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Sequence Number: 10-19-09  
Rule ID(s): 4505  
File Date: 10/21/09  
Effective Date: 1/19/10

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Tennessee Board of Occupational Therapy
<b>Division:</b>	
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
1150-02	General Rules Governing the Practice of Occupational Therapy
Rule Number	Rule Title
1150-02-.01	Definitions
1150-02-.03	Necessity of Licensure
1150-02-.10	Supervision
1150-02-.15	Disciplinary Actions, Civil Penalties, and Screening Panels

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1150-02  
General Rules Governing the Practice of Occupational Therapy

Rule 1150-02-.01 Definitions is amended by deleting subparagraphs (26) (a), (26) (b), (26) (c), (26) (d) and (26) (e) in their entirety and substituting instead the following language, and is further amended by inserting the following language as a properly alphabetized/numbered new paragraph and renumbering the current paragraphs accordingly, so that as amended, the new subparagraphs (26) (a), (26) (b), (26) (c), (26) (d) and (26) (e), and the new properly alphabetized/numbered paragraph shall read:

- (26)
- (a) Continuous: Within sight of the individual being supervised
  - (b) Close: Daily direct contact at the site of treatment.
  - (c) Routine: Direct contact at least every two (2) weeks at the site of treatment, with interim supervision occurring by other methods such as telephone or written communication.
  - (d) General: At least monthly direct contact with supervision available as needed by other methods.
  - (e) Minimal:
    - 1. For supervision of occupational therapists, minimal supervision may be provided on an as-needed basis and may be less than monthly.
    - 2. For supervision of occupational therapy assistants, minimal supervision is not appropriate.
- ( ) Direct contact - Observed treatment interventions, in-person review and/or discussion of caseload and treatment planning.

Authority: T.C.A. §§ 63-13-103, 63-13-206, 63-13-207, and 63-13-216.

Rule 1150-02-.03 Necessity of Licensure is amended by adding the following language as new paragraph (5):

- (5) Licensee Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Occupational Therapist" or "Occupational Therapy Assistant" as applicable, and to use the acronyms "O.T." or "O.T.A." as applicable, and to practice occupational therapy, as defined in T.C.A. § 63-13-103. Any person to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 1150-2-.13 (2) (a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the licensee to disciplinary action pursuant to T.C.A. § 63-13-209 (a) (1) and (a) (3).

Authority: T.C.A. §§ 63-13-103, 63-1-145, 63-13-209, 63-13-211, and 63-13-216.

Rule 1150-02-.10 Supervision is amended by deleting the first sentence of the introductory language in its entirety and substituting instead the following two (2) sentences, and is further amended by deleting paragraph (1) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (1) (d) in its entirety and

substituting instead the following language, and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by adding the following language as new subparagraph (2) (f), and is further amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (3) (f) in its entirety and substituting the following language, so that as amended, the new first two (2) sentences of the introductory language, the new paragraph (1) but not its subparagraphs, the new subparagraph (1) (d), the new paragraph (2) but not its subparagraphs, the new subparagraph (2) (f), the new paragraph (3) but not its subparagraphs, and the new subparagraph (3) (f) shall read:

1150-02-.10 SUPERVISION. The Board adopts, as if fully set out herein, and as it may from time to time be amended, the current "Guidelines for Supervision, Roles, and Responsibilities During the Delivery of Occupational Therapy Services" issued by the American Occupational Therapy Association but only to the extent that it agrees with the laws of the state of Tennessee or the rules of the Board. If there are conflicts with state law or rules, the state law or rules govern the matter.

(1) Supervision of an Occupational Therapist on a limited permit must include initial and routine inspection of written evaluations, written treatment plans, patient/client notes and routine evaluation of performance. The supervision must be conducted in person, by a licensed occupational therapist and must be as follows:

(d) Therapists must maintain documentation of each supervisory visit, and must identify a plan for continued supervision. Records must include, at a minimum, the following information:

1. Location of visit; a method of identifying clients discussed
2. Current plan for supervision (daily, weekly, bi-monthly)
3. Identification of type(s) of interventions observed. These include but are not limited to:
  - (i) Interventions
  - (ii) Training
  - (iii) Consultations
4. Other supervisory actions. These include but are not limited to:
  - (i) Discussion/recommendation for interventions and/or goals
  - (ii) Discussion/training in documentation
  - (iii) Demonstration/training in intervention techniques
  - (iv) Assessment/re-assessment/discharge
  - (v) Additional Comments
5. An agreement statement signed and dated by both parties, that the supervisory visit did occur and met the needs of the supervisor and supervisee.
6. It is the responsibility of the supervising occupational therapist to provide

and the limited permit holder to seek a quality and frequency of supervision that ensures safe and effective occupational therapy service delivery. Both parties (supervisor and supervisee) must keep copies of the supervisory records. Visit records must be maintained for three (3) years, and must be provided to the Board and/or its representative, upon request.

(2) Supervision of an Occupational Therapy Assistant on a limited permit means initial direction and routine inspection of the service delivery and provision of relevant in-service training. The supervising occupational therapist must provide additional supervision, if the patient's required level of care is beyond the level of skill of an entry level Occupational Therapy Assistant on a limited permit. This decision is based on client's level of care, OTA caseload, experience and demonstrated performance competency. Supervision of an Occupational Therapy Assistant on a limited permit must include initial and routine inspection of patient notes and routine evaluation of performance. The supervision must be conducted in person by a licensed occupational therapist and must be as follows:

(f) Therapists must maintain documentation of each supervisory visit, and must identify a plan for continued supervision. Records must include, at a minimum, the following information:

1. Location of visit; a method of identifying clients discussed
2. Current plan for supervision (daily, weekly, bi-monthly)
3. Identification of type(s) of interventions observed. These include but are not limited to:
  - (i) Interventions
  - (ii) Training
  - (iii) Consultations
4. Other supervisory actions. These include but are not limited to:
  - (i) Discussion/recommendation for interventions and/or goals
  - (ii) Discussion/training in documentation
  - (iii) Demonstration/training in intervention techniques
  - (iv) Assessment/re-assessment/discharge
  - (v) Additional Comments
5. An agreement statement signed and dated by both parties, that the supervisory visit did occur and met the needs of the supervisor and supervisee.
6. It is the responsibility of the supervising occupational therapist to provide and the limited permit holder to seek a quality and frequency of supervision that ensures safe and effective occupational therapy service delivery. Both parties (supervisor and supervisee) must keep copies of the supervisory records. Visit records must be maintained for three (3)

years, and must be provided to the Board and/or its representative, upon request.

- (3) Supervision of an Occupational Therapy Assistant with permanent licensure means initial direction and inspection of the service delivery and provision of relevant in-service training, according to the level of supervision the occupational therapy assistant requires. It is the responsibility of the occupational therapist and the occupational therapy assistant to seek the appropriate quality and frequency of supervision that ensures safe and effective occupational therapy service delivery. This decision is based on client's level of care, OTA caseload, experience and demonstrated performance competency.
- (f) Therapists must maintain documentation of each supervisory visit, and must identify a plan for continued supervision. Records must include, at a minimum, the following information:
1. Location of visit; a method of identifying clients discussed
  2. Current plan for supervision (daily, weekly, bi-monthly, monthly, other)
  3. Type of supervision provided. These include but are not limited to
    - (i) in person
    - (ii) phone contact
    - (iii) electronic contact
  4. Identification of type(s) of interventions observed. These include but are not limited to:
    - (i) Interventions
    - (ii) Training
    - (iii) Consultations
  5. Other supervisory actions. These include but are not limited to:
    - (i) Discussion/recommendation for interventions and/or goals
    - (ii) Discussion/training in documentation
    - (iii) Demonstration/training in intervention techniques
    - (iv) Assessment/re-assessment/discharge
    - (v) Additional Comments
  6. An agreement statement signed and dated by both parties, that the supervisory visit did occur and met the needs of the supervisor and supervisee.
  7. It is the responsibility of the supervising occupational therapist to provide and the occupational therapy assistant to seek a quality and frequency of supervision that ensures safe and effective occupational therapy service delivery. Both parties (supervisor and supervisee) must keep copies of

the supervisory records. Visit records must be maintained for three (3) years, and must be provided to the Board and/or its representative, upon request.

Authority: T.C.A. §§ 63-13-103, 63-13-205, 63-13-206, 63-13-207, and 63-13-216.

Rule 1150-02-.15 Disciplinary Actions, Civil Penalties, and Screening Panels is amended by adding the following language as new subparagraph (1) (f):

(1)

- (f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
  - 1. During any period of probation, suspension; or
  - 2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or
  - 3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
  - 4. As a stand-alone requirement(s) in any disciplinary order.

Authority: T.C.A. §§ 63-13-209 and 63-13-216.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Lisa R. Short	X				
Janet Neeley	X				
Sandra Fletchall				X	
Manoj M. Tendolkar				X	
Jeff E. Snodgrass	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Occupational Therapy on 10/23/2008, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/31/07

Notice published in the Tennessee Administrative Register on: 09/14/07

Rulemaking Hearing(s) Conducted on: (add more dates). 10/17/07

Date: January 28, 2009

Signature: Diona E. Layden

Name of Officer: Diona E. Layden  
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 1/28/2009

Notary Public Signature: [Signature]

My commission expires on: 1/23/2010



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
9-27-09  
Date

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Filed with the Department of State on: \_\_\_\_\_

10/21/09

Effective on: \_\_\_\_\_

1/19/10

*Tre Hargett*

Tre Hargett  
Secretary of State

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## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

# MINUTES

## RULEMAKING HEARING

### BOARD OF OCCUPATIONAL THERAPY

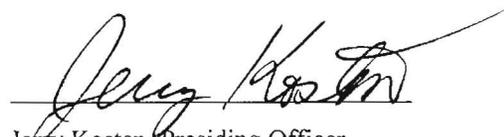
OCTOBER 17, 2007

The rulemaking hearing for the Tennessee Board of Occupational Therapy was called to order at 2:30 p.m., Central Daylight Time, on October 17, 2007 in the Department of Health Conference Center's Mockingbird Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Jerry Kosten was the presiding officer.

Prior to the rulemaking hearing, a written comment was received from the Tennessee Occupational Therapy Association.

One member of the public attended the rulemaking hearing, that being Ms. Angela Harrell who was representing herself. No written or oral comments were received at the rulemaking hearing.

The rulemaking hearing concluded at 2:50 p.m., Central Daylight Time.



Jerry Kosten, Presiding Officer  
Division of Health Related Boards

10/17/07  
Date

**Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

## Economic Impact Statement

- (1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:
  - (a) Licensed occupational therapists that provide supervision; and
  - (b) Licensed occupational therapists which advertise.
- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

As of December 31, 2006, Tennessee had 1,658 licensed occupational therapists who were eligible for licensure renewal.
- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed amendments which have economic impact on small businesses relate to new reporting, recordkeeping and other administrative requirements. The direct costs are expected to be minimal, but the time that is estimated to be necessary for compliance is substantial but not to the extent that the Board believes it would be unduly onerous. The Board believes there are no new professional skills required.
- (4) Statement of the probable effect on impacted small businesses and consumers:

Amendments pertaining to supervision – By prohibiting “minimal” supervision of occupational therapy assistants and by requiring more detailed recordkeeping, there may be an increase in the expenses associated with providing the supervision.

Amendment pertaining to use of titles – Licensed occupational therapists which advertise may have to revise advertisements which have been previously developed and/or currently running.
- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

Amendments pertaining to supervision – It would be less burdensome on small businesses not to promulgate the proposed supervision amendments, but this would be contrary to the Board’s duty to protect the public health, safety and welfare, as provided in T.C.A. § 63-13-201.

Amendment pertaining to use of titles – The Board does not believe there are less burdensome alternatives because the intent of T.C.A. § 63-1-145 (Public Chapter 467 of the Public Acts of 2005) requires the promulgation of this rule.
- (6) Comparison of the proposed rule with any federal or state counterparts:

Federal: The Board is not aware of any federal counterparts, and notes that there is no federal licensing of occupational therapists.

State:

Amendments pertaining to supervision – The requirement to maintain detailed supervision records is common amongst several of the health-related licensing boards, committees, and councils.

Amendment pertaining to use of titles – The proposed rule amendment regarding use of titles will be promulgated at all of the health related licensing boards, committees, and councils.
- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

It is not possible to exempt the impacted small businesses from all or any part of the requirements contained in the proposed rule because the impacted small businesses are the Board's licensees. If there were to be an exemption, the proposed rule amendments would have no actual effect.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

1. Rule 1150-02-.01 Definitions—The current rule’s definition of minimal supervision states that is “provided only on a need basis, and may be less than monthly.” The new rule’s definition of supervision revises the order in which the various types of supervision are listed and states that “for supervision of occupational therapists, minimal supervision may be provided on an as-needed basis and may be less than monthly,” and that “for supervision of occupational therapy assistants, minimal supervision is not appropriate.” Also, the current rule has no definition of “direct contact.” The new rule adds such definition.

Rule 1150-02-.03 Necessity of Licensure—The current rule addresses use of titles by unlicensed individuals, but contained no specific language regarding the permissible titles a licensee may use. The new rule establishes a licensee’s right to use the appropriate title, requires a licensee’s title to appear in advertisements, and cites violation of the rule as the Board’s authority for disciplinary action.

Rule 1150-02-.10 Supervision—The current rule adopts national guidelines but does not indicate if they take precedent over other Board rules. The new rule updates the name of the guidelines and makes it clear that they are adopted only to the extent that they agree with Board statutes and rules. Also, the current rule states that “appropriate records must be maintained to document compliance.” The new rule requires such records to be kept for three (3) years and states several items which must be part of supervision records, including a written agreement. Also, the current rule requires periodic inspection of the delivery of services provided by an Occupational Therapy Assistant (OTA) who has only a limited permit. The new rule requires routine inspection and asks for additional supervision if the patients required level of care is beyond the level of skill of an entry level OTA.

Rule 1150-02-.15 Disciplinary Actions, Civil Penalties, and Screening Panels—The current rule does not include conditions imposed upon licensees as a disciplinary option. The new rule defines conditions as being “any action deemed appropriate by the Board to be required of a disciplined licensee,” and then lists four (4) circumstances in which such conditions may be imposed.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Authority for these amendments comes from state statutes regarding the practice of occupational therapy, T.C.A. §§ 63-13-101, et seq., and Public Chapters 765 of the Public Acts of 2006 and 115 of the Public Acts of 2007.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals most directly affected by these rules are all current and future applicants for licensure when being supervised, occupational therapists who are supervisors of unlicensed persons or holders of limited permits, and licensees who advertise.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known opinions of the attorney general or any judicial ruling which relates to these rules.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is estimated to be no increase or decrease in revenues or expenditures because of these rule amendments.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Diona E. Layden, Assistant General Counsel  
Office of General Counsel  
Tennessee Department of Health  
220 Athens Way, Suite 210  
Nashville, Tennessee 37423  
615-741-1611

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alison Cleaves, Deputy General Counsel

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel  
Tennessee Department of Health  
220 Athens Way, Suite 210  
Nashville, Tennessee 37423  
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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.