

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

Form #3

Do Not Mark In This Box

FILED

2009 JUL -7 PM 12: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY: W. Va. Code §30-28-7

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Vonda Malnikoff
Authorized Signature

West Virginia Board of Occupational Therapy



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

June 25, 2009

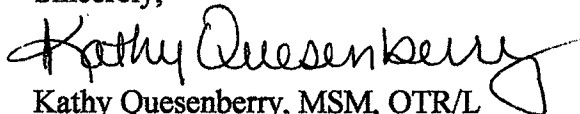
To: Secretary of State and the LRMRC

From: Kathy Quesenberry, MSM, OTR/L
WVBOT President

Re: Authority to file Agency Approved Legislative Rules

On behalf of the West Virginia Board of Occupational Therapy, please accept this letter authorizing the filing of Agency Approved Title 13 Legislative Rules, including Series 1 through 6, for consideration during the 2010 Legislative Session.

Sincerely,


Kathy Quesenberry, MSM, OTR/L
President

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 6, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Occupational Therapy
3041 University Ave.
2nd Floor, Suite 6
Morgantown, WV 26508
304-285-3150

LEGISLATIVE RULE TITLE: Competency Standards for Advanced Practice by
Occupational Therapists and Occupational Therapy Assistants

1. Authorizing statute(s) citation W Va. Code § 30-28-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 22, 2009

b. What other notice, including advertising, did you give of the hearing?
Board website: www.wvbot.org
Newsletter to all licensees

c. Date of Public Hearing(s) *or* Public Comment Period ended:
June 18, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached 1 comment No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 10, 2009

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Vonda Malnikoff, Executive Secretary

WV Board of Occupational Therapy

3041 University Ave.

2nd Floor, Suite 6

Morgantown, WV 26505

phone: 304-285-3150

fax: 304-285-3150

email: vmalnikoff@wvbot.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

*



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: July 6, 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 Agency Approved 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 and approved 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 WV BOT 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

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

**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. -- May 13, 2009

1.4. Effective Date. -- June 2, 2009

§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, phonophoresis, and diathermy.

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 occupational therapy assistant, including, but not limited to:

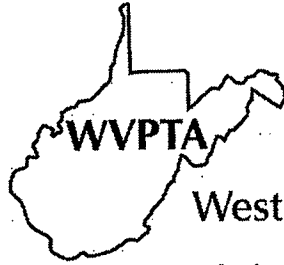
4.5.a. Accredited educational programs (including fieldwork education);

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.



West Virginia Physical Therapy Association

A chapter of the American Physical Therapy Association

May 28, 2009

Natalie E. Tennant
Secretary of State
State Capitol Complex
Charleston, WV 25305

Dear Secretary Tennant:

I am writing on behalf of the West Virginia Physical Therapy Association (WVPTA) to comment on the proposal by the West Virginia Board of Occupational Therapy to file Emergency Rules for competency requirements for licensees. The WVPTA worked with the members of the WV Association of Occupational Therapists and the WV Board of Occupational Therapy and agreed on language in HB 2309 during the recent legislative session. WVPTA supports the new practice act for occupational therapy.

The WVPTA does not oppose the filing of emergency rules to allow COTAs to continue their practice while establishing new competency standards.

However, we do have two suggested amendments to the proposed rule. The WVPTA will work through the Rule-Making Review Committee to make the following changes.

1) §13-5-2. Definitions.

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

2) §13-5-4 Competency Requirements for Occupational Therapy Assistants in the use of Physical Agent Modalities.

4.5 Competency may be displayed through documented educational programs, including accredited educational programs (including fieldwork education), specific certification, appropriate continuing education, or in-service training, which includes a method of evaluation and testing the knowledge of the therapist assistant.

Thank you for your consideration.

Sincerely yours,

Nancy S. Tonkin
Executive Director

2110 Kanawha Boulevard, E., Suite 220
Charleston, WV 25311
304-345-6808 voice / 304-344-4139 fax
nancy.tonkin@wvptmg.com

West Virginia Board of Occupational Therapy



3041 University Avenue
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May 28, 2009

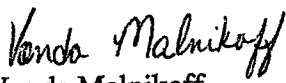
Natalie E. Tennant
Secretary of State
State Capitol Complex
Charleston, WV 25305

Dear Secretary Tennant,

I am writing on behalf of the West Virginia Board of Occupational Therapy (WVBOT) to indicate our agreement with the suggested amendments to our proposed Emergency Rule 13-5 made by the West Virginia Physical Therapy Association (WVPTA) as stated in the enclosed letter.

Please advise if you require any additional information from the Board while considering this proposed emergency rule.

Sincerely,


Vonda Malnikoff
Executive Secretary

enc.

RE: Emergency Rule

From: "Vonda K. Malnikoff" <vmalnikoff@wvbot.org>
 Subject: RE: Emergency Rule
 Date: Wed, June 3, 2009 1:10 pm
 To: "Nancy Tonkin" <nancy.tonkin@wvtmg.com>

Hi Nancy,

Just wanted to let you know that our Emergency Rule was approved as originally filed, with the understanding that your suggested changes would be incorporated into the final rule during the next legislative session.

Sincerely,

Vonda K. Malnikoff
 Executive Secretary, WVBOT
 3041 University Ave.
 2nd Floor, Suite 6
 Morgantown, WV 26505
 304-285-3150
vmalnikoff@wvbot.org

> Hi Vonda,
 > This is good to hear. Glad you agree on our suggestions.
 > Nancy
 >
 > -----Original Message-----
 > From: Vonda K. Malnikoff [<mailto:vmalnikoff@wvbot.org>]
 > Sent: Thursday, May 28, 2009 1:19 PM
 > To: Nancy Tonkin
 > Subject: RE: Emergency Rule
 >
 > Nancy,
 > WVBOT is in agreement with your suggestions. I'll communicate the necessary
 > amendments to the Secretary of State.
 >
 > Sincerely,
 >
 > Vonda K. Malnikoff
 > Executive Secretary, WVBOT
 > 3041 University Ave.
 > 2nd Floor, Suite 6
 > Morgantown, WV 26505
 > 304-285-3150
 > vmalnikoff@wvbot.org
 >
 >> Hi Vonda:
 >> We didn't get a copy of the emergency rules till last week so I then
 >> got them out to the key board members who have worked on this for their
 >> review
 >> and comment. Secretary Tennant asked that I share with her any
 >> suggestions
 >> that we have for the rule--before she ruled about the emergency basis.
 >> I tried to be clear that we don't have a problem with the rules being
 >> filed on an emergency basis but we do have two suggestions for changes
 >> which I think can be handled during the Rule-Making Review process this
 >> fall. The letter details the suggestions. Please review and let us
 >> know what you think about them.
 >> Nancy
 >> Nancy S. Tonkin
 >> Executive Director
 >> West Virginia Physical Therapy Association Suite 220, 2110 Kanawha
 >> Blvd., E.