ARTICLE 40.5 270

OCCUPATIONAL THERAPY PRACTICE ACT

12-40.5-101. Short title. (1) The SHORT TITLE of this article shall be known and may be cited as 270 IS the "Occupational Therapy Practice Act".

12-40.5-102. Legislative declaration. (1) The general
assembly hereby finds, determines, and declares that:

(a) Occupational therapy services are provided for the purpose of promoting health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction;

(b) 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;

(c) This act ARTICLE 270 is necessary to:
   (I) Safeguard the public health, safety, and welfare; and
   (II) Protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this act ARTICLE 270 to regulate persons who are representing themselves as occupational therapists AND OCCUPATIONAL THERAPY ASSISTANTS and who are performing services that constitute occupational therapy. <{Recommend including OTAs in the legislative declaration. OK?}>

12-270-103. Applicability of common provisions. Articles 1, 20, and 30 of this title 12 APPLY, ACCORDING TO THEIR TERMS, TO THIS ARTICLE 270.

12-270-104. [Formerly 12-40.5-103] Definitions. As used in this article 270, unless the context otherwise requires:

(1) "Activities of daily living" means activities that are oriented toward taking care of one's own body, such as bathing, showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, personal hygiene and grooming, sexual activity, sleep, rest, and toilet hygiene.

(2) "Aide" means a person who is not licensed by the director and who provides supportive services to occupational therapists and occupational therapy assistants.

(3) "Department" means the department of regulatory agencies. <{Redundant with definitions common provision, 12-1-103 (1).}>

(4) "Director" means the director of the division of professions and occupations. <{Redundant with definitions common provision, 12-20-102 (6).}>

(5) "Division" means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S. <{Redundant with definitions common provision, 12-20-102 (7).}>

(6) "Instrumental activities of daily living" means activities that are oriented toward interacting with the environment and that may be complex. These activities are generally optional in nature and may be delegated to another person. "Instrumental activities of daily living" include care of others, care of pets, child-rearing, communication device use, community mobility, financial management, health management and maintenance, home establishment and management, meal preparation and cleanup, safety procedures and
emergency responses, and shopping.

(6.5) "Licensee" means a person licensed under this article as an occupational therapist or occupational therapy assistant. <Redundant with definitions common provision, 12-20-102 (10).> 

(7) (4) "Low vision rehabilitation services" means the evaluation, diagnosis, management, and care of the low vision patient in visual acuity and visual field as it affects the patient's occupational performance, including low vision rehabilitation therapy, education, and interdisciplinary consultation.

(8) (5) "Occupational therapist" means a person licensed to practice occupational therapy under this article 270.

(9) (6) "Occupational therapy" means the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. The practice of occupational therapy includes:

(a) Methods or strategies selected to direct the process of interventions such as:

(I) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;

(II) Compensation, modification, or adaptation of an activity or environment to enhance performance;

(III) Maintenance and enhancement of capabilities without which performance of everyday life activities would decline;

(IV) Promotion of health and wellness to enable or enhance performance in everyday life activities; and

(V) Prevention of barriers to performance, including disability prevention;

(b) Evaluation of factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

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

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

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

(IV) Performance skills, including motor, process, and communication and interaction skills;

(c) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

(I) Therapeutic use of occupations, exercises, and activities;

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

(III) Identification, development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions, sensory processing, and behavioral skills;

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

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

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

(VII) Consultative services to groups, programs, organizations, or communities;

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

(IX) Assessment, design, fabrication, application, fitting, and training in assistive technology and adaptive and orthotic devices and training in the use of prosthetic devices, excluding glasses, contact lenses, or other prescriptive devices to correct vision unless prescribed by an optometrist;

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

(XI) Driver rehabilitation and community mobility;

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

(XIII) Application of physical agent modalities and therapeutic procedures such as wound management; techniques to enhance sensory, perceptual, and cognitive processing; and manual techniques to enhance performance skills; and

(XIV) The use of telehealth pursuant to rules as may be adopted by the director.

(7) "Occupational therapy assistant" means a person licensed under this article to practice occupational therapy under the supervision of and in partnership with an occupational therapist.

(8) "Supervision" means the giving of aid, directions, and instructions that are adequate to ensure the safety and welfare of clients during the provision of occupational therapy by the occupational therapist designated as the supervisor. Responsible direction and supervision by the occupational therapist shall include consideration of factors such as level of skill, the establishment of service competency, experience, work setting demands, the complexity and stability of the client population, and other factors. Supervision is a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services and the occupational therapist is legally accountable for occupational therapy services provided by the occupational therapy assistant and the aide.

(9) "Vision therapy services" means the assessment, diagnosis, treatment, and management of a patient with vision therapy, visual training, visual rehabilitation,
orthoptics, or eye exercises.

12-270-105. [Formerly 12-40.5-104] Use of titles restricted. (1) Only a person
licensed as an occupational therapist may use the title "occupational therapist licensed",
"licensed occupational therapist", "occupational therapist", or "doctor of occupational
"O.T.R./L.", or any other generally accepted terms, letters, or figures that indicate that the
person is an occupational therapist.

(2) Only a person licensed as an occupational therapy assistant may use the title
"occupational therapy assistant licensed" or "licensed occupational therapy assistant", use
the abbreviation "O.T.A./L." or "C.O.T.A./L.", or use any other generally accepted terms,
letters, or figures indicating that the person is an occupational therapy assistant.

12-270-106. [Formerly 12-40.5-105] License required - occupational therapists
- occupational therapy assistants.

(1) Repealed.

(2) (1) (a) On and after June 1, 2014, except as otherwise provided in this article 270,
a person shall not practice occupational therapy or represent himself or herself as being able
to practice occupational therapy in this state without possessing a valid license issued by the
director in accordance with this article 270 and rules adopted pursuant to this article 270.

(b) On June 1, 2014, each active occupational therapy registration becomes an active
occupational therapy license by operation of law. The conversion from registration to
licensure does not:

(I) Affect any prior discipline, limitation, or condition imposed by the director on an
occupational therapist's registration;

(II) Limit the director's authority over any registrant; or

(III) Affect any pending investigation or administrative proceeding.

(c) The director shall treat any application for an occupational therapy registration
pending on June 1, 2014, as an application for licensure, which application is subject to the
requirements established by the director.

(3) (2) On and after June 1, 2014, except as otherwise provided in this article 270,
a person shall not practice as an occupational therapy assistant or represent himself or herself
as being able to practice as an occupational therapy assistant in this state without possessing
a valid license issued by the director in accordance with this article 270 and any rules
adopted under this article 270.

12-270-107. [Formerly 12-40.5-106] Licensure of occupational therapists -
application - qualifications - rules. (1) Educational and experiential requirements.
Every applicant for a license as an occupational therapist must have:
(a) Successfully completed the academic requirements of an educational program for
occupational therapists that is offered by an institution of higher education and accredited
by a national, regional, or state agency recognized by the United States secretary of
education, or another such program accredited thereby and approved by the director.

(b) Successfully completed a minimum period of supervised fieldwork experience
required by the recognized educational institution where the applicant met the academic
requirements described in paragraph (a) of this subsection (1) SUBSECTION (1)(a) OF THIS
SECTION. The minimum period of fieldwork experience for an occupational therapist is
twenty-four weeks of supervised fieldwork experience or satisfaction of any generally
recognized past standards that identified minimum fieldwork requirements at the time of
graduation.

(2) Application. (a) When an applicant has fulfilled the requirements of subsection
(1) of this section, the applicant may apply for examination and licensure upon payment of
a fee in an amount determined by the director. A person who fails an examination may apply
for reexamination upon payment of a fee in an amount determined by the director.

(b) The application shall be in the form and manner designated by the director.

(3) Examination. Each applicant shall pass a nationally recognized examination
approved by the director that measures the minimum level of competence necessary for
public health, safety, and welfare.

(4) Licensure. When an applicant has fulfilled the requirements of subsections (1)
to (3) of this section, the director shall issue a license to the applicant; except that the
director may deny a license if the applicant has committed any act that would be grounds for
disciplinary action under section 12-40.5-110 12-270-114.

(5) Licensure by endorsement. (a) An applicant for licensure by endorsement must
file an application and pay a fee as prescribed by the director and must hold a current, valid
license or registration in a jurisdiction that requires qualifications substantially equivalent
to those required by subsection (1) of this section for licensure.

(b) An applicant for licensure by endorsement must submit with the application
verification that the applicant has actively practiced for a period of time determined by rules
of the director or otherwise maintained competency as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this
subsection (5) SUBSECTIONS (5)(a) AND (5)(b) OF THIS SECTION, the director shall review the
application and make a determination of the applicant's qualification to be licensed by
endorsement.

(d) The director may deny the application for licensure by endorsement if the
applicant has committed an act that would be grounds for disciplinary action under section
12-40.5-110 12-270-114.

(6) License renewal. (a) An occupational therapist must renew his or her license
issued under this article according to a schedule of renewal dates established by the director.
The occupational therapist must submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

(b) Licenses issued under this section are renewed or reinstated in accordance with the schedule established by the director, and the director shall grant a renewal or reinstatement pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If an occupational therapist fails to renew his or her license pursuant to the schedule established by the director, the license expires subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and (2). Any person whose license expires is subject to the penalties provided in this article 270 or section 24-34-102 (8), C.R.S., for reinstatement 12-20-202 (1).

(7) Fees. All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S. (Redundant with disposition of fees common provision, 12-20-105. Recommend repeal.)

12-270-108. [Formerly 12-40.5-106.5] Occupational therapy assistants - licensure - application - qualifications - rules. (1) Educational and experiential requirements. Every applicant for a license as an occupational therapy assistant must have:

(a) Successfully completed the academic requirements of an educational program for occupational therapy assistants that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another such program accredited thereby and approved by the director.

(b) Successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in paragraph (a) of this subsection (1) of this section. The minimum period of fieldwork experience for an occupational therapy assistant is sixteen weeks of supervised fieldwork experience or satisfaction of any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation.

(2) Application. (a) When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for licensure upon payment of a fee in an amount determined by the director.

(b) The applicant must submit an application in the form and manner designated by the director.

(3) Examination. Each applicant must pass a nationally recognized examination, approved by the director, that measures the minimum level of competence necessary for public health, safety, and welfare.
(4) **Licensure.** When an applicant has fulfilled the requirements of subsections (1) to (3) of this section, the director shall issue a license to the applicant; except that the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section **12-40.5-110** 12-270-114.

(5) **Licensure by endorsement.** (a) An applicant for licensure by endorsement must file an application and pay a fee as prescribed by the director and must hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required for licensure by subsection (1) of this section.

   (b) An applicant for licensure by endorsement must submit with the application verification that the applicant has actively practiced as an occupational therapy assistant for a period of time determined by rules of the director or otherwise maintained competency as an occupational therapy assistant as determined by the director.

   (c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (5) SUBSECTIONS (5)(a) AND (5)(b) OF THIS SECTION, the director shall review the application and make a determination of the applicant's qualification to be licensed by endorsement as an occupational therapy assistant.

   (d) The director may deny the license if the applicant has committed an act that would be grounds for disciplinary action under section **12-40.5-110** 12-270-114.

(6) **License renewal.** (a) An occupational therapy assistant must renew his or her license issued under this article according to a schedule of renewal dates established by the director. The occupational therapy assistant must submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

   (b) Licenses ISSUED UNDER THIS SECTION are renewed or reinstated in accordance with the schedule established by the director, and the director shall grant a renewal or reinstatement pursuant to section **24-34-102** (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section **24-34-105**, C.R.S. If an occupational therapy assistant fails to renew his or her license pursuant to the schedule established by the director, the license expires SUBJECT TO THE RENEWAL, EXPIRATION, REINSTATEMENT, AND DELINQUENCY FEE PROVISIONS SPECIFIED IN SECTION **12-20-202** (1) AND (2). Any person whose license expires is subject to the penalties provided in this article **270** or section **24-34-102** (8), C.R.S., for reinstatement **12-20-202** (1). *(Redundant with renewal / reinstatement / fees common provision, 12-20-202. Recommend amending as indicated.)*

**12-270-109.** [Formerly 12-40.5-107] **Supervision of occupational therapy assistants and aides.** (1) An occupational therapy assistant may practice only under the supervision of an occupational therapist who is licensed to practice occupational therapy in this state. The occupational therapist is responsible for occupational therapy evaluation,
appropriate reassessment, treatment planning, interventions, and discharge from occupational therapy services based on standard professional guidelines. Supervision of an occupational therapy assistant by an occupational therapist is a shared responsibility. The supervising occupational therapist and the supervised occupational therapy assistant have legal and ethical responsibility for ongoing management of supervision, including providing, requesting, giving, or obtaining supervision. The supervising occupational therapist shall determine the frequency, level, and nature of supervision with input from the occupational therapy assistant and shall base the supervision determination on a variety of factors, including the clients' required level of care, the treatment plan, and the experience and pertinent skills of the occupational therapy assistant.

(2) The supervising occupational therapist shall supervise the occupational therapy assistant in a manner that ensures that the occupational therapy assistant:
   (a) Does not initiate or alter a treatment program without prior evaluation by and approval of the supervising occupational therapist;
   (b) Obtains prior approval of the supervising occupational therapist before making adjustments to a specific treatment procedure; and
   (c) Does not interpret data beyond the scope of the occupational therapy assistant's education and training.

(3) An aide shall function only under the guidance, responsibility, and supervision of an occupational therapist or occupational therapy assistant. The aide shall perform only specifically selected tasks for which the aide has been trained and has demonstrated competence to the occupational therapist or occupational therapy assistant. The supervising occupational therapist or occupational therapy assistant shall supervise the aide in a manner that ensures compliance with this subsection (3) and is subject to discipline under section 12-40.5-110 12-270-114 for failure to properly supervise an aide.

12-270-110. [Formerly 12-40.5-108] Scope of article - exclusions. (1) This article does not prevent or restrict the practice, services, or activities of:
   (a) A person licensed or otherwise regulated in this state by any other law from engaging in his or her profession or occupation as defined in the article under which he or she is licensed;
   (b) A person pursuing a course of study leading to a degree in occupational therapy at an educational institution with an accredited occupational therapy program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision;
   (c) A person fulfilling the supervised fieldwork experience requirements of section 12-40.5-106 (1) 12-270-107 (1) if the experience constitutes a part of the experience necessary to meet the requirement of section 12-40.5-106 (1) 12-270-107 (1) and the person acts under appropriate supervision; or
(d) Occupational therapy in this state by any legally qualified occupational therapist
from another state or country when providing services on behalf of a temporarily absent
occupational therapist licensed in this state, so long as the unlicensed occupational therapist
is acting in accordance with rules established by the director. The unlicensed practice must
not be of more than four weeks' duration, and a person shall not undertake unlicensed
practice more than once in any twelve-month period.

12-270-111. [Formerly 12-40.5-109] Limitations on authority. Nothing in this
article shall be construed to authorize an occupational therapist to engage in the practice
of medicine, as defined in section 12-36-106; physical therapy, as defined in
article 44; vision therapy services or low vision rehabilitation services, except under the referral, prescription, supervision, or comanagement of an ophthalmologist
or optometrist; or any other form of healing except as authorized by this article 270.

12-270-112. [Formerly 12-40.5-109.3] Continuing professional competency -
definition. (1) (a) Each occupational therapist and occupational therapy assistant shall
maintain continuing professional competency to practice occupational therapy.
(b) The director shall establish a continuing professional competency program that
includes, at a minimum, the following elements:
(I) A self-assessment of the knowledge and skills of a licensee seeking to renew or
reinstate a license;
(II) Development, execution, and documentation of a learning plan based on the
self-assessment described in subparagraph (I) of this paragraph (b) SUBSECTION (1)(b)(I)
OF THIS SECTION; and
(III) Periodic demonstration of knowledge and skills through documentation of
activities necessary to ensure at least minimal ability to safely practice the profession; except
that an occupational therapist or occupational therapy assistant licensed pursuant to this
article need not retake the examination required by section 12-40.5-106.5 (3) 12-270-107
(3) or 12-40.5-106.5 (3) 12-270-108 (3), respectively, for initial licensure.
(2) A licensee satisfies the continuing competency requirements of this section if the
licensee meets the continuing professional competency requirements of one of the following
entities:
(a) An accrediting body approved by the director; or
(b) An entity approved by the director.
(3) (a) After the program is established, a licensee must satisfy the requirements of
the program in order to renew or reinstate a license to practice occupational therapy.
(b) The requirements of this section apply to individual occupational therapists and
occupational therapy assistants, and nothing in this section requires a person who employs
or contracts with an occupational therapist or occupational therapy assistant to comply with
this section.

(4) Records of assessments or other documentation developed or submitted in
connection with the continuing professional competency program:

(a) Are confidential and not subject to inspection by the public or discovery in
connection with a civil action against an occupational therapist, occupational therapy
assistant, or other professional regulated under this title 12; and

(b) May be used only by the director and only for the purpose of determining whether
a licensee is maintaining continuing professional competency to engage in the profession.

(5) As used in this section, "continuing professional competency" means the ongoing
ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to
practice occupational therapy according to generally accepted standards and professional
ethical standards.

12-270-113. [Formerly 12-40.5-109.5] Protection of medical records - licensee's
obligations - verification of compliance - noncompliance grounds for discipline - rules.
(1) Each occupational therapist and occupational therapy assistant responsible for patient
records shall develop a written plan to ensure the security of patient medical records. The
plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records if the licensee dies, retires, or
otherwise ceases to practice or provide occupational therapy services to patients; and

(c) The method by which patients may access or obtain their medical records
promptly if any of the events described in paragraph (b) of this subsection (1) SUBSECTION
(1)(b) of this section occurs.

(2) A licensee shall inform each patient in writing of the method by which the patient
may access or obtain his or her medical records if an event described in paragraph (b) of
subsection (1) SUBSECTION (1)(b) of this section occurs.

(3) Upon initial licensure under this article 270 and upon renewal of a license, the
applicant or licensee shall attest to the director that he or she has developed a plan in
compliance with this section.

(4) A licensee who fails to comply with this section is subject to discipline in
accordance with section 12-40.5-110 12-270-114.

(5) The director may adopt rules reasonably necessary to implement this section.

12-270-114. [Formerly 12-40.5-110] Grounds for discipline - disciplinary
proceedings - definitions - judicial review. (1) The director may take disciplinary action
against a licensee if the director finds that the licensee has represented himself or herself as
a licensed occupational therapist or occupational therapy assistant after the expiration,
suspension, or revocation of his or her license.
(2) The director may revoke, suspend, deny, or refuse to renew a license; place a
licensee on probation; issue a letter of admonition to a licensee TO TAKE DISCIPLINARY OR
OTHER ACTION AS AUTHORIZED IN SECTION 12-20-404 AGAINST, or issue a cease-and-desist
order to, a licensee in accordance with this section AND SECTIONS 12-20-403 AND 12-20-405,
AS APPLICABLE, upon proof that the licensee: <|Redundant with disciplinary actions
common provision, 12-20-404. Recommend amending this subsection as indicated. Also
adding reference to disciplinary procedures common provision, 12-20-403, and
cease-and-desist orders common provision, 12-20-405.|>

(a) Has engaged in a sexual act with a person receiving services while a therapeutic
relationship existed or within six months immediately following termination of the
therapeutic relationship. For the purposes of this paragraph (a) SUBSECTION (2)(a):
(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration, as
defined in section 18-3-401. C.R.S.
(II) "Therapeutic relationship" means the period beginning with the initial evaluation
and ending upon the written termination of treatment.
(b) Has falsified information in an application or has attempted to obtain or has
obtained a license by fraud, deception, or misrepresentation;
(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is
a habitual user of a controlled substance, as defined in section 18-18-102, C.R.S., or other
drugs having similar effects; except that the director has the discretion not to discipline the
licensee if he or she is participating in good faith in a program to end such THE use or abuse
that the director has approved;
(d) (I) Has failed to notify the director, as required by section 12-40.5-114.5
12-30-107 (1), of a physical condition; a physical illness; or a behavioral, mental health, or
substance use disorder that impacts the licensee's ability to provide occupational therapy
services with reasonable skill and safety or that may endanger the health or safety of
individuals receiving services; <|Adding reference to confidential agreements common
provision, 12-30-107, and specifically, to subsection (1), which requires notice to the
director.|>

(II) Has failed to act within the limitations created by a physical illness; a physical
condition; or a behavioral, mental health, or substance use disorder that renders the person
unable to practice occupational therapy with reasonable skill and safety or that may endanger
the health or safety of persons under his or her care; or
(III) Has failed to comply with the limitations agreed to under a confidential
agreement entered pursuant to section 12-40.5-114.5 SECTIONS 12-30-107 AND 12-270-118;
(e) Has violated this article 270 or aided or abetted or knowingly permitted any
person to violate this article 270, a rule adopted under this article 270, or any lawful order
of the director;
(f) Had a license or registration suspended or revoked for actions that are a violation
of this article 270;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or committed an act specified in section 12-40.5-114 12-270-115. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by section SECTIONS 12-20-202 (5) AND 24-5-101. C.R.S.

(h) Has fraudulently obtained, furnished, or sold any occupational therapy diploma, certificate, license, or renewal of a license or record, or aided or abetted such THE act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or registration required to practice occupational therapy in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-40.5-114 SECTIONS 12-30-108 AND 12-270-117; <{Adding reference to mental/physical exams common provision, 12-30-108.}> (k) Has engaged in any of the following activities and practices:

(I) Ordering or performing, without clinical justification, demonstrably unnecessary laboratory tests or studies;

(II) Administering treatment, without clinical justification, that is demonstrably unnecessary; or

(III) An act or omission that is contrary to generally accepted standards of the practice of occupational therapy;

(l) Has failed to provide adequate or proper supervision of a licensed occupational therapy assistant, of an aide, or of any unlicensed person in the occupational therapy practice; or

(m) Has otherwise violated this article 270 or any lawful order or rule of the director.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such THE actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a licensee when the director has reasonable grounds to believe that the licensee has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee or registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article 270.

(5) Disciplinary proceedings shall be conducted in accordance with SECTION 12-20-403 AND article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the
director's discretion. The director has the authority to exercise all powers and duties conferred by this article 270 during the disciplinary proceedings. <{Redundant with disciplinary proceedings common provision, 12-20-403. Recommend amending as indicated.}>  

(6) (a) No later than thirty days following the date of the director's action, an occupational therapist LICENSEE disciplined under this section shall be notified by the director, by a certified letter to the most recent address provided to the director by the occupational therapist LICENSEE, of the action taken, the specific charges giving rise to the action, and the occupational therapist's LICENSEE'S right to request a hearing on the action taken.  

(b) Within thirty days after notification is sent by the director, the occupational therapist LICENSEE may file a written request with the director for a hearing on the action taken. Upon receipt of the request the director shall grant a hearing to the occupational therapist LICENSEE. If the occupational therapist LICENSEE fails to file a written request for a hearing within thirty days, the action of the director shall be final on that date.  

(c) Failure of the occupational therapist LICENSEE to appear at the hearing without good cause shall be deemed a withdrawal of his or her request for a hearing, and the director's action shall be final on that date. Failure, without good cause, of the director to appear at the hearing shall be deemed cause to dismiss the proceeding. <{Should we update "occupational therapist" to "licensee" in subsection (6), above, to include OTAs?}>  

(7) (a) The director may request the attorney general to seek an injunction in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article ACCORDANCE WITH SECTION 12-20-406. <{Redundant with injunctive relief common provision, 12-20-406. Recommend amendment as indicated.}>  

(b)(I) (8) In accordance with article 4 of title 24, C.R.S., and this article 270, AND SECTION 12-20-403, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director. <{Recommend adding reference to disciplinary procedures common provision, 12-20-403.}>  

(H) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (7) is authorized to administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.  

(III) Upon failure of any witness or licensee to comply with a subpoena or process,
the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. If the person or licensee fails to obey the order of the court, the court may hold the person or licensee in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director. *(Redundant with disciplinary procedures common provision, 12-20-403. Recommend repealing.)*

(8) (a) The director, the director’s staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that otherwise might result by reason of the participation. *(Redundant with immunity common provision, 12-20-402. Recommend repeal.)*

(9) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. 12-20-408. *(Redundant with judicial review common provision, 12-20-408. Recommend amending as indicated.)*

(10) An employer of an occupational therapist LICENSEE shall report to the director any disciplinary action taken against the occupational therapist LICENSEE or the resignation of the occupational therapist LICENSEE in lieu of disciplinary action for conduct that violates this article 270. *(Should we update "occupational therapist" to "licensee" in subsection (10), above, to include OTAs?)*

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution. *(Redundant with no deferment common provision, 12-20-404 (2). Recommend repealing.)*

(12) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the director may issue an order to cease and desist the activity. The director
shall set forth in the order the statutes and rules alleged to have been violated, the facts
alleged to have constituted the violation, and the requirement that all unlawful acts or
unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to
paragraph (a) of this subsection (12), the respondent may request a hearing on the question
of whether acts or practices in violation of this article have occurred. The hearing shall be
conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(13) (a) If it appears to the director, based upon credible evidence as presented in a
written complaint by any person, that a person has violated any other provision of this
article, in addition to any specific powers granted pursuant to this article, the director may
issue to the person an order to show cause as to why the director should not issue a final
order directing the person to cease and desist from the unlawful act or unlicensed practice:

(b) A person against whom an order to show cause has been issued pursuant to
paragraph (a) of this subsection (13) shall be notified promptly by the director of the
issuance of the order, along with a copy of the order, the factual and legal basis for the order,
and the date set by the director for a hearing on the order. The notice may be served on the
person against whom the order has been issued by personal service, by first-class, postage
prepaid United States mail, or in another manner as may be practicable. Personal service or
mailing of an order or document pursuant to this paragraph (b) shall constitute notice of the
order to the person.

(c) (I) The hearing on an order to show cause shall be held no sooner than ten and
no later than forty-five calendar days after the date of transmission or service of the
notification by the director as provided in paragraph (b) of this subsection (13). The hearing
may be continued by agreement of all parties based upon the complexity of the matter,
number of parties to the matter, and legal issues presented in the matter, but in no event shall
the hearing be held later than sixty calendar days after the date of transmission or service of
the notification.

(II) If a person against whom an order to show cause was issued pursuant to
paragraph (a) of this subsection (13) does not appear at the hearing, the director may present
evidence that notification was properly sent or served on the person pursuant to paragraph
(b) of this subsection (13) and such other evidence related to the matter as the director deems
appropriate. The director shall issue the order within ten days after the director's
determination related to reasonable attempts to notify the respondent, and the order shall
become final as to that person by operation of law. Such hearing shall be conducted pursuant
to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show
cause was issued is acting or has acted without the required license, or has engaged or is
about to engage in acts or practices constituting violations of this article, the director may
issue a final cease-and-desist order directing the person to cease and desist from further
unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (13), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(14) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an unlicensed act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(15) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(16) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (9) of this section.

(11) THE DIRECTOR MAY ISSUE CEASE-AND-DESIST ORDERS UNDER THE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN SECTION 12-20-405. <{ Subsections (12) - (16) redundant with cease and desist common provision, 12-20-405. Recommend repealing and replacing with cross-reference to cease-and-desist orders common provisions. }>

(17) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action but should not be dismissed as being without merit, the director may send a letter of admonition to the licensee

(b) When the director sends a letter of admonition to a licensee, the director shall notify the licensee of the licensee's right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct described in the letter of admonition.

(c) If the licensee timely requests adjudication, the director shall vacate the letter of admonition and process the matter by means of formal disciplinary proceedings: <{ Redundant with letters of admonition common provision, 12-20-404 (4). Recommend repealing. }>

(18) (12) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, should be dismissed, but the director has noticed conduct by the licensee that could lead to serious
consequences if not corrected; The director may send a confidential letter of concern to the licensee UNDER THE CIRCUMSTANCES SPECIFIED IN SECTION 12-20-404 (5).  

(19) Any person whose license is revoked or who surrenders his or her license to avoid discipline under this section is ineligible to apply for a license under this article for at least two years after the date the license is revoked or surrendered.

12-270-115. [Formerly 12-40.5-111] Unauthorized practice - penalties. A person who practices or offers or attempts to practice occupational therapy without an active license as required by and issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense. For the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.: IS SUBJECT TO PENALTIES PURSUANT TO SECTION 12-20-407 (1)(b).

12-270-116. [Formerly 12-40.5-112] Rule-making authority. The director shall promulgate rules as necessary for the administration of this article PURSUANT TO SECTION 12-20-204.  

12-40.5-113. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without the invalid provision.

12-270-117. [Formerly 12-40.5-114] Mental and physical examination of licensees. (1) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety IN ACCORDANCE WITH SECTION 12-30-108, the director may order the licensee to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Except where due to circumstances beyond the licensee’s control, if the licensee fails or refuses to undergo a mental or physical examination, the director may suspend the licensee’s license until the director has made a determination of the licensee’s fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.
In an order requiring a licensee to undergo a mental or physical examination, the director shall state the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the licensee is deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the grounds that they are privileged communication.

(2) The licensee may submit to the director testimony or examination reports from a physician chosen by the licensee and pertaining to any condition that the director has alleged may preclude the licensee from practicing with reasonable skill and safety. The director may consider the testimony and reports submitted by the licensee in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

12-270-118. [Formerly 12-40.5-114.5] Confidential agreement to limit practice - violation - grounds for discipline. (1) If an occupational therapist or occupational therapy assistant has a physical illness; a physical condition; or a behavioral or mental health disorder that renders the person unable to practice occupational therapy with reasonable skill and safety to clients, the occupational therapist or occupational therapy assistant shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the director. The director may require the occupational therapist or occupational therapy assistant to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the occupational therapist's or occupational therapy assistant's ability to practice occupational therapy with reasonable skill and safety to clients.

(2) (a) Upon determining that an occupational therapist or occupational therapy assistant with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to clients, the director may enter into a confidential agreement with the occupational therapist or occupational therapy assistant in which the occupational therapist or occupational therapy assistant agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by
the director.

(b) As part of the agreement, the occupational therapist or occupational therapy assistant is subject to periodic reevaluation or monitoring as determined appropriate by the director.

c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(3) By entering into an agreement with the director pursuant to this section to limit his or her practice, an occupational therapist or occupational therapy assistant is not engaging in activities that are grounds for discipline pursuant to section 12-40.5-110. The agreement does not constitute a restriction or discipline by the director. However, if the occupational therapist or occupational therapy assistant fails to comply with the terms of the agreement, the failure constitutes a prohibited activity pursuant to section 12-40.5-110 (2)(d), and the occupational therapist or occupational therapy assistant is subject to discipline in accordance with section 12-40.5-110.

(4) This section does not apply to an occupational therapist or occupational therapy assistant subject to discipline for prohibited activities as described in section 12-40.5-110 (2)(e).

SECTION 12-30-107 CONCERNING CONFIDENTIAL AGREEMENTS TO LIMIT PRACTICE APPLIES TO THIS ARTICLE 270.

12-270-119. [Formerly 12-40.5-114.7] Professional liability insurance required - rules. (1) A person shall not practice occupational therapy unless the person purchases and maintains, or is covered by, professional liability insurance in an amount determined by the director by rule that covers all acts within the scope of practice of the occupational therapist or occupational therapy assistant.

(2) This section does not apply to an occupational therapist or occupational therapy assistant who is a public employee acting within the course and scope of the public employee's duties and who is granted immunity under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

12-270-120. [Formerly 12-40.5-115] Repeal of article - review of functions. This article 270 is repealed, effective September 1, 2020. Prior to the Before its repeal, the department of regulatory agencies shall review the director's powers, duties, and functions under this article as provided in section 270 are scheduled for review in accordance with 24-34-104, C.R.S.