

## Chapter 339 Occupational Therapy Licensing Board

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### DIVISION 1

#### PROCEDURAL RULES

##### 339-001-0000

##### Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, the State Occupational Therapy Licensing Board shall give notice of proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin.
- (2) By mailing a copy of the Notice to interested persons identified by the Board.
- (3) By mailing a copy of the Notice to the following persons, organizations or publications:
  - (a) Associated Press;
  - (b) Occupational Therapy Association of Oregon;

- (c) Oregon Board of Medical Examiners;
- (d) Oregon Physical Therapy Licensing Board;
- (e) Mental Health Association of Oregon;
- (f) Oregon Medical Association;
- (g) Oregon Health Care Association;
- (h) Active and lapsed licensees.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 675.210(4), 675.240(1) & (2), 675.250(2) & (3), 675.300(1)(a) & 675.320(11)

Hist.: OTLB 1-1978, f. & ef. 6-12-78; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2001, f. & cert. ef. 1-12-01

##### 339-001-0005

##### Model Rules of Practice and Procedure

The following Model Rules of Procedure promulgated by the Attorney General of the State of Oregon in effect January 1, 2008 are adopted by the Board by Reference. These rules apply to rulemaking and to the conduct of contested cases respectively:

(1) OAR 137-01-0005; 137-001-0007; 137-001-0008; 137-001-0009; 137-001-0011; 137-001-0018; 137-001-0030; 137-001-0040; 137-001-0050; 137-001-0060; 137-001-0070; 137-001-0080 and 137-001-0085.

(2) OAR 137-003-0501 to 137-003-0700.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Occupational Therapy Licensing Board.]

Stat. Auth.: ORS 183, 675.320(11), (13) & (14)

Stats. Implemented:

Hist.: OTLB 1-1978, f. & ef. 6-12-78; OTLB 1-1980, f. & ef. 3-12-80; OTLB 1-1982, f. & ef. 2-4-82; OTLB 1-1985, f. & ef. 1-8-85; OTLB 1-1986, f. & ef. 2-10-86; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11

##### 339-001-0006

##### Time for Requesting a Contested Case Hearing

A request for a contested case hearing must be in writing and must be received by the Board within thirty days from the date the contested case notice was served.

Stat. Auth.: ORS 675.320(10)

Stats. Implemented: ORS 183.341

Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11

##### 339-001-0011

##### Filing Exceptions and Argument to the Board

After a proposed order has been served on a party, the Board shall notify the party when written exceptions must be filed to be considered by the Board, and the Board shall notify the party when the party may appear before the Board to present argument regarding the proposed order.

Stat. Auth.: ORS 675.320(10)

Stats. Implemented: ORS 183.341

Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01

##### 339-001-0016

##### Petition for Reconsideration or Rehearing as Condition for Judicial Review

All parties, including limited parties, must file a petition for reconsideration or rehearing with the Board as a condition for obtaining judicial review of any order of the Board.

Stat. Auth.: ORS 675.320(10)

Stats. Implemented: ORS 183.341

Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01

##### 339-001-0018

##### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Executive Officer or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) **Copy of Rule** When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 675.320(10)

Stats. Implemented: ORS 36.224(4)

Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01

## DIVISION 5

### FEE SCHEDULES

#### 339-005-0000

##### Fees

Fees are non refundable. Two year licenses shall be issued to all licensees in even-numbered years at the fee schedule listed below. On a case-by-case basis the Board may approve the issuance of a one-year license.

(1) The fee for an initial Oregon or out of state occupational therapy license by endorsement is \$100. The Board may also assess the actual cost of conducting a background check, including fingerprinting.

(2) The two-year renewal fee issued for the occupational therapy license is \$ 150. The Board may also assess the actual cost to the Board of conducting workforce demographics surveys.

(3) The fee for an initial Oregon or out of state occupational therapy assistant license is \$70. The Board may also assess the actual cost of conducting a background check, including fingerprinting.

(4) The two-year renewal fee for the occupational therapy assistant license is \$ 100. The board may also assess the actual cost to the Board of conducting workforce demographics surveys.

(5) The fee for a limited permit is \$25 and may not be renewed.

(6) The fee for delinquent payment is \$50 and is due on renewal applications not renewed before May 1.

Stat. Auth.: ORS 675.320(6)

Stats. Implemented:

Hist.: OTLB 1-1989(Temp), f. 9-14-89, cert. ef. 10-3-89; OTLB 1-1990, f. & cert. ef. 3-20-90; OTLB 1-1995, f. 2-15-95, cert. ef. 4-1-95; OTLB 1-2004, f. & cert. ef. 6-3-04; OTLB 1-2007, f. & cert. ef. 8-1-07; OTLB 1-2010, f. 1-5-10, cert. ef. 3-1-10; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11

## DIVISION 10

### IMPLEMENTATION AND ADMINISTRATION OF THE OCCUPATIONAL THERAPY PRACTICE ACT

#### 339-010-0005

##### Definitions

(1) "Supervision," is a process in which two or more people participate in a joint effort to promote, establish, maintain and/or evaluate a level of performance. The occupational therapist is responsible for the practice outcomes and documentation to accomplish the goals and objectives. Levels of supervision:

(a) "Close supervision" requires daily, direct contact in person at the work site;

(b) "Routine supervision" requires the supervisor to have direct contact in person at least every two weeks at the work site with interim supervision occurring by other methods, such as telephone or written communication;

(c) "General supervision" requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site with supervision available as needed by other methods.

(2) "Leisure," as it is used in ORS 675.210(3) means occupational behavior that is developed as part of an individual occupational therapy evaluation and treatment process. This process is goal oriented toward the maximum health of the patient by the interaction of self-care, work and leisure, and is not used as an isolated recreation activity. The use in this way does not include leisure activities as used by therapeutic recreation specialists.

(3) "Licensed occupational therapy practitioner," for purposes of these rules, means an individual who holds a current occupational therapist or occupational therapy assistant license.

(4) "Occupational therapy aide," as it is used in OAR 339-010-0055, means an unlicensed worker who is assigned by the licensed occupational therapy practitioner to perform selected tasks.

(5) "Mentorship," as it is used in these rules, is a collaborative experience of direct contact between currently licensed occupational therapy practitioners for the purpose of updating professional skills. Mentorship may include, but is not limited to, mentee observation of the mentor's practice, classroom work, case review and discussion, and review and discussion of professional literature.

(6) "Occupational Therapy" further defines scope of practice as meaning the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for the purpose of promoting health and wellness and to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses 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:

(a) Occupational Therapists use selected methods or strategies to direct the process of interventions such as:

(A) Establish, remediate or restore skill or ability that has not yet developed or is impaired;

(B) Compensate, modify, or adapt activity or environment to enhance performance;

(C) Maintain and enhance capabilities without which performance in everyday life activities would decline;

(D) Promote health and wellness to enable or enhance performance in everyday life activities;

(E) Prevent barriers to performance, including disability prevention.

(b) Occupational Therapists evaluate factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(A) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems);

(B) Habits, routines, roles and behavior patterns;

(C) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance;

(D) Performance skills, including motor, process, and communication/interaction skills.

(c) Occupational Therapists use the following 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

(A) Therapeutic use of occupations, exercise, and activities;

(B) Training in self-care, self-management, home management and community/work reintegration;

(C) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavior skills;

(D) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process;



(E) Education and training of individuals, including family members, caregivers, and others;

(F) Care coordination, case management, and transition services;

(G) Consultative services to groups, programs, organizations, or communications;

(H) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles;

(I) Assessment, design, fabrication, application, fitting, and training in assistive technology, adaptive devise, and orthotic devices, and training in the use of prosthetic devices;

(J) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(K) Driver rehabilitation and community mobility;

(L) Management of feeding and eating to enable swallowing performance;

(M) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing, manual therapy techniques) to enhance performance skills as they relate to occupational therapy services.

Stat. Auth.: ORS 675.320(11), (13) & (14)

Stats. Implemented: ORS 675.210(4) & 675.320(13)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05; OTLB 1-2007, f. & cert. ef. 8-1-07

### 339-010-0010

#### Recognition of Education Programs

(1) Pursuant to ORS 675.240(1), the Board recognizes educational programs for occupational therapists currently accredited by the Accreditation Council for Occupational Therapy Education (ACOTE), and listed on **Exhibit 1**, attached to this rule and incorporated by reference. [Exhibit not included. See ED. NOTE.]

(2) Pursuant to ORS 675.250(2), the Board recognizes educational programs for occupational therapy assistants currently accredited by the Accreditation Council for Occupational Therapy Education (ACOTE), and listed on **Exhibit 1**, attached to this rule and incorporated by reference. [Exhibit not included. See ED. NOTE.]

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented:

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-2001, f. & cert. ef. 1-12-01

### 339-010-0012

#### Background Checks and Fingerprinting Requirements

The Board may require Oregon or National criminal history checks, including fingerprints or other background checks such as the Law Enforcement Data System (LEDS), from any applicants for a license as an occupational therapist or occupational therapy assistant, a limited permit, an applicant to reinstate a lapsed license, and applicant or licensee under investigation to determine their fitness. The fingerprints will be on forms prescribed by the Board. The Board will provide information on where acceptable fingerprints may be obtained and what acceptable procedure is to be used for submitting them. The Board will use the fingerprints to conduct Criminal History Checks. Fingerprint cards will be destroyed as required by law.

Stat. Auth.: ORS 675.320; Other Auth.: OAR 339-005-0000

Stats. Implemented:

Hist.: OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11; OTLB 1-2012, f. 7-3-12, cert. ef. 9-1-12

### 339-010-0013

#### Law Ethics Exam Requirement

Applicants for licensure for an Oregon Occupational Therapy license shall be required to take and successfully pass an Oregon Law/ethics examination with a passing score set by the board.

Stat. Auth.: ORS 675.320 & 675.230

Stats. Implemented:

Hist.: OTLB 1-2012, f. 7-3-12, cert. ef. 9-1-12

### 339-010-0015

#### License Examinations Approved by the Board

(1) Pursuant to ORS 675.240(1)(b) and (2), the Board adopts the current certification examination and passing score of the National

Board For Certification in Occupational Therapy as the examination to determine the fitness of applicants for practice as an occupational therapist.

(2) Pursuant to ORS 675.250(3), the Board approves the current certification examination and passing score of the National Board For Certification in Occupational Therapy as the examination to determine the fitness of applicants for practice as an occupational therapy assistant.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented: ORS 675.210(4), 675.240(1) & (2), 675.250(2) & (3), 675.300(1)(a) & 675.320(11)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 2-1986, f. & ef. 6-27-86; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-1999, f. & cert. ef. 10-27-99

### 339-010-0016

#### CE Requirements for Applicants for Licensure

(1) All applicants for licensure who have passed the NBCOT certification examination and have been unlicensed for up to three years will need 15 points of board approved continuing education a year prior to becoming licensed in Oregon.

(2) All applicants for licensure who have passed the NBCOT certification examination more than a one year ago and have been unlicensed for more than three years will:

(a) Successfully complete a Board approved Re-Entry Program specifically designed for occupational therapists preparing them for re-entry into the field of occupational therapy; or

(b) Successfully retake and pass the NBCOT examination within the previous year.

(3) The Board has the discretion to waive requirement for license application requirements.

Stat. Auth.: ORS 675.320(10) & (11)

Stats. Implemented:

Hist.: OTLB 1-2005, f. & cert. ef. 8-11-05

### 339-010-0018

#### Name, Address and Telephone Number of Record

(1) Every applicant, licensee and limited permit holder shall keep on file with the Board their:

(a) Legal name;

(b) Home address which must include a residential address and may also include a post office box number;

(c) A current contact telephone number and electronic mail address, if available;

(d) The name, address and telephone number of their current employer or place of business;

(e) A current designated mailing address.

(2) Whenever an applicant, licensee or limited permit holder legally changes their name, they shall notify the Board in writing within 30 days of the name change and provide the legal documentation of the name change.

(3) Whenever an applicant, licensee or limited permit holder changes their home address, their employer or place of business, their contact telephone number, electronic mail address or their mailing address, they shall notify the Board in writing within 30 days. Written notification may be by regular mail, electronic mail or facsimile.

(4) Unless requested for a public health or state health planning purpose or unless extenuating circumstances exist, the Board will withhold the personal electronic mail, address, home address, and personal telephone number of a licensee.

Stat. Auth.: ORS 675.320; Other Auth.: OAR 339-005-0000

Stats. Implemented:

Hist.: OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11

### 339-010-0020

#### Unprofessional Conduct

(1) Unprofessional conduct relating to patient/client safety, integrity and welfare includes:

(a) Intentionally harassing, abusing, or intimidating a patient/client, either physically or verbally;

(b) Intentionally divulging, without patient/client consent, any information gained in the patient relationship other than what is required by staff or team for treatment;

(c) Engaging in assault and/or battery of patient/client;

(d) Failing to respect the dignity and rights of patient/client, regardless of social or economic status, personal attributes or nature of health problems;

(e) Engaging in sexual improprieties or sexual contact with patient/client;

(f) Offering to refer or referring a patient/client to a third person for the purpose of receiving a fee or other consideration from the third person or receiving a fee from a third person for offering to refer or referring a patient/client to a third person;

(g) Taking property of patient/client without consent.

(2) Unprofessional conduct relating to professional competency includes:

(a) Engaging in any professional activities for which licensee is not currently qualified;

(b) Failing to maintain competency;

(c) Failing to provide a comprehensive service that is compatible with current research and within an ethical and professional framework;

(d) Failing to obtain a physician's referral in situations where an OT is using a modality not specifically defined in ORS 675.210(3);

(e) Failing to provide professional occupational therapy based on evaluation of patient's/client's needs and appropriate treatment procedures;

(f) Using an occupational therapy aide in violation of the law or Board rules regarding occupational therapy.

(3) Unprofessional conduct relating to the Board includes:

(a) Practicing occupational therapy without a current Oregon license;

(b) Failing to renew license in a timely manner;

(c) Failing to provide the Board with any documents requested by the Board;

(d) Failing to answer truthfully and completely any question asked by the Board;

(e) Failing to provide evidence of competency when requested;

(f) Violating the Practice Act, Board rules or Board Orders;

(4) Unprofessional conduct relating to impaired function includes:

(a) Engaging in or assisting in the practice of occupational therapy while impaired by alcohol or other drugs;

(b) Use of alcohol or other drugs in a manner that creates a risk of harm to patient/client;

(c) Engaging in the practice of occupational therapy while one's ability to practice is impaired by reason of physical or mental disability or disease.

(5) Unprofessional conduct relating to federal or state law or rules:

(a) Intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person or intentionally obstructing or attempting to obstruct another person from filing such report;

(b) Obtaining or attempting to obtain compensation by misrepresentation;

(c) Engaging in assault and/or battery of any person;

(d) Conviction of a crime or engaging in any act which the Board determines substantially relates to the practice of occupational therapy or indicates an inability to safely and proficiently engage in the practice of occupational therapy; or failing to notify the Board within 10 working days of a conviction of a misdemeanor, or an arrest for or conviction of a felony;

(e) Disciplinary actions imposed by another professional licensing body based on acts by the licensee similar to acts giving rise to discipline under the Practice Act or rules of the Board;

(f) Engaging in false, misleading or deceptive advertising.

(g) Fails to notify the appropriate licensing board of any conduct by another licensed medical provider when the licensee has reasonable cause to believe that the medical provider has engaged in prohibited or unprofessional conduct. As used in this subparagraph, "prohibited conduct" means a criminal act against a patient or a criminal act that creates a risk of harm to a patient and "unprofessional conduct" means conduct unbecoming a medical provider or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the medical provider's profession or conduct that endangers the health, safety or welfare of a patient.

(h) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of employment or business as required by OAR 339-010-0018.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented: ORS 675.300(1)(a)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11

### 339-010-0021

#### Imposition of Civil Penalties

(1) Imposition of a civil penalty does not preclude disciplinary sanction against the occupational therapist's/occupational therapy assistant's license. Disciplinary sanction against the occupational therapist's/occupational assistant's license does not preclude imposing a civil penalty. Criminal conviction does not preclude imposition of a civil penalty for the same offense.

(2) The civil penalty shall be payable to the Board by cash, cashier's check or money order.

(3) Civil penalties shall be imposed according the following schedule in the absence of a finding of aggravating or mitigating circumstances (per OAR 339-010-0022):

(a) Practicing or assisting in occupational therapy practice as defined in ORS 675.220(1) and 675.222 without a current Oregon license or limited permit due to nonpayment of fees:

(A) Date license lapses to six months, \$100;

(B) Six months to twelve months, \$200;

(C) One year to two years, \$500;

(D) Two years and up, \$1,000.

(b) Practicing or assisting in occupational therapy practice as defined in ORS 675.220(1) and 675.222 without a current Oregon license or limited permit, not related to nonpayment of fee, \$1,000;

(c) Unprofessional conduct by a licensee or limited permittee, \$1,000;

(d) Violation of ORS 675.210 to 675.340 or any rule of the Board unless otherwise provided in this schedule, \$1,000;

(e) Gross negligence in the practice of occupational therapy, \$1,000;

(f) Knowingly employing an individual to practice occupational therapy when the individual does not have a current, valid Oregon license or permit, \$1,000;

(g) Knowingly making a false statement to the Board, \$1,000;

(h) Practicing occupational therapy outside the scope for which the license or permit is issued, \$1,000;

(i) Obtaining or attempting to obtain a license or permit or a renewal of a license or permit by bribery or misrepresentation, \$1,000;

(j) Purporting to be a licensee or permittee when the person does not hold a valid license or permit, \$1,000;

(k) Practicing occupational therapy under a false or assumed name, \$500;

(l) Conviction of a crime where such crime bears a demonstrable relationship to the practice of occupational therapy, \$1,000;

(m) Undertaking to act as an occupational therapy assistant independently of the supervision of an occupational therapist licensed by the Oregon Occupational Therapy Licensing Board, \$500.

(4) The Board shall report to the National Board for Certification in Occupational Therapy all cases of disciplined licensees.

Stat. Auth.: ORS 675.320(10)

Stats. Implemented: ORS 675.336 & 675.337

Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01

### 339-010-0022

#### Aggravation and Mitigation

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose. The following factors will be considered in determining the dollar amount to include, but not limited to:

(1) Intent;

(2) Damage and injury to client;

(3) Potential danger to public health, safety and welfare;

(4) Severity and duration of the incident;

(5) Prior disciplinary offenses;

(6) A pattern of misconduct;

(7) Multiple offenses;

(8) Full and free disclosure to disciplinary board or cooperative attitude toward proceeding;

(9) Refusal to acknowledge wrongful nature of conduct;

(10) Timely good faith effort to make restitution or to rectify consequences of misconduct;

- (11) Economic impact on the person being sanctioned;
  - (12) Physical or mental disability or impairment;
  - (13) Interim rehabilitation;
  - (14) Imposition of other penalties or sanctions.
- Stat. Auth.: ORS 675.320(10)  
Stats. Implemented: ORS 183.090 & 675.337  
Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01

### 339-010-0023

#### License Renewals

(1) Each applicant for license renewal shall submit to the Board on or before May 1 of each even numbered year a completed license renewal application, CE log and appropriate renewal fee. The renewal fees are non-refundable.

(2) Failure to submit a renewal application, CE log and appropriate fee by May 1 may result in a civil penalty imposed on the applicant.

Stat. Auth.: ORS 675.320(10)(11)  
Stats. Implemented: ORS 675.336 & 675.337  
Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2004, f. & cert. ef. 6-3-04; OTLB 1-2008, f. 11-25-08, cert. ef. 1-1-09

### 339-010-0030

#### Supervised Field Work

For purposes of ORS 675.240(1) and 675.250(4), applicants who have successfully completed training and experience in the practice of occupational therapy as part of a planned program of study in an occupational therapist or occupational therapy assistant educational program approved by the Board shall be considered to have received supervised field work.

Stat. Auth.: ORS 675.320(10)  
Stats. Implemented: ORS 675.210(4), 675.240(1) & (2), 675.250(2) & (3), 675.300(1)(a) & 675.320(11)  
Hist.: OTLB 2-1986, f. & ef. 6-27-86; OTLB 1-1999, f. & cert. ef. 10-27-99

### 339-010-0035

#### Statement of Supervision for Occupational Therapy Assistant

(1) Any person who is licensed as an occupational therapy assistant may assist in the practice of occupational therapy only under the supervision of a licensed occupational therapist.

(2) Before an occupational therapy assistant assists in the practice of occupational therapy, he/she must file with the Board a current statement of supervision of the licensed occupational therapist who will supervise the occupational therapy assistant.

(3) An occupational therapy assistant always requires at least general supervision.

(4) The supervising occupational therapist shall provide closer supervision where professionally appropriate.

(5) The supervisor, in collaboration with the supervisee, is responsible for setting and evaluating the standard of work performed.

Stat. Auth.: ORS 675.320(11), (13) & (14)  
Stats. Implemented: ORS 675.210(4)  
Hist.: OTLB 2-1986, f. & ef. 6-27-86; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2008, f. 11-25-08, cert. ef. 1-1-09

### 339-010-0040

#### Limited Permit

(1) Students who have successfully completed the educational and field work requirements and students who receive their eligibility to take the NBCOT certification examination, but do not yet have their test results, may apply for a limited permit to practice occupational therapy under at least routine supervision (as defined in OAR 339-010-0005(1)(b)) of an Oregon licensed occupational therapist.

(2) Persons practicing occupational therapy in another country who are graduates of a World Federation of Occupational Therapists' approved school may apply for a limited permit. Applicants must present proof of eligibility to take the next certification exam.

(3) Applicants under sections (1) and (2) of this rule:

(a) Shall submit an application on a form provided by the Board with payment of a permit fee of \$25;

(b) Must submit an official transcript and/or other verification of having successfully completed academic and supervised field work requirements as set forth in ORS 675.240 and 675.250;

(c) Must show evidence of being approved to take the next certification examination.

(4) An Oregon licensed occupational therapist must sign the limited permit application verifying a supervisory role to the applicant.

(5) A limited permit may not be issued to applicants who have taken and failed the certification examination, and limited permits may not be renewed.

(6) A person who fails the exam must immediately surrender the limited permit upon receipt of examination scores.

(7) The Board may grant an extension of a limited permit to persons who, because of extenuating circumstances, are unable to take the scheduled certification examination. Request must be made in writing to the Board.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310  
Stats. Implemented: ORS 675.320(13)  
Hist.: OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-2006, f. & cert. ef. 12-28-06

### 339-010-0050

#### Occupational Therapy Services for Children and Youth in Education and Early Childhood Programs regulated by federal laws

(1) Definitions: This rule applies to all occupational therapy practitioners who include both occupational therapists and occupational therapy assistants as defined in OAR 339-010-0005. All other rules regarding Occupational Therapy practitioners apply notwithstanding what is found in these rules as they apply to practitioners in the education setting.

(a) "Children and youth" refers to a child or student determined to be eligible for services under IDEA or Section 504. Part B under IDEA describes requirements for the provision of special education services for preschool and school-age children and youth, ages 3 through 21 years. Part C, or the early intervention program, focuses on services for infants and toddlers with disabilities and their families. Section 504 and the Americans With Disabilities Act (ADA 1990) define a person with a disability as "any person who has a physical or mental impairment that substantially limits one or more major life activities..." and require a public school system to provide needed accommodations or services.

(b) "Service plans" document the program of services and supports necessary to meet a child's developmental or educational needs under the IDEA. These specify the need for occupational therapy services and include: the individualized family services plan (IFSP) for infants, toddlers and preschoolers; the individualized education plan (IEP) or a Section 504 Plan for school-age youth.

(c) "Educational or developmental goals" are developed collaboratively by a multi-disciplinary early intervention or educational team, which includes an occupational therapist as a related service provider, when areas of occupational performance have been identified.

(d) "Natural environment" refers to the most appropriate setting for the child to develop the skills needed for occupational performance.

(e) "Educational environments" refers to home; community; day care; preschool, or the general and special education settings.

(f) "Evaluation" is the process of gathering information to make decisions about a student's or child's strengths and educational or developmental needs.

(g) "Assessments" are the specific methods or measures used to gather data for the evaluation.

(2) The Occupational Therapy Process:

(a) Evaluation: The occupational therapist is responsible for the occupational therapy evaluation.

(A) The occupational therapist selects assessment methods that focus on identifying factors that act as supports or barriers to engagement in occupations. The initial occupational therapy evaluation should include analysis of the child's ability to access the natural or educational environment for learning.

(B) The occupational therapist must participate in decisions about the need for occupational therapy services, development of functional, measurable goals and determining which educational or developmental goals occupational therapy will support.

(C) The occupational therapist determines the types, frequency and duration of interventions, as well as accommodations and modifications of the environment.

(D) Screening to determine the need for an occupational therapy evaluation does not constitute initiation of occupational therapy services.



(b) Intervention: The occupational therapy practitioner may implement occupational therapy services, along a continuum, which may include the following:

(A) Direct intervention is the therapeutic use of occupations and activities with the child present, individually or in groups.

(B) Consultation is collaborative problem solving with parents, teachers, and other professionals involved in a child's program.

(C) The education process is imparting generalized knowledge and information about occupation and activity and does not address an individual child's specific education plan.

(c) Outcomes: The occupational therapist should review the intervention on an ongoing basis and dependent on the child's response, modify as needed.

(3) Delegation of therapeutic activities:

(a) The occupational therapy practitioner may instruct others, such as educational or daycare staff, to carry out a specific activity or technique designed to support the child's the performance.

(b) The designated person must be able to demonstrate the technique as instructed, recount the restrictions, safety factors and precautions.

(c) The occupational therapy practitioner is responsible for ongoing monitoring of the trained person and modifying the procedures based on outcomes and other changes.

(d) When considering the delegation of techniques the child's health and safety must be maintained at all times.

(4) Documentation:

(a) The occupational therapy practitioner must document evaluation, goals, interventions and outcomes if they are not included in the service plan.

(b) Documentation should reflect the child's current status, progress towards goals, response to interventions, and strategies that were promising or ineffective.

(c) The occupational therapist must utilize a method of data collection that allows for concise and accurate recording of intervention and progress.

(d) The occupational therapy practitioner is responsible for the analysis of data collected to verify progress and the documentation of their own activities to accomplish the goals.

(e) School records shall be kept for a minimum of seven years.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented: ORS 675.210(4), 675.240(1) & (2), 675.250(2) & (3), 675.300(1)(a) & 675.320(11)

Hist.: OTLB 2-1993(Temp), f. & cert. ef. 7-1-93; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2005, f. & cert. ef. 8-11-05; OTLB 1-2008, f. 11-25-08, cert. ef. 1-1-09; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11

### 339-010-0055

#### Occupational Therapy Aides Tasks

(1) An "aide" is a person who provides support services to an occupational therapist and occupational therapy assistant, but is not licensed by the Occupational Therapy Licensing Board. Any aide who is working with or supporting patients, and is performing activities covered under the occupational therapy plan of treatment, is considered an occupational therapy aide. The occupational therapy practitioner is responsible for the overall use and actions of the aide, and must ensure the competency of the aide performing the assigned tasks.

(2) An occupational therapist or occupational therapy assistant may supervise the aide. When the aide is performing treatment related tasks, the supervising occupational therapy practitioner must be within sight or earshot of the aide, and must be immediately available at all times to provide in-person direction, assistance, advice, or instruction to the aide.

(3) Treatment related tasks that the aide may assist with under the direct supervision of the occupational therapy practitioner include:

(a) Routine transfers;

(b) Routine care of patient's personal needs during the course of treatment;

(c) Execution of a well-established routine activity and/or exercise;

(d) Assisting the occupational therapy practitioner as directed during the course of treatment.

(4) Non-treatment related tasks that may be performed by the occupational therapy aide include:

(a) Clerical;

(b) Secretarial;

(c) Housekeeping;

(d) Supply ordering;

(e) Equipment maintenance;

(f) Fabrication of generic strapping material for splints;

(g) Transporting patients;

(h) Preparation of the work area or equipment.

(5) An aide does not provide skilled occupational therapy services in any practice setting. These rules do not apply to school aides and occupational therapists working in school settings. The rules on aides in the education setting are found in OAR 339-010-0050.

Stat. Auth.: ORS 675.320(11)

Stats. Implemented: ORS 675.320(11)

Hist.: OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2006, f. & cert. ef. 12-28-06

## DIVISION 20

### CONTINUING EDUCATION

#### 339-020-0000

##### Continuing Education Defined

Continuing education (CE) is participation in courses, classes, workshops and other means for the purpose of developing and updating professional skills to provide appropriate occupational therapy services.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented:

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94

#### 339-020-0010

##### CE Requirements for Current Licensees

(1) All current licensees shall obtain a minimum of 30 points of CE from Board approved categories during the two years immediately preceding the date of the license renewal.

(2) Exception: Current licensees who have had their licenses for less than two full years, but more than one year, shall obtain a minimum of 15 points of CE from Board approved categories during the year immediately preceding the date of the license renewal.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented:

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94; OTLB 1-2005, f. & cert. ef. 8-11-05

#### 339-020-0015

##### One-time requirement for CE on Pain Management

(1) After January, 2008, a one-time requirement of 7 points of CE on Pain Management must be completed as part of the 30 points of CE defined in OAR 339-020-0020.

(2) All currently licensed Occupational Therapists and Occupational Therapy Assistants who renew their license in May, 2010 must complete the one-hour online Oregon Pain Commission class and six additional points of CE on Pain Management. Any classes provided by the Pain Commission will count toward the 7 points. Licensees may use any CE points on Pain Management taken between 2006 and their renewal date in May, 2010.

(3) All new applicants for Occupational Therapy and Occupational Therapy Assistants must complete the one-time requirement of 7 points of CE on Pain management (including the one online hour offered by the Pain Commission) prior to their next renewal or within two years of license in Oregon, whichever comes later.

Stat. Auth.: ORS 675.320

Stats. Implemented:

Hist.: OTLB 1-2008, f. 11-25-08, cert. ef. 1-1-09

#### 339-020-0020

##### CE Categories and Points

These numbers refer to a two year total of 30 points. Credit for CE shall be calculated on a point basis in the following categories and must relate to occupational therapy services. It is the responsibility of the licensee to demonstrate how specific classes contribute to the development of the occupational therapy skills. "Application to OT Services" (CE Log) must be included for credit. Unless stated otherwise, one point equals one contact hour. Sixteen to 30 required CE points must come from categories 1-11. A limit of 14 of the required CE points may be accrued from categories 12-18.

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(1) Attendance at university, college or vocational technical adult education courses at or above practice level: Four points per credit hour. Documentation of successful completion required.

(2) Attendance at seminars, workshops, or institutes: One point per direct hour of content.

(3) Completion of educational telecommunication network or on-line courses: Points as awarded by certificate or per credit, see (1). Certificate of successful completion required.

(4) Attendance at educational sessions relating to occupational therapy sponsored by OTAO, AOTA, AOTA approved providers, and NBCOT or professional academic institutions relating to occupational therapy: One point per hour of attendance. Certificate of attendance required.

(5) Satisfactory completion of American Occupational Therapy Association approved courses/materials or courses/materials offered by AOTA approved providers: Points per certificate on completion. Documentation of satisfactory completion required.

(6) Publication — Copy of publications required.

(a) Publication of article in non-peer reviewed publication (e.g. OT Practice, SIS Quarterly, Advance, etc.): Five points per article.

(b) Publication of article in peer-reviewed professional publication (e.g. journals, book chapter, research paper): Ten points per article.

(c) Publication of chapter(s) in occupational therapy or related textbook: Ten points per chapter.

(7) Professional presentation (person presenting): Presentation must be at practice level for credit, e.g. CNA training would not be acceptable: Two points per hour with no additional points for subsequent presentation of same content. Course outline must be provided.

(8) Development of alternative media (computer software, video or audio tapes): Three points/hr of finished product. Outline required.

(9) Completing requirements for occupational therapy specialty certification (initial or recertification one time only for each specialty): 12 points. Copy of certificate required.

(10) Research, provided an abstract of the research is retained to prove participation: Principal — Eight points. Associate — Six points.

(11) Development and implementation of a school approved Level II student program (one time only and completed within a year): Four points. Copy of program must be provided.

(12) In-service training: One point per hour of attendance.

(13) Attendance at videotaped presentations of educational courses, seminars, workshops or institutes (group viewing with discussion): One-half point per direct hour of viewing with additional points for discussion, not to exceed seven points.

(14) Student supervision, Level I Fieldwork: One point for 8 hours of supervision.

(15) Student supervision, Level II Fieldwork: One point for 8 hours of supervision.

(16) Mentoring; as defined in OAR-339-010-0005(5): One point for every eight hours contract mentoring with documentation. Points may be obtained for both the mentor and the mentee.

(17) Professional leadership on a Board or Commission relating to OT — Volunteer services to organizations, populations, and individuals that advance the reliance on and use of one's occupational therapy skills and experiences to the volunteer setting or experience: 10 hours equal two points. Up to four points a year with documentation.

(18) Re-Entry Supervisors: Therapists providing supervision under OAR 339-010-0016: One point for 8 hours.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented: ORS 675.210(4), 675.240(1) & (2), 675.250(2) & (3), 675.300(1)(a) & 675.320(11)

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2003, f. & cert. ef. 3-4-03; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05

### 339-020-0080

#### CE Certification

(1) Persons seeking to renew their license or to restore a lapsed license shall submit with their application a signed statement certifying that they have completed CE requirements set forth in these rules.

(2) Licensees must maintain a record of continuing education for a minimum of four years and provide these records to the Board upon request.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented:

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94

### 339-020-0090

#### Waiver

The Board may, in individual cases involving physical disability or illness, or undue hardship, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports. Applications for waiver shall be made to the Board in writing at least two months prior to license expiration.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented:

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94

### 339-020-0100

#### Mentorship between licensees for CE Credit

For purposes of mentorship between licensed occupational therapy practitioners, in order to obtain CE credit:

(1) Enter into a written mentorship agreement signed by both parties that includes a detailed description of the planned and collaborative experience and the goals to be achieved under the plan;

(2) Provide written documentation signed and dated by both parties that the mentorship was successfully completed, if requested by the Board.

(3) Both the mentor and the mentee may obtain CE credit under OAR 339-020-0020.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented: ORS 657.320(12)

Hist.: OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05