aides. Aides do not provide skilled occupational therapy services. An aide is trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client tasks. The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. An aide shall function only under the direct line of sight supervision of an occupational therapist or occupational therapy assistant. An aide may provide: (3-29-10)

a. Non-client-related tasks, including clerical and maintenance activities and preparation of the work area or equipment. (3-29-10)

b. Client-related, routine tasks during which the aide may interact with the client. The following conditions must exist when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide: (3-29-10)

i. The outcome anticipated for the delegated task is predictable. (3-29-10)

ii. The client and environment are stable and will not require that judgment, interpretations, or adaptations be made by the aide. (3-29-10)

iii. The client has demonstrated some previous performance ability in executing the task. (3-29-10)

iv. The task routine and process have been clearly established. (3-29-10)

v. The aide has been trained and is able to demonstrate competency in carrying out the task and in using any necessary equipment. (3-29-10)

vi. The aide has been instructed on how to specifically carry out the delegated task with the specific client. (3-29-10)

vii. The aide knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant. (3-29-10)

c. The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process. (3-29-10)

012. DEEP THERMAL AND ELECTROTHERAPEUTIC MODALITIES, AND WOUND CARE.

01. Qualifications. Except as provided in ~~Paragraph~~ Subsection 012.01**.b.** of these rules, a person may not utilize occupational therapy techniques involving deep thermal, electrotherapeutic modalities or perform wound care management unless the person is licensed by the Board as an occupational therapist and certified by the Hand Therapy Commission. In lieu of being certified by the Hand Therapy Commission, the person must have obtained education and training as described in Paragraphs 012.01.a. through 012.01.c. of this rule. (~~3-29-10~~)

~~**a.** Is licensed by the Board as an occupational therapist; and~~ (~~3-29-10~~)

~~**i.** Is certified by the Hand Therapy Commission; or~~ (~~3-29-10~~)

~~**ii.a.** Has If the person utilizes techniques involving deep thermal, electrotherapeutic modalities, the person must have successfully completed three (3) continuing education units in the application of deep thermal and electrotherapeutic modalities and one and one half (1.5) continuing education units in wound care management, along with one hundred sixty (160) hours of supervised, on-the-job or clinical internship or affiliation training, pertaining to each area of deep thermal, electrotherapeutic such modalities and wound care management.~~ (~~3-29-10~~)(7-28-10)T

b. If the person manages wound care, the person must have successfully completed one and one-half (1.5) continuing education units in wound care management, along with one hundred sixty (160) hours of supervised, on-the-job or clinical internship or affiliation training pertaining to wound care management. (7-28-10)T

c. If the person utilizes both deep thermal, electrotherapeutic modalities and manages wound care, the person's supervised training for each may have overlapped, so that the one hundred sixty (160) hours for each were obtained concurrently through the same supervised, on-the-job or clinical internship or affiliation. (7-28-10)T

02. **Obtaining Education and Supervised Training.** A student occupational therapist, graduate occupational therapist, and an occupational therapist may utilize deep thermal, electrotherapeutic modalities or manage wound care while working towards obtaining the education and supervised training described in Section 012 of these rules. The supervisor must provide at least direct supervision to the student occupational therapist, and at least routine supervision to the graduate occupational therapist or occupational therapist. An *certified* occupational therapy assistant may apply deep thermal and electrotherapeutic modalities *only while the occupational therapy assistant is working under the direct supervision of a qualified occupational therapist.* under routine supervision if the occupational therapy assistant has obtained an advanced level of skill as described in Subsection 011.01 of these rules and the education and training described in Subsection 012.01 of these rules. Otherwise, the occupational therapy assistant must work under direct supervision while applying such modalities. (~~3-29-10~~)(7-28-10)T

03. **Supervised Training by Qualified Individual.** The supervised training described in Section 012 of these rules must be provided by an occupational therapist who is qualified as specified in this Subsection 012.01, or by another type of licensed health care practitioner whose education, training, and scope of practice enable the practitioner to competently supervise the person as to the modalities utilized and wound care management provided. (7-28-10)T

(BREAK IN CONTINUITY OF SECTIONS)

022. LICENSE EXPIRATION AND RENEWAL.

01. Expiration Date. An individual's license expires on the individual's birth date. The individual must annually renew the license before the individual's birth date in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-29-10)

02. Reinstatement. A license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Reinstatement of a license from inactive to active status is governed by Section 030. (~~3-29-10~~)(7-28-10)T

03. Application for Renewal. In order to renew a license, a licensee must submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

030. INACTIVE STATUS.

The Board shall grant inactive status to a licensee who makes application for inactive status; or who does not practice as an Occupational Therapist or Occupational Therapy Assistant in Idaho. (1-5-88)

01. Request for Inactive Status. Occupational Therapists and Occupational Therapy Assistants requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. (7-28-10)T

02. Inactive License Status. (7-28-10)T

a. Licensees may not practice in Idaho while on inactive status. (7-28-10)T

b. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho, subject to Subsection 030.03 of these rules. (7-28-10)T

c. Inactive license renewal notices and licenses will be marked "Inactive." (7-28-10)T

03. Reinstatement to Full Licensure from Inactive Status. An inactive licensee may reinstate to active status by submitting a completed, Board-approved application and paying the appropriate fee. The licensee's application must demonstrate, to the Board's satisfaction, that during the two (2) years immediately preceding the application, the licensee completed at least two (2) CEUs recommended by the Idaho Occupational Therapy Association and approved by the Board, along with at least ten (10) Board-approved professional development units (PDUs), as specified in Section 025 of these rules. (7-28-10)T

031. ~~REINSTATEMENT TO FULL LICENSURE FROM INACTIVE STATUS (RESERVED).~~

~~An individual desiring reinstatement to full active licensure to practice as an Occupational Therapist or Occupational Therapy Assistant shall submit a completed written application to the Board, on the forms prescribed by the Board together with the license and reinstatement fees. The application shall be verified and under oath (Subsection 021.01, above). The Board may request such other information deemed necessary to identify and evaluate the applicant's proficiency.~~ (1-5-88)

(BREAK IN CONTINUITY OF SECTIONS)

041. FEES.

01. Fees. Necessary fees shall accompany applications. Fees shall not be refundable. (3-29-10)

02. Initial Licensure. The fee for initial licensure of occupational therapists shall be one hundred fifteen dollars (\$115) and the fee for occupational therapy assistants shall be eighty-five dollars (\$85). (3-29-10)

03. Limited Permit or Temporary License. The fee for a limited permit or temporary license shall be thirty dollars (\$30). (3-29-10)

04. Active License Renewal Fee. The annual renewal fee for an active license shall be seventy dollars (\$70) for occupational therapists and fifty dollars (\$50) for occupational therapy assistants. ~~(3-29-10)~~(7-28-10)T

05. Reinstatement Fee. The fee to reinstate a lapsed license shall be thirty-five dollars (\$35). (3-29-10)

06. Inactive License Renewal Fee. The annual renewal fee for an inactive license shall be fifty dollars (\$50) for occupational therapists and occupational therapy assistants. ~~(3-29-10)~~(7-28-10)T

07. Inactive to Active License Fee. The fee for reinstating an inactive license ~~may be converted~~ to an active license ~~by application to the Board and payment of required~~ is the difference between the current inactive and active license renewal fees. (7-28-10)T

~~**a.** The fee for converting an inactive to an active license shall be forty dollars (\$40) and the annual renewal fee for each year not actively licensed minus inactive fees previously paid.~~ (3-29-10)

~~**b.** Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview.~~ (4-2-03)