

## CHAPTER 38 - BOARD OF OCCUPATIONAL THERAPY

### SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

#### 21 NCAC 38 .0101 PURPOSE

- (a) These Rules set out standards and procedures, to license occupational therapists and occupational therapy assistants and to see that the qualifications and activities of those engaged in occupational therapy are in accord with law and to carry out the purpose of the Occupational Therapy Practice Act.
- (b) The Board is not a Board of arbitration and has no jurisdiction to settle disputes between parties.

*History Note: Authority G.S. 90-270.66; 90-270.69;  
Eff. July 1, 1985;  
Amended Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### 21 NCAC 38 .0102 BOARD OFFICE

The administrative offices of the North Carolina Board of Occupational Therapy are located at:  
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*History Note: Authority G.S. 90-270.69(5);  
Eff. July 1, 1985;  
Amended Eff. July 1, 2007; February 1, 1994;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### 21 NCAC 38 .0103 DEFINITIONS

The definitions in G.S. 90-270.67 apply to this Chapter. The following definitions also apply to the Chapter:

- (1) "Activities of daily living" (ADL) means self-care activities.
- (2) "Assessment" means the tools or instruments that are used during the evaluation process.
- (3) "Client" means a person, group, program, organization, or community for whom the occupational therapy practitioner is providing services.
- (4) "Entry-level" means a person who has no experience in a specific position, such as a new graduate, a person new to the position, or a person in a new setting with no previous experience in that area of practice.
- (5) "Evaluation" means the process of obtaining and interpreting data necessary for intervention. This includes planning for and documenting the evaluation process and results.
- (6) "Instrumental activities of daily living" (IADL) means multi-step activities to care for self and others, such as household management, financial management, and childcare.
- (7) "Intervention" means treatment.
- (8) "Intervention plan" is the program established by the occupational therapist for the delivery of occupational therapy services. It may also be referred to as treatment plan, individualized education plan (IEP), individualized family service plan (IFSP), plan of care, or other terminology as determined by the occupational therapy service delivery setting.
- (9) "Level I Fieldwork" provides introductory level clinical training opportunities.
- (10) "Level II Fieldwork" provides clinical training in preparation for entry-level practice.
- (11) "Neglect of duty" occurs when a Board member fails to attend a majority of the official meetings of the Board within any 12 month period.
- (12) "Occupational Therapy", as defined in G.S. 90-270.67(4), may include evaluation of activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation.
- (13) "Occupational Therapy evaluation, treatment, and consultation" include the following:

- (a) remediation or restitution of performance abilities that are limited due to impairment in biological, physiological, psychosocial, and developmental process;
  - (b) adaptation of skills, process or environment, or the teachings of compensatory techniques in order to enhance performance;
  - (c) disability prevention methods and techniques that facilitate the development or safe application of performance skills;
  - (d) promotion of health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction; and
  - (e) interpretation of the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life.
- (14) "Occupational therapy practitioner" means an individual licensed by the Board as an occupational therapist or an occupational therapy assistant.
- (15) "Occupational therapy services" include the following:
- (a) Methods or strategies selected to direct the process of interventions such as:
    - (i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;
    - (ii) Compensation, modification, or adaptation of activity or environment to enhance performance;
    - (iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline;
    - (iv) Health promotion and wellness to enable or enhance performance in everyday life activities; and
    - (v) Prevention of barriers to performance, including disability prevention.
  - (b) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:
    - (i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems);
    - (ii) Habits, routines, roles, and behavior patterns;
    - (iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance; and
    - (iv) Performance skills, including motor, process, and communication/interaction skills.
  - (c) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure and social participation, including:
    - (i) Therapeutic use of occupations, exercises, and activities;
    - (ii) Training in self-care, self-management, home management, and community or work reintegration;
    - (iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills;
    - (iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process;
    - (v) Education and training of individuals, including family members, caregivers, and others;
    - (vi) Care coordination, case management, and transition services;
    - (vii) Consultative services to groups, programs, organizations, or communities;
    - (viii) Modification of home, work, school, or community environments and adaptation of processes, including the application of ergonomic principles;
    - (ix) Assessment, design, fabrication, application, fitting, and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices;
    - (x) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

- (xi) Driver rehabilitation and community mobility;
  - (xii) Management of feeding, eating, and swallowing to enable eating and feeding performance; and
  - (xiii) Application of physical agent modalities and use of a range of specific therapeutic procedures to enhance performance skills.
- (16) "Occupational therapy student" means an individual enrolled in an occupational therapist or occupational therapy assistant program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE).
- (17) "Practice Act" refers to the North Carolina Occupational Therapy Practice Act found in G.S. 90-270.65 et. seq.
- (18) "Screening" means obtaining and reviewing data relevant to a potential client to determine the need for further evaluation and intervention.
- (19) "Service Competency" is the ability to provide occupational therapy services in a safe and effective manner. It means that two practitioners can perform the same or equivalent procedure and obtain the same result.
- (20) "Skilled occupational" therapy services when rendered by an occupational therapist or occupational therapy assistant means functions that require the exercise of professional occupational therapy judgment, including the interpretation of referrals, screening, assessment, evaluation, development or modification of intervention plans, implementation of intervention, reassessment, or discharge planning.
- (21) "Supervision" is the process by which two or more people participate in joint effort to establish, maintain, and elevate a level of performance to ensure the safety and welfare of clients during occupational therapy. Supervision is structured according to the supervisee's qualifications, position, level of preparation, depth of experience and the environment within which the supervisee functions. Levels of supervision are:
- (a) "General supervision," which is required for all occupational therapy assistants by an occupational therapist. It includes a variety of types and methods of supervision and may include observation, modeling, co-treatment, discussions, teaching, instruction, phone conversations, videoconferencing, written correspondence, electronic exchanges, and other telecommunication technology. Methods of observation include face-to-face, synchronous or asynchronous videoconferencing. The specific frequency, methods, and content of supervision may vary by practice setting and are dependent on the complexity of client needs, number and diversity of clients, demonstrated service competency of the occupational therapist and the occupational therapy assistant, type of practice setting, requirements of the practice setting, and federal and state regulatory requirements. General supervision shall be required at least monthly; and
  - (b) "Direct supervision," which is required for all unlicensed personnel and volunteers. It means the Occupational Therapy supervisor must be within audible and visual range of the client and unlicensed personnel and available for immediate physical intervention. Videoconferencing is not allowed for direct supervision.
- (22) "Unlicensed personnel" means individuals within an occupational therapy setting who provide supportive services to the occupational therapist and the occupational therapy assistant and who function only under the guidance, responsibility, and supervision of the licensed occupational therapist or occupational therapy assistant to provide only specifically selected client-related or non-client related tasks for which the unlicensed personnel has been trained and has demonstrated competence.

*History Note:* Authority G.S. 90-270.67; 90-270.69(4);  
 Eff. July 1, 1985;  
 Amended Eff. July 1, 2007; May 1, 1989; May 1, 1987;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
 Amended Eff. July 1, 2018.

**21 NCAC 38 .0104      RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES**

*History Note:* Authority G.S. 90-270.69(4);

*Eff. July 1, 1985;*  
*Amended Eff. May 1, 1987;*  
*Repealed Eff. May 1, 1989.*

## **SECTION .0200 - APPLICATION FOR LICENSE**

### **21 NCAC 38 .0201 APPLICATION PROCESS**

(a) Each applicant, including those trained outside the United States or its territories, for an occupational therapist or occupational therapy assistant license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one head and shoulders photograph (passport type), taken within the past six months, of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the proper fees, as required by 21 NCAC 38 .0204;
- (3) evidence from the National Board for Certification of Occupational Therapy (NBCOT) of successful completion of the certification examination administered by it. Evidence of successful completion of the NBCOT certification examination shall be accepted as proof of graduation from an accredited curriculum and successful completion of field work requirements;
- (4) two signed statements on forms provided by the Board attesting to the applicant's good moral character; and
- (5) successful completion of a jurisprudence exam administered by the Board.

(b) An applicant previously licensed in any state re-entering the field of occupational therapy after not practicing occupational therapy for more than 24 months shall complete 90 days of general, supervised, re-entry fieldwork and shall provide to the Board;

- (1) a written plan for 90 days of general, supervised, re-entry fieldwork within 10 days of securing employment; and
- (2) monthly documentation confirming that the general, supervised, re-entry fieldwork is being provided.

*History Note: Authority G.S. 90-270.69(4); 90-270.70;*  
*Eff. July 1, 1985;*  
*Amended Eff. March 23, 2009; July 1, 2007; May 1, 1989; May 1, 1987;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

### **21 NCAC 38 .0202 EXEMPTIONS**

*History Note: Authority G.S. 90-270.70; 90-270.71;*  
*Eff. July 1, 1985;*  
*Repealed Eff. May 1, 1987.*

### **21 NCAC 38 .0203 INTERVIEWS**

Interviews may be required by the Board should it have questions about the qualifications of an applicant.

*History Note: Authority G.S. 90-270.69(1),(4);*  
*Eff. July 1, 1985;*  
*Amended Eff. May 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

### **21 NCAC 38 .0204 FEES**

(a) Fees are as follows:

- (1) a request for an initial application for licensure as an occupational therapist or occupational therapy assistant is ten dollars (\$10.00);
- (2) application for issuance of a license or re-issuance of an expired license is one hundred dollars (\$100.00);
- (3) annual renewal of a license is fifty dollars (\$50.00);
- (4) late renewal of a license is an additional fifty dollars (\$50.00).

(b) Fees shall be non-refundable and shall be paid in cash or in the form of a cashier's check, certified check or money order made payable to the North Carolina Board of Occupational Therapy. Personal checks shall be accepted for payment of renewal fees.

*History Note:* Authority G.S. 90-270.77;  
Eff. July 1, 1985;  
Amended Eff. October 1, 2007; July 1, 2007; February 1, 1994; May 1, 1989; May 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

## SECTION .0300 - LICENSING

### 21 NCAC 38 .0301 LICENSE NUMBER: DISPLAY OF LICENSE AND IDENTIFICATION BADGE

(a) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number shall not be reissued. The license and current renewal card must be available for inspection at the licensee's principal place of business.

(b) Persons licensed under this Chapter shall be required to comply with the provisions of G.S. 90-640.

(c) A licensed person shall be exempted from the requirement in Paragraph (b) of this Rule if such person notifies the Board in writing, at the address set forth in Rule .0102 of this Chapter, that the person's safety or some therapeutic concern requires that only a first name and level of licensure be displayed.

*History Note:* Authority G.S. 90-270.69(4); 90-270.73; 90-640;  
Eff. July 1, 1985;  
Amended Eff. February 1, 2014; July 1, 2007; May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### 21 NCAC 38 .0302 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license shall apply for renewal and shall submit the renewal application, documentation of continuing competence activities, and the fee. Occupational therapy assistants who are employed must also include evidence of required supervision.

(b) Licenses not renewed by June 30 are expired. Persons whose licenses are expired for 24 months or less and who desire to be licensed shall apply for and complete the requirements to renew the license. The person shall also provide proof of 15 points of continuing competence activities for the last year the license was current and for each full year the person's license was expired.

(c) Any person whose license is expired and who engages in any occupational therapy activities governed by the occupational therapy law shall be subject to the penalties prescribed in G.S. 90-270.76, G.S. 90-270.79, G.S. 90-270.80 and G.S. 90-270.80A.

(d) Licenses expired in excess of 24 months shall not be renewed. Persons whose licenses are expired in excess of 24 months and who desire to be licensed shall apply for and complete the requirements for a new license.

(e) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete the continuing competence activity requirement prescribed in 21 NCAC 38 .0800. A copy of military orders or the extension approval by the Internal Revenue Service must be furnished to the Board. If approved, continuing competence activity points acquired during this extended time period shall not be utilized for future renewal purposes.

*History Note:* Authority G.S. 90-270.69(4); 90-270.75; 93B-15(b); 105-249.2;  
Eff. July 1, 1985;  
Amended Eff. May 1, 2010; July 1, 2007; May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### 21 NCAC 38 .0303 LIMITED PERMITS

*History Note:* Authority G.S. 90-270.69(4); 90-270.74;  
Eff. July 1, 1985;  
Amended Eff. July 1, 2007; May 1, 1989; May 1, 1987;  
Repealed Eff. October 1, 2007.

## **21 NCAC 38 .0304            GROUND S FOR LICENSE DENIAL OR DISCIPLINE**

(a) In addition to the conduct set forth in G.S. 90-270.76, the Board may deny, suspend, or revoke a license, or impose probationary conditions on a license, upon any of the following grounds:

- (1) writing a check given to the Board in payment of required fees which is returned unpaid;
- (2) allowing an unlicensed occupational therapist or occupational therapy assistant to practice under the licensee's supervision or control;
- (3) making any false statement or giving any false information in connection with an application for a license or renewal of a license or any investigation by the Board or the Board's designee;
- (4) committing a crime the circumstances of which relate to the occupational therapy profession;
- (5) violating any federal or state statute or rule which relates to the occupational therapy profession;
- (6) practicing occupational therapy while the licensee's ability to practice was impaired by alcohol or other drugs or a physical or mental disability or disease;
- (7) engaging in sexual misconduct. For the purposes of this Paragraph, sexual misconduct includes:
  - (A) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person;
  - (B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients;
- (8) obtaining or attempting to obtain payment by fraud or deceit;
- (9) violating any Order of the Board;
- (10) failing to properly make the disclosures required by 21 NCAC 38 .0305;
- (11) abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of care;
- (12) recording or communicating false or misleading data, measurements or notes regarding a patient;
- (13) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (14) practicing or offering to practice beyond the scope permitted by law;
- (15) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (16) performing, without supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional;
- (17) harassing, abusing, or intimidating a patient either physically or verbally;
- (18) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (19) promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party;
- (20) delegating professional responsibilities to a person when the licensee delegating the responsibilities knows or has reason to know that the person is not qualified by training, by experience, or by licensure to perform the responsibilities;
- (21) billing or charging for services or treatments not performed; or
- (22) making treatment recommendations based on the extent of third party benefits instead of the patient's condition.

(b) A licensee has been incompetent in practice under G.S. 90-270.76(a)(5) if the licensee has engaged in conduct which evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of occupational therapy.

(c) When a person licensed to practice occupational therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Occupational Therapy may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Occupational Therapy Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

*History Note:* Authority G.S. 90-270.69(4); 90-270.76;  
Eff. July 1, 1985;  
Amended Eff. January 1, 2009; July 1, 2007; May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

**21 NCAC 38 .0305 CONTINUING DUTY TO REPORT CERTAIN CRIMES AND CIVIL SUITS**

All occupational therapists and occupational therapy assistants are under a continuing duty to report to the Board within 30 days all:

- (1) convictions of or pleas of guilty or no contest to a felony or any crime such as fraud that involves moral turpitude; and
- (2) civil lawsuits arising out of or related to a licensee's practice of occupational therapy.

*History Note:* Authority G.S. 90-270.69(2),(4); 90-270.74;  
Eff. July 1, 1985;  
Amended Eff. March 1, 2008; July 1, 2007; May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

**21 NCAC 38 .0306 PROFESSIONAL CORPORATION**  
**21 NCAC 38 .0307 RENEWAL OF CERTIFICATE OF REGISTRATION**

*History Note:* Authority G.S. 55B-2;  
Eff. October 1, 1986;  
Amended Eff. May 1, 1989;  
Repealed Eff. February 1, 1994.

**21 NCAC 38 .0308 CODE OF ETHICS**

Pursuant to G.S. 90-270.76(a)(2) the Board adopts by reference the Occupational Therapy Code of Ethics (2005) of the American Occupational Therapy Association, including subsequent amendments and editions. Copies of the American Occupational Therapy Association Code of Ethics may be obtained online at <http://www.aota.org> at no cost. To the extent the Occupational Therapy Code of Ethics might conflict with the North Carolina Occupational Therapy Practice Act or the Rules of the North Carolina Board of Occupational Therapy, the North Carolina Occupational Therapy Practice Act or the Rules of the North Carolina Board of Occupational Therapy shall take precedent.

*History Note:* Authority G.S. 90-270.69(4);  
Eff. December 1, 2009;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

**SECTION .0400 - GENERAL**

**21 NCAC 38 .0401 CHANGE OF ADDRESS OR BUSINESS NAME**

All licensees shall notify the Board in writing of each change of name, residence, trade name, business address, or mailing address, within ten days of such change.

*History Note:* Authority G.S. 90-270.69(2),(4);  
Eff. July 1, 1985;  
Amended Eff. July 1, 2007; May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

**21 NCAC 38 .0402 ADVERTISING**

In all advertisements relating to occupational therapy, the occupational therapist's or occupational therapy assistant's name and license number shall be given. A licensee may not advertise under a name that is different from the licensee's surname unless written notice has been filed with the Board. The licensee shall notify the Board of all certificates of assumed name filed with any county register of deeds in compliance with G.S. 66-68.

*History Note:* Authority G.S. 90-270.69(4);  
Eff. July 1, 1985;  
Amended Eff. July 1, 2007; May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

## **SECTION .0500 - RULES**

### **21 NCAC 38 .0501 PETITIONS FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES**

(a) General. The procedure for petitioning the Board to adopt, amend, or repeal a rule is governed by G.S. 150B-16.  
(b) Submission. Rule-making petitions shall be sent to the Board. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of any proposed rule or amendment to a rule;
- (2) the reason for the proposal;
- (3) the effect of the proposal on existing rules or decisions;
- (4) data supporting the proposed rule change;
- (5) practices likely to be affected by the proposed rule change;
- (6) persons likely to be affected by the proposed rule change.

(c) Disposition. The Board shall review the petition at its next regular meeting following receipt of the petition, and the Board shall render its decision to either deny the petition or initiate rule-making. The Board shall notify the petitioner of its decision in writing within the 120-day period set by G.S. 150B-16.

*History Note:* Authority G.S. 90-270.69(4); 150B-16;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0502 PROCEDURE FOR ADOPTION OF RULES**

(a) General. The procedure for the adoption, amendment or repeal of a rule is governed by G.S. 150B.  
(b) Notice of Rule-Making. Any person who wishes to receive individual notice shall file a written request with the Board and shall be responsible for the cost of mailing said notice.  
(c) Public Hearing. Any public rule-making hearing required by G.S. 150B shall be conducted by the Chairman of the Board or by any person he may designate. The presiding officer shall have complete control of the hearing and shall conduct the hearing so as to provide a reasonable opportunity for any interested person to present views, data and comments. Oral presentations shall not exceed 15 minutes. Written presentations shall be acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

*History Note:* Authority G.S. 150B-21.2;  
Eff. May 1, 1989;  
Amended Eff. July, 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0503 TEMPORARY RULES**

The power of the Board to adopt temporary rules and the procedure by which such rules are put into effect are governed by G.S. 150B-13.

*History Note:* Authority G.S. 150B-13;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0504 DECLARATORY RULINGS**

(a) General. The issuance of declaratory rulings by the Board is governed by G.S. 150B-17.

(b) Contents of Request. A request for a declaratory ruling shall be in writing and addressed to the Board. The request shall contain the following information:

- (1) The name and address of the person making the request;
- (2) The statute or rule to which the request relates;



- (3) A concise statement of the manner in which the person has been aggrieved by the statute or rule; and
  - (4) A statement as to whether a hearing is desired, and if desired, the reason therefor.
- (c) Refusal to Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:
- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case;
  - (2) When the facts underlying the request for a ruling on a rule were specifically considered at the time of the adoption of the rule in question; and
  - (3) When the subject matter of the request is involved in pending litigation in North Carolina.

*History Note:* Authority G.S. 150B-17;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

## **SECTION .0600 - ADMINISTRATIVE HEARING PROCEDURES**

### **21 NCAC 38 .0601 APPLICABLE HEARING RULES**

When the Board elects to have the Office of Administrative Hearings hear a contested case, the Board's rules pertaining to contested case hearings, instead of the rules of the Office of Administrative Hearings, shall apply.

*History Note:* Authority G.S. 90-270.69(4); 150B-38(h);  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0602 RIGHT TO HEARING**

When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give all such affected persons notice of their right to a hearing by mailing to them, by certified mail, at their last known address a notice of the proposed action and a notice of a right to a hearing.

*History Note:* Authority G.S. 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0603 REQUEST FOR HEARING**

(a) Any time an individual believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the individual should submit a request to the Board's office, with the request bearing the notation: "REQUEST FOR ADMINISTRATIVE HEARING". The request should contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 38 Rule .0604, a hearing will be scheduled.

*History Note:* Authority G.S. 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0604 GRANTING OR DENYING HEARING REQUEST**

- (a) The Board will grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6).
- (b) The denial of a request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the reasons leading the Board to deny the request.
- (c) Approval of a request for a hearing will be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0605 of this Section.

*History Note:* Authority G.S. 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0605 NOTICE OF HEARING**

- (a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):
  - (1) the name, position, address, and telephone number of a person at the offices of the Board to contact for further information or discussion;
  - (2) the date, time and place for a pre-hearing conference, if any; and
  - (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.
- (b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of occupational therapy in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

*History Note:* Authority G.S. 150B-3; 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0606 WHO SHALL HEAR CONTESTED CASES**

All administrative hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

*History Note:* Authority G.S. 150B-11; 150B-38; 150B-40;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0607 INFORMAL PROCEDURES**

The Board and the other party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

*History Note:* Authority G.S. 150B-11; 150B-41;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **21 NCAC 38 .0608 PETITION FOR INTERVENTION**

- (a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should bear the notation: "PETITION TO INTERVENE IN THE CASE OF (name of case)".
- (b) The petition must include the following information:
  - (1) the name and address of petitioner;
  - (2) the business or occupation of petitioner, where relevant;
  - (3) a full identification of the hearing in which petitioner is seeking to intervene;
  - (4) the statutory or non-statutory grounds for intervention;
  - (5) any claim or defense in respect of which intervention is sought; and

- (6) a summary of the arguments or evidence petitioner seeks to present.
- (c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.
- (d) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

*History Note:* Authority G.S. 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

## **21 NCAC 38 .0609 TYPES OF INTERVENTION**

- (a) Intervention of Right. A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.
- (b) Permissive Intervention. A petition to intervene permissively, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:
- (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and
  - (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.
- (c) Discretionary Intervention. The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

*History Note:* Authority G.S. 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

## **21 NCAC 38 .0610 DISQUALIFICATION OF BOARD MEMBERS**

- (a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.
- (b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: "AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case)".
- (c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.
- (d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule.

Where a petition for disqualification is filed less than ten days before a hearing or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification.

In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

- (e) Procedure for Determining Disqualification:

- (1) The Board will appoint a Board member to investigate the allegations of the affidavit.
- (2) The investigator will report to the Board the findings of the investigation.
- (3) The Board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.

- (6) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

*History Note:* Authority G.S. 150B-11; 150B-38; 150B-40;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

## **21 NCAC 38 .0611 SUBPOENAS**

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(e) Any objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(f) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(g) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(h) Promptly after the close of such hearing, the majority of the Board members hearing the contested case will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

*History Note:* Authority G.S. 150B-11; 150B-39; 150B-40;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

## **21 NCAC 38 .0612 WITNESSES**

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*History Note:* Authority G.S. 150B-11; 150B-38; 150B-40;

*Eff. May 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

### **21 NCAC 38 .0613 FINAL DECISION**

In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. The decision will be the prerequisite "final agency decision" for the right to judicial review. To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.

*History Note: Authority G.S. 150B-45;*  
*Eff. May 1, 1989;*  
*Amended Eff. February 1, 1994;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

### **21 NCAC 38 .0614 PROPOSALS FOR DECISION**

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 3 .0026.

The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions should bear the notation: "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)".

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

*History Note: Authority G.S. 150B-11; 150B-38; 150B-40;*  
*Eff. May 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

## **SECTION .0700 - PROFESSIONAL CORPORATIONS**

### **21 NCAC 38 .0701 AUTHORITY AND DEFINITIONS**

As used in this Section:

- (1) "Administrator" means the administrator of the North Carolina Board of Occupational Therapy.
- (2) "Board" means the North Carolina Board of Occupational Therapy.
- (3) "Legal Counsel" means the legal counsel to the North Carolina Board of Occupational Therapy.
- (4) "Licensee" means any individual who is duly licensed to practice occupational therapy in North Carolina as an occupational therapist or occupational therapy assistant.
- (5) "Occupational therapy related services" means those activities through which occupational therapy, as defined in G.S. 90-270.67(4), is practiced.
- (6) "Professional Corporation" means professional corporations organized for the purpose of providing occupational therapy related services in North Carolina.

*History Note: Authority G.S. 55B-2; 55B-12; 90-270.69(4);  
Eff. February 1, 1994;  
Amended Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### **21 NCAC 38 .0702 PREREQUISITES FOR INCORPORATION**

The following requirements must be met in order to incorporate:

- (1) The incorporator, whether one or more, of a professional corporation shall be licensed to practice occupational therapy in North Carolina as an occupational therapist.
- (2) Before the filing of the articles of incorporation with the Secretary of State, the incorporators shall file with the administrator of the Board a copy of the original articles of incorporation, together with a registration fee of fifty dollars (\$50.00).
- (3) The copy of the articles of incorporation shall be accompanied by an application to the Board (Corp. Form 01) certified by all incorporators, setting forth the names, addresses and N.C. license numbers of each shareholder of the corporation who will be practicing occupational therapy for the corporation.
- (4) Included with the articles of incorporation shall be a statement that all such persons are licensed to practice occupational therapy in North Carolina as occupational therapists, and stating that the corporation will be conducted in compliance with the Professional Corporation Act and the rules of this Section.
- (5) If the articles are changed in any manner before being filed with the Secretary of State, they shall be resubmitted to the administrator of the Board and shall not be filed until approved by the administrator of the Board.

*History Note: Authority G.S. 55B-4; 55B-10; 90-270.69(4);  
Eff. February 1, 1994;  
Amended Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### **21 NCAC 38 .0703 CERTIFICATE OF REGISTRATION**

The Certificate of Registration shall be issued as follows:

- (1) The legal counsel or administrator shall issue a Certificate of Registration (Corp. Form 02) for the professional corporation to become effective only when the professional corporation files the articles of incorporation with the Secretary of State and if:
  - (a) the legal counsel or administrator of the Board finds that no disciplinary action is pending before the Board against any of the licensed incorporators or persons who will be directors, officers, or shareholders of such corporation; and
  - (b) it appears to the legal counsel or administrator that such corporation will be conducted in compliance with the law and rules.
- (2) The proposed original articles of incorporation, and the Certificate of Registration, shall be returned to the incorporators for filing with the Secretary of State. The copy of the articles and a copy of the certification shall be retained in the administrative offices of the Board. If the required findings cannot be made, the registration fee shall be refunded to the incorporators.
- (3) The initial Certificate of Registration shall remain in effect until June 30 of the year in which it was issued unless suspended or terminated as provided by law. The Certificate of Registration shall be renewed annually thereafter.
- (4) Prior to the date of expiration of the certificate, the corporation shall submit its written application for renewal upon a form as provided by the Board. The application shall be accompanied by check in the amount of twenty-five dollars (\$25.00) in payment of the renewal fee. The Board shall renew the certificate provided that the Board finds that the corporation has followed the law and the rules of the Board.
- (5) If the corporation does not apply for renewal of its Certificate of Registration within 30 days after the date of its expiration, the Certificate of Registration shall be automatically suspended. Upon suspension of the Certificate of Registration, the legal counsel or the administrator of the Board shall notify the Secretary of State in writing.

- (6) The Certificate of Registration may be reinstated within the fiscal year upon payment of the renewal fee plus a late renewal fee of ten (\$10.00), if such corporation is then otherwise qualified and entitled to a renewal of its Certificate of Registration.

*History Note:* Authority G.S. 55B-10; 55B-11; 55B-12; 90-270.69(4);  
Eff. February 1, 1994;  
Amended Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

#### **21 NCAC 38 .0704 GENERAL AND ADMINISTRATIVE PROVISIONS**

- (a) If the legal counsel or administrator shall decline to issue a Certificate of Registration required by 21 NCAC 38 .0703(1), or decline to renew the same when requested, or shall refuse to take any other action required of him/her in writing by a professional corporation, the aggrieved party may request, in writing, a review of such action by the Board, and the Board shall provide a formal hearing for such aggrieved party before a majority of the Board.
- (b) All amendments to charters of professional corporations, all merger and consolidation agreements to which a professional corporation is a party, and all dissolution proceedings and similar changes in the corporate structure of a professional corporation shall be filed with the legal counsel or administrator of the Board for approval before being filed with the Secretary of State.
- (c) The legal counsel or administrator may issue the certificate (Corp. Form 04) required by G.S. 55B-6 when stock is transferred in a professional corporation, and such certificate shall be permanently attached to the stub of the transferee's certificate in the stock book of the professional corporation.

*History Note:* Authority G.S. 55B-6; 90-270.69(4);  
Eff. February 1, 1994;  
Amended Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

#### **21 NCAC 38 .0705 FORMS**

The following forms may be secured from the office of the Board regarding professional corporations:

- (1) Regulations adopted by the Board relating to Professional Corporations whose purpose is providing occupational therapy related services;
- (2) Corp. Form 01 - Certificate of Incorporator(s) and Application for a Certificate of Registration for a Professional Corporation;
- (3) Corp. Form 02 - Certificate of Registration of a Professional Corporation for the Purpose of Providing Occupational Therapy Related Services;
- (4) Corp. Form 03 - Application for Renewal of Certificate of Registration; and
- (5) Corp. Form 04 - Certificate Authorizing Transfer of Stock in Professional Corporation Organized to Provide Occupational Therapy Related Services.

*History Note:* Authority G.S. 55B-12; 90-270.69(4);  
Eff. February 1, 1994;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

#### **21 NCAC 38 .0706 FEES**

- (a) Initial issuance of a Certificate of Registration requires a fee of fifty dollars (\$50.00).
- (b) Renewal of a Certificate of Registration requires a fee of twenty-five dollars (\$25.00).
- (c) Late renewal of a Certificate of Registration requires an additional fee of ten dollars (\$10.00).

*History Note:* Authority G.S. 55B-10; 55B-11; 55B-12; 90-270.69(4);  
Eff. February 1, 1994;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **SECTION .0800 – CONTINUING COMPETENCE ACTIVITY**

#### **21 NCAC 38 .0801 CONTINUING COMPETENCE DEFINITIONS**

As used in this Section:

- (1) "AOTA Approved Provider Program" means a voluntary process of review and approval of continuing education (CE) providers by the American Occupational Therapy Association (AOTA) based on criteria and guidelines that assess a provider's ability to develop and implement CE activities that are relevant to the practice of occupational therapy.
- (2) "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks.
- (3) "Continuing Competence" means a process in which an occupational therapist or an occupational therapy assistant develops and maintains the knowledge, performance skills, interpersonal abilities, critical reasoning skills, and ethical practice reasoning skills necessary to perform his or her occupational therapy professional responsibilities.
- (4) "Continuing Education" means structured educational experiences beyond academic degree work that are intended to provide knowledge in a particular area.
- (5) "Continuing Education Credit" means credit given for a formalized activity in the form of contact hours or continuing education units.
- (6) "Continuing Education Unit (CEU)" means a unit of measure for continuing education. One CEU is defined as 10 contact hours of participation in a learning activity excluding meals and breaks.
- (7) "Peer Reviewed" means any written work that is blind reviewed by more than one person.
- (8) "Points" means an assigned unit of measure for each continuing competence activity as set forth in Rule .0805 of this Section.

*History Note:* Authority G.S. 90-270.69; 90-270.75(a);  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
Amended Eff. January 1, 2020.

#### **21 NCAC 38 .0802 CONTINUING COMPETENCE REQUIREMENTS FOR LICENSURE**

- (a) Licensed occupational therapists and occupational therapy assistants applying for license renewal shall document having earned a minimum of 15 points for approved continuing competence activities between July 1 of the preceding year and June 30 of the current year. Documentation of each continuing competence activity shall comply with Rule .0805 of this Chapter.
- (b) For each renewal period, the licensee shall document completion of at least one contact hour of a qualified activity for maintaining continuing competence related to ethics in the practice of occupational therapy that shall be included in the total points for the year. Continuing competence activities in ethics shall be related to developing the licensee's ability to reflect on, determine, and act on the moral aspects of practice as required by Rule .0308 of this Chapter.
- (c) Continuing competence contact hours exceeding the total needed for renewal shall not be carried forward to the next renewal period.
- (d) Continuing competence activities shall not include new employee orientation or annual training required by the employer.
- (e) Licensees shall not receive credit for completing the same continuing competence activity more than once during a renewal period.

*History Note:* Authority G.S. 90-270.69; 90-270.75(a);  
Eff. July 1, 2007;  
Amended Eff. January 1, 2015; February 1, 2014;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

#### **21 NCAC 38 .0803 APPROVAL OF ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE**

- (a) Provided the activities meet the requirements of Rule .0804, the Board shall approve:
  - (1) Continuing competence activities sponsored or approved by the North Carolina Occupational Therapy Association;
  - (2) Continuing competence activities sponsored or approved by the American Occupational Therapy Association; and
  - (3) Continuing competence activities sponsored by AOTA approved providers.



(b) A provider of a continuing competence activity shall furnish documentation for demonstrating completion to all participants, specifying the following information:

- (1) name of the participant;
- (2) name of the provider;
- (3) dates of the activity and completion;
- (4) title and location of the activity;
- (5) number of contact hours; and
- (6) signature of the provider or representative.

*History Note: Authority G.S. 90-270.69; 90-270.75(a);  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
Amended Eff. July 1, 2018.*

## **21 NCAC 38 .0804 SCOPE OF QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE**

(a) To be approved by the Board, activities that qualify for maintaining continuing competence as set forth in Rule .0805 of this Section must be related to the licensee's current or anticipated roles and responsibilities in occupational therapy by enhancing the licensee's continuing competence.

(b) Subject matter for approved activities include research; theoretical or practical content related to the practice of occupational therapy; or the development, administration, supervision, and teaching of clinical practice or service delivery programs by occupational therapists or occupational therapy assistants.

(c) Documentation of completion of continuing competence activities must be submitted to the Board as set forth in Rule .0805 of this Section.

*History Note: Authority G.S. 90-270.69; 90-270.75(a);  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
Amended Eff. January 1, 2020.*

## **21 NCAC 38 .0805 QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE**

Activities that qualify for maintaining continuing competence shall include the following:

- (1) Continuing Education:
  - (a) Includes attendance and participation at a live presentation such as a workshop, seminar, conference, or in-service educational program and may include participation in other continuing education activities that require an assessment of learning. Examples of continuing education include electronic or Web-based courses, AOTA Self-Paced Clinical Courses or other formalized self-study courses, or AOTA Continuing Education Articles;
  - (b) A licensee shall earn one point for each contact hour that is awarded by the provider. There are no maximum points in this category; and
  - (c) Documentation shall include a certificate of completion including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended.
- (2) Academic Coursework:
  - (a) Includes participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy;
  - (b) A licensee shall earn one point for each contact hour, up to a maximum of six points, except that a licensee enrolled in a graduate or post-graduate OT curriculum has no maximum points in this category; and
  - (c) Documentation shall include an original official transcript indicating completion of the course, date, and a description of the course from the school catalogue or course syllabus.
- (3) Small Group Study:
  - (a) Includes review and discussion of journal articles, clinical videotapes or audiotapes by at least two licensed practitioners;
  - (b) A licensee shall earn one point for three contact hours up to a maximum of three points; and

- (c) Documentation shall include title, author, publisher, time spent, and date of completion. Licensee must complete the Small Group Study Form provided by the NCBOT and include a statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.
- (4) Mentorship Agreement:
  - (a) Participation as a Mentee:
    - (i) Participation in a formalized mentorship agreement with a mentor as defined by a signed contract between the occupational therapy practitioner mentor and the occupational therapy practitioner mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee. These activities must be related to the development of new occupational therapy skills outside current required job performance;
    - (ii) A licensee shall earn one point for each 10 contact hours spent in activities directly related to achievement of goals and objectives up to a maximum of two points; and
    - (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
  - (b) Participation as Mentor:
    - (i) Participation in a formalized mentorship agreement with an occupational therapy practitioner or post Level II OT or OTA fieldwork student mentee as defined by a signed contract between the mentor and mentee that designates the responsibilities of the mentor and specific goals and objectives that are to be met by the mentee. These activities must be related to the development of occupational therapy skills for the mentee. The mentorship must not be part of the mentor's current required job responsibilities;
    - (ii) A licensee shall earn one point for each four hours spent in mentorship activities as a mentor up to a maximum of five points; and
    - (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
- (5) Fieldwork Supervision:
  - (a) Participation as the primary clinical fieldwork educator for Level I or Level II OT or OTA fieldwork students;
  - (b) A licensee shall earn one-half point for each 20 hours of fieldwork, up to a maximum of 12 points; points for Level I may not exceed six.
  - (c) Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form. Evaluation scores and comments shall be deleted or blocked out; and
  - (d) If fieldwork spans two licensure years, credit shall be given only for the year it is completed.
- (6) Professional Writing:
  - (a) Publication of a peer-reviewed book, chapter, article, or contracted review of occupational therapy resource material;
  - (b) During the year written, edited, or reviewed a licensee shall earn:
    - (i) 15 points as author of a book;
    - (ii) 10 points as author of a chapter;
    - (iii) Five points as author of a peer-reviewed article;
    - (iv) Five points as a contracted reviewer of a print or multimedia occupational therapy resource; or
    - (v) 10 points as listed editor of a book.
  - (c) Documentation shall consist of full reference for publication including title, author, editor, and date of publication; or copy of acceptance letter, if not yet published; and
  - (d) Credit for submitted items shall be given for one licensure period only.
- (7) Presentation and Instruction:

- (a) Presentation of an academic course or peer-reviewed or non peer-reviewed workshop, seminar, in-service, electronic or Web-based course for the first time or for which more than 50% of the material has been revised related to occupational therapy;
  - (b) A licensee shall earn two points for one contact hour that is awarded for an activity, up to a maximum of six points; and
  - (c) Documentation shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of such, signed by the sponsor.
- (8) Professional Meetings and Activities:
- (a) Includes participation in board or committee work with agencies or organizations to promote and enhance the practice of occupational therapy;
  - (b) A licensee shall earn one point for five hours, up to a maximum of two points for participation on committees or boards; and
  - (c) Documentation must include name of committee or board, name of agency or organization, purpose of service, description of licensee's role, and hours of participation must be signed by an officer or representative of the organization or committee.
- (9) Board Certification or Specialty Certification:
- (a) The Board shall recognize completion of activities that result in board certification or specialty certification by AOTA during the current licensure period;
  - (b) A licensee shall earn 15 points for each board certification or specialty certification credential earned or re-certified during the current licensure period; and
  - (c) Documentation shall include certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of requirements for obtaining board certification or specialty certification or recertification.
- (10) Research and Grants:
- (a) Development of or participation in a research project or grant proposal relevant to occupational therapy;
  - (b) A licensee shall earn one point for each three hours spent working on a research project or grant proposal, up to a maximum of five points; and
  - (c) Documentation includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project or name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

*History Note:* Authority G.S. 90-270.69; 90-270.75(a);  
 Eff. July 1, 2007;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
 Amended Eff. January 1, 2020.

**21 NCAC 38 .0806 WAIVER OF REQUIREMENTS**

The Board shall waive all or part of the continuing competence activity requirements of this Section if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements. The Board shall add the unfulfilled continuing competence hours to the following year's requirements.

*History Note:* Authority G.S. 90-270.69; 90-270.75(a);  
 Eff. July 1, 2007;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

**21 NCAC 38 .0807 DOCUMENTATION/REPORTING PROCEDURES**

(a) Licensees shall maintain the required proof of completion for each continuing competence activity as specified in the rules of this Section. The required documentation shall be retained by the licensee for two years following the last day of the license renewal period for which the continuing competence activities were earned.

(b) Licensees shall not send their continuing competence activity documentation to the Board unless audited or otherwise requested by the Board.

*History Note:* Authority G.S. 90-270.69; 90-270.75(a);  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

#### **21 NCAC 38 .0808 AUDIT OF CONTINUING COMPETENCE ACTIVITIES**

(a) The Board shall perform a random audit of licensees' continuing competence activity requirements at least once during each licensing period.

(b) A licensee who is audited shall provide proof of completion of the continuing competency activities.

(c) A licensee who fails to comply with the continuing competence activity requirements of this Section shall be subject to disciplinary action that may include suspension or revocation of license.

*History Note:* Authority G.S. 90-270.69; 90-270.75(a);  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### **SECTION .0900 - SUPERVISION, SUPERVISORY ROLES, AND CLINICAL RESPONSIBILITIES OF OCCUPATIONAL THERAPIST AND OCCUPATIONAL THERAPY ASSISTANTS**

#### **21 NCAC 38 .0901 NOTIFICATION OF SUPERVISION CHANGE**

Occupational therapy assistants and supervising occupational therapists must notify the Board office in writing of any change in ceasing or assuming supervision. The occupational therapist is responsible for supervision of the occupational therapy assistant until official notice that supervision has ceased is received at the Board office. Failure to notify the Board may subject both the occupational therapist and occupational therapy assistant to disciplinary action. Notices must be signed. Telephone or email notices shall not be accepted.

*History Note:* Authority G.S. 90-270.69;  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

#### **21 NCAC 38 .0902 SUPERVISION IS AN INTERACTIVE PROCESS.**

The occupational therapist and the occupational therapy assistant are each responsible for supervision to ensure safe and effective service delivery of occupational therapy services and to foster professional competence and development. The supervising occupational therapist shall provide supervision. The occupational therapy assistant shall obtain supervision. Evidence of supervision must be recorded on a supervisory log or in the documentation.

*History Note:* Authority G.S. 90-270.69;  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

#### **21 NCAC 38 .0903 TYPES OF SUPERVISION**

(a) Occupational therapy assistants at all levels shall require general supervision by an occupational therapist pursuant to Rule .0103(21)(a) of this Chapter.

(b) Occupational therapy students shall require supervision by an occupational therapy practitioner as follows:

- (1) An occupational therapy practitioner shall comply with Accreditation Council for Occupational Therapy Education (ACOTE) requirements for experience when supervising Level II fieldwork occupational therapist and occupational therapy assistant students, which ACOTE requirements, including subsequent amendments and editions, are incorporated by reference. Copies of the incorporated material are available for inspection at the Board office and are available for purchase for five dollars (\$5.00);
- (2) The occupational therapist may supervise Level I and Level II fieldwork occupational therapist and occupational therapy assistant students; and
- (3) The occupational therapy assistant may:

- (A) Supervise Level I occupational therapist or occupational therapy assistant students;
  - (B) Supervise Level II occupational therapy assistant students; and
  - (C) Participate in the supervision of Level II occupational therapist students under the direction and guidance of the supervising occupational therapist.
- (c) Unlicensed personnel and volunteers require direct supervision. Unlicensed personnel or volunteers may be supervised by occupational therapists or occupational therapy assistants.

*History Note: Authority G.S. 90-270.69;  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
Amended Eff. July 1, 2018.*

#### **21 NCAC 38 .0904 DOCUMENTATION OF SUPERVISION**

- (a) Documentation of supervision is the responsibility of both the occupational therapist and occupational therapy assistant. Documentation must include the frequency of supervisory contact, method(s) or type(s) of supervision, content areas addressed, and names and credentials of the persons participating in the supervisory process.
- (b) Supervision must reflect a review of all aspects of the occupational therapy assistant's practice. In any situation, the occupational therapist is ultimately responsible for all delegated services. Co-signature on occupational therapy service documentation, even if mandated by statute or rule, does not accurately satisfy supervision requirements.
- (c) Effectiveness of the supervision shall be regularly evaluated by both the occupational therapist and the occupational therapy assistant.

*History Note: Authority G.S. 90-270.69;  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

#### **21 NCAC 38 .0905 DELINEATION OF CLINICAL RESPONSIBILITIES**

Regardless of the setting in which occupational therapy services are delivered, the occupational therapist and the occupational therapy assistant shall have the following responsibilities during client evaluation, intervention, and outcome evaluation:

- (1) Evaluations:
  - (a) The occupational therapist shall;
    - (i) Direct the evaluation process;
    - (ii) Determine the need for services;
    - (iii) Define the problems within the domain of occupational therapy that need to be addressed;
    - (iv) Determine the client's goals and priorities in collaboration with the occupational therapy assistant and the client or caregiver;
    - (v) Interpret the information provided by the occupational therapy assistant and integrate that information into the evaluation decision-making process;
    - (vi) Establish intervention priorities;
    - (vii) Determine specific future assessment needs;
    - (viii) Determine specific assessment tasks that can be delegated to the occupational therapy assistant; and
    - (ix) Initiate and complete the evaluation, interpret the data, and develop the intervention plan in collaboration with the occupational therapy assistant.
  - (b) The occupational therapy assistant may contribute to the evaluation process by implementing assessments delegated by the occupational therapist.
- (2) Intervention Planning:
  - (a) The occupational therapist shall develop the occupational therapy intervention plan. The plan may be developed collaboratively with the occupational therapy assistant and the client or caregiver; and
  - (b) The occupational therapy assistant may provide input into the intervention plan.
- (3) Intervention implementation:

- (a) The occupational therapist:
    - (i) Shall implement the occupational therapy intervention;
    - (ii) May delegate aspects of the occupational therapy intervention to the occupational therapy assistant; and
    - (iii) Shall supervise all aspects of intervention delegated to the occupational therapy assistant.
  - (b) The occupational therapy assistant shall implement delegated aspects of intervention in which the occupational therapy assistant has established service competency; and
  - (c) Occupational therapists shall not be subject to disciplinary action by the Board for refusing to delegate or refusing to provide the required training for delegation, if the occupational therapist determines that delegation may compromise client safety.
- (4) Intervention review:
- (a) The occupational therapist shall meet with each client who has been assigned to an occupational therapy assistant to further assess the client, to evaluate intervention, and, if necessary, to modify the individual's intervention plan;
  - (b) The occupational therapist shall determine the need for continuing or discontinuing services; and
  - (c) The occupational therapy assistant may contribute to the process of determining continuing or discontinuing services by providing information about the client's response to intervention to assist with the occupational therapist's decision making.
- (5) Documentation:
- (a) The occupational therapy practitioner shall document each evaluation, intervention, and discharge plan recognizing the requirements of practice settings, payors, and service delivery models. Documentation shall include the following elements:
    - (i) Client name or identifiable information;
    - (ii) Signature with occupational therapist or occupational therapy assistant designation of the occupational therapy practitioner who performed the service;
    - (iii) Date of the evaluation, intervention, or discharge plan;
    - (iv) Objective and measurable description of contact or intervention and client response; and
    - (v) Length of time of intervention session or evaluation.
  - (b) The occupational therapist shall determine the overall completion of the evaluation, intervention, or discharge plan; and
  - (c) The occupational therapy assistant shall:
    - (i) Document intervention, intervention response, and outcome; and
    - (ii) Document client's level of function at discharge.
- (6) Discharge:
- (a) The occupational therapist shall determine the client's discharge from occupational therapy services; and
  - (b) The occupational therapy assistant shall:
    - (i) Report data for discharge summary; and
    - (ii) Formulate discharge or follow-up plans under the supervision of the occupational therapist.
- (7) Outcome evaluation:
- (a) The occupational therapist is responsible for the selection, measurement, and interpretation of outcomes that are related to the client's ability to engage in occupations; and
  - (b) The occupational therapy assistant must be knowledgeable about duties delegated by the occupational therapist that relate to the client's targeted occupational therapy outcome and provide information relating to outcome achievement.

*History Note: Authority G.S. 90-270.69;  
 Eff. July 1, 2007;  
 Amended Eff. December 1, 2009;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
 Amended Eff. July 1, 2018.*

## SECTION .1000 – SUPERVISION OF LIMITED PERMITTEES

<b>21 NCAC 38 .1001</b>	<b>LIMITED PERMIT</b>
<b>21 NCAC 38 .1002</b>	<b>SUPERVISION OF LIMITED PERMITTEE</b>
<b>21 NCAC 38 .1003</b>	<b>SERVICE COMPETENCY OF LIMITED PERMITTEE</b>
<b>21 NCAC 38 .1004</b>	<b>SIGNATURE OF LIMITED PERMITTEE</b>
<b>21 NCAC 38 .1005</b>	<b>BOARD NOTIFICATION</b>

*History Note:* Authority G.S. 90-270-69; 90-270.74;  
Eff. July 1, 2007;  
Repealed Eff. November 1, 2007.

## SECTION .1100 – SUPERVISION OF UNLICENSED PERSONNEL

### 21 NCAC 38 .1101 RESPONSIBILITY OF THE OCCUPATIONAL THERAPY PRACTITIONER

- (a) The occupational therapy practitioner is responsible for the quality of all occupational therapy services provided to the client by persons under the practitioner's supervision. It is the occupational therapy practitioner who provides skilled occupational therapy services through the exercise of professional judgment.
- (b) The occupational therapy practitioner shall provide and review these Rules with each unlicensed person under the practitioner's supervision.

*History Note:* Authority G.S. 90-270-69;  
Eff. July 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

### 21 NCAC 38 .1102 DELEGATION OF DUTIES TO UNLICENSED PERSONNEL

- (a) Unlicensed personnel do not provide skilled occupational therapy services. Unlicensed Personnel are trained by an occupational therapist or occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the unlicensed personnel. Unlicensed personnel first must demonstrate competency to be able to perform the assigned, delegated client and non-client related tasks.
- (b) The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the unlicensed personnel to carry out client and non-client related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan.
- (c) The occupational therapy assistant may supervise unlicensed personnel.
- (d) Non-client related tasks include clerical and maintenance activities and preparation of the work area or equipment.
- (e) Client-related tasks are routine tasks during which the unlicensed personnel may interact with the client but does not provide skilled occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the unlicensed personnel;
- (1) The outcome anticipated for the delegated task is predictable;
  - (2) The situation of the client and environment is stable and will not require the judgment interpretation, or adaptations be made by the unlicensed personnel;
  - (3) The client has demonstrated some previous performance ability in executing the task; and
  - (4) The task routine and process have been established.
- (f) When performing delegated client-related tasks the supervisor must ensure that the unlicensed personnel;
- (1) is trained and able to demonstrate competency in carrying out the selected task and using equipment, if appropriate;
  - (2) has been instructed on how to specifically carry out the delegated task with the specific client, and
  - (3) knows the precautions, signs and symptoms for the particular client that would indicated the need to seek assistance for the occupational therapist or occupational therapy assistant.
- (g) The supervision of the unlicensed personnel must be documented and include;
- (1) information about frequency and methods of supervision used;
  - (2) the content of supervision; and
  - (3) the names and credentials of all persons participating in the supervisory process.
- (h) Occupational therapy practitioners shall not allow employer or work place pressures to result in the prohibited use of unlicensed personnel.

(i) Services provided by unlicensed personnel may not be billed, charged, or identified as "occupational therapy."

*History Note:* Authority G.S. 90-270-69;

*Eff. July 1, 2007;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*