

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2009 AUG 28 AM 11:26

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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

AGENCY: WV Board of Physical Therapy TITLE NUMBER: Title 16

CITE AUTHORITY: W. Va. Code 30-20-5

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: General Provisions

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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.

Lesley Sprance, PT, DPT  
Authorized Signature

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: General Provisions

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Board of Physical Therapy

Address: 642 Davison Run Road  
Clarksburg, WV 26301

Phone Number: (304) 627-2257 Email: wvbopt@yahoo.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: General Provisions

Rule Title: General Provisions

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

N/A

**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.

The foreign-educated applicant is solely responsible for meeting the criteria for being considered for licensure as a Physical Therapist in West Virginia. The State Agency itself will not incur any costs associated with an individual who is required to take and pass the English Proficiency Exam. And although the Board is a State entity, its funding is solely generated from fees paid by licensees.

Date: 8/27/08

Signature of Agency Head or Authorized Representative

Deaf Spire, PT, OPI

**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: August 27, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Board of Physical Therapy

642 Davison Run Road

Clarksburg, WV 26301

LEGISLATIVE RULE TITLE: General Provisions

1. Authorizing statute(s) citation W. Va. Code 30-20-5

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

June 30, 2008

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 31, 2008

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

Attached \_\_\_\_\_

No comments received   x

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

August 28, 2008

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

Frankie S. Cayton, Administrator

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642 Davisson Run Road

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Clarksburg, WV 26301

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Phone: (304) 627-2251 Fax: (304) 627-2253 [wbopt@yahoo.com](mailto:wbopt@yahoo.com)

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- 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)

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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.

N/A

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b. Date of hearing or comment period:

N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached       N/A

The West Virginia Board of Physical Therapy (hereinafter "Board") is proposing amendments to Legislative Rule, Title 16, Series 1 at § 16-1-10.1(c) and at § 16-1-11, regarding the English Proficiency test for those applicants whose native language is not English and fees charged by the Board. Currently, the computer based test that is listed in the rule no longer exists, and has been replaced by an Internet based test. Moreover, the scoring of the Internet based test is calculated differently than the Computer based test, so there is no means to convert the Internet based test score to the Computer based test score as currently listed in the rule. It is imperative that applicants receive the most accurate and up to date information regarding this section of the test for those wishing to become licensed as physical therapists in the state of West Virginia.

In order to maintain the services provided by the Board, the Board is also proposing those fees that do not need to be published within the rule itself to be deleted from the rule such as copying and postage fees. This will enable the Board to better serve the public and revise the fees accordingly without necessitating a rule change every time these fees increase.

The comment period was held between June 30, 2008 through July 31, 2008, for these proposed changes. To date, no comments have been received by the West Virginia Board of Physical Therapy regarding the proposed changes to the rule. As such, the Board is not making any further revisions to this rule.

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SECRETARY OF STATE  
STATE OF WEST VIRGINIA

TITLE 16  
LEGISLATIVE RULE  
WV BOARD OF PHYSICAL THERAPIST

SERIES 1  
GENERAL PROVISIONS

§16-1-1. General.

1.1. Scope. -- This legislative rule describes and defines requirements for licensure as well as nature of practice for Physical Therapists, Physical Therapist Assistants and support personnel.

1.2. Authority. -- W. Va. Code §30-20-1, et. seq.

1.3. Filing Date. -- ~~May 11, 2000.~~

1.4. Effective Date. -- ~~June 1, 2000.~~

1.5. Amendment -- This Rule ~~repeals and replaces~~ amends Title 16, Series 1, ~~which became effective April 5, 1994, which was repealed and replaced effective June 1, 2000.~~

§16-1-2. Definitions.

The following words and phrases as used in these rules shall have the following meanings, unless the context otherwise requires:

2.1. "Board" means the West Virginia Board of Physical Therapy.

2.2. "Physical Therapist", means a person who meets all the requirements under W. Va. Code §30-20-1, et. seq., and this Rule and is licensed to practice Physical Therapy by the West Virginia Board of Physical Therapy. An individual who possesses a temporary permit issued by the Board to practice Physical Therapy is not fully licensed to practice Physical Therapy, and as such is subject to the conditions set forth in W. Va. Code §30-20-9 (a) and Section 7 of this Rule.

2.3. "Physical Therapist Assistant" means a person who meets all the requirements under W. Va. Code §30-20-1, et. seq. and this Rule and is licensed to practice by the West Virginia Board of Physical Therapy. The Physical Therapist Assistant performs Physical Therapy procedures and related tasks that have been selected and delegated only by the supervising Physical Therapist. An individual who possesses a temporary permit as a Physical Therapist Assistant is not fully licensed to practice as a Physical Therapist Assistant, and as such is subject to the conditions set forth in W. Va. Code §30-20-9(b)(1) and (2) and its accompanying Rules and Regulations.

2.4. "Physical Therapy Aide" means a person trained under the direction of a Physical Therapist who performs designated and supervised routine Physical Therapy tasks.

2.5. "Other Assistive Personnel" means other trained or educated health care personnel, not defined in 2.5 or 2.6 of this section, who perform specific designated tasks related to Physical Therapy under the supervision of a Physical Therapist. At the discretion of the supervising Physical Therapist, and if properly credentialed and not prohibited by any other law, "other assistive personnel" may be identified by the title specific to their training or education.

2.6. "Supervision". As contained in this section, the term "supervision" shall mean authoritative procedural guidance by a licensed Physical Therapist for the accomplishment of a function or activity, with initial direction and periodic inspection on a regular basis by a Physical Therapist of the actual act of accomplishing the function or activity. The

supervising Physical Therapist is responsible for and as such must participate in the patient's care.

### **§16-1-3. Applications.**

3.1. The applicant must complete the application form provided by the Board and supply the following:

- a. Personal information;
- b. Educational information;
- c. History of previous work experience, if applicable;
- d. License verification (s) from other State Licensing Boards that regulate Physical Therapy in their respective States.
- e. Written responses to questions regarding criminal offenses;
- f. Written responses to questions regarding child support obligations;
- g. Name and address of prospective employer in West Virginia if known;
- h. Photo identification; and
- i. Applicable fee (s).

### **§16-1-4. Scores.**

4.1. The applicant must take the National Physical Therapy Exam (NPTE) and obtain a passing score as determined by the Board.

### **§16-1-5. Issuance, Renewal or Reinstatement of License.**

5.1. The Board reserves the right to evaluate the applicant according to the testing, licensure, and procedural requirements as initiated by the agency responsible for the ownership and development of the National exam.

5.2. Licenses expiring on December 31, of

each particular year must be renewed by payment of applicable fee along with completed renewal application.

5.3. All licensees desiring to remain "active" and in good standing must complete ten contact hours of continuing education per calendar year.

5.4. A license not renewed with no specific request to place it in "inactive" status will automatically "lapse".

### **§16-1-6. Temporary Permit for Physical Therapists.**

6.1. An individual possessing a temporary permit issued by the Board to practice Physical Therapy in the State of West Virginia shall practice under the direct supervision of a Physical Therapist.

6.2. While the Physical Therapist is practicing under a temporary permit, a Physical Therapist must be on the premises at all times. All progress notes written by the Physical Therapist with a temporary permit shall be cosigned by a Physical Therapist supervisor within twenty-four (24) hours.

6.3. A temporary permit may be issued in the following instances only to individuals who have met the eligibility criteria set forth in W. Va. Code §30-20-6, and who have submitted proper application and identification as determined by the Board:

a. Pending examinations, to any Physical Therapist applicant who is a new graduate of a program approved by the Commission on Accreditation in Physical Therapy Education (CAPTE). Said temporary permit shall be valid for a period of ninety (90) consecutive days and said permit may not be renewed or reissued in the same calendar year.

b. To a person who possesses an unencumbered license in another state or territory or possession of the United States and who is a graduate of a program approved by CAPTE, said

temporary permit shall be valid only for a period of ninety (90) consecutive days and said permit may not be renewed or reissued in the same calendar year.

**§16-1-7. Temporary Permits for Physical Therapy Assistants.**

7.1. Upon proper application and identification as determined by the Board, and the payment of the applicable nonrefundable fee, the Board may issue, without examination, a temporary permit to act as a Physical Therapy Assistant in this State.

7.2. While the Physical Therapist Assistant is practicing under a temporary permit, a Physical Therapist must be on the premises at all times. All progress notes written by the Physical Therapist Assistant with a temporary permit shall be cosigned by a Physical Therapist supervisor within twenty-four (24) hours.

7.3. Said temporary permit may be issued:

a. Pending examinations, to any Physical Therapist Assistant who meets the requirements of W. Va. Code §30-20-6 (b)(1) and (2). Said temporary permit shall be valid for a period of ninety (90) consecutive days and said permit may not be renewed or

b. To a person who possesses an unencumbered license in another state or territory or possession of the United States and who is a graduate of a program approved by CAPTE. Said temporary permit shall be valid only for a period of ninety (90) consecutive days and said permit may not be renewed or reissued in the same calendar year.

**§16-1-8. Nature of Practice for Physical Therapists.**

8.1. Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations, and disability or other health and movement related conditions in order to determine

a diagnosis, prognosis, plan of therapeutic intervention, and to access the ongoing effects of intervention.

8.2. Alleviating impairments and functional limitations by designing, implementing, and modifying therapeutic interventions that include, but are not limited to therapeutic exercise; functional training in self care and in home, community or work reintegration; manual therapy including soft tissue and joint mobilization and other manual therapy techniques; therapeutic massage; assistive and adaptive orthotic, prosthetic, protective and supportive devices and equipment; bronchopulmonary hygiene, debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.

8.3. Reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations.

8.4. Engaging in administration, consultation, education and research.

8.5. Directly or indirectly supervise Physical Therapist Assistants and other support personnel depending on the work setting as stipulated by W. Va. Code §30-20-2(h) (1) or this Rule.

**§16-1-9. Supervision of a Physical Therapist Assistant.**

9.1. When the Physical Therapist and the Physical Therapist Assistant are not within the same physical setting, the performance of the delegated functions by the Physical Therapist Assistant must be consistent with safe and legal Physical Therapy practice as set forth in W. Va. Code §30-20-1, et. seq., accompanying Legislative Rules and Regulations, and established policies of the Board. Said performance shall be predicated on the following factors:

a. Complexity and activity of the patient's needs;

- b. Proximity and accessibility to the Physical Therapist;
- c. Supervision available in the event of emergencies or critical events; and
- d. Type of setting in which the service is rendered.

9.2. The Physical Therapist Assistant shall not perform the following Physical Therapy activities:

- a. Interpretation of referrals;
- b. Physical Therapy initial evaluation and re-evaluation;
- c. Identification, determination, or modification of plans of care (including goals and treatment programs);
- d. Final discharge assessment/evaluation or establishment of the discharge plan; or
- e. Therapeutic techniques beyond the education, skill and knowledge of the Physical Therapist Assistant.

9.3. Supervision requirements of a Physical Therapist Assistant depend upon the practice setting in which the care is delivered:

- a. When care is delivered in a hospital or other acute-care center, free-standing, or independent practice setting, a Physical Therapist must be on premises at all times.
- b. When care is delivered in a skilled/unskilled nursing facility, distinct part skilled/unskilled nursing unit in an acute-care hospital, home health, or school system setting, the following requirements must be observed and documented in the patient records:
  - c. A Physical Therapist must be accessible by telecommunications to the Physical Therapist Assistant at all times that the Physical Therapist Assistant is treating patients; and

available to make a site visit jointly with the Physical Therapist Assistant within twenty-four (24) hours as prudent practice indicates.

d. An initial visit must be made by a Physical Therapist for evaluation of the patient and establishment of a plan of care.

e. A joint visit by the Physical Therapist and the Physical Therapist Assistant must be made on the Physical Therapist Assistant's first visit to the patient.

f. At least once every ten (10) Physical Therapist Assistant visits, or within twenty-one (21) calendar days, whichever occurs first, there must be a joint on-site visit by the licensed Physical Therapist Assistant and the licensed Physical Therapist. In the event that the supervising Physical Therapist changes, then that Physical Therapist must evaluate the patient with the Physical Therapist Assistant before the next Physical Therapist Assistant visit is made.

g. The Physical Therapist must make the final visit to terminate the plan of care.

h. No more than two (2) persons, Physical Therapist Assistants, foreign-educated Physical Therapists, or other assistive personnel, or any combination thereof, can be supervised by a Physical Therapist at any one time.

**§16-1-10. Licensing Individuals Outside the United States.**

10.1. A Physical Therapist candidate for licensure in West Virginia who was educated outside of the United States must meet the following criteria in order to be eligible for licensure by the Board:

a. Credentials:

1. The foreign-educated applicant must present a certificate issued by a Board approved prescreening certification agency.

b. Education.

1. The applicant is to be a Physical Therapy graduate of a foreign institution of higher learning with at least the equivalent of a B. S. Degree in Physical Therapy as determined by the Board.

2. Equivalent education is to be reported to the Board through a Board approved credentialing agency.

c. English Proficiency:

1. Unless the native language is English, the applicant must demonstrate proficiency in English ~~by passing the Test of English as a Foreign Language (TOEFL) with a grade of at least six hundred (600) on the Paper-based Test or at least two hundred fifty (250) on the Computer-based Test, and Test of Spoken English (TSE) with a total score of at least fifty-five (55), and the Test of Written English (TWE) with a score of at least five (5). These scores will be reviewed periodically and determined by the Board.~~ by examination by a Board approved testing company with passing scores as determined by the Board.

11.2. Applicants shall pay to the Board the fees established by statute and determined by the Board. In addition, the Board may charge fees reasonably related to the cost of providing services to applicants or interested parties. The services for which fees may be collected include, but are not limited to, verification or endorsement of licensure; continuing education coursework review; duplication of license cards or wall certificates; copying; postage expenses; mailing lists; and processing of returned checks.

**§16-1-11. Fees.**

11.1. The West Virginia Board of Physical Therapy is an autonomous State Licensing Board Agency and as such receives no monies from the State's general revenue fund; nor does it receive any Federal money. All money necessary to efficiently staff and equip a public office must be generated by services performed by the Board in behalf of its licensees or other interested parties.

16CSR1

a. Physical Therapist Application	\$ 25.00
b. Physical Therapist License	\$110.00
c. Physical Therapist Temporary Permit	\$ 35.00
d. Physical Therapist Biennial Renewal	\$120.00
e. Physical Therapist Lapsed License	\$250.00
f. Physical Therapist Assistant Application	\$ 25.00
g. Physical Therapist Assistant License	\$ 70.00
h. Physical Therapist Assistant Temporary Permit	\$ 20.00
i. Physical Therapist Assistant Biennial Renewal	\$ 80.00
j. Physical Therapist Assistant Lapsed License	\$170.00
k. Permanent License Verification	\$ 25.00
<del>l. Duplicate Wallet Card/License</del>	<del>\$ 5.00</del>
<del>m. Duplicate Wall Certificate</del>	<del>\$15.00</del>
<del>n. Name Change Requiring New Card/License (Outside of Renewal Season)</del>	<del>\$5.00</del>
o. <u>1.</u> Exam Processing Fee	\$25.00
<del>p. Copy of Statutory Law</del>	<del>\$20.00</del>
<del>q. Mailing List/Directory</del>	
<del>1. Label-ready List</del>	<del>Rate @ 10 cents/name and address</del>
<del>2. Hard-copy Directory</del>	<del>Rate @ 15 cents/name and address</del>
<del>3. Labels</del>	<del>Rate @ 30 cents/name and address</del>
<del>r. Continuing Education Course Review (for Company or Facility)</del>	<del>... \$50.00</del>
<del>s. Continuing Education Course Review (for WV Licensed PT or PTA)</del>	<del>.. \$5.00</del>
<del>t. Continuing Education Course Recertification (in subsequent yrs.)</del>	<del>... \$15.00</del>
<del>u. Bounced Check Fee</del>	<del>\$10.00</del>

16CSR1

~~v. Mail Services..... (All special requests for specific mail services are performed on an even exchange basis.)~~

~~w. Copying Charges..... \$.20/page~~

~~x. m. All fees not paid by the due date shall be assessed a penalty to be determined by the Board not to exceed 25% of the original fee required.~~



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

DARRELL V. McGRAW, JR.  
ATTORNEY GENERAL

(304) 558-2021  
FAX (304) 558-0140

August 28, 2008

**By Hand Delivery**

The Honorable Betty Ireland  
West Virginia Secretary of State  
1900 Kanawha Boulevard, East  
State Capitol Complex, Suite 157K  
Charleston, West Virginia 25305

RE: Agency Approved Rule Change—Title 16, Series 1

Dear Secretary Ireland:

On behalf of the West Virginia Board of Physical Therapy whom I represent, I have attached an original Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee (Form #3) along with a Fiscal Note for Proposed Rules (Appendix B), the Rule-Making Questionnaire, the Rule itself with strike-outs and additions, and a brief explanation of the proposed rule changes and any comments received by the West Virginia Board of Physical Therapy. I understand that the emergency rule is now effective and will be in effect for approximately one year; however, the next step in the legislative rule-making process in order to make these changes permanent is filing the Agency Approval of the Proposed Rule.

Moreover, I have attached fifteen copies for the Legislative Rule-Making Committee along with a computer disc which contains the rule itself with any strike-outs and/or additions. The Board has voted to make these changes to Title 16, Series 1 and is looking forward to working with your Office in making these proposed changes to the rule. Should you have any questions, please do not hesitate to call me or the Board Chair, Lesleigh Sprouse. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Katherine A. Campbell".

KATHERINE A. CAMPBELL  
ASSISTANT ATTORNEY GENERAL

Attachments

cc: Lesleigh B. Sprouse, Board Chair  
Frankie Cayton, Executive Director, WV Board of Physical Therapy