

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF OCCUPATIONAL THERAPY

IN RE: PETITION FOR DECLARATORY
STATEMENT BY:

SHARON ROSENBERG

ORDER ON PETITION FOR DECLARATORY STATEMENT

This matter came before the Board of Occupational Therapy (herein "the Board") at a duly-noticed public meeting held on May 15, 2023, in Tallahassee, Florida, for consideration of a Petition for Declaratory Statement (herein "Petition"), by Sharon Rosenberg. ("Petitioner"). The Petition was received on April 26, 2023, and published on April 28, 2023, in volume 49, number 83 of the Florida Administrative Register. No comments by interested persons or requests for intervention were received.

STATEMENT OF RELEVANT FACTS

The Petitioner is requesting a Declaratory Statement regarding rule 64B11-4.001, Florida Administrative Code, specifically regarding Dry Needling. The Board accepts the facts as presented in the Petition, which is attached to this Order and incorporated by reference.

LAW

1. 64B11-4.001, Florida Administrative Code states:

(1) Electrical Stimulation Device.

...(c) The training required for students, postgraduates, and licensees to qualify for the use of an electrical stimulation device shall include didactic training of at least four (4) hours and performance of at least five (5) treatments under supervision. The required training may be obtained through educational programs, workshops, or seminars offered at a college or university approved for training of occupational therapists by the American Occupational Therapy Association or of physical therapists by the American

Physical Therapy Association or at clinical facilities affiliated with such accredited colleges or universities or through educational programs offered by the American Society of Hand Therapists or Florida Occupational Therapy Association. Didactic training may be in person or from interactive, real-time courses. An interactive, real-time course may be a web-based, satellite transmitted, or video conference, or online instruction program that allows or requires the licensee to interact in real time, including live chat, with the instructor during the presentation of the program.

(d) Supervised treatment sessions shall be conducted under the personal supervision of licensed occupational therapists and occupational therapy assistants who have completed four hours of coursework in the use of electrical stimulation devices and five (5) supervised treatments or licensed physical therapists and physical therapist assistants trained in the use of electrical stimulation devices. Treatment supervisors must have a minimum of 24 months prior experience in the use of electrical stimulation devices. Personal supervision means that the supervisor is in the room with the trainees and actively provides guidance and supervision of the performance treatments.

...

(2) Ultrasound Device.

...

(c) The training required for students, postgraduates, and licensees to qualify for the use of an ultrasonic stimulation device shall include didactic training of at least four (4) hours and performance of at least five (5) treatments under supervision. The required training may be obtained through educational programs, workshops, or seminars offered at a college or university approved for training of occupational therapists by the American Occupational Therapy Association or of physical therapists by the American Physical Therapy Association or at clinical facilities affiliated with such accredited colleges or universities or educational programs offered through the American Society of Hand Therapists or Florida Occupational Therapy Association. Didactic training may be in person or from interactive, real-time courses. An interactive, real-time course may be a web-based, satellite transmitted, or video conference, or online instruction program that allows or requires the licensee to interact in real time, including live chat, with the instructor during the presentation of the program.

(d) Supervised treatment sessions shall be conducted under the personal supervision of licensed occupational therapists and occupational therapy assistants who have completed four hours of coursework in the use of ultrasound devices and five (5) supervised treatments or licensed physical therapists and physical therapist assistants trained in the use of ultrasound devices. Treatment supervisors must have a minimum of 24 months prior experience in the use of ultrasound devices. Personal supervision means that the supervisor is in the room with the trainees and actively provides guidance and supervision of the performance treatments.

...

(3) Neurofeedback Device.

...

(c) The training required for students, postgraduates, and licensees to qualify for the

use of a neurofeedback device shall include didactic training of at least sixteen (16) hours and performance of at least five (5) treatments under supervision. The required training may be obtained through educational programs, workshops, or seminars offered at a college or university approved for training of occupational therapists by the American Occupational Therapy Association or of physical therapists by the American Physical Therapy Association or at clinical facilities affiliated with such accredited colleges or universities or educational programs offered through the American Society of Hand Therapists or Florida Occupational Therapy Association. Didactic training may be in person or from interactive, real-time courses. An interactive, real-time course may be a web-based, satellite transmitted, or video conference, or online instruction program that allows or requires the licensee to interact in real time, including live chat, with the instructor during the presentation of the program.

(d) Supervised treatment sessions shall be conducted under the personal supervision of licensed occupational therapists and occupational therapy assistants who have completed sixteen (16) hours of coursework in the use of neurofeedback devices and five (5) supervised treatments, licensed physical therapists and physical therapist assistants who have completed sixteen(16) hours of coursework in the use of neurofeedback devices and five (5) supervised treatments, medical doctors trained in the use of neurofeedback devices, psychologists trained in the use of neurofeedback devices, or other licensed healthcare professionals trained in the use of neurofeedback devices. Treatment supervisors must have a minimum of 24 months prior experience in the use of neurofeedback devices. Personal supervision means that the supervisor is in the room with the trainees and actively provides guidance and supervision of the performance treatments....

2. Petitions for declaratory statements are governed by Section 120.565, F.S., and Chapter 28-105, Florida Administrative Code ("F.A.C.").

Subsections 120.565(1) and (2), Florida Statutes state:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

3. Rule 28-105.001, Florida Administrative Code states:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

APPLICATION

4. The Petitioner is a licensee who is substantially affected by the statute.

5. Petitioner seeks guidance as to whether she can perform/receive reimbursement for taking CE courses and becoming certified in the modality of dry needling.

6. The Board considered the Petition and voted that:

No, Petitioner would be in violation of the statute as dry needling is not a statutorily accepted prescription device.

Dry needling would be outside the scope of practice of Occupational Therapy

Therefore, the Board files this response to the Petition for Declaratory Statement filed by Sharon Rosenberg.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 1 day of June, 2023.

BOARD OF OCCUPATIONAL THERAPY

Allen Hall

ALLEN HALL
Executive Director *for*
James Spafford, Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to: **Sharon Rosenberg**, 2488 NW 147th St., Newberry, FL 32669; and by e-mail to: Kara H. Aikens, Assistant Attorney General, at kara.aikens@myfloridalegal.com, and Cassandra Fullove at Cassandra.fullove@myfloridalegal.com, this 2 day of June , 2023.

Elizabeth Eubanks
Deputy Agency Clerk

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Elizabeth Eubanks
DATE: April 26, 2023

Sharon Rosenberg
2488 NW 147th st
850-322-7936

Petition for Declaratory Statement before the Board of Occupational Therapy

On behalf of Florida Occupational Therapy (OT) Association, we are seeking clarification from the Occupational Therapy board that Florida OTs can take CE courses, become certified, and perform/receive reimbursement for the modality of Dry Needling.

Under current Florida rule: 64B11-4.001 Use of Prescription Devices i.e. (E stim and Ultra Sound aka PAMS) states the following with regards to specifications:

- Need 4 hours of classroom education for each device
- Follow this with 5 supervised treatments of each
- These treatments must be real, not sample treatments on co-workers, family & friends
- No specific form to keep records on.
- Your supervisor for these treatments should have been certified themselves for at least a year.

In the Use of PAMs with specific certifications required, they are Electrical Stimulation, Ultrasound, and Neurofeedback.