

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2009 MAY 15 AM 9:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Occupational Therapy TITLE NUMBER: 13

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §30-28-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 5

TITLE OF RULE BEING PROPOSED: Competency Standards for Advanced Practice by Occupational Therapists and
Occupational Therapy Assistants

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 18, 2009 AT 3:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Occupational Therapy
3041 University Ave.
2nd Floor, Suite 6
Morgantown, WV 26505

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Konda Malnikoff

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



West Virginia Board of Occupational Therapy

3041 University Avenue
2nd Floor, Suite 6
Morgantown, WV 26505
304-285-3150
www.wvbot.org

TO: Secretary of State and the LRMRC

FROM: West Virginia Board of Occupational Therapy

DATE: May 12, 2009

RE: Brief Summary and Statement of Circumstances

During the 2009 Legislative Session, House Bill 2309 was passed, amending §30-28, the West Virginia Occupational Therapy Practice Act. In order to ensure passage, one of the provisions we had to include restricts Occupational Therapy Assistants (OTA's) from performing deep thermal or electrical modalities to patients, except under the direct supervision of an Occupational Therapist (OT), until the WV Board of Occupational Therapy promulgates Rules to establish competency standards in this area.

The attached Rule defines the training and competency standards required by OTA's to perform these advanced practice modalities under the general supervision of an OT. This Rule is necessary to ensure that only OTA's who are adequately trained and competent in such modalities are providing these services to patients.

This same Rule was also filed as an emergency rule to allow trained OTA's to continue to provide these services to patients, under the general supervision of an OT, until the proposed legislative rule is passed through the normal rule-making process during the 2010 Legislative Session.

If you have any further questions, please do not hesitate to contact the Board at the number above.

Sincerely,

Kathy F. Quesenberry, MSM, OTR/L

Kathy Quesenberry, MSM, OTR/L
President

Martin Douglas, MS, OTR/L

Martin Douglas, MS, OTR/L
Secretary / Treasurer

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 13, Series 5 Competency Standards for Advanced Practice

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Occupational Therapy

Address: 3041 University Ave.
2nd Floor, Suite 6
Morgantown, WV 26505

Phone Number: 304-285-3150 Email: vmalnikoff@wvbot.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

These changes will not effect the costs and revenues of state government as WVBOT is a self-funded Board.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title:

Title 13, Series 5 Competency Standards for Advanced Practice

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Although the Board is a state entity, its funding source is solely generated by fees paid by licensees.

Date: 5/12/09

Signature of Agency Head or Authorized Representative

Vonda Malnikoff

FILED

**TITLE 13
LEGISLATIVE RULE
BOARD OF OCCUPATIONAL THERAPY**

2009 MAY 15 AM 9:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 5
COMPETENCY STANDARDS FOR ADVANCED PRACTICE BY
OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS**

§13-5-1. General.

1.1. Scope. -- This legislative rule establishes competency standards for advanced practice by occupational therapists and occupational therapy assistants

1.2. Authority. -- W. Va. Code §30-28-6.

1.3. Filing Date. --

1.4. Effective Date. --

§13-5-2. Definitions.

As used in this rule:

2.1. "ACOTE" means the Accreditation Council for Occupational Therapy Education.

2.2. "Advanced Practice" means treatment techniques or arenas which require education and training obtained subsequent to the qualifying degree program or beyond current ACOTE standards for the qualifying degree program.

2.3. "Board" or "WVBOT" means the West Virginia Board of Occupational Therapy.

2.4. "Deep thermal agent modalities" means therapeutic ultrasound and phonophoresis.

2.5. "Electrotherapeutic agent modalities" means neuromuscular electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis.

2.6. "General Supervision" means initial direction, periodic inspection of service delivery, periodic meetings to review the outcome of service delivery, and the personal and direct involvement

of the supervisor in the licensed occupational therapy assistant's professional experience which can also include evaluation of his or her performance. The supervisor need not be present or on the premises at all times where the licensed occupational therapy assistant is performing the professional services. General supervision is demonstrated through co-signatures on all paperwork or electronic notes pertaining to the practice of occupational therapy for the person requiring general supervision. All paperwork or electronic notes pertaining to the practice of occupational therapy must be signed and dated, electronically or otherwise, by the supervising licensed occupational therapist.

2.7. "Mechanical modalities" means the therapeutic application of various forms of mechanical energy to the body, including traction and intermittent pneumatic compression (does not include spinal traction).

2.8. "Modality" means the employment of or the method of employment of a therapeutic agent.

2.9. "Physical Agent Modality (PAM)" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity, and are used as an adjunct to or in preparation for purposeful activity.

2.10. "Superficial physical agent modality" means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices.

2.11. "Occupational Therapist" means a person licensed to practice occupational therapy and whose license is in good standing.

2.12. "Occupational Therapy Assistant"

means a person licensed to assist in the practice of occupational therapy under the general supervision of the licensed occupational therapist and who license is in good standing.

§13-5-3. Physical Agent Modalities in Occupational Therapy.

3.1. Physical agent modalities may be used by occupational therapy practitioners when used as an adjunct to / or in preparation for purposeful activity to enhance occupational performance.

3.2. An occupational therapist shall not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

3.3. Occupational therapy assistants and students of occupational therapy shall use modalities and techniques only when the individual has received the theoretical and technical preparation necessary for safe and appropriate integration of the intervention in occupational therapy.

3.4 When an occupational therapist delegates the use of modalities to an occupational therapy assistant or student, both shall:

3.4.a. Comply with appropriate supervision requirements as defined in §13-1-2; and

3.4.b. Assure that their use is based on service competency.

§13-5-4. Competency Requirements for Occupational Therapy Assistants in the use of Physical Agent Modalities.

4.1. To promote the safe provision of occupational therapy, this section sets forth the requirements which must be met before an

occupational therapy assistant may apply physical agent modalities.

4.2. Occupational therapy assistants may apply superficial thermal and mechanical modalities including, but not limited to, hot packs, cold packs, paraffin, fluidotherapy, and icing, under the general supervision of an occupational therapist, consistent with ACOTE standards for an educational program for occupational therapy assistants.

4.3. Any occupational therapy assistant who wishes to utilize advanced practice occupational therapy techniques involving deep thermal or electrical modalities under the general supervision of an occupational therapist, must maintain documented evidence of possessing the theoretical background and technical skills for safe and competent use.

4.4. The occupational therapy assistant is responsible for proving competency in the use of specific modalities and techniques.

4.5. Competency may be displayed through documented educational programs which include a method of evaluation and testing the knowledge of the therapist, including, but not limited to:

4.5.a. Accredited educational programs (including fieldwork education);

4.5.b. Specific certification;

4.5.c. Appropriate continuing education;

or

4.5.d. Inservice training.

4.6. Training shall be completed prior to the use of the specific modality. Documentation of training shall be made available to the Board upon request.