

RULE ADOPTION
VOLUME 43, ISSUE 21
ISSUE DATE: **NOVEMBER** 7, 2011
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
OCCUPATIONAL THERAPY ADVISORY COUNCIL

Adopted Amendment: N.J.A.C. 13:44K-5.4

Adopted New Rule: N.J.A.C. 13:44K-5.5

Use of Physical Agent Modalities; Use of Physical Agent Modalities by a Licensed Occupational Therapy Assistant; Supervisor Responsibilities

Proposed: May 16, 2011 at 43 N.J.R. 1239(a).

Adopted: July 19, 2011 by Thomas R. Calcagni, Director, **Division of Consumer Affairs**, in consultation with the Occupational Therapy Advisory Council.

Filed: October 12, 2011 as R.2011 d.274, **without change**.

Authority: N.J.S.A. 45:1-15 and 45:9-37.51 et seq.

Effective Date: November 7, 2011.

Expiration Date: March 31, 2016.

Summary of Public Comments and Agency Responses:

The Division received comments on the notice of proposal from the following:

1. Stephanie Franklin-Cosgrove, OTR, CHT, New Jersey Occupational Therapy Association, Legislative Chairperson;
2. Felicia M. Chew, MS, OTR, Director of Clinical Services - Occupational Therapy, Genesis Rehab Services;
3. Cynthia F. Epstein, OTR, CEO/President, Occupational Therapy Consultants, Inc.;
4. Angela Rico;
5. Suzanne Windus, MS, OT, CHT, NovaCare Rehabilitation;
6. Camille Sauerwald, Academic Fieldwork Coordinator, Richard Stockton College of New Jersey;
7. Michael Staino, NovaCare Rehabilitation;
8. Ellen McCann; NovaCare Outpatient Rehabilitation;
9. Cornelia von Lersner Benson, OT;
10. Kathleen A. McHale, OTA, NovaCare/Selected Medical, and Genesis Rehab Services; and
11. Marcy M. Buckner, State Policy Analyst, American Occupational Therapy Association, Inc.

1. **COMMENT:** All commenters expressed support for the proposed amendment and new rule that will permit licensed occupational therapy assistants to utilize advanced physical agent modalities. Many of the commenters noted that the new rule will increase access to occupational therapy services, thereby benefitting clients in New Jersey. Ms. Franklin-Cosgrove noted that although some occupational therapists, occupational therapy assistants, and their employers may

incur costs as a result of the new rule, she believes those costs are outweighed by the benefit New Jersey consumers will realize from increased access to occupational therapy services.

RESPONSE: The Council thanks the commenters for their support of the proposed amendment and new rule.

2. COMMENT: Ms. Rico inquired whether an occupational therapist using advanced physical agent modalities may be supervised by a licensed physical therapist. In addition, the commenter requested that the Council provide information concerning the supervision requirements for occupational therapists and occupational therapy assistants.

RESPONSE: A licensed occupational therapist who has been trained in the use of advanced physical agent modalities, consistent with the requirements of N.J.A.C. 13:44K-5.4, may use such modalities without supervision. A licensed occupational therapy assistant who meets the requirements of new N.J.A.C. 13:44K-5.5, may use advanced physical agent modalities under the supervision of a licensed occupational therapist. Consistent with the requirements of existing N.J.A.C. 13:44K-6.1, a licensed physical therapist may not supervise an occupational therapy assistant. The Council notes that the supervision obligations of [page=3035] licensed occupational therapists and occupational therapy assistants are set forth in existing N.J.A.C. 13:44K-6.1 through 6.4.

3. COMMENT: Ms. Windus requested that the Council amend the proposed new rule to exempt from the coursework requirements any occupational therapy assistant who has been practicing for 10 years or more.

RESPONSE: The Council declines to amend N.J.A.C. 13:44K-5.5 to exempt any occupational therapy assistants from the training requirements of the new rule. The Council believes that public safety dictates that all occupational therapy assistants, regardless of the number of years they have practiced, must complete a Council-approved 30-hour training course on the use of advanced physical agent modalities before being authorized to use such modalities with appropriate supervision. Such training will help ensure that occupational therapy assistants use advanced physical agent modalities in a safe and effective manner.

4. COMMENT: Ms. Sauerwald noted that the proposed amendment and new rule fail to provide a definition for the term "qualified" supervisor, and noted that the word "qualified" does not appear in the regulations, although the notice of proposal states that the supervising therapist must be "qualified." The commenter requested that the Council amend its rules to insert the term "qualified" when referring to a supervising occupational therapist, and also to provide a definition of for the term "qualified supervisor."

RESPONSE: The Council believes that new N.J.A.C. 13:44K-5.5 is sufficiently clear and declines to amend the rule as suggested by the commenter. N.J.A.C. 13:44K-5.5(d) expressly provides that a licensed occupational therapy assistant may use advanced physical agent modalities only under the supervision of a licensed occupational therapist who has met the experience requirements of N.J.A.C. 13:44K-6.2(g), and who has completed a Council-approved training course, or holds a current certification from the Hand Therapy Certification Commission or similar organization. N.J.A.C. 13:44K-6.2(g) provides that prior to acting as a supervisor, a licensed occupational therapist must have at least 1,200 hours of work experience obtained in not less than one year and in not more than three years of practice.

5. COMMENT: Ms. Buckner expressed concern that the training course requirement in the new rule appears to imply that the approved course is a single 30-hour course from one provider with various components. The commenter noted that occupational therapist assistants might attend multiple courses from a variety of continuing education providers to become proficient in the application of physical agent modalities.

RESPONSE: The Council-approved training course outlined in new N.J.A.C. 13:44K-5.5 is a single course that must be at least 30 hours in length, similar to the training course requirement in existing N.J.A.C. 13:44K-5.4 for licensed occupational therapists desiring to utilize advanced physical agent modalities. The new rule does not preclude a provider of an approved course from breaking the course up into different segments to be offered over a period of time if the provider so chooses. The Council's intent in requiring the approved course to be a single 30-hour course is to ensure that a licensee is receiving training in the use of advanced physical agent modalities as part of a comprehensive program, and not in piecemeal fashion.

6. COMMENT: Ms. Buckner expressed concern about the provision in new N.J.A.C. 13:44K-5.5, which permits the primary instructor of the Council-approved advanced physical agent modalities course to be a licensed physical therapist, physical therapy assistant, or physician. The commenter believes that permitting someone other than an occupational therapy practitioner to teach the course will result in confusion for participants as to appropriate context for the use of physical agent modalities by Council licensees. The commenter notes that physical agent modalities should be integrated into a broader occupational therapy program as a preparatory method for the therapeutic use of activities.

RESPONSE: The Council disagrees with the commenter's suggestion that licensed physical therapists, physical therapy assistants, and physicians should be precluded from serving as instructors for advanced physical agent modalities training. In its approval of courses, the Council reviews the credentials of course instructors on a case-by-case basis to determine whether a particular instructor is qualified to teach the course, including whether the instructor possesses adequate knowledge of the modality as related to occupational therapy practice. The Council, however, notes that a licensed occupational therapist or licensed occupational therapy assistant who receives training in advanced physical agent modalities has a professional responsibility to ensure that he or she utilizes such modalities consistent with his or her scope of practice.

7. COMMENT: Ms. Buckner expressed concern regarding the provision in the new rule that permits an occupational therapy assistant to apply to the Council for approval of a course in the use of advanced physical agent modalities that has not been pre-approved by the Council. The commenter believes that the Council should pre-approve courses provided by the American Occupational Therapy Association (AOTA), AOTA Approved Providers, or the New Jersey Occupational Therapy Association, as long as the providers meet the regulatory requirements set forth in the new rule.

RESPONSE: Existing N.J.A.C. 13:44K-5.4(e), referenced in new N.J.A.C. 13:44K-5.5(c), outlines the process that a course provider must comply with in order to obtain Council approval of a course on advanced physical agent modalities. All course providers, including those referenced by the commenter, are welcome to submit their courses for Council review and approval, consistent with the requirements of the rule. N.J.A.C. 13:44K-5.5(h), however, sets forth the process that a occupational therapy assistant must complete if he or she wishes to take a course on advanced physical agent modalities that has not been submitted to the Council for approval by the course provider. Subsection (h) permits the licensee who desires to take a course on physical agent modalities that is not Council-approved to submit the documentation necessary to obtain Council review and approval. The Council notes that this requirement mirrors the requirement for occupational therapists set forth in existing N.J.A.C. 13:44K-5.4(h).

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendment and new rule are governed by N.J.S.A. 45:9-37.51 et seq., and are not subject to any Federal standards or requirements.

Full text of the adoption follows:

SUBCHAPTER 5. SCOPE OF PRACTICE

13:44K-5.4 Use of physical agent modalities by a licensed occupational therapist; delegation to licensed occupational therapy assistant

(a)-(i) (No change.)

(j) A licensed occupational therapist may delegate the application of the advanced physical agent modalities set forth in (c) above to a licensed occupational therapy assistant consistent with the requirements of N.J.A.C. 13:44K-5.5. Delegation of advanced physical agent modalities to anyone other than a licensed occupational therapy assistant who has satisfied the requirements of N.J.A.C. 13:44K-5.5 shall be deemed professional misconduct and may subject a licensee to the penalties set forth in N.J.S.A. 45:1-21 et seq.

(k)-(m) (No change.)

13:44K-5.5 Use of physical agent modalities by a licensed occupational therapy assistant; supervisor responsibilities

(a) A licensed occupational therapy assistant may use the superficial thermal agent and mechanical device modalities set forth in N.J.A.C. 13:44K-5.4(b) under the supervision of a licensed occupational therapist consistent with the requirements of N.J.A.C. 13:44K-5.4.

(b) A licensed occupational therapy assistant may use the advanced physical agent modalities set forth in N.J.A.C. 13:44K-5.4(c) under the supervision of a licensed occupational therapist consistent with the requirements of this section.

(c) Prior to using advanced physical agent modalities, a licensed occupational therapy assistant shall have completed a training course that meets the requirements set forth in N.J.A.C. 13:44K-5.4(e).

(d) A licensed occupational therapy assistant shall use advanced physical agent modalities only under the supervision of a licensed occupational therapist who has:

1. Met the experience requirements of N.J.A.C. 13:44K-6.2(g); and
2. Completed a training course that meets the requirements of N.J.A.C. 13:44K-5.4(e) or who holds a current certification from the Hand [page=3036] Therapy Certification Commission or any other national organization that utilizes substantially similar certification standards consistent with the requirements of N.J.A.C. 13:44K-5.4(f).

(e) A licensed occupational therapist shall supervise the use of advanced physical agent modalities by a licensed occupational therapy assistant consistent with the following:

1. The supervising occupational therapist shall provide close supervision, as defined in N.J.A.C. 13:44K-1.2, of the licensed occupational therapy assistant, during which time the occupational therapist shall directly observe the occupational therapy assistant's application of each type of modality in a patient treatment setting no fewer than five times. Documentation of such supervision shall be maintained by the supervising occupational therapist consistent with the requirements of N.J.A.C. 13:44K-6.2(h) and by the licensed occupational therapy assistant consistent with the requirements of N.J.A.C. 13:44K-6.3(c);

2. Following the five instances of direct observation of the licensed occupational therapy assistant's application of a particular type of modality, the supervising occupational therapist shall determine the level of supervision required of the occupational therapy assistant, consistent with the requirements of N.J.A.C. 13:44K-6.2(e).

i. Notwithstanding (e)2 above, the occupational therapist shall continue to provide close supervision for any occupational therapy assistant who has been engaged in the practice of occupational therapy for less than one year on a full-time basis, consistent with the requirements of N.J.A.C. 13:44K-6.2(e); and

3. The supervising occupational therapist shall satisfy all supervisor responsibilities set forth in N.J.A.C. 13:44K-6.2.

(f) A supervising occupational therapist shall not delegate the close supervision of an occupational therapy assistant's use of advanced physical agent modalities, including the direct observation of the occupational therapy assistant's application of the modalities, to anyone other than a licensed occupational therapist who has met the requirements of (d) and (e) above.

(g) A licensed occupational therapy assistant shall retain documentation relating to his or her completion of the training course and shall make such documentation available to the Council upon request. The documentation shall include, if applicable:

1. The name and address of the person or organization presenting the course;

2. The name and address of the facility where the course was presented;
3. A copy of the course syllabus, which includes a detailed description of the learning objectives and teaching methods employed in the course and the qualifications of the instructor(s); and
4. A certificate of completion from the course sponsor.

(h) A licensed occupational therapy assistant may apply to the Council for approval of a course in the use of advanced physical agent modalities that has not been pre-approved by the Council. The licensee shall submit the documentation set forth in (g) above to the Council for review.

(i) A licensed occupational therapy assistant who uses advanced physical agent modalities without having satisfied the requirements of this section shall be deemed to have engaged in professional misconduct and may be subject to the penalties set forth in N.J.S.A. 45:1-21 et seq.

(j) Notwithstanding the fact that a licensed occupational therapy assistant is permitted to use advanced physical agent modalities because he or she has satisfied the training requirements of this section, a licensed occupational therapy assistant shall not use a specific advanced physical agent modality that he or she has not been trained to use until he or she is familiar with the device's proper use and contraindications, and until he or she has been directly observed under close supervision by a supervising occupational therapist in the application of the modality at least five times in a patient treatment setting. Following such direct observation, the licensed occupational therapy assistant may use the modality under the supervision of a licensed occupational therapist consistent with the requirements of (e)2 above. Failure to comply with this section shall be deemed professional misconduct and may subject a licensed occupational therapy assistant to the penalties set forth in N.J.S.A. 45:1-21 et seq.