



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Occupational Therapy TITLE-SERIES: 13-05  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 13-05 Competency Standards for Advanced Practice by Occupational Therapists and  
Occupational Therapy Assistants

**PRIMARY CONTACT**

NAME: WV Board of Occupational Therapy  
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CITE STATUTORY AUTHORITY: 30-28-7

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

Rulemaking authority to establish competency standards for licensees of the Board.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 4/24/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 5/31/2024

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Notice of comment period posted on Board website; email notification to all licensees of the Board

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Competency standards for OT's and OTA's to perform treatment techniques and/or modalities which require education and training subsequent to the qualifying degree program.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The current rule is limited to defining competency standards for OTA's in the use of physical agent modalities. The proposed changes expand this to define competency standards for both OT's and OTA's to utilize treatment techniques and/or modalities which require education and training beyond entry-level skills.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No fiscal impact

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes  
 Vonda K Malnikoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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. -- ~~April 15, 2010.~~

1.4. Effective Date. -- ~~July 1, 2010.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2035.

**§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 and periodic inspection of the activities of a licensed occupational therapist assistant by the supervising licensed occupational therapist, but does not necessarily require constant physical presence on the premises while the activities are performed.

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 by the Board under the provisions of W. Va. Code §30-28 to assist in the practice of occupational therapy under the general supervision of an occupational therapist.

**§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 may 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;

4.5.b. Specific certification as endorsed by the American Occupational Therapy Association or its successor, or as approved by the WVBOT;

4.5.c. Successful completion of an appropriate continuing education course which includes theory, indications, contra-indications and applications.

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.

4.6.a. The Board shall conduct random audits of occupational therapy assistants to substantiate competency in physical agent modalities.

**§13-5-5. Competency Requirements for Occupational Therapists and Occupational Therapy Assistants in the use of Advanced Practice treatment techniques.**

5.1. To promote the safe provision of occupational therapy, this section sets forth the requirements which must be met before an occupational therapist or occupational therapy assistant may utilize treatment techniques and/or modalities which require education and training beyond entry-level skills.

5.2. Any occupational therapist or occupational therapy assistant who wishes to utilize advanced practice occupational therapy techniques and/or modalities must maintain documented evidence of possessing the theoretical background and technical skills for safe and competent use.

5.3. Training shall be completed prior to the use of the specific treatment technique and/or modality. Documentation of training shall be made available to the Board upon request.

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

5.4.a. Accredited educational programs;

5.4.b. Specific certification as endorsed by the American Occupational Therapy Association or its successor, or as approved by the WVBOT;

5.4.c. Successful completion of an appropriate continuing education course which includes theory, indications, contra-indications and applications.

5.5. When an occupational therapist delegates the use of treatment techniques and/or modalities to an occupational therapy assistant, both shall:

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

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

5.6. In order for an occupational therapy assistant to provide advanced treatment techniques and/or modalities under the general supervision of an occupational therapist, the supervising occupational therapist must be trained in the advanced treatment technique and/or modality.