

Notice of Agency Rulemaking Proposal

AGENCY: 02-477, Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Occupational Therapy Practice

CHAPTER NUMBER AND TITLE:

Chapter 4: License Renewal and Continuing Education Requirements; Reinstatement (new)
Chapter 6-A: License Renewal; Reinstatement (repeal)

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

At its January 13, 2023 meeting, the Board of Occupational Therapy Practice reviewed and accepted public comments and made subsequent changes to its proposed rulemaking packet as noted below:

Board Rules, Chapter 4:

1. Section 1(2) – Temporary licenses – replace the word “an” with “one” to make consistent with statutory language.
2. Section 3(A) – Added language recognizing activities completed during the licensure renewal period for purposes of maintaining certification with the National Board for Certification in Occupational Therapy (NBCOT) and who completes the one hour of ethics satisfies the continuing education requirements.
3. Section 3(B) – Revised to clarify the hours and content requirements in meeting the continuing education requirements.
4. Section 3(C) – Revised to clarify the minimum hours and to clarify that continuing education activities do not require in-person attendance, nor do they require live, remote interaction with presenters.
5. Section 3(C)(h) and (i) – Added language to allow fieldwork direct supervision (Levels I and II).
6. Section 3(F) – Added language to clarify action as a result of a failed audit.
7. Section 4 – Added language to allow the Board to grant continuing education deferments due to extenuating circumstances, sets the requirements for first renewals, and identifies the process for requesting inactive licensure status and returning to active licensure status.

Copies of the proposed rule and rulemaking documents may be found on the Board’s webpage: <https://www.maine.gov/pfr/professionallicensing/professions/board-occupational-therapy-practice>.

Date, time and location of PUBLIC HEARING (*if any*): N/A – written comments only. Pursuant to 5 M.R.S. § 8052(1) and § 8053(3)(B), a hearing may be requested by five (5) interested persons by submitting a request in writing to contact person for this filing. Comments on the proposed rules may be submitted by emailing Candice.B.Wright@maine.gov or by mailing comments to the Maine Board of Occupational Therapy Practice, Attn: Candice Wright, 35 State House Station, Augusta, ME 04333-0035.

COMMENT DEADLINE: Tuesday, February 28, 2023, 5:00 p.m. Written comments may be submitted to Candice Wright, Consumer Assistance and Hearing Coordinator, 35 State House Station, Augusta, ME 04333-0035, Candice.B.Wright@maine.gov.

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*): Candice Wright, Consumer Assistance and Hearing Coordinator, 35 State House Station, Augusta, ME 04333-0035, Candice.B.Wright@maine.gov, 207-624-8601, TTY: Maine relay 711.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (if any): N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. § 2274(2); 32 M.R.S. § 2283(4); 10 M.R.S. § 8003(5-A)(D)(5).

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different):

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-occupational-therapy-practice>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: kristin.racine@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT *Rachel Hennessey* DATE: 1/13/2023
(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02A	4440	01	4946				

Rulemaking Fact Sheet

(5 MRSA §8057-A)

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NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON:

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PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE:

At its January 13, 2023 meeting, the Board of Occupational Therapy Practice reviewed and accepted public comments and made subsequent changes to its proposed rulemaking packet as noted below:
Board Rules, Chapter 4:

1. Section 1(2) – Temporary licenses – replace the word “an” with “one” to make consistent with statutory language.
2. Section 3(A) – Added language recognizing activities completed during the licensure renewal period for purposes of maintaining certification with the National Board for Certification in Occupational Therapy (NBCOT) and who completes the one hour of ethics satisfies the continuing education requirements.
3. Section 3(B) – Revised to clarify the hours and content requirements in meeting the continuing education requirements.
4. Section 3(C) – Revised to clarify the minimum hours and to clarify that continuing education activities do not require in-person attendance, nor do they require live, remote interaction with presenters.
5. Section 3(C)(h) and (i) – Added language to allow fieldwork direct supervision (Levels I and II).
6. Section 3(F) – Added language to clarify action as a result of a failed audit.
7. Section 4 – Added language to allow the Board to grant continuing education deferments due to extenuating circumstances, sets the requirements for first renewals, and identifies the process for requesting inactive licensure status and returning to active licensure status.

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<https://www.maine.gov/pfr/professionallicensing/professions/board-occupational-therapy-practice>

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES NO

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The rule will require that licensees complete continuing education during each reporting period as a condition of renewal, and that at least one hour of continuing education must be on the topic of ethics in the practice of occupational therapy. Reinstating continuing education required for renewal for licensees also satisfies Maine's duty as a member state of the Occupational Therapy Licensure Compact to require continuing education for license renewal. Maine joined the Occupational Therapy Licensure Compact as a result of P.L. 2021, c. 324 (LD 31), An Act to Adopt the Occupational Therapy Licensure Compact.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) Expertise of board staff and board members.

ESTIMATED FISCAL IMPACT OF THE RULE: It is estimated that some licensees may incur some costs to comply with the requirements in this rule. The proposed rule, however, permits a wide range of options to comply with the continuing education requirements, therefore, the total cost to any individual licensee, if any, cannot be ascertained. Moreover, some renewing licensees who maintain a current NBCOT Certification may already be completing hours that would satisfy this requirement in board rule in order to maintain their certification.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Chapter 4: LICENSE RENEWAL AND CONTINUING EDUCATION REQUIREMENTS; REINSTATEMENT

SUMMARY: This chapter sets forth the requirements for renewing licenses issued by the board and references the statutory requirements for reinstatement of a license that has expired for more than 90 days.

1. License Term**1. Occupational Therapists; Occupational Therapy Assistants**

Licenses of all occupational therapists and occupational therapy assistants expire annually on March 31.

2. Temporary Licensees

A temporary license may be issued for a term of six (6) months and may be renewed for ~~an~~ one additional six (6) months at the discretion of the board following review of the documentation required by Section 2(2) of this chapter.

2. Requirements for License Renewal**1. Generally.** A temporary licensee, occupational therapist or occupational therapy assistant may renew a license by:

- A. Submitting a renewal application;
 - B. Remitting the fee set forth in Chapter 10 of the rules of the Office of Professional and Occupational Regulation;
 - C. For licenses renewed up to 90 days after the date of expiration, remitting the late fee required by Chapter 11 of the Rules of the Office of Professional and Occupational Regulation;
- and
- D. Providing such other information as the board may require.

2. Additional Requirements for Temporary License Renewal (one-time 6 month renewal). In addition to the items required by Section 2(1) of this chapter, a temporary licensee shall also submit:

- A. NBCOT approval to sit for the appropriate certification examination;
- B. A study plan for the appropriate certification examination;

- C. A supervision plan appropriate for the practice setting that meets the requirements of 32 M.R.S. § 2272(15), that is signed by the supervising occupational therapist; and
- D. Such other information as the board may require.

3. Continuing Education Requirement for Occupational Therapists and Occupational Therapy Assistants

Occupational therapists and occupational therapy assistants shall certify at time of license renewal to compliance with the continuing education requirements set forth in this chapter.

A. Number of Hours and Content Required.

- i. Every occupational therapist shall complete a total of ten (10) hours and every occupational therapy assistant shall complete a total of six (6) hours of continuing education relevant to the practice of occupational therapy or interprofessional practice during each reporting period as a condition of renewal. For the purposes of this chapter, an “hour” means sixty (60) minutes. The reporting period is April 1 of the previous year through the March 31 renewal date. Hours completed during the reporting period cannot be carried forward into a subsequent renewal period.
- ii. During each reporting period, one (1) hour of the total required ten (10) hours for occupational therapists and one (1) hour of the total required six (6) hours for OTAs shall be on ethics in the practice of occupational therapy. The (1) one hour of ethics can be satisfied with any qualifying continuing education activity as set forth in subsection 3(B).
- iii. **NBCOT Certification Activities.** Notwithstanding any provision in this Chapter to the contrary, an occupational therapist or an occupational therapy assistant who obtains continuing education activities within the renewal period as part of maintaining a current NBCOT Certification and who completes the one hour of ethics as set forth in Section 3(B)(i) may certify at the time of renewal to satisfying the requirements of this Chapter.

B. Qualifying Continuing Education Activities. ~~For the purpose of this chapter, there is not requirement for either in-person attendance or a live, remote program during which immediate interaction with the instructor is possible.~~ Qualifying activities for satisfying the requirements of Section 2(3)(A) include:

- i. **Minimum hours at sponsored presentation required.**
 - a. At least fFour (4) of the required hours shall include participation as required at a sponsored presentation offered by any recognized sponsor as set forth in Section 2(3)(C~~D~~) of this Chapter.

- ii. **Other qualifying activities.** Other qualifying activities include:
- a. Participation as required at a presentation such as a workshop, seminar, conference, or in-service educational program.
 - b. Academic coursework related to the practice of occupational therapy, which 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.
 - c. Publications of books, articles, films, or web-based resources related to practice, management, or education of occupational therapy.
 - d. Preparation for teaching a course in occupational therapy in an accredited program.
 - e. Preparation for and presenting at a workshop, seminar, conference, or in-service educational program.
 - f. Pursuit of evidence-based practice by reviewing critically appraised topics for evidence-based literature on practice-related subjects.
 - g. Research, which includes development or participation in a research project as a primary or assistant investigator in the research project.
 - h. Level I fieldwork direct supervision. For the purposes of this subsection, this qualifying activity may be submitted for one (1) hour per student. Letter(s) of verification or certification from the educational institution that includes the dates of fieldwork supervision completed satisfies the documentation requirement of this activity.
 - i. Level II fieldwork direct supervision. For the purposes of this subsection, this qualifying activity may be submitted for two (2) hours per student. Letter(s) of verification or certification from the educational institution that includes the dates of fieldwork supervision completed satisfies the documentation requirement of this activity.
- iii. **In-person attendance; live, remote interaction.** For purposes of this chapter, continuing education activities are not required to be held in-person nor required to include live, remote interaction with presenters.
- CD.** **Recognized Sponsors.** Licensees may satisfy the requirement of Section 2 (3)(A)(i) by completing activities:

- i. sponsored or approved by the Maine Occupational Therapy Association (MEOTA), its successor organization or a comparable organization;
- ii. sponsored or approved by NBCOT, its successor organization or a comparable organization;
- iii. sponsored or approved by the American Occupational Therapy Association (AOTA), its successor organization or a comparable organization; or
- iv. sponsored by AOTA approved providers.

DE. **Audit of Continuing Education.** A licensee's certification of completion of continuing professional education is subject to audit and documentation retention requirements as set forth in the rules of the Office of Professional and Occupational Regulation, 02-041 C.M.R. ch. 13.

E. **Failed Audit; Disciplinary Action.** If a continuing education audit shows that the licensee did not fulfill the requirements of this chapter, then the licensee shall be notified of the failed audit. A failed audit may require further investigation and may result in disciplinary action.

4. Reinstatement

Renewal of a license that has expired for more than 90 days is governed by 32 M.R.S. § 2283(1).

5. Deferments, First Renewal, Inactive Status

A. Deferment. Upon receipt of a written request prior to license expiration, the Board may, in its discretion, grant a continuing education deferment to an individual licensed by the Board who, because of prolonged illness or other extenuating circumstances, has been unable to meet the educational requirements under this chapter.

B. First renewal; general requirements. Licensees who renew for the first time must complete one (1) hour of ethics and either one half of the required continuing education credit hours as outlined in this chapter.

C. Active to Inactive License Status. To place an active license on inactive status, the licensee must submit a written request to the Board attesting that services will not be rendered during the remainder of the license term. Licensees with an inactive status are required to renew their licenses to maintain inactive license status but are not required to complete continuing education credit hours under this chapter.

D. documented evidence of completing continuing education credit hours as outlined below.

- (1) Licenses who hold an inactive license status for a period fewer than five years must meet the continuing education requirements as outlined in Section 5(B) for the license they hold under this chapter, to return the license to active status.
 - (2) Licenses who hold an inactive license status for a period exceeding five years must meet the continuing education requirements as outlined in Section 3(A) for the license they hold under this chapter, to return the license to active status.
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STATUTORY AUTHORITY: 32 M.R.S. §§ 2274(2); 2283(4); 10 M.R.S. § 8003(5-A)(D)

EFFECTIVE DATE: