



STATE OF WISCONSIN

Department of Safety and Professional Services
1400 E Washington Ave.
Madison WI 53703

Governor Scott Walker

Secretary Dave Ross

Mail to:
PO Box 8935
Madison WI 53708-8935

Email: dsps@wisconsin.gov
Web: <http://dsps.wi.gov>

Voice: 608-266-2112 • FAX: 608-267-0644 • TTY: 608-267-2416

**OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD MEETING
VIRTUAL MEETING/TELECONFERENCE
Room 121A, 1400 E. Washington Avenue, Madison
DPS Contact: Tom Ryan (608) 261-2378
OCTOBER 29, 2013**

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting items may be removed from the agenda. Please consult the meeting minutes for a summary of the actions and deliberations of the Board.

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Introduction of New Board Member(s)

B. Recognition of Board Member(s)

C. Adoption of the Agenda (1-4)

D. Approval of Minutes of April 10, 2013 (5-10)

E. Administrative Updates

1) Staff Changes

a) Introduction of Greg Gasper, Administrator, Division of Policy Development

b) Introduction of Greg DiMiceli, Executive Director

2) Survey on Potential Agency Merger (11-12)

3) Public Board Agenda Request Form

4) Other

F. Review and Discussion of the DPS Economic Impact Report (13-42)

G. Legislative/Administrative Rule Matters

1) Review and Discussion of Scope Statement 165-OT 1, 2, 3 and 4 – Practice Standards (43-46)

2) Review and Approval of Revisions to 165-OT 1, 2, 3 and 4 Relating to Practice Standards and Approve for Submission to the Clearinghouse (47-58)

H. APPEARANCE – Teri Black, WOTA – Scope of Practice Changes (59-60)

I. AOTA 2014 Annual Conference – Board Consideration of Travel (61-62)

J. Informational Items

- 1) Guidance Related to OSEP's Letter to Couillard (**63-66**)

K. Items Added After Preparation of Agenda

- 1) Introductions, Announcements and Recognition
- 2) Presentations of Petition(s) for Summary Suspension
- 3) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 4) Presentation of Final Decisions
- 5) Disciplinary Matters
- 6) Executive Director Matters
- 7) Education and Examination Matters
- 8) Credentialing Matters
- 9) Class 1 Hearing(s)
- 10) Practice Matters
- 11) Legislation/Administrative Rule Matters
- 12) Liaison Report(s)
- 13) Informational Item(s)
- 14) Speaking Engagement(s), Travel, or Public Relation Request(s)

L. Public Comment(s)

CLOSED SESSION

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (Wis. Stat. § 19.85 (1) (a)); consider closing disciplinary investigation(s) with administrative warning(s) (Wis. Stat. § 19.85 (1) (b), and Wis. Stat. § 440.205); consider individual histories or disciplinary data (Wis. Stat. § 19.85 (1) (f)); and to confer with legal counsel (Wis. Stat. § 19.85 (1) (g))

M. 9:45 A.M. - Conducting Oral Examination(s) for 2 candidate(s). (67-68)

N. Presentation and Deliberation on Proposed Stipulations, Final Decisions and Orders by the Division of Legal Services and Compliance (DLSC):

- 1) Susan K. Weisenberger, OT – 12 OTB 003 (**69-76**)
 - o Case Advisor – Brian Holmquist

O. DLSC Matters

- 1) Case Status Report
- 2) Case Closing(s)

P. Deliberation of Items Received after Preparation of Agenda

- 1) Disciplinary Matters
- 2) Education and Examination Matters
- 3) Credentialing Matters
- 4) Class 1 Hearings
- 5) Monitoring Matters
- 6) Professional Assistance Procedure (PAP) Matters
- 7) Petition(s) for Summary Suspensions
- 8) Petition(s) for Extension of Time
- 9) Proposed Stipulations, Final Decisions and Orders

- 10) Administrative Warnings
- 11) Proposed Decisions
- 12) Matters Relating to Costs
- 13) Motions
- 14) Petitions for Rehearing
- 15) Formal Complaints
- 16) Case Closings
- 17) Appearances from Requests Received or Renewed

P. Consulting with Legal Counsel

Q. Ratifying Licenses and Certificates

RECONVENE INTO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

R. Voting on Items Considered or Deliberated on in Closed Session if Voting is Appropriate

S. Open Session Items Postponed to After Closed Session

T. Executive Order 61 – Report from Mylinda Barisas-Matula and Deb McKernan-Ace (77-84)

U. Executive Order 50 – Continued Review of Position Statements (85-92)

V. Training

- 1) Board Member Training
- 2) Case Advisor Training (93-106)

ADJOURNMENT

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**OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD
MINUTES
APRIL 10, 2013**

PRESENT: Mylinda Barisas-Matula, David Cooper, Brian Holmquist, Deborah McKernan-Ace, Dorothy Olson, Corliss Rice (arrived 9:30), Gail Slaughter

STAFF: Tom Ryan, Executive Director; Karen Rude-Evans, Bureau Assistant

CALL TO ORDER

Brian Holmquist, Chair, called the meeting to order at 9:21 a.m. A quorum of six (6) members was confirmed.

ADOPTION OF AGENDA

Amendments:

- Item I 3 a (open)–APPEARANCE: Teri Black, Wisconsin Occupational Therapy Association – Regarding Proposed Rules Concerning Practice Standards OT 1, 2, 3, 4 and 5

MOTION: Gail Slaughter moved, seconded by David Cooper, to adopt the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF OCTOBER 30, 2012

Corrections:

- Under PRESENT, add Gail Slaughter

MOTION: Mylinda Barisas-Matula moved, seconded by Gail Slaughter, to approve the minutes of October 30, 2012 as corrected. Motion carried unanimously.

ADMINISTRATIVE UPDATES

Election of Officers

NOMINATION: Gail Slaughter nominated Brian Holmquist for Board Chair.

Tom Ryan called for nominations a total of three times. Hearing no additional nominations, a vote was called.

Brian Holmquist was elected Board Chair by unanimous vote.

NOMINATION: Deb McKernan-Ace nominated David Cooper for Board Vice Chair.

Tom Ryan called for nominations a total of three times. Hearing no additional nominations, a vote was called.

David Cooper was elected Board Vice Chair by unanimous vote.

NOMINATION: Gail Slaughter nominated Mylinda Barisas-Matula for Board Secretary.

Tom Ryan called for nominations a total of three times. Hearing no additional nominations, a vote was called.

Mylinda Barisas-Matula was elected Board Secretary by unanimous vote.

2013 ELECTION RESULTS	
Chair	Brian Holmquist
Vice Chair	David Cooper
Secretary	Mylinda Barisas-Matula

Liaison Appointments

MOTION: Mylinda Barisas-Matula moved, seconded by Gail Slaughter, to accept the board appointments as outlined below. Motion carried unanimously.

- Screening Panel – Dorothy Olson, David Cooper, and Brian Holmquist
- Credentialing/Education Liaison(s) – Deborah McKernan-Ace and Mylinda Barisas-Matula
- Division of Enforcement Monitoring Liaison – Mylinda Barisas-Matula
- Examination Liaison(s)/Team – Brian Holmquist and Deborah McKernan-Ace
- Legislative Liaison – Brian Holmquist
- PAP Liaison – Gail Slaughter
- Travel Liaison – Gail Slaughter
- Digest Coordinator – no appointment made at this time
- Practice Question Procedure – questions go to legal counsel then to the Board if necessary

Delegation Motion

MOTION: David Cooper moved, seconded by Mylinda Barisas-Matula, to delegate authority to the Chair of the Occupational Therapists Affiliated Credentialing Board, highest ranking officer, or highest ranking member on the Board, to appoint liaisons to the Department where knowledge or experience in the profession is required to carry out the duties of the Board in accordance with the law. Motion carried unanimously.

MONITORING LIAISON

MOTION: Mylinda Barisas-Matula moved, seconded by Gail Slaughter, to adopt the delegated roles and authorities document as presented and approve the model language. Motion carried unanimously.

LEGISLATIVE/ADMINISTRATIVE RULE MATTERS**Executive Order 61**

MOTION: Gail Slaughter moved, seconded by Dorothy Olson, to appoint Mylinda Barisas-Matula and Deb McKernan-Ace to review the rules as regards Executive Order 61. Motion carried unanimously.

Executive Order 50 – Review of Position Statements/FAQ’s

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, to eliminate the position statement “DOES THE DEFINITION OF “PHYSICIAN” INCLUDE A DOCTOR OF OSTEOPATHY AS USED IN S. OT 4.03(2)(A), WIS.ADMIN. CODE?” from the DSPS website. Motion carried unanimously.

MOTION: Dorothy Olson moved, seconded by Mylinda Barisas-Matula, to eliminate the position statement “IS THERE A DIFFERENCE BETWEEN A VERBAL ORDER AND AN ORAL REFFERAL?” from the DSPS website. Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, to eliminate the following two position statements from the DSPS website: “IS THERE A DIFFERENCE BETWEEN A “REFFERAL” ORDER AND A “PHYSICIAN ORDER” AS USED IN S. OT 4.03(2)(D)? and “WHAT TYPES OF OCCUPATIONAL THERAPY SERVICES MAY BE PROVIDED UNDER A “REFERRAL” AS OPPOSED TO A “PHYSICIAN ORDER”?”. Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Deb McKernan-Ace, in the position statement “WHAT TYPE OF DOCUMENT SHOULD LICENSEES MAINTAIN AS PROOF OF HAVING COMPLETED THE REQUIRED CONTINUING EDUCATION?” to strike “proof of payment” and add the correlating citation(s) at the end as a hyperlink. Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, to eliminate the following position statement from the DPSP website: “UNDER S. OT 4.04(4), WIS. ADMIN. CODE, MUST THE SUPERVISING OCCUPATIONAL THERAPIST MEET SIMULTANEOUSLY WITH THE OCCUPATIONAL THERAPY ASSISTANT AND THE CLIENT OR MAY THESE REQUIRED MEETINGS BE HELD SEPARATELY?”. Motion carried unanimously.

MOTION: Mylinda Barisas-Matula moved, seconded by Gail Slaughter, to make the changes to the following position statement and to add code references as a hyperlink.

WHAT ROLE MAY AN CERTIFIED OCCUPATIONAL THERAPY ASSISTANT (COTA) PLAY IN SCREENING OR EVALUATING PATIENTS ~~FOR PHYSICAL FUNCTION?~~

~~Section OT 1.03(1) of the Wisconsin Administrative Code provides that a~~ An COTA may collaborate with an OT in screening or evaluating patients for physical function. Wisconsin Administrative Code Sections OT 4.03(1)(a) and 4.03(3)(a).

Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, in the position statement “MAY AN OCCUPATIONAL THERAPIST BE INVOLVED IN DETERMINING WHETHER THE NEED FOR RESTRAINTS IS AN APPROPRIATE OPTION FOR PATIENTS IN A SKILLED NURSING FACILITY?”, to delete the first sentence through the word “she” and insert “An occupational therapist”, and delete the second sentence and make the code references a hyperlink. (The revisions are outlined below.) Motion carried unanimously.

MAY AN OCCUPATIONAL THERAPIST BE INVOLVED IN DETERMINING WHETHER THE NEED FOR RESTRAINTS IS AN APPROPRIATE OPTION FOR PATIENTS IN A SKILLED NURSING FACILITY?

~~While an occupational therapist is not the ultimate decision maker in determining whether the use of restraints should be used on a patient in a skilled nursing facility, he or she~~ An occupational therapist may participate and provide input during the patient evaluation process. Typically, the physician, in collaboration with other allied health professionals (including OTs), makes the decision as to the use of restraints. See ss. OT 4.02 (2) (e) and 4.03 (2) (a), Wis. Admin. Code.

CLOSED SESSION

Chair Brian Holmquist read the motion to convene to closed session.

MOTION: Gail Slaughter moved, seconded by Deb McKernan-Ace, to convene to closed session to deliberate on cases following hearing (Wis. Stat. 19.85 (1) (a)); consider closing disciplinary investigation(s) with administrative warning(s) (Wis. Stat. 19.85 (1) (b), and Wis. Stat. 440.205); consider individual histories or disciplinary data (Wis. Stat. 19.85 (1) (f)) and to confer with legal counsel (Wis. Stat. 19.85 (1) (g)). Roll Call Vote: Mylinda Barisas-Matula-yes; David Cooper-yes; Brian Holmquist-yes; Deborah McKernan-Ace-yes; Dorothy Olson-yes; Corliss Rice-yes; Gail Slaughter. Motion carried unanimously.

The Board convened into closed session at 10:54 a.m.

RECONVENE TO OPEN SESSSION

MOTION: Deb McKernan-Ace moved, seconded by Gail Slaughter, to reconvene to open session. Motion carried unanimously.

Open session reconvened at 11:59 a.m.

VOTING ON ITEMS CONSIDERED IN CLOSED SESSION IF VOTING IS APPROPRIATE

RATIFICATION OF EXAMINATION SCORES

MOTION: Gail Slaughter moved, seconded by David Cooper, to ratify the exam scores for the oral examination candidates. Motion carried unanimously.

ADJOURNMENT

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 3:41 p.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, on Behalf of Executive Director Thomas Ryan		2) Date When Request Submitted: 10/14/2013 Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Survey On Potential Agency Merger	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Discuss survey			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

We are contacting you today as we would appreciate your feedback (including feedback from your organizations board and members) about possibly merging the Department of Safety and Professional Services (DSPS) and the Department of Agriculture, Trade and Consumer Protection (DATCP). Your input about how this consolidation may impact you is very valuable to us.

The 2013-15 state budget calls for a study about consolidating these two agencies. DSPS manages the licensing and regulation of professions in health, business and construction trades. They also oversee state building safety codes and provide services related to plan review, permit issuance, building and component inspection, and safety codes. DATCP is responsible for the promotion and regulation of Wisconsin's agriculture industry, including Agriculture Resource Management and Animal Health, as well as the oversight of food safety and consumer protection.

We ask that you complete the survey and forward this email to your members for their response so we can better understand how a potential consolidation may affect you. Your answers and contact information will be kept confidential and will not be used outside of the scope of this survey. All survey results will be tallied for any reporting purposes.

[TAKE THE SURVEY – your answers will be kept confidential](#)

Thank you in advance for your participation and input.
Office of Business Development

Note: throughout the survey, you will see the term 'license' which refers to any license, credential, certification, registration or permit. Please view the term to mean the document a state agency issues as a requirement to do business, perform an occupation or specific work activity in the State of Wisconsin.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, on Behalf of Executive Director Thomas Ryan		2) Date When Request Submitted: 10/22/2013 Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Review and Discussion of the DSPS Economic Impact Report	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Tom Ryan will review and discuss the DSPS Economic Impact Report with the Board.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Recent Accomplishments and Economic Footprint Report

Regulating industries that contribute over \$75 billion annually to the Wisconsin economy

September 2013

INTRODUCTION

The regulated professions and industries within the Department of Safety and Professional Services (DSPS) have a significant impact on the economy and the health, safety, and welfare of Wisconsin's residents. This report assesses the contribution of DSPS to Wisconsin's economy specifically focusing on the health care, construction, and real estate industries. Without the Department's regulatory oversight, proper functioning of these industries could not be maintained.

Highlights from this report include:

- Since its creation, DSPS has made great strides to increase responsiveness, drive productivity, and reduce operational costs to meet the increasing demands of its customers while making efficient use of valuable taxpayer dollars.
- Earning \$18 billion annually on average, health and business professionals credentialed by DSPS are a vital component to economic growth in Wisconsin.
- In 2009, health care professionals credentialed by DSPS generated \$40 billion in economic activity, almost 17% of Wisconsin's gross state product.
- With DSPS regulatory oversight, the construction sector safely and competently contributed approximately \$6.9 billion to Wisconsin real gross domestic product (GDP) in 2012.
- With DSPS regulatory oversight, the construction sector provided over 152,000 well-paying jobs to Wisconsin workers in 2011.
- Construction projects regulated by DSPS can be effective economic stimuli that create jobs and increase spending in a wide range of other sectors of the economy.
- With DSPS regulatory oversight, the real estate industry accounted for \$28.2 billion or 12.5% of Wisconsin GDP in 2012
- When a real estate professional credentialed by DSPS sells a home in Wisconsin, it generates over \$13,000 in income from real estate related industries; over \$5,000 in additional expenditures on consumer items such as furniture, appliances, and paint services; and over \$3,000 in expenditures on remodeling within two years of the home purchase.

MISSION

The mission of the Department of Safety and Professional Services is to promote economic growth and stability while protecting the citizens of Wisconsin as designated by statute.

PURPOSE

- competent practice of licensed professionals
- safety of the construction and use of public and private buildings
- compliance with professional and industry standards

The contribution this Department makes to Wisconsin's economy far exceeds these numbers alone, as every day over 380,000 credential holders go to work in a DSPS regulated industry.¹

This report contains four parts. The first section provides a general overview of the Department's roles and responsibilities and describes recent process improvements for greater Departmental productivity. The second section assesses the economic contribution of DSPS through the regulation of the health care industry. The third section examines the impact of DSPS on the Wisconsin economy through the regulation of the construction industry. The fourth section evaluates the economic impact of DSPS through the regulation of the real estate industry.

¹ For a complete list of DSPS regulated industries please visit: <http://dsps.wi.gov/Licenses-Permits/Credentialing>.

GENERAL RESPONSIBILITIES AND RECENT ACCOMPLISHMENTS

DSPS protects the citizens of Wisconsin by ensuring safe and competent practice of licensed professionals and safe and sanitary conditions in public and private buildings. Divisions within DSPS perform a variety of tasks to successfully accomplish this mission.²

DIVISION RESPONSIBILITIES

The Division of Policy Development (DPD) provides administrative support and policy guidance to the professional boards in the state by facilitating board meetings, serving as a liaison between the boards and the Department, and managing the administrative rule promulgation process for self-regulated professions. DPD also manages the administrative rule promulgation process for professions that are directly regulated by the Department. *In 2012, DPD provided administrative services to over 40 boards and councils and facilitated approximately 180 meetings related to board activities.*

The Division of Professional Credential Processing (DPCP) processes all credential applications and oversees credential eligibility, renewal, continuing education requirements, and examination requirements for regulated professions. *Between June of 2011 and June of 2013, DPCP processed roughly 72,000 initial credentials and 212,000 renewals. As of June, 2013, there were over 388,000 active credential holders.*

The Division of Legal Services and Compliance (DLSC) provides legal services to professional boards and the department regarding the investigation and discipline of licensed credential holders for violations of professional regulations. The Division is also responsible for the complaint intake process, monitoring compliance with disciplinary orders, managing a confidential program for impaired professionals, performing audits of trust accounts, and conducting business inspections for pharmacies, drug distributors and manufacturers, funeral establishments, and barber and cosmetology schools and establishments.

The Division of Industry Services (DIS) contains multiple bureaus. The Bureau of Field Services provides services related to construction and operation of buildings, along with ensuring compliance with health and safety codes. The Bureau of Technical Services (BTS) provides services such as plan review, consultation, inspections, and product evaluation. *In 2012, BTS staff completed over 14,000 plan reviews and 100,000 inspections.* The Division also administers the Wisconsin Two-Percent Fire

DSPS protects the citizens of Wisconsin by ensuring safe and competent practice of licensed professionals and safe and sanitary conditions in public and private buildings.

² To achieve greater efficiencies, the DSPS recently recommended the transfer of responsibilities related to petroleum products and storage tank systems. The enactment of 2013 Wisconsin Act 20 transferred these responsibilities to the WI Department of Natural Resources and WI Department of Agriculture, Trade and Consumer Protection.

Dues Payments Program. Funded by fire insurance premiums paid in Wisconsin, DIS distributes payments to municipalities to be used to purchase fire protection equipment, fund fire prevention inspection and public fire education, train fire fighters and fire inspectors, or fund pension or other special funds for disabled or superannuated fire fighters. *In 2013, DIS distributed approximately \$15.9 million to Wisconsin municipalities through the Two-Percent Fire Dues Payments Program.*³

RECENT ACCOMPLISHMENTS

Since its creation, DSPS has made great strides to increase responsiveness, drive productivity, and reduce operational costs to meet the increasing demands of its customers while making efficient use of valuable taxpayer dollars.

Since its creation, DSPS has made great strides to increase responsiveness, drive productivity, and reduce operational costs in order to meet the increasing demands of its customers while making efficient use of valuable taxpayer dollars.

Reducing Prescription Drug Abuse

DPD recently implemented the Wisconsin Prescription Drug Monitoring Program (PDMP). *As a HIPAA⁴-compliant database, the Wisconsin PDMP stores data about controlled substances and other highly abused substances prescribed to individuals in Wisconsin and lawfully discloses the data to authorized individuals.*

Pharmacies and other dispensers of prescription drugs collect and submit data to the PDMP database including information about the prescriber, the dispenser, the drug, and the patient for each prescription. Authorized users may obtain data stored in the PDMP database to verify prescription information. PDMP helps to improve patient care and safety, reduce the abuse and diversion of prescription drugs in Wisconsin, and ensure that patients with a legitimate medical need for the prescription medications are not adversely affected.

Effective June 1, 2010, 2009 Wisconsin Act 362 directed DSPS to manage the operations of PDMP in accordance with the rules and policies developed by the Pharmacy Examining Board. In September of 2011, DSPS received grant funding to manage PDMP. The Pharmacy Examining Board began the administrative rule-writing process on October 1, 2011 and the rules, ch. Phar 18, became effective on January 1, 2013. Since this date, DSPS staff members have travelled the state educating the public through outreach and training events.

³ The Department also contains a Division of Management Services. The Division of Management Services provides administrative services to the Office of the Secretary and all other Divisions within the Department. These services include human resources, payroll, planning, budget, accounting, and information technology.

⁴ Health Insurance Portability and Accountability Act is a Federal legislation designed to improve the portability and continuity of health insurance. Another important objective is to reduce administrative costs for providers and payers while protecting the privacy of health information.

The Wisconsin PDMP became fully operational on June 1, 2013. The Department established memoranda of understanding (MOUs) with sovereign tribes and the Indian Health Services (HIS) to participate in PDMP and participated in several Alcohol and Other Drug Abuse prevention events. PDMP staff continues to strengthen state tribal collaboration through outreach to the Great Lakes Inter-Tribal Council, Inc., tribal leaders, tribal health directors, and tribal law enforcement. *Currently the PDMP database stores approximately 6 million prescription records, 1,800 dispensers submit data, and 3,200 users have query accounts.* DSPS staff seek to further enhance the PDMP database by working to improve processes to allow access to data and exchange data with neighboring states.

The Prescription Drug Monitoring Program will reduce the abuse and diversion of prescription drugs in Wisconsin.

Issuing Licenses More Quickly

DPCP recently developed and piloted the Online License Application System (OLAS) that allows individuals to apply and pay fees for professional credentials online. This system will significantly decrease the turnaround time for applicants to receive their professional credential and begin working in Wisconsin.

OLAS for nursing licenses piloted in spring of 2013 to reduce the processing time of nursing applications and provide schools with an efficient paperless process to approve and submit graduation information to DSPS. A sample of 10 percent showed that DSPS granted OLAS applicants permission to take the required National Council Licensure Examination (NCLEX) one to two business days after the receipt of the OLAS application from the school and *granted OLAS applicants a license one to two business days* after receipt of NCLEX exam results. This processing time is a significant improvement over applications sent by postal mail. Using the paper method it took one to five business days for the application to reach credentialing staff from the mail room and another 17 business days (on average, while waiting for additional paperwork) before DSPS granted permission to take the NCLEX exam. Since the implementation of Nursing OLAS, the processing time between receipt of an application and NCLEX authorization has decreased by 90 percent on average. DPCP is working to expand OLAS to several other professions.

Since the implementation of Nursing OLAS, the processing time between receipt of an application and NCLEX authorization has decreased by 90 percent on average.

DPCP has similarly encouraged applicants to renew their credentials online via the website. *As a result, the percent of online renewals increased from 84% in 2011 to 95% in 2012.* The Division also implemented a live call center that allows customers and the general public to contact the Department via telephone and speak with a live representative to address their immediate concerns.

Creating Efficiencies

In June of 2012, DSPS commenced a paperless office initiative to promote operational effectiveness, a more productive use of space, and simplified processes. DPD began providing electronic board agendas and laptops to board members in place of paper agendas for an *estimated annual savings of \$21,000*. Further, this initiative also allowed for the elimination of 214 file cabinets, 18 bookcases, and 144 feet of open shelving giving the Department the ability to add workstations to its flagship location at 1400 East Washington Avenue. Efforts like this allowed for the Madison-based staff of the Division of Industry Services (DIS) to completely vacate its space at the former Department of Commerce building and move to the East Washington location, *saving the Department roughly \$65,000 each month*.

Industry Services implemented several additional initiatives to increase staff productivity and improve customer satisfaction. First, in the interest of delivering consistent performance and code enforcement, DIS has made great strides at standardizing the inspection process and report format across all division programs. Process improvements include using technology tools to assist field team members in report preparation and submission.

DIS recently implemented electronic plan review saving the Department and its customers valuable time and money. Historically, individuals have submitted paper plans to various locations in the state. Occasionally, specific locations would experience a high volume of plan submittals resulting in increased turnaround time. *Electronic plan review provides for greater organizational flexibility by allowing reviewers all over Wisconsin to share the workload which expedites the plan review process.*

In order to further expedite processes for customers, DIS staff are developing electronic forms for all applications, registrations, and permits that will allow customers to complete the paperwork online. The Division is similarly developing the database management required to electronically process these applications.

Clearing the Red Tape

In compliance with 2012 Executive Order 61, DPD and the professional boards supported by the Division identified and changed administrative rules that hindered job creation and small business growth; such as,

- A less burdensome pathway to licensure for barbers
- A more convenient online open book exam option for funeral directors
- Deletion of a requirement that certain municipalities hire two full-time plumbing inspectors

Boards supported by the division initiated the administrative rule writing process for a number of additional changes as a result of 2012 Executive Order 61, for example:

The Division of Policy Development and the professional boards managed by the Division identified and changed administrative rules that hindered job creation and small business growth including implementing a less burdensome path to licensure for barbers.

- The Optometry Examining Board seeks to allow electronic signatures for prescription eyeglasses, which will allow thousands of optometry patients to enjoy the increased speed and accuracy of electronic prescription eyeglasses.
- The Real Estate Examining Board plans to provide brokers the ability to retain records in electronic format and recognizing the ledger and journaling software widely utilized in the real estate industry.
- The Dentistry Examining Board seeks to reduce unnecessary regulatory burdens on dentistry professionals by eliminating nonessential paperwork associated with the training of unlicensed persons, modernizing rules to allow for electronic authorization of dental laboratory work, and developing guidelines for patient dental record retention removing significant paper storage costs.

DPD has worked to *create predictability* in the enforcement of administrative rules by updating forms to better align with statutory requirements and codifying internal policy procedures; this gives members of the public *clear expectations* of what they can expect when they walk through the doors of our agency. The Division has also greatly *increased transparency* in the rule writing process by using the website to notice public comment periods on all rule projects.

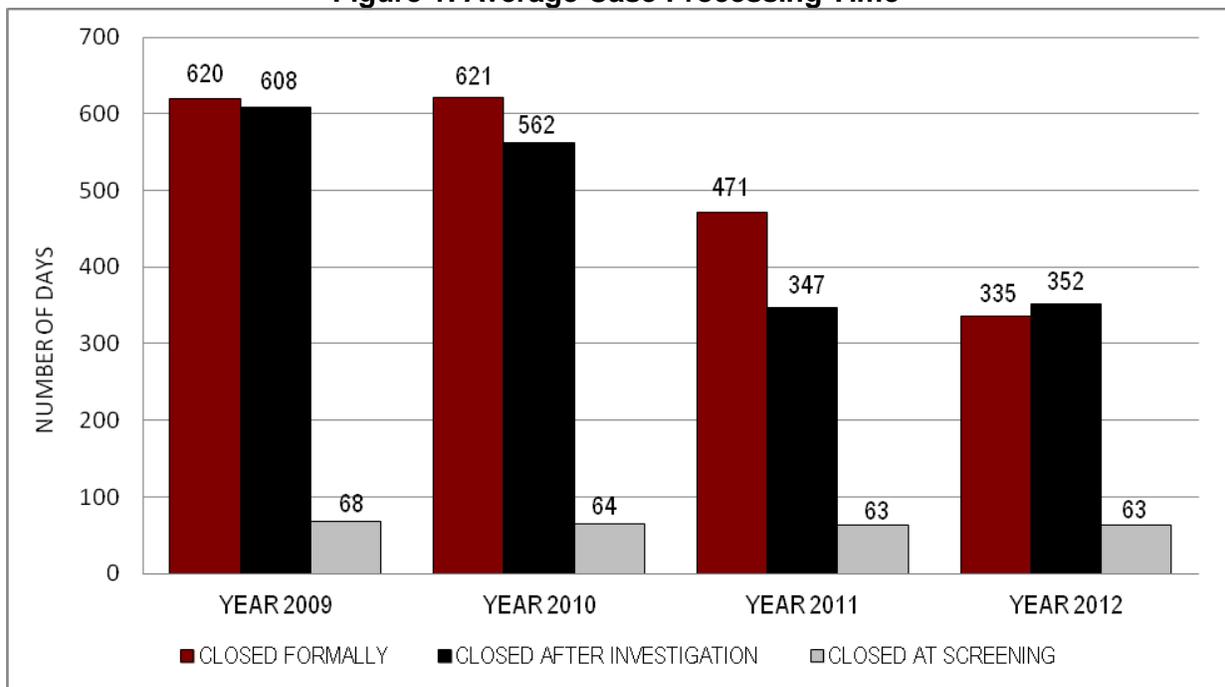
Saving Taxpayer Dollars

Shortly after the establishment of DSPS, Department management and staff analyzed agency expenditures and found several opportunities for cost savings. For example, it was discovered that the agency continued to pay for landlines and voicemail boxes that once belonged to former employees. *As of April 2012, the Department eliminated 152 landlines and 54 voicemail boxes for a combined annual base savings of approximately \$22,000.* Several additional disconnections have occurred since that date resulting in even greater cost savings.

Protecting the Public

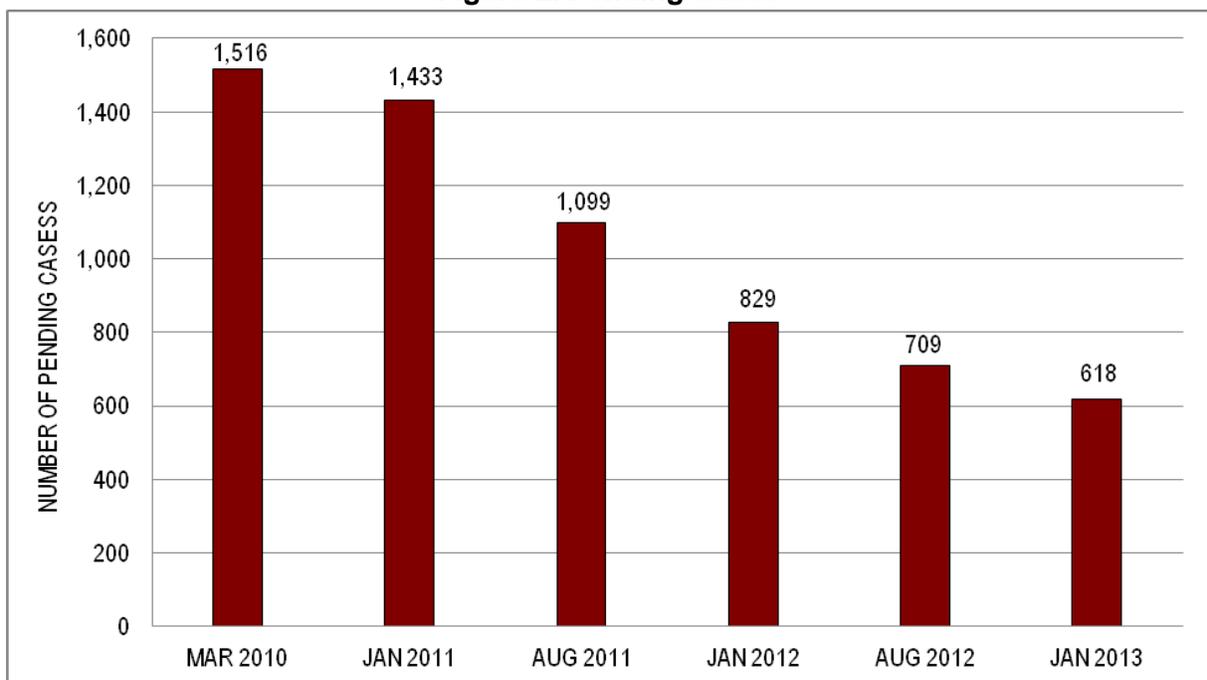
In 2011, under Governor Walker's administration, an increased focus was placed on timely enforcement and resolution of cases. This insured prompt protection of the public without comprising adequacy and appropriateness of enforcement actions. DLSC case processing time has improved significantly from 2009. *The average number of days to process improved as follows: closed formal from 620 days in 2009 down to 335 days in 2012; closed after investigation from 608 days down to 352 days, and closed at screening from 68 days in 2009 down to 63 days in 2012.* (See Figure 1)

Figure 1: Average Case Processing Time

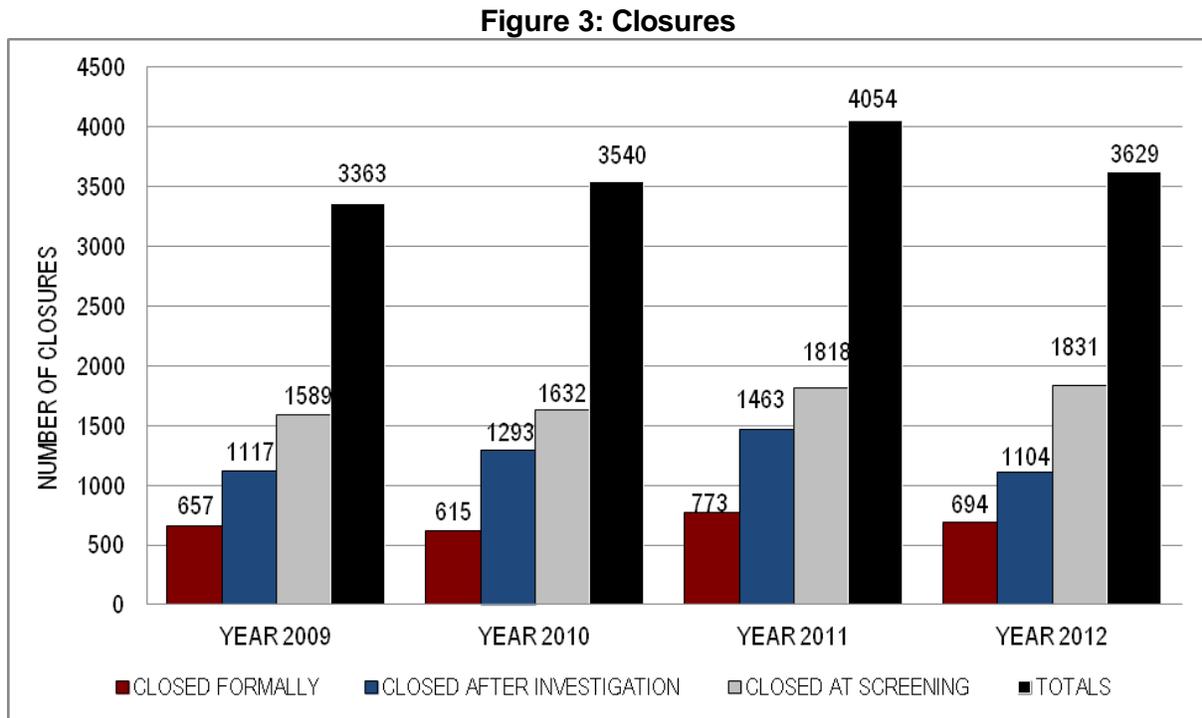


Through effective management and increased operational efficiency, DLSC has reduced its pending caseload from 1,516 to 618 cases (Figure 2).

Figure 2: Pending Cases



As shown in the chart below, protection of the public has been a top priority in DLSC, as the number of enforcement actions has increased in the past 2 years (Figure 3).



In addition to the case closures mentioned in the charts above, in 2012 DLSC completed 206 audits, 153 inspections, had 69 participants enrolled in a confidential assistance program for chemically impaired professionals, and monitored approximately 1,890 professional credential holders for compliance with disciplinary orders. However, numbers alone don't tell the whole story. The Division continuously looks for ways of ensuring that cases are handled in the best manner possible through precise attention to detail, intense legal scrutiny, and high quality customer service. For example, the division recently created online tutorials to explain the legal process to professional board members who serve as case advisors on disciplinary actions. These tutorials can be accessed by board members from the board room, work, or home 24 hours a day, 7 days a week on any computer. This is just one of the many ways DLSC delivers first rate service to the citizens of Wisconsin.

HEALTH AND BUSINESS REGULATION

Occupational regulation in Wisconsin began in 1882 with the creation of the Pharmacy Examining Board. This board set the credential requirements for pharmacists, granted credentials, promulgated administrative rules applicable to pharmacists, and collected credential fees. Between 1882 and 1965, 16 additional independent examining boards or councils were created that had separate budgets and directly employed staff (Austin 2013).

Several extensive reorganizations of Wisconsin state government in the mid-1960s sought to improve operational efficiency and responsiveness to the public. A substantial reorganization of the executive branch resulted from the Kellett Commission, named after its chair, William R. Kellett. Many of the Kellett Commission’s proposals impacted occupational licensure in Wisconsin, including the creation of a single Department of Regulation and Licensing (DRL) to provide centralized administrative services to the existing independent examining boards and councils. Under the consolidated administrative structure, each board maintained the independent regulation of its own profession, and the Department took on the direct regulation of specific professions where no examining board existed. These recommendations became law in 1967 (Chapter 75, Laws of 1967; Austin 2013).

Subsequent legislation further consolidated occupational regulation under DRL and shifted most administrative responsibilities from the independent boards to the Department (Austin 2013):

Earning \$18 billion annually on average, health and business professionals credentialed by DSPS are a vital component to economic growth in Wisconsin.

1975	<ul style="list-style-type: none"> • The regulation of barbering and the regulation of the funeral industry transferred to DRL from the Department of Health and Social Services • DRL authorized to hire staff for all the boards with a few exceptions
1977	<ul style="list-style-type: none"> • Single appropriation created for the expenditure of all license fee revenue and budgetary authority centralized under DRL
1979	<ul style="list-style-type: none"> • DRL authorized to reorganize staff along functional lines rather than by the boards they served and to eliminate the last employee positions remaining under the boards’ direct authority • Legislation eliminated the Watchmaking Examining Board and Athletic Examining Board
2009	<ul style="list-style-type: none"> • Second appropriation created to split the budget and staffing of the professions regulated by the Medical Examining Board and affiliated credentialing boards from the remaining DRL professions

In 2011, the Department of Safety and Professional Services was created and assumed all responsibilities performed by the former DRL and certain functions performed by the former Department of Commerce (2011 Wisconsin Act 32; Austin 2013).

In June of 2013, over 300,000 health and business professionals credentialed by DSPS worked in the state of Wisconsin earning *\$18 billion dollars annually on average*.⁵ These professionals contribute to economic growth in Wisconsin by spending their earnings at Wisconsin businesses, providing in-state capital for business investment and job creation, and supporting state and local governments through the payment of a variety of taxes.

⁵ Annual average earnings for professions with many subcategories such as Professional Engineering were calculated by taking an average of the subcategories. Annual average earnings for professionals “in-training” were calculated by dividing the annual average earning for a fully credentialed professional by two. The total annual earnings for all credential holders in each profession were estimated by multiplying the number of active licenses in each profession by the most recent estimates of average annual earnings for professions in Wisconsin as provided in the Occupational and Employment Statistics (Wisconsin Department of Workforce Development 2012).

HEALTH CARE INDUSTRY

The Centers for Medicare and Medicaid Services (CMS), a federal agency within the United States Department of Health and Human Services (DHHS), estimates that *roughly \$40 billion⁶ were spent on health care services in Wisconsin in 2009* (Centers for Medicare and Medicaid Services 2011).⁷ Professionals credentialed by DSPS account for the vast majority of health spending in Wisconsin. DSPS ensures the safe and competent practice of 62 different health professions. Appendix A provides a complete list of health-related professions and boards under the purview of DSPS.

In 2009, health care professionals credentialed by DSPS generated \$40 billion in economic activity, almost 17% of state gross domestic product.

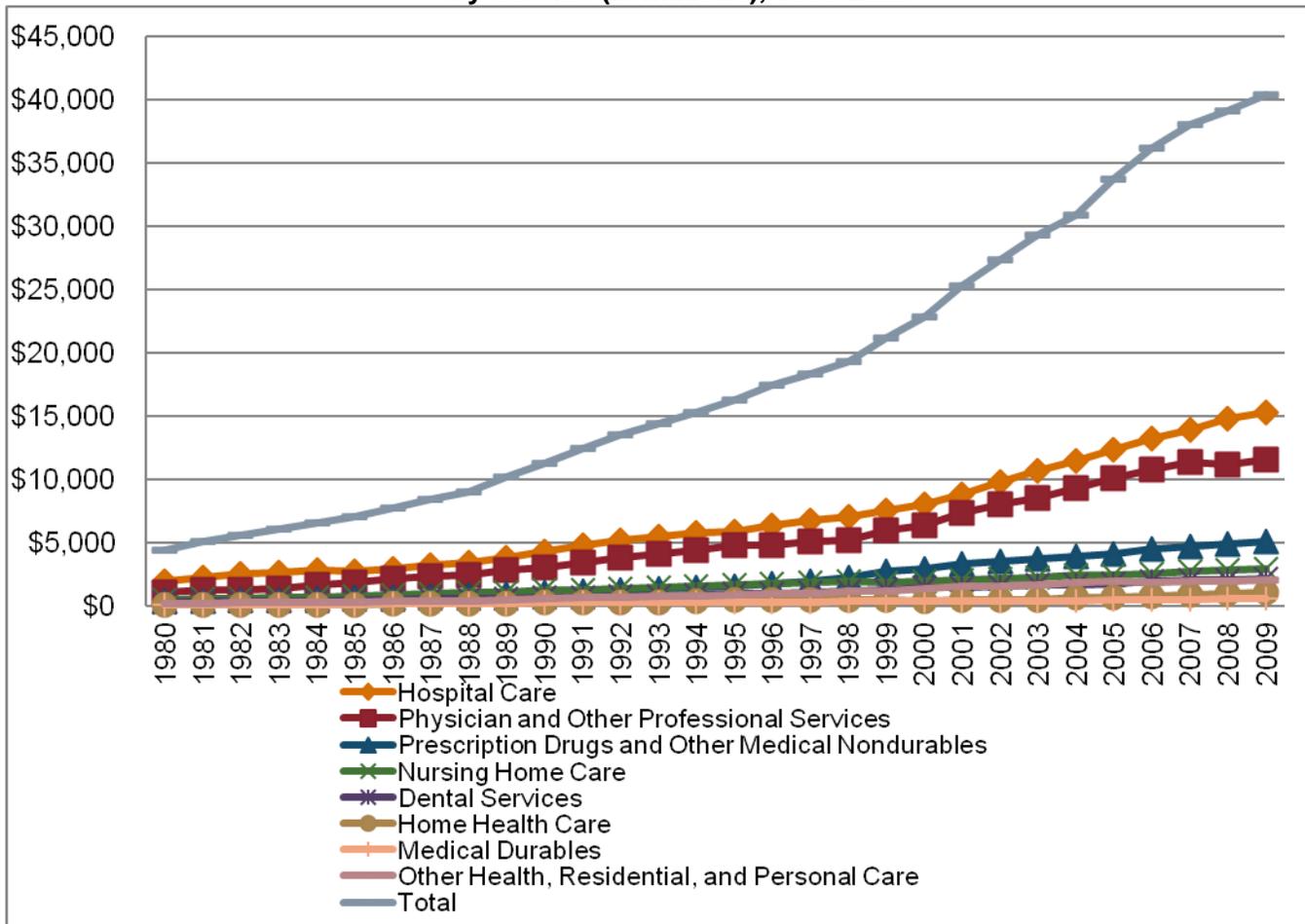
Between June of 2011 and June of 2013, the Department processed approximately 34,000 initial credentials and over 57,000 renewals for health care professionals. As of June 2013, there were over 197,000 active Wisconsin credential holders in health care professions. In 2012, DSPS provided administrative services to 27 health-related boards and councils and facilitated approximately 115 meetings for health-related board activities.

⁶ The data used in this report are state-of-provider estimates which reflect spending for services delivered in each state to residents and nonresidents. These estimates are useful in measuring the role of health spending in a state's economy.

⁷ Health care spending data produced by the National Health Expenditure Accounts (NHEA) of the Department of Health and Human Services Center for Medicare and Medicaid Services are larger than those produced by Bureau of Labor Statistics Consumer Expenditure Survey (CE); however, both are valid and widely utilized estimates of health care expenditures. Differences in definitions, sources, and methods are responsible for differences in the estimates. See http://www.bls.gov/cex/nhe_compare_200710.pdf for more a more detailed explanation.

Figure 4 shows the composition of total health care expenditures by service category in Wisconsin. The economic activity of each service category is either directly or indirectly generated by health care professionals credentialed by DSPS. Appendix C details the service categories and DSPS involvement in each category.

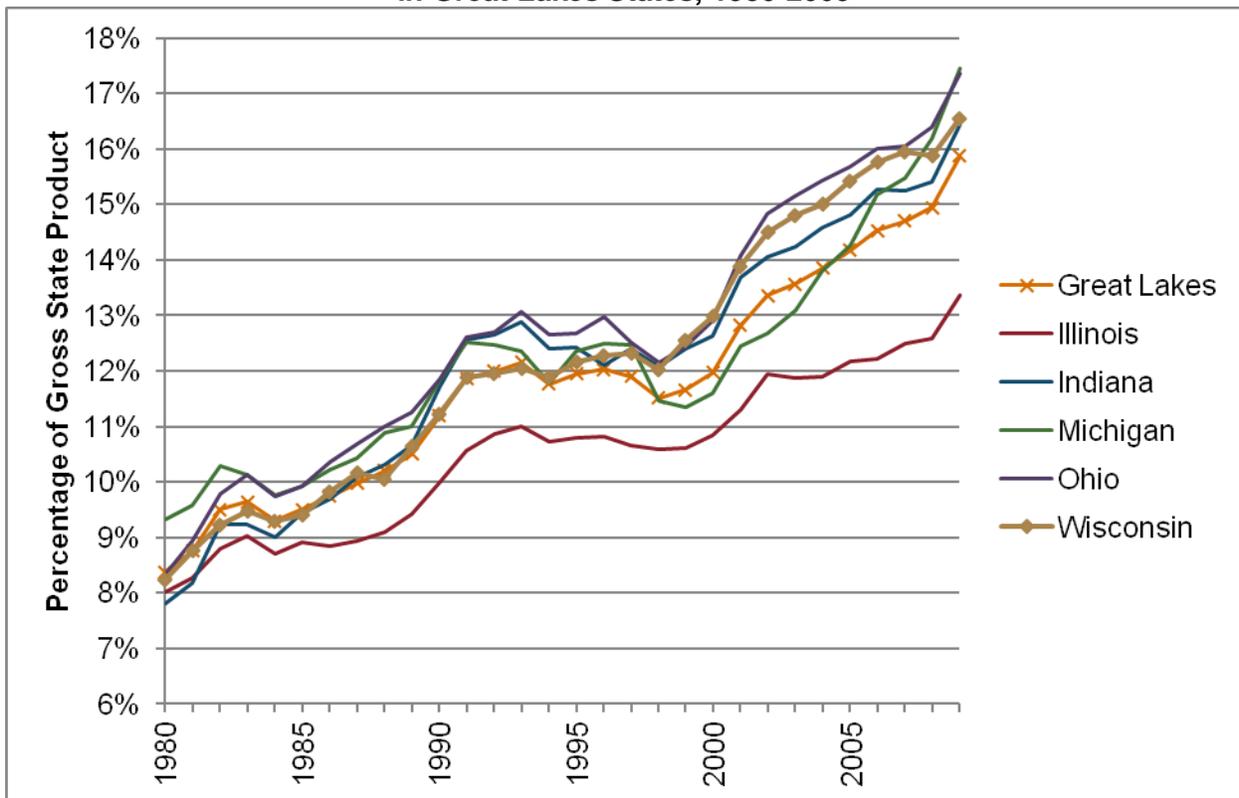
Figure 4: Health Care Spending in Wisconsin by Service (in millions), 1980-2009



Source: Centers for Medicare & Medicaid Services (2011), National Health Expenditure Accounts

Over the past 30 years, the health care industry has comprised a growing share of the state's gross domestic product (GDP). As shown in Figure 5, between 1980 and 1991, expenditures generated by health care professionals grew from 8.2% to 12.1% of the GDP and remained at this level for roughly eight years. Health care expenditures in Wisconsin grew from 12.1% of state GDP in 1999 to 17% in 2009.

Figure 5: Health Care Expenditures as a Percentage of State Gross Domestic Product in Great Lakes States, 1980-2009



Source: Centers for Medicare & Medicaid Services (2011), National Health Expenditure Accounts

Also shown in Figure 5, Wisconsin's neighboring states have experienced similar growth in health care industry expenditures (Centers for Medicare and Medicaid Services 2011). *If these trends continue, DSPS will play even more vital of a role in the state's economy as these health care professionals continue generating considerable economic activity.*

CONSTRUCTION SECTOR

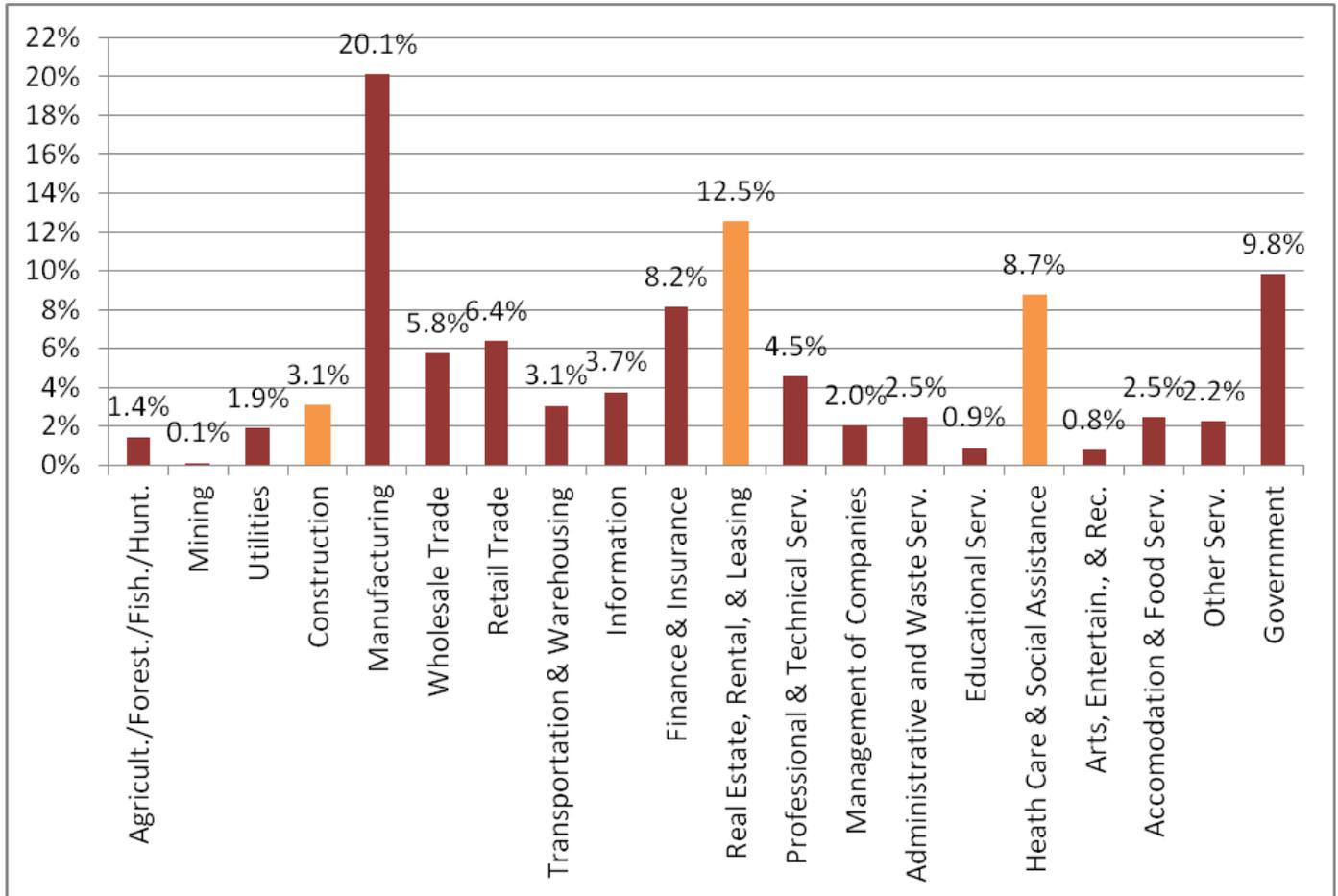
Between June of 2011 and June of 2013, the Department processed approximately 34,000 initial credentials and over 57,000 renewals for construction sector professionals. As of June 2013, there were *over 83,000 active DSPS credential holders in construction sector professions*. In 2012, Bureau of Technical Services staff completed *over 14,000 plan reviews and 100,000 inspections*. With DSPS regulatory oversight, the construction sector safely and competently contributed approximately \$6.9 billion to Wisconsin real GDP in 2012 (U.S. Bureau of Economic Analysis 2013a).

With DSPS regulatory oversight, the construction sector safely and competently contributed approximately \$6.9 billion to Wisconsin gross state product in 2012.

A handful of mid-sized industrial sectors, including construction, comprise the core of the Wisconsin economy. This is demonstrated using conventional measures of economic activity including output (gross domestic product) and employment. The U.S. Bureau of Economic Analysis (BEA) publishes annual estimates of Real Gross Domestic Product (RGDP) by state and provides estimates of shares of Wisconsin RGDP produced by each major industrial sector.

As shown in Figure 6, compared to the other major industrial sectors, construction is a moderate contributor to Wisconsin GDP. In 2012, the construction sector directly produced approximately \$6.9 billion or 3.1% of Wisconsin RGDP (U.S. Bureau of Economic Analysis 2013a).

Figure 6: Sectoral Shares of 2012 Wisconsin Real GDP⁸



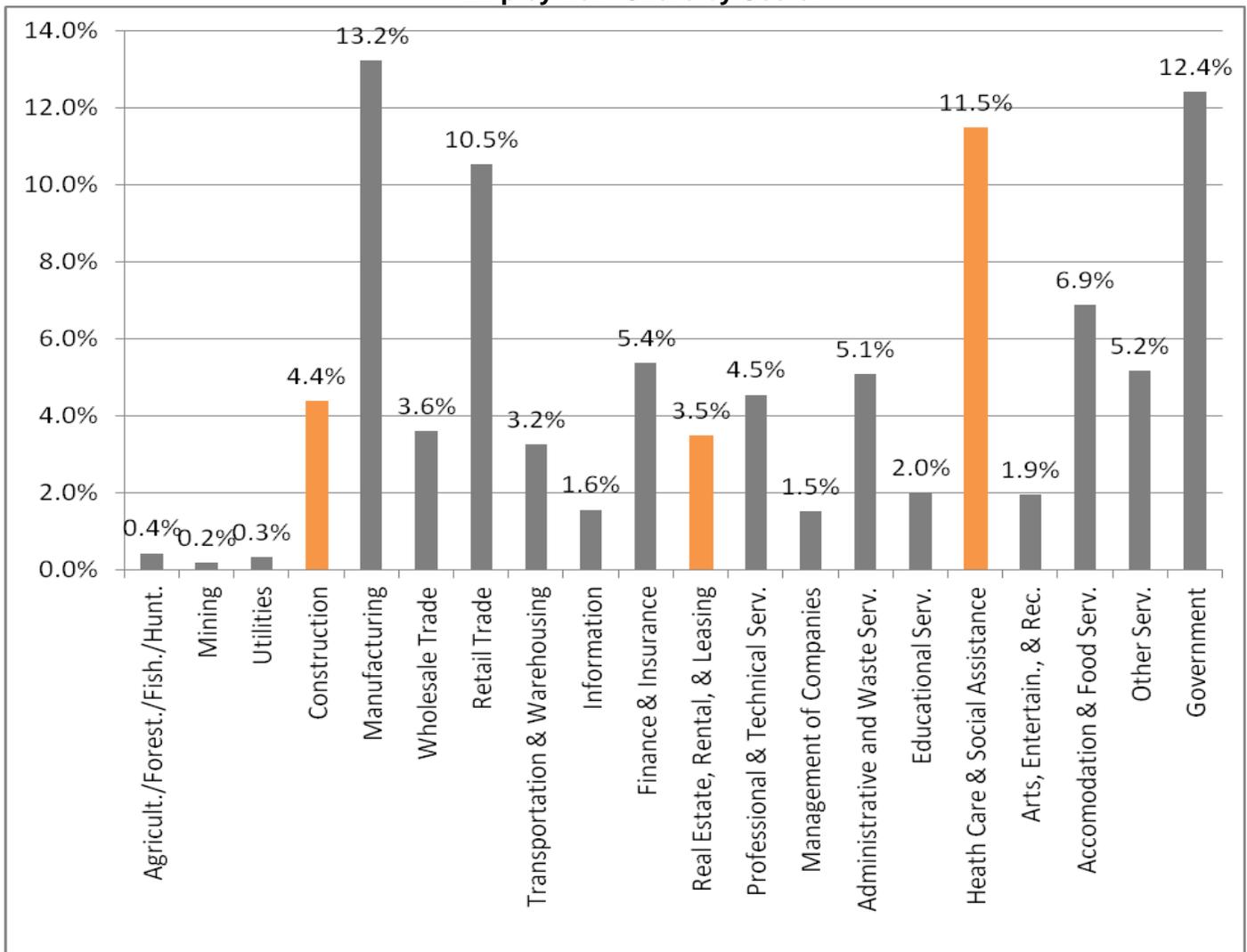
Source: U.S. Bureau of Economic Analysis (2013a)

⁸ Health care spending data produced by the National Health Expenditure Accounts (NHEA) of the Department of Health and Human Services Center for Medicare and Medicaid Services (used in the previous section) are larger than those produced by Bureau of Labor Statistics Consumer Expenditure Survey (CE); however, both are valid and widely utilized estimates of health care expenditures. Differences in definitions, sources, and methods are responsible for differences in the estimates. See http://www.bls.gov/cex/nhe_compare_200710.pdf for more a more detailed explanation.

With DSPS regulatory oversight, the construction sector provided over 152,000 well-paying jobs to Wisconsin workers in 2011.

Construction is a mid-sized component of the overall Wisconsin labor market. The sector contained over 152,000 jobs in 2011 and accounted for 4.4% of the overall 2011 state employment as shown in Figure 7.

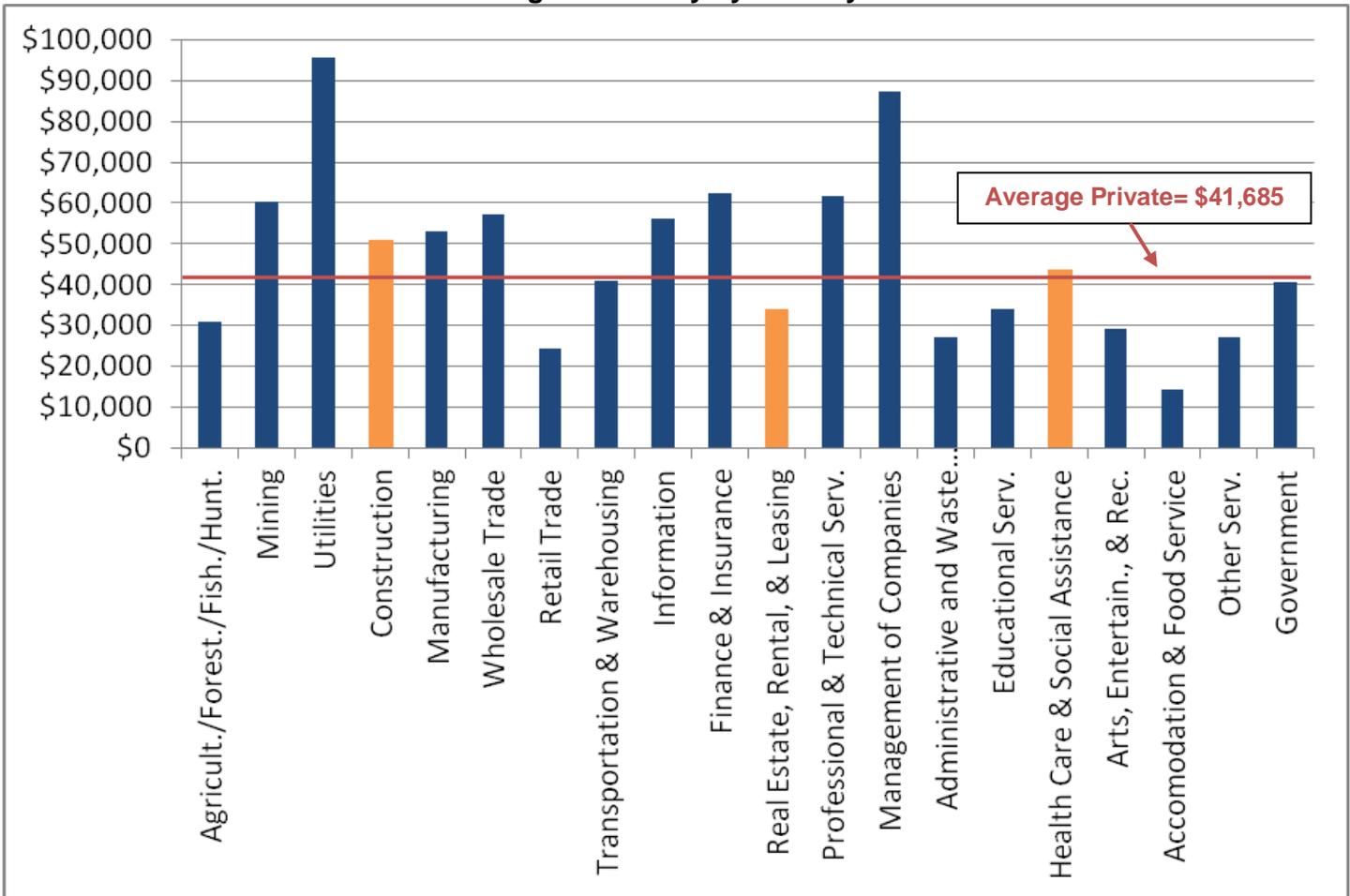
**Figure 7: Wisconsin 2011
Employment Share by Sector**



Source: U.S. Bureau of Economic Analysis (2013b)

Construction jobs tend to be relatively high skilled and high paying. Figure 8 provides the wage profile showing the average wage and salary income in Wisconsin for the year 2011 by major NAICS sector.⁹ The construction sector had an annual average wage greater than 11 of the major NAICS sectors of roughly \$51,000, almost \$10,000 above the average.

Figure 8: 2011 Wisconsin Average Annual Wage and Salary by Industry



Source: U.S. Bureau of Economic Analysis (2013c)

In addition to being an important component of the Wisconsin economy, the construction sector plays a vital role in stimulating economic growth. Construction projects generate output, income, and employment within the construction sector and create “ripple effects” in a wide range of other sectors of the economy.

⁹ The annual wage and salary income is calculated by dividing the Bureau of Economic Analysis total for wage and salary disbursements (Table SA07N) by wage and salary employment (Table SA27N).

In a report prepared for the Skill Integrity Responsibility Council, Inc., researchers estimated the total economic impact of two hypothetical construction projects: (1) A \$10 million new building project, and (2) A \$1 million remodeling project (Clark and Crane 2011).¹⁰ Table 1 summarizes their findings.

Table 1: Total Economic Impact of Hypothetical Construction Projects

Industry	Case Study 1:			Case Study 2:		
	\$10 Million New Building Project			\$1 Million Remodeling Project		
	Total Economic Impact	Total Job Increase	Total Tax Revenue Generated	Total Economic Impact	Total Job Increase	Total Tax Revenue Generated
Construction Sector	\$10.1 million	91	x	\$1 million	10	x
All Other Sectors	\$9.1 million	79	x	\$0.92 million	8	x
Total	\$19.2 million	170	\$853 thousand	\$1.92 million	18	\$91 thousand

Source: Clark and Crane (2011)

As shown in Table 1, a \$10 million new building project translates into \$19.2 million in economic impact, 170 jobs (91 jobs in the construction sector and 79 jobs elsewhere in the economy), and \$853 thousand in tax revenue. The total value added (after inputs are subtracted) from a \$10 million new building project is *\$10.3 million, with 75% of that coming from labor income*. Also shown in Table 1, a \$1 million remodeling project for a nonresidential building translates into *\$1.92 million in total economic impact, 18 jobs* (10 jobs in construction and 8 jobs elsewhere), and *\$91 thousand in state and local tax revenues*. The total value added (after inputs are subtracted) from a \$1 million dollar remodeling project is \$1.1 million, with 73% of that coming from labor income (Clark and Crane 2011).¹¹ The findings of this report show that construction projects regulated by DSPS can be effective as short run economic stimuli. Furthermore, the resulting infrastructure leads to improved economic productivity in the long run.

Construction projects regulated by DSPS can be effective economic stimuli that create jobs and increase spending in a wide range of other sectors of the economy.

¹⁰ Crane and Clark used the IMPLAN Input-Output or I-O modeling developed by the U.S. Department of Agriculture to measure the “ripple effects” that cause construction projects to have a greater impact on the state economy. This model has been widely tested and used for state and sub-state regional impact analysis.

¹¹ The model used to estimate these impacts assumes that no capacity constraints will prevent the economy from expanding to the full impact. In reality, very large construction projects can cause bottlenecks that may prevent the full scalable impact from being realized.

REAL ESTATE INDUSTRY

As of June 2013, over 21,000 real estate industry professionals credentialed by DSPS contributed to the Wisconsin economy. The Real Estate Examining Board and Real Estate Appraisers Board attached to DSPS regulate real estate brokers, real estate salespersons, timeshare salespersons, real estate business entities, licensed appraisers, certified residential appraisers, and certified general appraisers in Wisconsin. According to the United States Bureau of Economic Analysis estimates, the real estate industry accounted for *\$28.2 billion or 12.5% of Wisconsin GDP in 2012* (as shown above in Figure 6). In 2011, the real estate industry comprised roughly 3.5% of overall 2011 state employment (as shown above in Figure 7).¹²

When a real estate professional credentialed by DSPS sells a home in Wisconsin, it generates over \$13,000 in income from real estate related industries; over \$5,000 in expenditures on consumer items; and over \$3,000 in expenditures on remodeling.

When a real estate professional credentialed by DSPS sells a home in Wisconsin, it generates over \$13,000 in income from real estate related industries; over \$5,000 in additional expenditures on consumer items such as furniture, appliances, and paint services; and over \$3,000 in expenditures on remodeling within two years of the home purchase. Aside from house-related expenditures, a new home sale results in greater spending at restaurants, sporting events, and charity events of approximately \$11,000 on average (NAR Research 2013).

Wisconsin home sales jumped an astounding 11.4 percent in the first half of 2013 compared to 2012. Median house prices also increased to \$140,000, a 7.7 percent increase from the first

half of 2012 (Wisconsin REALTORS® Association). These trends indicate that DSPS will continue to play an essential role in Wisconsin's economy through its regulation of the real estate industry.

¹² Components of the BEA real estate industry estimates are not regulated by DSPS.

Appendix A: Health Care Professions and Boards under purview of DSPS

Health Care Professions

Acupuncturist	Occupational Therapy Assistant
Advanced Practice Nurse Prescriber	Optometrist
Anesthesiologist Assistant	Perfusionist
Art Therapist	Pharmacist
Athletic Trainer	Pharmacy (In State)
Audiologist	Pharmacy (Out of State)
Behavior Analyst	Physical Therapist
Chiropractic Radiological Technician	Physical Therapist Assistant
Chiropractic Technician	Physician
Chiropractor	Physician Assistant
Clinical Substance Abuse Counselor	Podiatrist
Clinical Supervisor In Training	Prevention Specialist
Controlled Substances Special Use Authorization	Prevention Specialist in Training
Dance Therapist	Private Practice School Psychologist
Dental Hygienist	Professional Counselor
Dentist	Psychologist
Dietitian	Registered Nurse
Drug or Device Manufacturer	Registered Sanitarian
Hearing Instrument Specialist	Respiratory Care Practitioner
Independent Clinical Supervisor	Sign Language Interpreter
Intermediate Clinical Supervisor	Sign Language Interpreter (Restricted)
Licensed Midwife	Social Worker
Licensed Practical Nurse	Social Worker- Advanced Practice
Licensed Radiographer	Social Worker- Independent
Limited X-Ray Machine Operator Permit	Social Worker- Licensed Clinical
Marriage and Family Therapist	Social Worker- Training Certificate
Massage Therapist or Bodywork Therapist	Speech-Language Pathologist
Music Therapist	Substance Abuse Counselor
Nurse-Midwife	Substance Abuse Counselor in Training
Occupational Therapist	Veterinarian
	Veterinary Technician
	Wholesale Distributor of Prescription Drugs

Health Care Boards

Examining Boards

Chiropractic Examining Board
Dentistry Examining Board
Hearing and Speech Examining Board
Marriage and Family Therapy, Professional Counseling and Social Work Examining Board
Medical Examining Board

Board of Nursing
Nursing Home Administrator Examining Board
Optometry Examining Board
Pharmacy Examining Board
Physical Therapy Examining Board
Psychology Examining Board
Radiography Examining Board
Veterinary Examining Board

Boards

Controlled Substance Board

Credentialing Boards Attached to the Medical Examining Board

Athletic Trainers Affiliated Credentialing Board
Dietitians Affiliated Credentialing Board
Massage Therapy and Bodywork Therapy Affiliated Credentialing Board
Occupational Therapists Affiliated Credentialing Board
Podiatry Affiliated Credentialing Board

Councils

Council on Anesthesiologist Assistants
Examining Council on Registered Nurses
Examining Council on Licensed Practical Nurses
Perfusionist Examining Council
Pharmacist Advisory Council
Council on Physician Assistants
Respiratory Care Practitioners Examining Council
Sign Language Interpreter Council

Appendix B: All Boards and Councils under purview of DSPS

Examining Boards

Accounting Examining Board
Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors
Chiropractic Examining Board
Cosmetology Examining Board
Dentistry Examining Board
Funeral Directors Examining Board
Examining Board of Professional Geologists, Hydrologists, and Soil Scientists
Hearing and Speech Examining Board
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board
Medical Examining Board
Board of Nursing
Nursing Home Administrator Examining Board
Optometry Examining Board
Pharmacy Examining Board
Physical Therapy Examining Board
Psychology Examining Board
Radiography Examining Board
Real Estate Examining Board
Veterinary Examining Board

Boards

Auctioneer Board
Building Inspector Review Board
Cemetery Board
Controlled Substances Board
Real Estate Appraisers Board

Affiliated Credentialing Boards

Athletic Trainers Affiliated Credentialing Board
Dietitians Affiliated Credentialing Board
Massage Therapy and Bodywork Therapy

Affiliated Credentialing Board
Occupational Therapists Affiliated Credentialing Board
Podiatry Affiliated Credentialing Board

Councils

Council on Anesthesiologist Assistants
Crematory Authority Council
Automatic Fire Sprinkler System Contractors and Journeymen Council
Contractor Certification Council
Conveyance Safety Code Council
Dwelling Code Council
Manufactured Housing Code Council
Multifamily Dwelling Code Council
Examining Council on Registered Nurses
Examining Council on Licensed Practical Nurses
Perfusionist Examining Council
Pharmacist Advisory Council
Plumbers Council
Council on Physician Assistants
Council on Real Estate Curriculum and Examinations
Respiratory Care Practitioners Examining Council
Sign Language Interpreter Council

Advisory Committees¹³

Alteration and Change of Occupancy Council
Amusement Ride Code Council
Boiler and Pressure Vessel Code Council
Commercial Buildings Code Council
Conveyance Safety Code Council
Electrical Code Council

¹³ Under Wisconsin Statute 440.042, the Secretary of DSPS may convene an advisory committee to advise on any matter related to the regulation of credential holders.

Energy Conservation Council
Erosion and Stormwater Council
Fire Department Safety and Health Code
Council
Fire Prevention Code Council
Fire Protection Systems Council
Fire Safety Council
Gas Systems Code Council
General Task Group
HVAC Council
Means of Egress Council
Mechanical Refrigeration Code Council

Passenger Ropeways Code Council
Plumbing Code Council
Pool Code Council
POWTS Code Council
POWTS Technical Committee
Public Employee Safety and Health Code
Council
Rental Unit Energy Efficiency Code Council
Stormwater Workgroup
Structural Review Council
Wisconsin Fund Code Council

Appendix C: Health Care Service Categories

Health Care Service Category	Relation to DSPS
<p>Hospital Care: Covers all services provided by hospitals to patients. These include room and board, ancillary charges, services of resident physicians, inpatient pharmacy, hospital-based nursing home and home health care, and any other services billed by hospitals in the United States. The value of hospital services is measured by total net revenue, which equals gross patient revenues (charges) less contractual adjustments, bad debts, and charity care. It also includes government tax appropriations as well as non-patient and non-operating revenues.</p>	<p>These services are generated by DSPS credentialed health care professionals.</p>
<p>Physician and Clinical Services: Covers services provided in establishments operated by Doctors of Medicine (M.D.) and Doctors of Osteopathy (D.O.), outpatient care centers, plus the portion of medical laboratories services that are billed independently by the laboratories. This category also includes services rendered by a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) in hospitals, if the physician bills independently for those services. Clinical services provided in freestanding outpatient clinics operated by the U.S. Department of Veterans' Affairs, the U.S. Coast Guard Academy, the U.S. Department of Defense, and the U.S. Indian Health Service are also included.</p>	<p>DSPS credentials Doctors of Medicine and Doctors of Osteopathy.</p>
<p>Other Professional Services: Covers services provided in establishments operated by health practitioners other than physicians and dentists. These professional services include those provided by private-duty nurses, chiropractors, podiatrists, optometrists, and physical, occupational and speech therapists, among others.</p>	<p>DSPS credentials nurses; chiropractors; podiatrists; optometrists; physical, occupational, and speech therapists; among other health professionals. See Appendix A for a complete list.</p>
<p>Prescription Drugs: Covers the "retail" sales of human-use dosage-form drugs, biological drugs, and diagnostic products that are available only by a prescription.</p>	<p>DSPS credentials pharmacists, pharmacies, wholesale distributors of prescription drugs, drug or device manufacturers, and professionals with the authority to prescribe.</p>
<p>Other Non-Durable Medical Products: Covers the "retail" sales of non-prescription drugs and medical sundries.</p>	<p>DSPS credentials pharmacists, drug or device manufacturers, and</p>

	the health professionals advising purchases of non-durable medical products.
Nursing Home Care: Covers nursing and rehabilitative services provided in freestanding nursing home facilities. These services are generally provided for an extended period of time by registered or licensed practical nurses and other staff. Care received in state and local government facilities and nursing facilities operated by the U.S. Department of Veterans Affairs are also included.	DSPS credentials registered nurses, licensed practical nurses, and advanced practice nurse prescribers.
Dental Services: Covers services provided in establishments operated by a Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.) or a Doctor of Dental Science (D.D.Sc.).	DSPS credentials dentists and dental hygienists.
Home Health Care: Covers medical care provided in the home by freestanding home health agencies (HHAs). Medical equipment sales or rentals not billed through HHAs and non-medical types of home care (e.g., Meals on Wheels, chore-worker services, friendly visits, or other custodial services) are excluded.	DSPS credentials health professionals responsible for providing home health care. See Appendix A for a complete list of health professions regulated by DSPS.
Medical Durables: Covers “retail” sales of items such as contact lenses, eyeglasses and other ophthalmic products, surgical and orthopedic products, hearing aids, wheelchairs, and medical equipment rentals.	Health professionals credentialed by DSPS directly and indirectly induce the consumption of medical durables.
Other Health, Residential, and Personal Care: This category includes spending for Medicaid home and community based waivers, care provided in residential care facilities, ambulance services, school health and worksite health care. Generally these programs provide payments for services in non-traditional settings such as community centers, senior citizens centers, schools, and military field stations. The residential establishments are classified as facilities for the intellectually disabled and mental health and substance abuse facilities. The ambulance establishments are classified as Ambulance services.	DSPS credentials health professionals typically responsible for health, residential, and personal care including professional counselors, substance abuse counselors, psychiatrists, and psychologists. See Appendix A for a complete list of health professions regulated by DSPS.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Shawn Leatherwood		2) Date When Request Submitted: October 4, 2013 Items will be considered late if submitted after 4:30 p.m. and less than: ▪ 10 work days before the meeting for Medical Board ▪ 08 work days before the meeting for all others	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Review and Discussion 165-OT 1, 2, 3, 4- Practice standards	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board will review and approve the scope statement for implementation.			
11) Shawn Leatherwood	Authorization		October 4, 2013
Signature of person making this request			Date
Supervisor (if required)			Date
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)			
Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATEMENT OF SCOPE

Department of Safety and Professional Services

Rule No.: 165- OT 1 – OT 5

Relating to: Modernization of occupational therapy regulations

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

Modernize the rules governing licensed occupational therapists and occupational therapist assistants to reflect current practice in the profession.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Occupational Therapists Affiliated Credentialing Board (Board) has undertaken a review of its current rules as a response to changes within their profession. The majority of the current rules have been in place since January 2003. A great deal has changed within the profession since the initial promulgation of the rules. Specifically, as of April 14, 2011 the American Occupational Therapy Association (AOTA) redefined the definition of Occupational Therapy Practice. The profession has expanded and grown past much of the current language in the rules. Definitions such as evaluation, occupational performance areas, occupational performance components, occupational performance contexts, prevention and screening need updating to reflect profession specific terminology that's in step with the today's practice of occupational therapy. Also, the Biennial Registration date should be corrected to reflect the accurate date. These are a few examples of how outdated the current rules are.

The Board's review will be comprehensive identifying specific sections of Chapter OT 1- OT 5 for revision. However, although the Board's review of terminology, practice standards, and licensing requirements will be comprehensive, it will not result in a major policy change. With these revisions, the Board seeks to clarify the existing rules. In the alternative, if new rules are not promulgated the current rules will continue to lag behind standards and terminology presently used in the profession.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The legislature has granted general statutory authority to affiliated credentialing boards for rule writing in the following sections ss. 15.085 (b), 227.11 (2) (a), and 403.035 (1), Stats. The legislature has granted specific rule writing authority to the Occupational Therapists Affiliated Credentialing Board via s. 448.965 (1), and (2), Stats. The Board may write rules that set forth standards for passing examination for occupational therapists and occupational therapy Assistants, continuing education requirements, standards for unprofessional conduct, and rules that define the scope of practice for the profession.

- (1) The affiliated credentialing board shall promulgate rules that establish each of the following:
- (a) Standards for acceptable examination performance by an applicant for licensure as an occupational therapist or occupational therapy assistant.

(b) Continuing education requirement for license renewal for an occupational or occupational therapist or occupational therapy assistant under s. 448.967 (2).

(c) Standards of practice for occupational therapy, including a code of ethics and criteria for referral.

(2) The affiliated credentialing board may promulgate rules that define the scope of practice of occupational therapy or the scope of assisting in the practice of occupational therapy.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

250

6. List with description of all entities that may be affected by the proposed rule:

Individuals that will be affected by the rule include licensed occupational therapist and occupational therapists assistants, OT instructors, applicants for licensure as an occupational therapist or occupational therapist assistant and occupational therapist professional associations. Persons and entities employing occupational therapists may be impacted as well.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

It is anticipated that the implementation of this rule will have no economic impact on small businesses.

Contact Person: Shawn Leatherwood 608-261-4438

Melinda Barinas Matula 9/5/12
Department Head or Authorized Signature

9/5/12
Date Submitted

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Shawn Leatherwood		2) Date When Request Submitted: October 4, 2013 Items will be considered late if submitted after 4:30 p.m. and less than: ▪ 10 work days before the meeting for Medical Board ▪ 08 work days before the meeting for all others	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Review and Discussion of 165-OT 1, 2, 3, 4- Practice standards	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No		9) Name of Case Advisor(s), if required: N/A
10) Describe the issue and action that should be addressed: The Board will review and approve revisions to 165-OT 1, 2, 3, 4-relating to practice standards and approve for submission to the Clearinghouse.			
11) Authorization Shawn Leatherwood Signature of person making this request		October 4, 2013 Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS
AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OCCUPATIONAL THERAPISTS
OCCUPATIONAL THERAPISTS : AFFILIATED CREDENTIALING
AFFILIATED CREDENTIALING : BOARD
BOARD : ADOPTING RULES
 : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to repeal OT 2.07 (5) and 3.06 (b) (Note); to amend OT 2.03 (2) (e), OT 2.03 (2) (j), OT 2.07 (6), OT 3.02, OT 3.05, OT 4.02 (2), OT 4.02 (2) (a) and (b), OT 4.03 (1) (a), OT 4.03 (2) (title), OT 4.03 (2) (c), (d), and (e), OT 4.03 (3) (a), (b), and (f), OT 4.03 (5) (b) and (c), OT 4.03 (6) (b) and (c), OT 4.05 (6) and (7) (a); to repeal and recreate OT 1.02; and to create OT 3.06 (r) and OT 4.02 (2) (j) to (q) relating to practice standards.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

s. 448.965, Stats.

Statutory authority:

ss. 15.085 (5) (b), 227.11 (2) (a), 448.965, Stats.

Explanation of agency authority:

The Occupational Therapists Affiliated Credentialing Board (Board) is authorized generally, pursuant to s. 15.08 (5) (b), Stats., to promulgate rules for guidance within its profession. The Board may also promulgate rules that interpret statutes they enforce or administer per s. 227.11 (2) (a), Stats. Section 448.965 (2), Stats., is administered by the Occupational Therapist Affiliated Credentialing Board and provides, “[t]he affiliated credentialing board may promulgate rules that define the scope of practice of occupational therapy or the scope of assisting in the practice of occupational therapy.” The proposed rule seeks to modernize practice standards captured in the current rules and bring the code in line with current practice within the profession. Therefore, the Board is authorized both generally and specifically to promulgate the proposed rules.

Related statute or rule:

None.

Plain language analysis:

The Occupational Therapist Affiliated Credentialing Board reviewed its rules and determined that the rules were outdated. The Board identified several key areas in the rules that were not typical of practice within the profession. The Board was also prompted by the American Occupational Therapy Association (AOTA). The AOTA changed the definition of Occupational Therapy Practice for the AOTA Model Practice Act in April of 2011. The Board seeks to incorporate some of the language from the AOTA Model Practice Act within the proposed rules. Ultimately, the Board seeks to institute changes that will update the current code language with current practices within the profession.

SECTION 1. recreated the definition provisions and defines areas of occupation occupational performance skills, occupational performance contexts and environment as well as other terms.

SECTION 2. increases the time period from 3 to 5 years that an applicant may be required to complete an oral examination, if they have not practiced prior to their application.

SECTION 3. amends OT 2.03 (2) (j) by omitting the term "been".

SECTION 4. repeals OT 2.07 (5).

SECTION 5. amends language regarding expiration of temporary licensure.

SECTION 6. amends the biennial renewal date from November 1 to June 1.

SECTION 7. repeals the note found in the corresponding table.

SECTION 8. creates a provision which was added to the table.

SECTION 9. adds terms to the list of occupational therapy services.

SECTION 10. creates additional provisions to the occupational therapy services listed in s. 4.02 (2) (j).

SECTION 11. adds language to OT 4.03 (1) (a) specifying the objectives of occupational therapy.

SECTION 12. amends the title in OT 4.03 (2) by striking the term "physician".

SECTION 13. removes terms and clarifies the distinction between orders and referrals.

SECTION 14. adds terms that distinguish between health care provider and health care professional.

SECTION 15. clarifies the terms related to program implementation.

SECTION 16. amends the provision by adding terms that specify the support system that should be in place for discontinuation of services.

SECTION 17. deletes unnecessary language.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois: The Illinois Occupational Therapy Practice Act ILL. Admin. Code tit. 68 §1315.100 governs OT practice in Illinois. The code sets forth provisions for modalities in occupational therapy, supervision of occupational therapy assistants and several other sections that the Wisconsin rules do not cover.

Iowa: Iowa administrative code defines occupational therapy practice which includes physical agent modalities 645 IAC 206.1, and sets forth a Code of Ethics for occupational therapist 645 IAC 208.1, and grounds for discipline. 645 IAC 209. Other topics covered include continuing education and supervision requirements.

Michigan: In Michigan Occupational Therapists are governed under the Public Health Code Act 368 of 1978 MCL and the Department of Consumer and Industry Services. Michigan statutes and administrative code do not set forth provisions regarding modalities in occupational therapy or practice and supervision nor does it outline topic areas for the completion of continuing education credits as the current Wisconsin rule does.

Minnesota: Minnesota statutes govern the scope of practice for Occupational Therapists. Minn. Stat. §§ 148.6401 -148.6450. The provisions cover such topics as physical agent modalities and supervision of occupational therapy assistants similar to the current Wisconsin rules.

Summary of factual data and analytical methodologies:

The impetus for the proposed rule was a review by the Board which indicated that there was a gap between terminology currently being used in the profession and the language that was in the rule. The Board decided to address this issue by drafting the proposed rule. No other factual data or analytical methodologies were used.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

These proposed rules will not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Fiscal Estimate and Economic Impact Analysis:

The Department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Fiscal Estimate and the Economic Impact Analysis.

Effect on small business:

These proposed rules will not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Shawn Leatherwood Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608 261-4438.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Shawn Leatherwood Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Shancethea.Leaherwood@wisconsin.gov. Comments must be received on or before * to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OT 1.02 is repealed and recreated to read:

OT 1.02 (1) "Activity demands" means the specific features of an activity that influence the type and amount of the effort required to perform the activity. Activity demands include the specific objects, space demands, social demands, sequence and timing, required actions and performance of skills body functions and body structures.

(2) "Areas of occupation" means the functional abilities that occupational therapy addresses in the areas of activities of daily living such as instrumental activities of daily

living , rest and sleep, educational activities , work and vocational activities, play leisure and social participation.

(3) “Assessment” is a component part of the evaluation process, and means the process of determining the need for, nature of, and estimated time of treatment at different intervals during the treatment, determining needed coordination with or referrals to other disciplines, and documenting these activities.

(4) “Board” means the occupational therapists affiliated credentialing board.

(5) “Body functions” means the physiological functions of body systems , including mental, sensory, pain, neuromusculoskeletal, movement, cardiovascular, hematological, immunological, respiratory, voice , speech, digestive, metabolic, endocrine, genitourinary, reproductive, lymphatic, integumentary and related structures.

(6) “Body structures” means anatomical parts of the body, such as organs, limbs, and their components that support body functions.

(7) “Client factors” means values, beliefs, and spirituality, body functions, and body structures that reside within the client and may affect performance in areas of occupation.

(8) “Consultation” means a work-centered, problem-solving helping relationship in which knowledge, experience, abilities and skills are shared with client, family, caregivers, and other professionals, including physicians, in the process of helping to habilitate or rehabilitate through the use of occupational therapy.

(9) “Entry-level” means the person has no demonstrated experience in a specific position, such as a new graduate, a person new to the position, or a person in a new setting with no previous experience in that area of practice.

(10) “Evaluation” means the process of obtaining and interpreting data necessary for understanding the individual system or situation. This includes planning for and documenting the evaluation process, results and recommendations, including the need for intervention and potential change in the intervention plan.

(11) “Experienced” means demonstrated competence in the performance of duties in a given area of practice.

(12) “Habilitation” means an occupational therapy intervention designed for the education, training or support services provided to individuals to assist them in acquiring and maintaining skills not yet gained or learned, thus enabling them to learn, practice and refine skills needed for independent living, productive employment activity and community participation.

(13) "Level I fieldwork" means an integral part of didactic courses and includes varied learning experiences. Students are supervised in observation and assistance with clients during short term contacts.

(14) "Level II fieldwork" means extended fieldwork which emphasizes the application and integration of academically acquired knowledge and skills in the supervised delivery of occupational therapy services to clients.

(15) "Occupational performance skills" means the skills and abilities that an individual demonstrates in the actions they perform including sensorimotor, sensory-perceptual, emotional regulation, cognition, communication, and social skills.

(16) "Occupational performance contexts and environments" means a variety of interrelated conditions within and surrounding the client that influence an individual's engagement in desired or required occupational performance including personal (age, gender, education; cultural, (customs, beliefs, behaviors); temporal (maturation, time of day or year, duration, stage of disability); physical (natural and built environments); virtual (communication which occurs absent of physical contact via simulated, real time or near time activity; social (relationships and expectations of persons groups and systems.

(17) "Occupational therapist educational program" means an educational program and supervised internships in occupational therapy recognized by the board and accredited by the Accreditation Council for Occupational Therapy Education or a program approved by the World Federation of Occupational Therapy.

(18) "Occupational therapy assistant educational program" means an educational program and supervised internships in occupational therapy recognized by the board and accredited by the Accreditation Council for Occupational Therapy Education or a program approved by the World Federation of Occupational Therapy.

(19) "Order" means the practice of identifying the need for occupational therapy education and intervention and delegating the responsibility to perform the evaluation and intervention to an occupational therapist.

(20) "Performance patterns" means patterns of behavior related to an individual's daily life activities that are habitual or routine.

(21) "Prevention" means the fostering of normal development, promoting health and wellness, sustaining and protecting existing functions and abilities, preventing disability or supporting levels of restoration or change to enable individuals to maintain maximum independence.

(22) "Referral" means the practice of requesting occupational therapy services.

(23) "Rehabilitation" means the process of treatment and education to restore a person's ability to live and work as normally as possible after a disabling injury or illness.

(24) "Screening" means the review of occupational performance skills in natural environments, educational or clinical settings to determine the significance of discrepancy between current performance and expected level of performance, which may be done in consultation with a physician.

(25) "Service competence" means the determination made by various methods that 2 people performing the same or equivalent procedures will obtain the same or equivalent results.

(26) "Supervision" is a cooperative process in which 2 or more people participate in a joint effort to establish, maintain and elevate a level of competence and performance. One of the participants, the supervisor, possesses skill, competence, experience, education, credentials, or authority in excess of those possessed by the other participant, the supervisee.

SECTION 2. OT 2.03 (2) (e) is amended to read:

OT 2.03 (2) (e) Has not practiced occupational therapy for a period of ~~3~~ 5 years prior to application, unless the applicant has graduated from a school of occupational therapy within that period. Practice for the purposes of this paragraph includes direct client treatment and education, occupational therapy instruction in an occupational therapy academic program recognized by the board, occupational therapy research, and service in administrative positions for health care providers or governmental bodies with responsibility relating to occupational therapy.

SECTION 3. OT 2.03 (2) (j) is amended to read:

OT 2.03 (2) (j) Has ~~been~~ graduated from an occupational therapy school not approved by the board.

SECTION 4. OT 2.07 (5) is repealed.

SECTION 5. OT 2.07 (6) is amended to read:

OT 2.07 (6) A temporary license shall remain in effect for 6 months and may not be renewed.

SECTION 6. OT 3.02 and 3.05 are amended to read:

OT 3.02 Registration required; method of registration. Each licensee shall register biennially with the board. Prior to ~~November 1~~ June 1 of each odd numbered year the department shall mail to each licensee at his or her last known address as it appears in the records of the board an application form for registration. Each licensee shall complete the application form and return it with the required fee to the department. ~~The board shall~~

~~notify the licensee within 30 business days of receipt of a completed registration form whether the application for registration is approved or denied.~~

OT 3.05 Failure to be registered. Failure to renew a license by ~~November 1~~ June 1 of odd numbered years shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for reinstatement of the license as follows:

SECTION 7. OT 3.06 (b) Table (Note) is repealed.

SECTION 8. OT 3.06 (r) Table is created to read:

Professional Development Activities	Professional Development Points
(r) Reimbursement or Ethics Courses	1 point per contact hour

SECTION 9. OT 4.02 (2) (a) and (b) are amended to read:

OT 4.02 (2) Occupational therapy ~~services~~ interventions include, but are not limited to the following:

OT 4.02 (2) (a) Screening, evaluating, developing, improving, sustaining or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play, ~~and leisure activities, rest and sleep education, and social participation.~~

OT 4.02 (2) (b) Evaluating, developing, remediating, or restoring sensorimotor, neuromusculoskeletal, cognitive, or psychosocial ~~components of performance and skills.~~

SECTION 10. OT 4.02 (2) (j) to (q) are created to read:

OT 4.02 (2) (j) Therapeutic use of occupations, exercises, and activities.

(k) Training in self-care, self-management, health management and maintenance, home management, community work reintegration, and school activities and work performance.

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

(m) Assessment, recommendation, and training in techniques to enhance functional mobility, including management of wheelchair and other mobility devices.

(n) Low vision rehabilitation

(o) Driver rehabilitation and community mobility

(p) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(q) Facilitating the occupational performance of groups, populations, or organizations through the modification of environments and adaptation processes.

SECTION 11. OT 4.03 (1) (a) is amended to read:

OT 4.03 (1) (a) An occupational therapist, alone or in collaboration with an occupational therapy assistant, when practicing either independently or as a member of a treatment team, shall identify individuals who present deficits or declines in areas of occupation, occupational performance ~~areas~~ skills, and performance ~~components~~ patterns.

SECTION 12. OT 4.03 (2) (title) is amended to read:

OT 4.03 (2) REFERRAL REFFERALS AND PHYSICIAN ORDERS. (a) Evaluation, rehabilitation treatment, and implementation of treatment with individuals with specific medical conditions shall be based on an order from a physician, dentist or podiatrist, or any other qualified health care professional.

SECTION 13. OT 4.03 (2) (c), (d), and (e) are amended to read:

OT 4.03 (2) (c) Although ~~a referral~~ an order is not required, an occupational therapist or occupational therapy assistant may accept a referral for the purpose of providing services which include consultation, habilitation, screening, client education, wellness, prevention, environmental assessments, and work-related ergonomic services.

OT 4.03 (2) (d) ~~Physician orders~~ Orders shall be in writing. However, oral ~~referrals~~ orders may be accepted if they are followed by a written and signed order by the ~~referring physician~~ ordering professional within 72 hours from the date on which the client consults with the occupational therapist or occupational therapy assistant.

OT 4.03 (2) (e) ~~Physician order~~ Orders or referral from another health care ~~provider~~ professional is not required for evaluation or intervention if an occupational therapist or occupational therapy assistant provides services in an educational environment, including the child's home, for children and youth with disabilities pursuant to rules promulgated by the federal individuals with disabilities education act, the department of public instruction and the department of health services, or provides services in an educational environment for children and youth with disabilities pursuant to the code of federal regulations.

SECTION 14. OT 4.03 (3) (a), (b), (f), and (4) (d) are amended to read:

OT 4.03 (3) (a) EVALUATION. The occupational therapist directs the evaluation process upon receiving a ~~physician an~~ order or referral from another health care ~~provider~~ professional. An occupational therapist alone or in collaboration with the occupational

therapy assistant shall prepare an occupational therapy evaluation for each individual referred ordered for occupational therapy services. The occupational therapist interprets the information gathered in the evaluation process.

OT 4.03 (3) (b) The evaluation shall consider the individual's medical, vocational, social, educational, family status, and personal and family goals, and shall include an assessment of how occupational performance ~~components~~ skills and occupational performance contexts influence the individual's functional abilities and deficits in occupational performance areas of occupation, patterns, contexts and environments.

OT 4.03 (3) (f) Evaluation results shall be communicated to the ~~referral source~~ ordering professional and to the appropriate persons in the facility and community.

OT4.03 (4) (d) In developing the program, the occupational therapist alone or in collaboration with the occupational therapy assistant shall also collaborate, as appropriate, with the individual, family, other health care professionals and community resources; shall select the media, methods, environment, and personnel needed to accomplish the goals; and shall determine the frequency and duration of occupational therapy ~~services~~ interventions provided.

SECTION 15. OT 4.03 (5) (b) and (c) are amended to read:

OT 4.03 (5) (b) The individual's areas of occupations, occupational performance, areas skills and occupational performance ~~components~~ patterns shall be routinely and systematically evaluated and documented.

OT 4.03 (5) (c) Program modifications shall be formulated and implemented consistent with the changes in the individual's occupational performance areas skills, occupational performance ~~components~~ patterns and occupational performance contexts and environments.

SECTION 16. OT 4.03 (6) (b) and (c) are amended to read:

OT 4.03 (6) (b) A comparison of the initial and current state of functional abilities and deficits in areas of occupation, occupational performance areas skills and occupational performance ~~components~~ patterns shall be made and documented.

OT 4.03 (6) (c) A discharge plan shall be prepared, consistent with the ~~services~~ interventions provided, the individual's goals, and the expected prognosis. Consideration shall be given to the individual's occupational performance contexts and environments including appropriate community resources for referral, and environmental factors or barriers that may need modification.

SECTION 17. OT 4.05 (6) and (7) (a) is amended to read:

OT 4.05 (6) An occupational therapist or occupational therapy assistant may delegate to non-licensed personnel duties or functions ~~other than maintenance or restorative services to the clients~~, including but not limited to the following services:

OT 4.05 (7) (a) Interpretation of referrals or ~~prescriptions~~ orders for occupational therapy services.

SECTION 18. Effective Date. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Member of the Board
Occupational Affiliated Credentialing
Board

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, on Behalf of Executive Director Thomas Ryan		2) Date When Request Submitted: 10/22/2013 Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? APPEARANCE - Teri Black , Wisconsin Occupational Therapy Association - Scope of Practice Changes	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input checked="" type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Teri Black, WOTA, will speak to the Board regarding scope of practice changes.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, on Behalf of Executive Director Thomas Ryan		2) Date When Request Submitted: 10/18/2013 Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 2014 AOTA Annual Conference and Expo, April 3-6, 2014, Baltimore, MD	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Preliminary information on the 2014 AOTA Annual Conference and Expo.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

2014 Annual Conference & Expo

AOTA's Annual Conference & Expo

Baltimore, MD
April 3-6, 2014

We are in the process of finalizing the 2014 Annual Conference Program. Submitters will receive notification regarding the status of their submission by mid-September.

Registration and complete program information will launch on December 12, 2013.

Full Conference registration	Members		Nonmembers		"Join Now" Package Membership & Conference	
	OT/OTA	Student	OT/OTA	Student	OT	OTA
Early rate Deadline March 5						
Individual	436	285	623	342	636	552
Speaker	393	257	560	287	593	509
Regular rate						
Individual	508	398	660	477	709	625
Speaker	456	347	594	414	656	572
Daily rates						
Thu-Sat						
Individual	205	162	267	193		
Speaker	185	140	240	168		
Sun						
Individual	162	129	210	153		
Speaker	146	113	189	134		

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, on Behalf of Executive Director Thomas Ryan		2) Date When Request Submitted: 9/25/2013 Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Informational Item - Guidance Related to OSEP's Letter to Couillard	
7) Place Item in: <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Informational Item			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Guidance Related to OSEP's Letter to Couillard

This guidance document was developed in response to the Office of Special Education Program's (OSEP) March 2013 *Letter to Couillard* regarding special education personnel working with students who are not identified as students with disabilities. A copy of the letter is at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-011637r-wi-couillard-rti3-8-13.pdf>.

Special education and related services are designed to meet the unique needs of students with disabilities in the context of the entire educational experience. All students should be educated in the least restrictive environment (LRE) to the maximum extent appropriate and have access to the general education curriculum in order to meet educational standards that apply to all children. To provide the most effective supports to students with disabilities, it is common for schools to maximize staff's varied expertise through general and special education personnel working together in general education inclusive environments. While this practice is encouraged, care should be taken to ensure staff are performing these duties within what is permissible. This document provides guidelines for determining permissible tasks for special education teachers working in inclusive settings. This guidance also applies to speech and language pathologists, who are special educators.

Three considerations guide decision-making about special education teachers instructing students who have not been identified as having a disability and needing special education. These are due process, funding, and licensing.

- **Due process:** Students may not receive special education services unless the local educational agency (LEA) has gone through proper referral, evaluation, and placement procedures. Procedural safeguards including specific parental rights apply. Instruction by a special education teacher beyond the scope of incidental benefit is considered special education (see below).
- **Funding:** All staff who are required to be licensed must work within the scope of the position for which they are employed or contracted, and may only perform duties permitted by their funding source. Guidance within this document applies regardless of whether the teacher is funded through federal, state, or local sources.
- **Licensing:** All staff must be appropriately licensed under PI 34 and work within the parameters of their certifications and contracts. Special education teachers are licensed to provide special education or related services to eligible students with disabilities in accordance with their individualized education programs (IEPs).

Instructional Tasks

The reason for a special education teacher performing an instructional task must be to implement specific services outlined in a student's IEP. Special education teachers may not spend additional time, perform additional tasks, or perform tasks that interfere with the provision of services outlined in IEPs for students not currently identified as needing special education or related

services. Examples of activities not permitted by special education teachers as cited in OSEP's *Letter to Couillard* include grading papers and spending time on parent teacher conferences for students without disabilities. However, the incidental benefit provision of the Individuals with Disabilities Education Act (IDEA) (CFR §300.208) permits one or more nondisabled students to benefit from the special education and related services, and supplementary aids and services provided to a student with a disability in accordance with the student's IEP.

Determinations of what constitutes an incidental benefit must be made on a case-by-case basis. Situations in which a special education teacher is responsible for targeted instruction of one or more students without IEPs is considered beyond "incidental benefit." Likewise, instruction in special education environments should occur only when specified in IEPs. When determining if it is permissible for special education personnel to perform an instructional task or assignment with a non-disabled student, the following guiding questions may be helpful:

1. Is the reason for the special education teacher performing the task related to specific needs of at least one child with a disability as outlined in his or her IEP?
 - ✓ If no, it is not permissible for the special education teacher to perform the task.
2. Will the task require additional time beyond what is required to address the needs of at least one child with a disability as outlined in his or her IEP?
 - ✓ If yes, it is not permissible for the special education teacher to perform the task.
3. Will the provision of free appropriate public education (FAPE) or any IEP services be compromised if the special education teacher performs the task?
 - ✓ If yes, it is not permissible for the special education teacher to perform the task.
4. Will the task result in a student or students not currently identified as needing special education and related services receiving instruction beyond the scope of incidental benefit by the special education teacher?
 - ✓ If yes, it is not permissible for the special education teacher to perform the task.

Special education teachers are permitted to participate in co-teaching and intervention configurations within the guidelines above. If concerns are brought to the Department of Public Instruction (DPI), they will be examined on a case-by-case basis.

Participation on Decision-Making Teams

Many schools have established grade-level, content-area, and/or building-level teams to analyze data related to students' response to instruction and intervention, and to subsequently make instructional or referral decisions based on that analysis. As part of their child find obligations, special education personnel may be members of collaborative teams that determine whether to refer a student for an evaluation to determine whether the student is a student with a disability, in part, based on data collected from general education interventions. As members of such teams, these staff members are encouraged to share their expertise in addressing the needs of students with disabilities with other personnel to assist them in identifying, locating, and evaluating students with disabilities in accordance with child find responsibilities. These types of pre-referral processes cannot be used to delay a referral for a special education evaluation. Under Wisconsin law, the LEA must proceed with the evaluation process when a referral is received.

Special education teachers may also share their expertise on collaborative teams that plan instructional interventions for all students. Their expertise on such topics as using data to inform instruction, selecting data collection tools, and matching instruction to specific needs is a valuable asset to a schoolwide system of support.

However, special education personnel may not spend additional time, perform additional tasks, or perform tasks that interfere with the provision of services outlined in IEPs for students not currently identified as needing special education or related services. Assessing, observing, or screening individual students who are not eligible for special education or outside of a special education evaluation process is not permissible.

Finally, occupational and physical therapists may not be assigned to participate as regular members of such teams because of state licensing and practice rules for these particular professionals. Pupil services personnel (i.e. psychologists, school social workers, school nurses, and school counselors) may be assigned as regular members.

Options for Increased Flexibility

Flexible Funding Options

All LEAs have the option to use up to 15% of their IDEA allocations to provide interventions to students not identified as needing special education or related services, but who need additional supports to succeed in the general education curriculum (CFR §300.226). These interventions must be provided within the scope of general education. Information and technical assistance on Coordinated Early Intervening Services (CEIS) can be found at http://sped.dpi.wi.gov/sped_ceis.

Additionally, those LEAs with Title I Schoolwide schools have the option of setting aside a proportionate amount of their IDEA allocations to support activities in a Title I Schoolwide program at the school level (CFR §300.206). Information and technical assistance on IDEA Title I Schoolwide Set-Aside can be found at http://sped.dpi.wi.gov/sped_grt-title1-setaside.

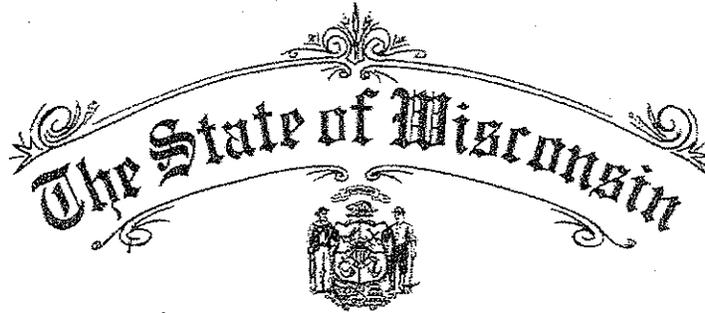
Dual Licensure

Individuals who have both general education and special education licenses may perform duties that correspond with each license if they are employed or contracted with the LEA for those distinct roles, have clearly delineated duties, and keep required Personnel Activity Reports (PARs) if federally funded. For example, a teacher provides special education services 60% of the day and general education interventions 40% of the day. This teacher is funded 60% with IDEA Flow-through dollars, and 40% with IDEA CEIS dollars. His contract with the LEA reflects his position as a 60% special education teacher and 40% general education teacher, and he accurately keeps PARs.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, on Behalf of Executive Director Thomas Ryan		2) Date When Request Submitted: 10/17/2013 Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Review of Executive Order 61	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: To comply with Executive Order 61, the Board is being asked to review its rules to identify rules that unnecessarily burden small businesses to conduct their affairs and expand.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



OFFICE OF THE GOVERNOR

EXECUTIVE ORDER # 61

Relating to Job Creation and Small Business Expansion

WHEREAS, creating jobs and growing our state's economy is dependent on a vibrant small business sector; and

WHEREAS, small businesses have generated 64% of net new jobs over the past fifteen years and employ over half of all private sector employees; and

WHEREAS, according to recent U.S. Census data, 86% of Wisconsin business employ fewer than 20 workers, and 74% have ten workers or less; and

WHEREAS, small businesses spend 80% more per worker than large employers to comply with government regulations and, according to a recent National Federation of Independent Business survey of Wisconsin employers, 91% said it was impossible to know about, comply with, and understand all of government's regulations; and

WHEREAS, according to the U.S. Small Business Administration, complying with government regulations costs small businesses \$10,585 per worker, which discourages investment and hiring by small businesses; and

WHEREAS, government regulations are regularly cited as one of the top three concerns for small business growth, according to NFIB's Small Business Optimism Index; and

WHEREAS, 2011 Wisconsin Act 46 strengthened Wisconsin's Small Business Regulatory Review Board (Board) empowering small business owners and giving them the ability to judge the economic impact of government regulation; and

WHEREAS, 2011 Wisconsin Act 46 requires state agencies to submit any rule with an economic impact to the Board for review and allows the Board to suggest changes to the agency that will improve compliance and reduce the rule's burden on small businesses; and

WHEREAS, pursuant to Wis. Stat. § 227.30, the Board has the authority to review rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses to conduct their affairs; and

WHEREAS, state agencies and the Board should not only be reviewing new rules but collaborating to reform existing rules that hinder job creation and small business expansion and that this effort would help further the state's goal of creating 250,000 jobs by 2015.

NOW THEREFORE, I, SCOTT WALKER, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this State, specifically Wis. Stat. § 227.10(2m), do hereby:

1. Require all state agencies to review 2011 Wisconsin Act 46 to ensure they are in compliance, ready to assist small business owners, and properly submitting any proposed rules with an economic impact to the Board;
2. Require all state agencies to cooperate with the Board to identify existing rules hindering job creation and small business growth;

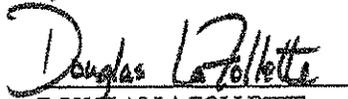
3. Require all state agencies to work with the Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them;
4. Require all state agencies to work with the Board to identify strategies that will increase compliance with existing rules;
5. Request that the Board engage small business owners and their representative organizations to gather input on any rules hindering job growth;
6. Request that the Board provide a report and analysis of these rules, in a manner similar to Wis. Stat. § 227.30(1), to the Governor's Office of Regulatory Compliance and the agency with the authority to amend the rules, which details the rules they have identified for modification.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done in the City of Eau Claire this twenty-second day of February, in the year two thousand twelve.


SCOTT WALKER
Governor

By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249.

Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine. *Martinez v. DILHR*, 165 Wis. 2d 687, 478 N.W.2d 582 (1992).

A collective bargaining agreement between the regents and the teaching assistants association is not subject to review by the committee. 59 Atty. Gen. 200.

In giving notice of public hearings held under sub. (2), the committee should concurrently employ the various forms of notice available that best fit the particular circumstances. 62 Atty. Gen. 299.

If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Atty. Gen. 159.

Legislative committee review of administrative rules in Wisconsin. Bunn and Gallagher. 1977 WLR 935.

227.27 Construction of administrative rules.

- (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.01 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.
- (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau or the secretary of state, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

History: 1983 a. 544; 1985 a. 182 ss. 22, 55 (2), (3); Stats. 1985 s. 227.27; 2005 a. 249; 2007 a. 20.

227.30 Review of administrative rules or guidelines.

- (1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.
- (2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:
 - (a) The continued need for the rule or guideline.
 - (b) The nature of the complaints and comments received from the public regarding the rule or guideline.
 - (c) The complexity of the rule or guideline.

- (d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
 - (e) The length of time since the rule or guideline has been evaluated.
 - (f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.
- (3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.

History: 2003 a. 145; 2005 a. 249.

SUBCHAPTER III

ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross-reference: See also ch. NR 2, Wis. adm. code.

227.40 Declaratory judgment proceedings.

- (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.
- (2) The validity of a rule may be determined in any of the following judicial proceedings when material therein:
 - (a) Any civil proceeding by the state or any officer or agency thereof to enforce a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party is accorded an administrative review or a judicial review by other provisions of the statutes and such opposing party has failed to exercise such right to review so accorded;
 - (b) Criminal prosecutions;
 - (c) Proceedings or prosecutions for violations of county or municipal ordinances;
 - (d) Habeas corpus proceedings relating to criminal prosecution;

**227.10 Statements of policy and interpretations of law;
discrimination prohibited.**

- (1)** Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule.
- (2)** No agency may promulgate a rule which conflicts with state law.
- (2m)** No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

227.114 Rule making; considerations for small business.

227.114(2)

- (1) In this section, "small business" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- (2) When an agency proposes or revises a rule that may have an effect on small businesses, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:
 - (a) The establishment of less stringent compliance or reporting requirements for small businesses.
 - (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
 - (c) The consolidation or simplification of compliance or reporting requirements for small businesses.
 - (d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule.
 - (e) The exemption of small businesses from any or all requirements of the rule.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, On Behalf of Executive Director Tom Ryan		2) Date When Request Submitted: 10/25/2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Occupational Therapists Affiliated Credentialing Board			
4) Meeting Date: October 29, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Executive Order 50 – Continued Review of Position Statements/FAQs	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both		8) Is an appearance before the Board being scheduled? If yes, who is appearing?	9) Name of Case Advisor(s), if required:
10) Describe the issue and action that should be addressed: All Boards are reviewing position statements, position papers and other website content to ensure the content is not outdated and are in compliance with statutes, rules, and Executive Order 50, relating to guidelines for the promulgation of administrative rules.			

**Positions Statements Related to Occupational Therapy
Issued by the Occupational Therapists Affiliated Credentialing Board**

WHAT IS THE MEANING OF “SPECIFIC MEDICAL CONDITIONS” AS USED IN S. OT 4.03(2)(A), WIS. ADMIN. CODE?

The phrase “specific medical conditions” is not defined in either the statutes or the administrative rules that govern the practice of occupational therapy.

DOES THE DEFINITION OF “PHYSICIAN” INCLUDE A DOCTOR OF OSTEOPATHY AS USED IN S. OT 4.03(2)(A), WIS. ADMIN. CODE?

Section 448.01 of the Wisconsin Statutes defines the term “physician” and includes an individual who possesses the degree of doctor of osteopathy. Accordingly, doctors of osteopathy are considered to be physicians as used in s. OT 4.03(2)(a), Wis. Admin. Code.

IS THERE A DIFFERENCE BETWEEN A VERBAL ORDER AND AN ORAL REFERRAL?

There is no difference between a verbal order and an oral referral.

IS THERE A DIFFERENCE BETWEEN A “REFERRAL” AND A “PHYSICIAN ORDER” AS USED IN S. OT 4.03(2)(D)?

“Referral” and “physician order” are defined in s. OT 1.02(16), Wis. Admin. Code, and mean the practice of requesting and, where applicable, ordering occupational therapy services and delegating the responsibility for evaluation and treatment to an occupational therapist. Accordingly, the two may be used interchangeably.

WHAT TYPES OF OCCUPATIONAL THERAPY SERVICES MAY BE PROVIDED UNDER A “REFERRAL” AS OPPOSED TO A “PHYSICIAN ORDER”?

Because the two terms may be used interchangeably, there is no difference in the type of occupation services that can be provided under a referral versus a physician's order.

UNDER S. OT 4.04(4), WIS. ADMIN. CODE, MUST THE SUPERVISING OCCUPATIONAL THERAPIST MEET SIMULTANEOUSLY WITH THE OCCUPATIONAL THERAPY ASSISTANT AND THE CLIENT OR MAY THESE REQUIRED MEETINGS BE HELD SEPARATELY?

Simultaneous meetings are permissible. Meetings may be held separately, that is, one meeting between the Occupational Therapist and the Occupational Therapy Assistant, and one with the Occupational Therapist and the client. These meetings do not need to be held at or during a treatment session. On-premises meetings are intended to review the progress and effectiveness of treatment.

WHAT TYPE OF DOCUMENTATION SHOULD LICENSEES MAINTAIN AS PROOF OF HAVING COMPLETED THE REQUIRED CONTINUING EDUCATION?

Examples of satisfactory proof of having completed the required continuing education include, but are not limited to, certificates of attendance, proof of payment, agendas, etc.

WHAT ROLE MAY A CERTIFIED OCCUPATIONAL THERAPY ASSISTANT (COTA) PLAY IN SCREENING OR EVALUATING PATIENTS FOR PHYSICAL FUNCTION?

Section OT 4.03 (1) of the Wisconsin Administrative Code provides that a COTA may collaborate with an OT in screening or evaluating patients for physical function.

IS IT WITHIN THE SCOPE OF PRACTICE FOR AN OCCUPATIONAL THERAPIST TO PROVIDE A MEDICATION CONTAINER TO A CLIENT AND TO INSTRUCT THE CLIENT ABOUT HOW TO USE IT?

Providing a medication container and training a client in how to use it is a non-skilled intervention and therefore falls under the scope of practice as found in s. OT 4.02 (2) (h), Wis. Admin. Code.

IS IT WITHIN THE SCOPE OF PRACTICE FOR AN OCCUPATIONAL THERAPIST TO CONDUCT AN EVALUATION OF SOMEONE WHO HAS LOW VISION AND TO PROVIDE APPROPRIATE TREATMENT OPTIONS FOR THAT PERSON?

Once a person has been diagnosed as having low vision, an occupational therapist may conduct an evaluation to determine what type of deficits exist for that person and may assist in treating the problem by recommending and implementing appropriate accommodations. See ss. OT 4.02 (1) (a-d); 4.02 (2) (a) and (e); and 4.03 (2) (a), Wis. Admin. Code.

MAY AN OCCUPATIONAL THERAPIST BE INVOLVED IN DETERMINING WHETHER THE NEED FOR RESTRAINTS IS AN APPROPRIATE OPTION FOR PATIENTS IN A SKILLED NURSING FACILITY?

While an occupational therapist is not the ultimate decision maker in determining whether the use of restraints should be used on a patient in a skilled nursing facility, he or she may participate and provide input during the patient evaluation process. Typically, the physician, in collaboration with other allied health professionals (including OTs), makes the decision as to the use of restraints. See ss. OT 4.02 (2) (e) and 4.03 (2) (a), Wis. Admin. Code.

MAY AN OCCUPATIONAL THERAPIST WHO HAS OBTAINED CERTIFICATION FOR HAND THERAPY UTILIZE IT AS A PHYSICAL AGENT MODALITY?

Under s. OT 4.02 (2) (f), Wis. Admin. Code, an occupational therapist may engage in a physical agent modality provided he or she is an experienced therapist with documented

evidence of theoretical background, technical skill, and competence. By obtaining special training, for instance, through a hand certification program, an occupational therapist may meet the theoretical piece; however, the occupational therapist must have the required technical skill and experience before engaging in the modality.

IS A PHYSICIAN REFERRAL REQUIRED BEFORE AN OCCUPATIONAL THERAPIST MAY ENGAGE IN CRANIOSACRAL TREATMENT?

Under ss. OT 4.03 (2) (a) and (c), Wis. Admin. Code, craniosacral treatment may be provided by an occupational therapist with or without a physician referral. Regardless of whether or not there is a referral, an occupational therapist must be properly trained in this treatment modality before utilizing it.

IS A PHYSICIAN ORDER REQUIRED BEFORE AN OCCUPATIONAL THERAPIST CAN UTILIZE MYOFACIAL RELEASE FOR THE TREATMENT OF TMJ?

TMJ is a specific, medically diagnosed condition and is appropriately treated with myofacial release. Referrals for treatment may be made by physicians and chiropractors to occupational therapists, but self referrals would not be appropriate. See ss. OT 4.03 (2) (a) and (b), Wis. Admin. Code.

DO REFERRALS NEED A PHYSICIAN'S SIGNATURE?

Under s. OT 4.03 (2) (b), Wis. Admin. Code, referrals are not required to have a physician signature. However, under s. OT 4.03 (2) (d), physician orders must be in writing.

MAY AN OCCUPATIONAL THERAPIST ACCEPT REFERRALS FROM PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS?

Yes. Occupational therapists may accept referrals from physician assistants and nurse practitioners under s. OT 4.03 (2) (c), Wis. Admin. Code.

IS IT ACCEPTABLE FOR A NURSE PRACTITIONER TO PROVIDE A REFERRAL OR AN ORDER FOR OCCUPATIONAL THERAPY?

Yes, under s. OT 4.03 (2) (b), Wis. Admin. Code, referrals may be accepted from advanced practice nurses.

IF AN OPTOMETRIST MAKES A REFERRAL FOR OCCUPATIONAL THERAPY, DOES THERE ALSO NEED TO BE A PHYSICIAN ORDER?

Under s. OT 4.03 (2) (b), Wis. Admin. Code, referrals for occupational therapy may be accepted from optometrists.

DO ALL CLIENTS HAVE TO BE REFERRED TO OCCUPATIONAL THERAPY IN ORDER TO RECEIVE SERVICES?

No, under ss. OT 4.03 (c) and (e), Wis. Admin. Code, there are circumstances under which a referral is not necessary in order to receive occupational therapy

MAY OCCUPATIONAL THERAPY ASSISTANTS (OTA) COMPLETE RE-EVALUATIONS AND DISCHARGE EVALUATIONS?

While an occupational therapy assistant does not have the independent authority to complete either a re-evaluation or a discharge evaluation, they may be done in collaboration with an occupational therapist, under ss. OT 4.03 (4) (a) and (5) (a), Wis. Admin. Code.

WHAT CONSTITUTES OCCUPATIONAL THERAPY ASSISTANT ENTRY-LEVEL COMPETENCIES?

Occupational therapy assistant entry-level competencies will vary based on the individual OTA's abilities and the various occupational therapy practice settings. Under s. OT 4.04, Wis. Admin. Code, supervisors will be in the best position to determine when, for instance, close supervision is no longer required for rehabilitation, neonate, early intervention, and school system services for entry-level OTAs.

HOW LONG DO ENTRY-LEVEL OCCUPATIONAL THERAPY ASSISTANTS REQUIRE CLOSE SUPERVISION

Occupational therapy assistant entry-level competencies will vary based on the individual OTA's abilities and the various occupational therapy practice settings. A supervisor is likely in the best position to assess the competency of an entry-level OTA. Once competency has been achieved, close supervision would no longer be required under s. OT 4.04 (5), Wis. Admin. Code.

CAN AN OCCUPATIONAL THERAPY ASSISTANT ENGAGE IN CARDIAC PROGRAMS IF THERE IS ON-SITE SUPERVISION AVAILABLE?

Yes, provided the OTA has demonstrated competency in this practice area, he may engage in cardiac programs. See ss. OT 4.03 (5) (a) and 4.04, Wis. Admin. Code.

CAN AN OCCUPATIONAL THERAPY ASSISTANT DO PRE AND POST-JOINT REPLACEMENT TREATMENT?

Yes, provided the OTA has demonstrated his competency in this practice area, she may engage in pre and post-joint replacement treatment. See ss. OT 4.03 (5) (a) and 4.04, Wis. Admin. Code.

HOW DOES SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS IN SCHOOLS DIFFER FROM OTHER SETTINGS?

There is no substantive difference between the supervision that occurs in schools versus other settings. See s. OT 4.04 (5), Wis. Admin. Code. However, the Department of Public

Instruction also has provisions that apply to occupational therapists and occupational therapy assistants. For further information on that topic, practitioners should consult with the Department of Public Instruction.

CAN AN OCCUPATIONAL THERAPY ASSISTANT TAKE A PHYSICIAN ORDER UNDER DIRECT SUPERVISION?

Wis. Stat. Admin. Code § OT 4.04(1) directs that the occupational therapist is responsible for delivery of occupational therapy services, including those provided by the occupational therapy assistant. The occupational therapist must determine which occupational therapy services may be delegated to someone other than the occupational therapist. Therefore, An OTA may accept an order from a physician, but must refer the order to the supervising occupational therapist for implementation.

ARE THERE ANY GUIDELINES FOR CO-SIGNING?

Co-signature references can be found in ss. OT 4.04 (3) and (4), Wis. Admin. Code.

IS THERE A RECOMMENDED FORMAT FOR DOCUMENTING SUPERVISION?

No, other than the requirements must include the items such as name, status, and plan, as found in s. OT 4.04 (4), Wis. Admin. Code.

IS A SUPERVISING OCCUPATIONAL THERAPIST REQUIRED TO BE PRESENT WHEN AN OCCUPATIONAL THERAPY ASSISTANT PROVIDES IN-HOME CARE?

The objective of on-premises meetings is review of the progress and effectiveness of treatment. The supervising occupational therapist is responsible for the occupational therapy services provided, including those provided by an occupational therapy assistant. The supervising occupational therapist is therefore responsible for determining the level of supervision necessary to avoid unacceptable risk of harm to the patient.

Motions from the 4/10/2013 meeting regarding the review of position statements:

Executive Order 50 – Review of Position Statements/FAQ’s

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, to eliminate the position statement “DOES THE DEFINITION OF “PHYSICIAN” INCLUDE A DOCTOR OF OSTEOPATHY AS USED IN S. OT 4.03(2)(A), WIS.ADMIN. CODE?” from the DSPS website. Motion carried unanimously.

MOTION: Dorothy Olson moved, seconded by Mylinda Barisas-Matula, to eliminate the position statement “IS THERE A DIFFERENCE BETWEEN A VERBAL ORDER AND AN ORAL REFFERAL?” from the DSPS website. Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, to eliminate the following two position statements from the DSPS website:“IS THERE A DIFFERENCE BETWEEN A “REFFERAL” ORDER AND A “PHYSICIAN ORDER” AS USED IN S. OT 4.03(2)(D)? and “WHAT TYPES OF OCCUPATIONAL THERAPY SERVICES MAY BE PROVIDED UNDER A “REFERRAL” AS OPPOSED TO A “PHYSICIAN ORDER”?”. Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Deb McKernan-Ace, in the position statement “WHAT TYPE OF DOCUMENT SHOULD LICENSEES MAINTAIN AS PROOF OF HAVING COMPLETED THE REQUIRED CONTINUING EDUCATION?” to strike “proof of payment” and add the correlating citation(s) at the end as a hyperlink. Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, to eliminate the following position statement from the DPSP website: “UNDER S. OT 4.04(4), WIS. ADMIN. CODE, MUST THE SUPERVISING OCCUPATIONAL THERAPIST MEET SIMULTANEOUSLY WITH THE OCCUPATIONAL THERAPY ASSISTANT AND THE CLIENT OR MAY THESE REQUIRED MEETINGS BE HELD SEPARATELY?”. Motion carried unanimously.

MOTION: Mylinda Barisas-Matula moved, seconded by Gail Slaughter, to make the changes to the following position statement and to add code references as a hyperlink.

WHAT ROLE MAY AN CERTIFIED OCCUPATIONAL THERAPY ASSISTANT (COTA) PLAY IN SCREENING OR EVALUATING PATIENTS ~~FOR PHYSICAL FUNCTION?~~

~~Section OT 1.03(1) of the Wisconsin Administrative Code provides that a~~ An COTA may collaborate with an OT in screening or evaluating patients ~~for physical function.~~ Wisconsin Administrative Code Sections OT 4.03(1)(a) and 4.03(3)(a).

Motion carried unanimously.

MOTION: Gail Slaughter moved, seconded by Mylinda Barisas-Matula, in the position statement “MAY AN OCCUPATIONAL THERAPIST BE INVOLVED IN DETERMINING WHETHER THE NEED FOR RESTRAINTS IS AN APPROPRIATE OPTION FOR PATIENTS IN A SKILLED NURSING FACILITY?”, to delete the first sentence through the word “she” and insert “An occupational therapist”, and delete the second sentence and make the code references a hyperlink. (The revisions are outlined below.) Motion carried unanimously.

MAY AN OCCUPATIONAL THERAPIST BE INVOLVED IN DETERMINING WHETHER THE NEED FOR RESTRAINTS IS AN APPROPRIATE OPTION FOR PATIENTS IN A SKILLED NURSING FACILITY?

~~While an occupational therapist is not the ultimate decision maker in determining whether the use of restraints should be used on a patient in a skilled nursing facility, he or she~~ An occupational therapist may participate and provide input during the patient evaluation process. ~~Typically, the physician, in collaboration with other allied health professionals (including OTs), makes the decision as to the use of restraints.~~ See ss. OT 4.02 (2) (e) and 4.03 (2) (a), Wis. Admin. Code.

BOARD APPEARANCE REQUEST FORM

Board Name: Occupational Therapists Affiliated Credentialing Board

Board Meeting Date: 10/29/2013

Person Submitting Agenda Request: Hannah Whaley, Investigator

Person requesting an appearance: Attorney Sandra L. Nowack

Mailing address: Division of Legal Services and Compliance

Email address: sandra.nowack@wisconsin.gov

Telephone #: 608-266-8098

Reason for Appearance: Attorney Nowack will give an overview of the Case Advisor Training to the Board members.

Is the person represented by an attorney? If so, who?

Attorney's mailing address:

Attorney's e-mail address:

Phone Attorney:



**OVERVIEW OF
DPS REGULATORY
STRUCTURE**

The Department and the Boards

The **Department** of Safety and Professional Services (Department) and the attached Boards are distinct legal entities with different functions, working toward the same goal.

The Department was created to perform a wide range of duties, including providing legal expertise and administrative support to the Boards. Legal expertise is provided to the Boards in three ways: by a legal counsel, who has a fiduciary responsibility to provide legal advice to the board in exercising its duties and responsibilities; by the assignment of an administrative law judge when disciplinary action goes to a formal hearing; and by the prosecutor of each case opened for investigation.

The Department provides administrative support by the assignment of an Executive Director, Bureau Assistant and Rules Coordinator to each board. These staff members manage board meeting agendas, handle a range of board related business and serve as a liaison between the board and the Department.

The Division of Legal Services and Compliance (**DLSC**) is the part of the Department tasked with the responsibility of enforcing licensee compliance with State laws and professional codes. DLSC is the physical extension of Boards' authority in disciplining misconduct. DLSC works collaboratively as the Board's partner in ensuring that fair and just discipline is imposed on violators of professional rules in a way that accomplishes the State's goals in protection, deterrence and rehabilitation.

Boards are established to perform many functions, including setting entry and practice standards through rule-making and regulating the professions through disciplinary actions. Within disciplinary actions, individual Board members may have two roles: the judicial role of a final decision-maker and the consultant role of case advisor.

As a consultant, the case advisor of a particular case assists DLSC's prosecuting attorney with professional expertise on the licensee's misconduct and necessary discipline to bring the licensee into compliance. If the attorney and licensee reach an informal resolution, the Board as a whole (including the case advisor of that case) will hear relevant facts, as the judge, and determine whether the agreed-upon resolution is sufficient. The consulting and judicial roles must be kept distinct and separate. To blur the line between the roles violates due process. Many of the safeguards and specific prohibitions are discussed below.

Common terms/definitions

- Respondent
- Licensee

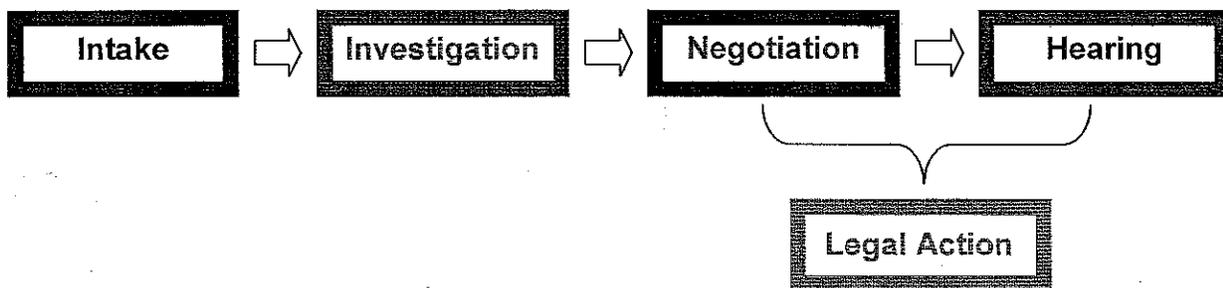
The Disciplinary Process

The Department operates on a complaint driven process, meaning all compliance actions are results of submitted complaints against alleged licensee misconduct, not from the Department's active search for misconduct. The Complaint itself may come from a variety of sources, such as consumers, professionals, or other cases that alerted us to misconduct of another licensee.

The State of Wisconsin recognizes and respects an individual's interest in earning a living. However, the individual's interest must be balanced with the public's interest in obtaining services that are safe and effective. In disciplining licensees, the State has three goals:

- 1. Protect the public;**
- 2. Deter the conduct; and**
- 3. Rehabilitate the respondent.**

The State does not punish licensees for misconduct, but provides them with the necessary tools and opportunities to regain compliance. This protects both the public's and the individual's interests.



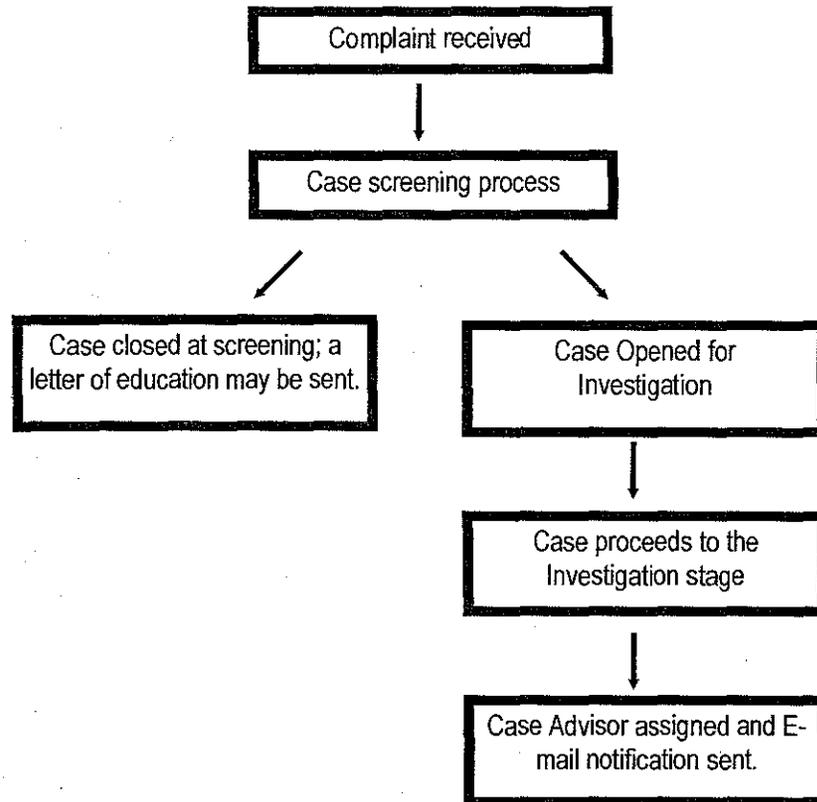
Intake Process

The Intake stage is the first stage in the case handling process.

As a complaint is received by the Department, Intake Staff collect relevant information (such as records, follow-up from the Complainant if the information is incomplete or an initial response from the accused licensee) and send the complaint to the Screening Panel, which may consist of several Board members and a DLSC attorney. The Screening panel, at a predetermined time, will confer and determine whether, from the information provided, a violation may have occurred. The panel may consider many factors, such as the seriousness of the allegations, the harm or threat of harm, whether the dispute is already resolved, and whether the matter is primarily a civil or private dispute. If a complaint does not warrant further action, it is closed under appropriate codes depending on the facts of the case, and a letter is sent out to the parties. If a complaint does have merit, or require further investigation, the case is opened and goes on to the Investigation stage.

The Intake stage is especially important as a gatekeeper against trivial complaints and cases without proof. This stage protects licensed professionals from meritless attacks on their

reputation and livelihood. In certain circumstances, a licensee may be close to violating a professional standard, but did not violate it. Through the Screening process, the Panel may choose to issue a letter of education that warns the licensee of the risks of his conduct to prevent future violations.



Case Assigning

When a case is opened, a case advisor will be assigned, along with an investigator, paralegal and attorney. The advisor can be assigned to a particular case by:

1. The screening panel - initial assignment made by screening panel during screening.
2. DLSC staff - when a conflict is identified or replacement for a previous case advisor is necessary, another case advisor will be assigned.
3. Expertise - in some cases the case advisor is assigned (either by the screening panel or DLSC) based on his or her expertise in a particular area relevant to the case. In cases where professional expertise is not required, a Public Member may be assigned as the advisor.
4. General rotation - case advisor assignments are made generally based on a rotation system so that the caseload is distributed as evenly as possible among board members.

5. Geographical area – case advisor is assigned based on *not* being in the same geographical area as Respondent [Exception: Real Estate Appraisers are assigned by geographical area due to the importance of local area knowledge].

Once assigned, the advisor will receive an email or letter from the Intake staff with notification of the assignment. The notification will include the case number, name of the Complainant, Respondent, original complaint and all supplemental information obtained since the complaint was received. At this time, the assigned advisor should review the materials and determine if there is any conflict of interest or bias that would require reassignment. If a conflict does exist, or if the advisor is uncertain if one exists, the advisor should contact DLSC staff immediately.

Forms of “Discipline”

It is important to understand and remember that almost all professionals hold a certain level of pride in their professional career. The State does not regulate professionals to all operate at the highest standard possible, which is a system better controlled by the market and individual professional’s reputation. Instead, we regulate professionals to operate *above the minimum standard*. At times, licensees may be careless, incompetent or reckless. As the embodiment of the profession, Boards must make sure that the imposed discipline is appropriate to address the misconduct when the entire circumstance is taken into account. In addition to formal discipline, Boards also have non-disciplinary options that may more appropriately correct the licensee’s failure. The case must always be reviewed and determined case-by-case, taking into account all facts specific to that particular case.

Forms of Informal Discipline: Useful Non-Disciplinary Tools

1. Case Closure: Prosecutorial Discretion
 - a. Sometimes, the simple act of opening a case against the licensee is enough to alert the licensee to improve his practices.
 - b. Some examples of situations:
 - i. The incident in question was not seriously harmful to the public;
 - ii. Compliance with the statutes or rules has been gained;
 - iii. The expenditure of resources to pursue the violation greatly exceeds the value to the public in pursuing the matter; or
 - iv. The Board has taken action in regard to the licensee that addressed the conduct and no further action is necessary.
2. Remedial Education
 - a. Requiring licensee to complete education that addresses his failure through a Board Order that does not include specific finding of a violation.
 - b. Remedial education allows the licensee to gain compliance with less embarrassment to his or her professional pride.
3. Administrative Warning:
 - a. Requires that the misconduct is a minor violation, and the misconduct is a first occurrence for the licensee (Wis. Admin. Code ch. SPS 8)

- b. The fact that the warning was issued is a public record, but the content of the warning is private and confidential.
 - c. Licensee may request review of the warning within 20 days and make an appearance before the Board. If a warning is appealed, the Board may re-examine the case and request DLSC to pursue a different resolution, if warranted.
4. The Professional Assistance Procedure (PAP):
- a. PAP is an alternative to formal disciplinary process for an impaired professional; it encourages individuals to seek help for their impairment in a non-disciplinary environment.
 - b. If an individual is released from PAP for failure to comply with the program, the Department Monitor at that time may refer the individual to DLSC for formal disciplinary procedures, if appropriate.

Forms of Formal Discipline

If the licensee's misconduct cannot be corrected with a non-disciplinary option, or if the misconduct is common enough that all licensees within the profession must be alerted to its substandard nature, formal discipline may be warranted.

1. Reprimand – to “publicly warn the holder of a credential” (Wis. Stat. § 440.01(1)(e))
2. Limited License – to “impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder’s practice” (Wis. Stat. § 440.01(1)(d))
 - a. A credential can be limited in many ways, allowing Boards to creatively and most appropriately address the credential holder’s deficiency. For example:
 - i. Education – can the misconduct be resolved by re-education?
 - ii. Testing – can the misconduct be resolved by re-testing?
 - iii. Assessment or Treatment – can the licensee practice safely and competently if AODA impairment is treated?
 - iv. Supervision, Work Reports or Auditing
 - v. Other options by limiting:
 1. Practice scope
 2. Geographic practice area
 3. Types of procedures
 4. Types of clients
 - b. Time period – can be permanent or for a set period of time (e.g. until education is completed, testing passed, or licensee is deemed safe to practice).
 - c. Measurability – when determining the appropriate limitation, please choose limitations that are clearly measurable and enforceable. Establish guidelines on how the licensee can show his or her compliance with the Board’s intended restrictions.
3. Suspension – to “completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(h))
 - a. Suspension should only be used when the conduct was egregious, as it is a form of deterrence rather than rehabilitation.

- b. Suspensions can be imposed by length of time, completion of other Board requirements, or indefinitely, requiring a successful petition to the Board to lift the suspension.
- 4. Revocation or Voluntary Surrender – to revoke is to “completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential” (Wis. Stat. § 440.01(f))
 - a. Revocation is only appropriate for the most serious conduct
 - b. Not all revocations are permanent: licensees may re-apply (but it is up to the Board whether a license will be granted) unless the Order specifically prohibits or limits it.
 - c. Voluntary surrender is essentially identical to a revocation, except that it causes less embarrassment.
- 5. Voluntary Surrender or Retirement without a Finding of Violation
 - a. There are instances where, regardless of the egregiousness of the conduct, the licensee wishes to stop practicing.
 - b. In these circumstances, the licensee can retire or surrender his or her license without a formal finding of violation.
- 6. Forfeiture or Citations - some boards have the ability to impose monetary forfeitures or citations, which serve a deterrent function rather than rehabilitative.

The legal team assigned to a case will always assist the Case Advisor in determining the most appropriate discipline. The legal team may have additional information such as historical data and recent trend or change in discipline for similar conduct. Also, because the legal team has direct interactions with respondents, the team may have important insight as to what may be the most efficient and effective way to bring a particular respondent into compliance.

Summary Suspensions

Summary suspension is a special tool that allows us to suspend a licensee without a stipulated agreement and before a full hearing. Because this tool circumvents certain due process, it can be used only when the facts establish that the licensee has engaged in and/or is likely to engage in conduct that threatens the health, safety or welfare of the public, which requires emergency suspension.

If a Board uses summary suspension, a formal complaint must be filed shortly after and a hearing held promptly. It is critical that all evidence is ready for the hearing.

Obtaining a summary suspension against a licensee does not necessarily mean that licensee has indeed engaged in misconduct; it only means that we have enough reason to believe he did, **AND** that he will continue to do so, placing the public in danger. Without evidence that the dangerous conduct will continue unless the licensee is suspended, summary suspension should not be granted.

Informal Settlement Conferences

Another special tool ...

Costs

The Department has the authority to recoup time and money spent on a case if discipline is ultimately imposed. Costs include recovery for investigator, paralegal and attorney time, Administrative Law Judge's time if the matter goes to hearing, witness fees, postage, costs paid out for certified copies of records, court reporter fees, etc.

Case Advisor Role

The board member, while acting as a case advisor, has the responsibility to:

1. review the case materials;
2. identify additional materials required in order to make a determination;
3. provide expert and technical advice and assistance to the DLSC staff;
4. assist the attorney in determining the merits of the case;
5. assist the attorney in determining whether a violation occurred;
6. assist the attorney in determining the appropriate discipline if a violation occurred; and
7. assist with finding expert witnesses.

The case advisor is the prosecuting attorney's consultant in determining if a violation occurred, what is the exact nature of that violation, the egregiousness of the violation, and what is necessary to bring the violator back into compliance. While the prosecuting attorney is an expert of the law, without the case advisor's expertise in a particular professional field, the attorney will be unable to adequately determine the facts of the case.

The most important factor in ensuring efficient and effective discipline of a licensee is clear communication between the case advisor and the legal team. With clear direction and expertise, the case advisor can assist the team's investigation and imposition of appropriate discipline. The case advisor and the legal team assigned to a particular case should maintain open communication through telephone, email, fax or regular mail. Complex issues may require telephone discussions. The legal team would always be happy to set up a phone conference at the case advisor's convenience. Communication between the case advisor and the legal team is an on-going process, as the case advisor's expertise may be needed each time new information is discovered.

The case advisor should provide the legal team with an opinion or request for additional information within **two (2) weeks** of receiving the investigative materials (**3 days for appraisers**). Timeliness is critical, allowing the legal team to conduct additional investigation or collect evidence as needed. Licensees also wish to have their cases resolved as soon as possible, as any case open against their license may jeopardize their employment or professional pride and reputation. If a case advisor knows there may be a delay, or if an unexpected event occurs, please contact your legal team immediately and we can set a new date for completion or discuss case transfer options.

The case advisor's opinion/communication should be clear and answer each of these questions: is additional information required? Did a violation occur? What is the violation? What would a *minimally competent* licensee have done in the same circumstance? How egregious is this conduct? What is the root issue? What would adequately address this issue and bring the licensee into compliance?

Please keep in mind that the violation often is not as clear to the legal team as to someone within the particular profession. However, the case advisor's analysis should serve to clear up any confusion or lack of understanding.

Being privy to private (oftentimes unproven) information, the case advisor has a duty to maintain confidentiality. Pending cases cannot be discussed with other board members, colleagues or friends.

Curbside consults with other experts

Occasionally, an issue may arise that is outside the case advisor's specialty or area of expertise. In certain circumstances, the advisor may consult with a colleague in that particular field or specialty in order to form an opinion on the violation and appropriate discipline. However, there are two prohibitions:

1. consultations may not be with another board member
2. do not disclose any identifying information specific to the case

If other questions or concerns arise with who may be consulted, the case advisor should discuss those concerns with the legal team assigned to that case.

Ex-Parte Communication

As both a board member (who act as the decision maker or "judge") and a case advisor (who act as the expert witness), it is essential that all decisions or recommendations are made with objectivity. The advisor must protect against conflicts of interest, as well as the *perception* of a conflict. As such, the board member/advisor must not communicate with individuals involved in a pending case (including complainant(s), respondent(s) and witness(es)).

If a party of a case (whether it's assigned to you or not) attempts to contact you, please advise him or her that you cannot discuss the case with them, and inform your legal team immediately.

Case Advisor Participation in Board Deliberations

When a proposed resolution (whether as a result of a stipulated agreement by the respondent or a proposed decision by the Administrative Law Judge) is before the board for consideration, the board member that served as advisor for the case may or may not be a part of the deliberation, depending on what type of case it is:

- Proposed stipulations, administrative warnings or case closures – the case advisor may participate in discussions and may vote on the matter. The advisor should be prepared to speak in support of the agreed upon resolution, discipline or closure. The advisor can always contact the case’s attorney prior to the meeting in order to refresh his or her memory on why a particular discipline is the most appropriate one.
- Proposed decision following an evidentiary hearing – the case advisor may not participate in discussions. The advisor likely has access to information that was not presented or admitted as evidence during the hearing, and it would be unfair and unjust to the licensee for the advisor to report on conclusions or information that was not proven at the hearing.

Disposal of Materials

All materials you receive during the course of the case investigation and disposition are confidential. They should be kept in a secure location and not shared with others. When the case is closed, you may destroy all copies or return them to the Division of Legal Services and Compliance for disposal.

Caution: Please make certain that none of the materials to be destroyed are originals. If they are, please return these items to the Division of Legal Services and Compliance.

PURPOSE, MISSION AND CORE VALUES

Purpose: The purpose of the Department of Safety and Professional Services is to ensure:

- The safety of consumers of licensed professional services;
- Licensure to competent professionals;
- Compliance with professional and industry standards; and
- Safety in the construction and use of public and private buildings.

DLSC promotes safety through complaint intake and the investigation, inspection, audit and discipline of regulated professionals and businesses. We provide legal services to professional boards, monitor order compliance and administer a program for impaired professionals. Our stakeholders are the public, boards, regulated professionals/businesses and Agency divisions.

Mission: We provide legal services to ensure consumer protection and we courteously assist professionals in achieving compliance with professional standards. We are responsive and respectful to all stakeholders and fiscally responsible to the taxpayers, boards and licensed professionals who bear our financial burden.

Core Values: Our core values are:

- **Integrity:** We treat each other and our stakeholders with courtesy, ensuring decency, honesty and fairness in all of our efforts and communications. We competently and enthusiastically provide our services in a fair and fiscally prudent manner.

- **Accountability:** We take personal responsibility for our results through objective standards, which help us to deliver measureable results within expected timelines.
- **Teamwork:** We foster a winning environment and healthy culture by taking pride in our work, displaying a sense of urgency in our mission and elevating Team success above self. We ensure success through strong relationships with our stakeholders.
- **Service:** We provide exemplary customer-service and value to our stakeholders through effectively responding to their needs in a timely and courteous manner.
- **Continuous Improvement:** We embrace innovative solutions for the continuous improvement of services and efficiency, and we demand an environment of operational excellence and a culture of positive enthusiasm.

Conclusion

We are here to assist case advisors and board members every step of the way to accomplish our joint mission. We thank you for your voluntary service to the State of Wisconsin and your commitment to your profession.

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