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**MONDAY, NOVEMBER 3, 2003**  
**RULE ADOPTION**  
LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
OCCUPATIONAL THERAPY ADVISORY COUNCIL RULES

Readoption with Amendments: N.J.A.C. 13:44K

Adopted New Rule: N.J.A.C. 13:44K-8.5

Proposed: May 5, 2003 at 35 N.J.R. 1784(a).

Adopted: July 10, 2003 by Reni Erdos, Director, Division of Consumer Affairs.

Filed: October 3, 2003 as R.2003 d.428, without change.

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

Effective Dates: October 3, 2003, Readoption; November 3, 2003, New Rule and Amendments. Expiration Date: October 3, 2008.

**Federal Standards Statement**

A Federal standards analysis is not required because the rules readopted with amendments and new rule N.J.A.C. 13:44K-8.5 are governed by N.J.S.A. 45:9-37.51 et seq., and are not subject to any Federal requirements or standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:44K.

Full text of the adopted amendments and new rule follows:

<< NJ ADC 13:44K-3.1 >>

**13:44K-3.1 Licensing procedure: occupational therapist**

(a) An applicant for licensure as an occupational therapist shall submit the following to the Council:

1. A completed application form which contains the following:

i.-iii. (No change.)

iv. For applicants who have taken the certification examination prior to January 1, 2003, a "Verification of Certification" letter from the National Board for Certification in Occupational Therapy (NBCOT) indicating that the candidate has successfully completed the certification examination for occupational therapists;

v. For applicants who have taken the certification examination on or after January 1, 2003, a score transfer from NBCOT indicating that the candidate has successfully completed the certification examination for occupational therapists;

Recodify existing v.-vii. as vi.-viii. (No change in text.)

2.-3. (No change.)

<< NJ ADC 13:44K-3.2 >>

**13:44K-3.2 Licensing procedure: occupational therapy assistant**

(a) An applicant for licensure as an occupational therapy assistant shall submit the following to the Council:

1. A completed application form which contains the following:

i.-iii. (No change.)

iv. For applicants who have taken the certification examination prior to January 1, 2003, a "Verification of Certification" letter from the National Board for Certification in Occupational Therapy (NBCOT) indicating that the applicant has successfully completed the certification examination for occupational therapy assistants;

v. For applicants who have taken the certification examination on or after January 1, 2003, a score transfer from NBCOT indicating that the candidate has successfully completed the certification examination for occupational therapy assistants;

Recodify existing v.-viii. as vi.-ix. (No change in text.)

2.-3. (No change.)

<< NJ ADC 13:44K-4.2 >>

**13:44K-4.2 Expiration of temporary license; renewal of temporary license**

(a) A temporary license holder shall take the licensure examination within 90 days of the date of issuance of his or her temporary license. Failure to take the examination within 90 days shall constitute a failure of the examination and the temporary license shall automatically expire. A temporary license holder may, however, apply to the Council for renewal of the temporary license as provided in (c) below. A temporary license holder shall take the licensure examination within 180 days of the date of issuance of the renewal.

(b) A temporary license shall expire automatically upon the temporary license holder being notified of failure of the licensure examination. Upon notification of failure of the initial examination, a temporary license holder may apply to the Council for renewal of the temporary license as provided in (c) below.

(c) A temporary license shall be renewable one time only. A temporary license holder seeking renewal of a temporary license shall submit a written request for renewal to the Council certifying that he or she has requested a "Confirmation of Examination Registration and Eligibility to Examine Notice" from the National Board for Certification in Occupational Therapy (NBCOT) which shall be sent directly to the Council from NBCOT. The temporary license holder shall also submit the renewal fee set forth in N.J.A.C. 13:44K-11.1.

(d) A temporary license which has been renewed pursuant to (c) above shall automatically expire upon notification to the temporary license holder from NBCOT that he or she has failed the licensure examination for the second time or upon the temporary license holder's failure to take the licensure examination for the second time within 180 days of the date of issuance of the renewal. The temporary license holder shall immediately cease practice and surrender the temporary license to the Council upon such notification or upon expiration of the 180 days.

(e) A temporary license shall expire within 180 days of the temporary license holder's receipt of notification from NBCOT that he or she has passed the licensure examination. The temporary license holder shall cease practicing under the temporary license no later than 180 days after receiving the NBCOT notification. The temporary license holder shall submit all documentation required for permanent licensure as provided in N.J.A.C. 13:44K-2.1, and shall surrender the temporary license to the Council within 180 days of NBCOT notification.

(f) A temporary license issued pursuant to N.J.A.C. 13:44K-4.1(b) to an applicant for a permanent license who has completed the academic and administrative requirements necessary for an occupational therapy degree or certificate, but who has not had the degree or certificate conferred, shall be valid for 180 days from the date of issuance. The temporary license holder shall cease practicing under the temporary license no later than 180 days after the date the license is issued. The temporary license holder shall submit an official transcript of his or her education to complete his or her permanent licensure application, as provided in N.J.A.C. 13:44K-2.1, and shall surrender the temporary license to the Council within 180 days of the date of issuance.

<< NJ ADC 13:44K-7.3 >>

### **13:44K-7.3 Responsibilities of a temporary licensed occupational therapist or a temporary licensed occupational therapy assistant**

(a)-(b) (No change.)

(c) A temporary licensed occupational therapist or a temporary licensed occupational therapy assistant shall maintain a record of supervision which shall include the name and license number of his or her designated supervisor, the date when the temporary licensee received supervision and the type of supervision that was provided.

<< NJ ADC 13:44K-8.1 >>

### **13:44K-8.1 Notification of change of address; service of process**

(a) A licensee shall notify the Council, within 30 days, of any change in address on file with the Council and shall specify whether the address is a residence or employment address.

(b)-(c) (No change.)

<< NJ ADC 13:44K-8.2 >>

### **13:44K-8.2 Notification of change of name or practice name**

(a) (No change.)

(b) Upon receipt of the items set forth in (a) above and upon payment of the fees specified in N.J.A.C. 13:44K-11.1(a)12 and 13, the Council shall issue to the individual a new license.

(c)-(d) (No change.)

<< NJ ADC 13:44K-8.5 >>

### **13:44K-8.5 Sexual misconduct**

(a) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Client" means any person who is the recipient of occupational therapy evaluation, instruction or treatment rendered by a licensee.

"Client-therapist relationship" means a relationship between an occupational therapist, occupational therapy assistant, or temporarily licensed occupational therapist or occupational therapy assistant, and the client wherein the licensee owes a continuing duty to the client to render occupational therapy services consistent with his or her training and experience.

"Licensee" means any person licensed to engage in practice as an occupational therapist, occupational therapy assistant or temporarily licensed occupational therapist or occupational therapy assistant by the Occupational Therapy Advisory

Council.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the client's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or client's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a client's body which is necessary during the performance of a generally accepted and recognized occupational therapy procedure.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee's activities or role as a provider of occupational therapy services, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a client, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee. "Sexual harassment" may also include conduct of a nonsexual nature if it is based on the sex of an individual.

"Spouse" means the husband, wife or fiancée of the licensee or an individual involved in a long-term committed relationship with the licensee. For purposes of the definition of "spouse," a long-term committed relationship means a relationship which is at least six months in duration.

(b) A licensee shall not engage in sexual contact with a client with whom he or she has a client-therapist relationship. The client-therapist relationship is ongoing for purposes of this section, unless:

1. Occupational therapy is terminated by way of written notice to the client and is documented in the client record; or
2. The last occupational therapy was rendered more than six months ago.

(c) In circumstances where the client is, or should be recognized by the licensee as, clearly vulnerable by reason of emotional or cognitive disorder to exploitive influence by the licensee, the prohibition on sexual contact shall extend indefinitely.

(d) A licensee shall not seek or solicit sexual contact with a client with whom he or she has a client-therapist relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a client, unless that discussion is directly related to a proper occupational therapy purpose. Such discussion shall not include disclosure by the licensee of his or her own sexual relationships.

(f) A licensee shall provide privacy and examination conditions which prevent the exposure of the unclothed body of the client. Appropriate draping measures shall be employed to protect client privacy.

(g) A licensee shall not engage in sexual harassment either within or outside of the professional setting.

(h) A licensee shall not engage in any other activity which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or which is for the sexual arousal, or sexual gratification of the licensee or client or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering occupational therapy to a spouse, providing that the rendering of such occupational therapy is consistent with accepted standards of occupational therapy

and that the performance of occupational therapy is not utilized to exploit the client spouse for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The client solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the client.

<< NJ ADC 13:44K-9.1 >>

**13:44K-9.1 Display of notice of licensure; duplicate license; notification of availability of fee information**

(a) All licensed occupational therapists and occupational therapy assistants shall make their licenses available to clients upon request. Duplicate licenses may be obtained upon payment of the fees provided in N.J.A.C. 13:44K-11.1(a) 12 and 13.

(b)-(c) (No change.)

<< NJ ADC 13:44K-11.1 >>

**13:44K-11.1 Fee schedule**

(a) The following fees shall be charged by the Occupational Therapy Council:

1.-7. (No change.)

8. Temporary license renewal--occupational therapist ..... \$50.00

9. Temporary license renewal--occupational therapy assistant .... \$50.00

Recodify existing 8.-11. as 10.-13. (No change in text.)