

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV BOARD OF PHYSICAL THERAPY TITLE NUMBER: TITLE 16

CITE AUTHORITY: 30-20-6

AMENDMENT TO AN EXISTING RULE: YES NO

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

TITLE OF RULE BEING AMENDED: GENERAL PROVISIONS FOR PHYSICAL THERAPIST AND
PHYSICAL THERAPIST ASSISTANT

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Leslie M. Spawz, PT, PPT
| Authorized Signature



WEST VIRGINIA BOARD OF PHYSICAL THERAPY
101 DEE DRIVE
Charleston, West Virginia 25311
Telephone: (304) 558-0367 Fax: (304) 558-0369

LESLEIGH B. SPROUSE
Board Chair

PATRICIA A. HOLSTEIN
Administrator

December 15, 2010

The Honorable Natalie E. Tennant
West Virginia Secretary of State
1900 Kanawha Blvd East
State Capitol Complex, Suite 157K
Charleston, WV 25305

RE: Notice of Rule Modification

Dear Secretary Tennant:

Enclosed is an original Notice of Rule Modification of a Proposed Rule (Form #4) along with an additional 10 copies for the Legislative Rule Making Committee for our proposed Title 16 Rule Series 1.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Lesleigh Sprouse, PT, DPT

Lesleigh Sprouse
Chair Board

Enclosure

TITLE 16
LEGISLATIVE RULE
WV BOARD OF PHYSICAL THERAPY

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SERIES 1
GENERAL PROVISIONS
FOR
PHYSICAL THERAPIST AND PHYSICAL THERAPIST ASSISTANT STATE

§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. --

1.4. Effective Date. --

1.5. Amendment -- This rule amends title 16, series 1, which was repealed and replaced effective

§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. “Applicant” means any person making application for an original or renewal license or a temporary permit under the provisions of the WV Code §30-20-1, et. seq.

2.2. “Board” means the West Virginia Board of Physical Therapy.

2.3. “Business entity” means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity providing physical therapy services.

2.4. “Consultation” means a physical therapist renders an opinion or advice to another physical therapist or health care provider through telecommunications.

2.5. “Direct supervision” means the actual physical presence of the physical therapist in the immediate treatment area where the treatment is being rendered.

2.6. “General supervision” means the physical therapist must be available at least by telecommunications.

2.7. “Immediate treatment area” is defined as the area within the physical therapist's direct line of sight or within audible distance of the physical therapist and the ability of the physical therapist to immediately respond to calls for assistance from the patient or physical therapy aide.

2.8. "License" means a physical therapist license or license to act as a physical therapist assistant issued under the provisions of the WV Code §30-20-1, et. seq.

2.9. "Licensee" means a person holding a license under the provisions of the WV Code §30-20-1, et. seq.

2.10. "On-site supervision" means the supervising physical therapist is continuously on-site and present in the building where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session.

2.11. "Permit" or "temporary permit" means a temporary permit issued under the provisions of the WV Code §30-20-1, et. seq.

2.12. "Permittee" means any person holding a temporary permit issued pursuant to the provisions of the WV Code §30-20-1, et. seq.

2.13. "Physical therapist" means a person engaging in the practice of physical therapy who holds a license or permit issued under the provisions of who meets all the requirements under WV. 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.

2.14. "Physical therapist assistant" means a person holding a license or permit issued under the provisions of W. Va. Code §30-20-1, et. seq., and this rule who assists in the practice of physical therapy by performing patient related activities delegated to him or her by a physical therapist and performs under the supervision of a physical therapist and which patient related activities commensurate with his or her education and training, including physical therapy procedures, but not the performance of evaluative procedures or determination and modification of the patient plan of care. 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.

2.15 "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and routine tasks related to physical therapy services under the direction supervision of a physical therapist, other than a physical therapy assistant, who assists a licensed physical therapist in the practice of physical therapy under the direct supervision of such licensed physical therapists and who also performs activities supportive of but not involving assistance in the practice of physical therapy.

2.15. a. A physical therapy aide works under the direct supervision of a physical therapist.

2.16. "Practice of physical therapy" or "physiotherapy" means the care and services as described in the WV Code §30-20-1, et. seq.

2.17. "Telecommunication" means audio, video or data communication.

§16-1-3. Applications.

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

3.1.a. Personal information;

3.1.b. Educational information;

3.1.c. History of previous work experience, if applicable;

3.1.d. License verification (s) from other jurisdictions that regulate the practice of physical therapy in their jurisdictions.

3.1.e. Written responses to questions regarding criminal offenses;

3.1.f. Written responses to questions regarding child support obligations;

3.1.g. Name and address of prospective employer in West Virginia if known;

3.1.h. Photo identification; and

3.1.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. Failure to renew a license or place a license on "inactive" status will render that license delinquent.

5.3. All licensees desiring to remain "active" and in good standing must complete ~~ten~~ 20 contact hours of board approved of continuing education ~~per calendar year within the two year licensing period.~~ If the licensee does not complete the 20 contact hours within the license period, that licensee will be placed on delinquent status and will be subject to all fees associated with delinquent status.

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

5.5. Delinquent licensee is responsible for penalty fees including but not limited to: application fee, delinquent license fee, and the current year renewal fee. A licensee must also complete and show proof of board approved continuing education requirements.

5.6. To reinstate an "inactive" license, the licensee must submit an application for renewal

along with a non-refundable application fee and license renewal fee.

5.7. A volunteer license will be marked as a "volunteer" license and is restricted to practicing in accordance with §30-20-13.

5.8. Any change in personal contact and employer/supervisor information must be submitted in writing to the board as changes occur.

§16-1-6. Temporary Permit for Physical Therapists and Physical Therapist Assistants.

6.1. An individual issued a temporary permit to practice physical therapy shall practice under the on-site supervision of a physical therapist. All progress notes written by the physical therapist or physical therapist assistant with a temporary permit shall be cosigned by a the supervising physical therapist for that therapy session supervisor within 24 hours.

6.2. A temporary permit may be issued only to individuals who have met the eligibility criteria set forth in W. Va. Code §30-20-6 8, §30-20-10, and §30-20-12, and who have submitted proper application and identification as determined by the board:

6.2.a. Pending examinations, to any physical therapist or physical therapist assistant applicant who is a new graduate of a program approved by the Commission on Accreditation in Physical Therapy Education (CAPTE).

6.2.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.

6.3 The temporary permit is valid only for a period of 90 consecutive days and the permit may shall not be renewed.

~~§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 non-refundable 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 provide on-site supervision. 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. A temporary permit may be issued:~~

~~7.3.a. Pending examinations, to any Physical Therapist Assistant who meets the requirements of W. Va. Code §30-20-6 (b)(1) and (2) The temporary permit is valid for a period of ninety (90) consecutive days and the permit may not be renewed; or,~~

~~7.3.b. To a person who possesses an unencumbered license in another jurisdiction and who is a graduate of a program approved by CAPTE. The temporary permit is valid only for a period of ninety (90) consecutive days and the permit may not be renewed.~~

§16-1-87. Nature Scope of Practice for Physical Therapists.

87.1. A physical therapist may perform the following:

~~87.1.a. 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. Examine, evaluate and test patients/clients with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement related conditions in order to determine a diagnosis, prognosis and plan of treatment intervention, and to assess the ongoing effects of intervention. Provided, that electromyography examination and electro diagnostic studies other than the determination of chronaxia and strength duration curves shall not be performed except under the supervision of a physician electromyographer and electro diagnostician;~~

~~87.1.b. 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. Alleviate impairments, functional limitations and disabilities by designing, implementing and modifying treatment intervention that may include, but are not limited to: therapeutic exercise, functional training in self-care in relation to motor control function; mobility; and in home, community or work integration or re-integration; manual therapy techniques including mobilization of the joints, therapeutic massage; fabrication of assistive; adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; patient-related instruction, mechanical and electrotherapeutic modalities, and physical agent or modalities including, but not limited to, heat, cold, light, air, water, and sound;~~

~~87.1.c. 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. Reduce the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and wellness in population of all ages; and,~~

~~87.1.d. Engaging in administration, consultation, education and research.~~

7.2 A licensee shall adhere to the standards of ethical practice by practicing in a manner that is moral and honorable.

7.3 A licensee shall not cheat or assist others in conspiring to cheat on the National Physical Therapy Exam.

7.4 A licensee shall not falsify, alter, or destroy patient/client records, medical records, or billing records without authorization. The licensee shall maintain accurate patient and/or billing records.

7.5 A licensee shall not practice physical therapy while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability.

7.6 A licensee shall adhere to the minimal standard of acceptable prevailing practice. Failure to

adhere to the minimal standards of practice, whether or not actual injury to a patient occurred, includes, but is not limited to:

7.6. a. Failing to assess and evaluate a patient's status;

7.6. b. Performing or attempting to perform techniques, procedures, or both in which the licensee is untrained by education or experience;

7.6. c. Delegating physical therapy functions or responsibilities to an individual lacking the ability or knowledge to perform the functions or responsibility in question;

7.6. d. Causing, or permitting another person to cause, physical or emotional injury to the patient, or depriving the patient of the individual's dignity;

7.6. e. Providing treatment interventions that are not warranted by the patient's condition or continuing treatment beyond the point of reasonable benefit to the patient with the intent to defraud;

7.6. f. Practicing in a pattern of negligent conduct, which means a continued course of negligent conduct or of negligent conduct in performing the duties of the profession;

7.6. g. Providing substandard care as a physical therapist assistant by exceeding the authority to perform components of physical therapy interventions selected by the supervising physical therapist or through a deliberate or negligent act or failure to act, whether or not actual injury to any person occurred;

7.6. h. Abandoning the patient by inappropriately terminating the patient practitioner relationship by the licensee;

7.6. i. Documenting or billing for services not actually provided; or documenting or billing services with the intent to defraud;

7.6. j. A licensee shall not maliciously cause harm to another licensee.

§16-1-98. Supervision of a Physical Therapist Assistant.

8.1. In all practice settings, the following are required:

8.1.a. An initial visit shall be made by a physical therapist for evaluation of the patient and establishment of a plan of care.

8.1.b. The physical therapist shall make the final visit to terminate the plan of care unless the patient or physician terminates the plan of care.

8.1.c. No more than four (4) physical therapist assistants, physical therapist assistants holding a temporary permit, or physical therapy aides, or any combination thereof, can be supervised by a physical therapist at any one time.

8.1.d. The only exceptions to the level of supervision or supervisory ratio are subsections 8.5, 8.6, 8.7 of this section.

98.12. Supervision requirements of a physical therapist assistant depend upon the practice setting in which the care is delivered:

98.12.a. When care is delivered in a hospital or other acute-care center, free-standing, or independent practice setting, a physical therapist must provide on-site supervision, with the exception that general supervision is permitted in an outpatient or acute care setting 20% of the time of a physical therapist assistant with at least 1000 hours of experience, unless general supervision in that particular setting would violate federal guidelines. The physical therapist must properly document all instances of general supervision in the patient's chart."

98.12.b. When care is delivered in a skilled/unskilled nursing facility, distinct part skilled/unskilled nursing unit or swing-bed unit in an acute-care hospital, home health, or school system setting, the following requirements must be observed and documented in the patient records:

98.12.b.1. 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 24 hours as prudent practice indicates.

98.12.b.2. 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.

98.12.b.3. At least once every 10 physical therapist assistant visits, or within 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~~ new supervising physical therapist assistant must discuss the patient's diagnosis and plan of care with the previous supervising physical therapist before the next physical therapist assistant visit is made. Either physical therapist must document such communication.

~~9.1.c. In all practice settings, the following are required:~~

~~9.1.c.1. An initial visit must be made by a Physical Therapist for evaluation of the patient and establishment of a plan of care.~~

~~9.1.c.2. The Physical Therapist must make the final visit to terminate the plan of care.~~

~~9.1.c.3. No more than two (2) persons, Physical Therapist Assistants, Physical Therapist Assistants holding a temporary permit, foreign-educated Physical Therapists, or physical therapy aides, or any combination thereof, can be supervised by a Physical Therapist at any one time.~~

98.23. 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 WV 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:

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

98.23.b. Proximity and accessibility to the physical therapist;

98.23.c. Supervision available in the event of emergencies or critical events; and

98.23.d. Type of setting in which the service is rendered.

98.34. The physical therapist assistant may not perform the following physical therapy activities:

98.34.a. Interpretation of referrals;

98.34.b. Physical therapy initial evaluation and re-evaluation;

98.34.c. Identification, determination, or modification of plans of care (including goals and treatment programs);

98.34.d. Final discharge assessment/evaluation or establishment of the discharge plan; or

98.34.e. Therapeutic techniques beyond the education, skill and knowledge of the physical therapist assistant.

8.5. In an emergency situation, such as serious illness of the therapist or death of a family member, which causes the unanticipated absence of the supervising physical therapist for not more than 3 consecutive days, a licensed physical therapist assistant may continue to render services, under the supervision of another physical therapist, to only those patients for which the licensed physical therapist assistant has previously participated in the intervention for established plans of care not to exceed the regularly scheduled operational hours of the particular day or days the supervising physical therapist is absent. Every effort shall be made by the licensed physical therapist or licensed physical therapist assistant to obtain supervision in the care described in this section. A licensee utilizing this section shall maintain a written record noting the dates and the emergency and shall submit a report to the board not more than 2 weeks after the emergency, setting forth each day absent under this paragraph and the reason for such absence. A licensed physical therapist may utilize this emergency provision no more than 10 days per calendar year. The physical therapist assistant must be supervised as described in section §16-1-8.2 of this rule.

8.6. In an emergency situation, such as serious illness of the therapist or death of a family member, which causes the unanticipated absence of the supervising physical therapist for up to 1 day, a licensed physical therapist assistant may continue to render services, under the general supervision of the supervising Physical Therapist, to only those patients for which the licensed physical therapist assistant has previously participated in the intervention for established plans of care not to exceed the regularly scheduled operational hours of the particular day the supervising physical therapist is absent. Every effort shall be made by the licensed physical therapist or licensed physical therapist assistant to obtain supervision in the care described in this section. A licensee utilizing this section shall maintain a written record noting the dates and the emergency and shall submit a report to the board not more than 2 weeks after the emergency, setting forth each day absent under this paragraph and the reason for such absence. A licensed physical therapist may utilize this emergency provision no more than 40 hours per calendar year. Under this section a physical therapy aide can only participate in non-patient care tasks.

8.7. A physical therapist assistant shall directly supervise a physical therapy aide only in an emergency situation necessary to assure patient's safety.

§16-1-109. Licensing Individuals outside the United States.

109.1. An applicant for a physical therapist license who was educated outside of the United States shall meet the following criteria in order to be eligible for licensure by the board:

109.1.a. Credentials:

109.1.a.1. The foreign-educated applicant shall present a certificate issued by a board approved prescreening certification agency.

109.1.b. Education.

109.1.b.1. The applicant shall 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.

109.1.b.2. Equivalent education shall be reported to the board through a board approved credentialing agency.

109.1.c. English Proficiency:

109.1.c.1. Unless the native language is English, the applicant shall demonstrate proficiency in English by passing the test at one setting, of English as a Foreign Language iBT (TOEFL iBT) and the Test of Spoken English (TSE) and the Test of Written English (TWE) with passing scores as determined by the board.

§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.~~

~~11.2. Applicants shall pay to the Board the fees established and authorized by statute.~~

11.2.a. Physical Therapist Application	\$ 25.00
11.2.b. Physical Therapist License	\$220.00
11.2.c. Physical Therapist Temporary Permit.....	\$35.00
11.2.d. Physical Therapist Biennial Renewal	\$120.00
11.2.e. Physical Therapist Lapsed License	\$250.00
11.2.f. Physical Therapist Assistant Application	\$25.00
11.2.g. Physical Therapist Assistant License.....	\$140.00

11.2.h. Physical Therapist Assistant Temporary Permit.....	\$20.00
11.2.i. Physical Therapist Assistant Biennial Renewal.....	\$80.00
11.2.j. Physical Therapist Assistant Lapsed License.....	\$170.00
11.2.k. Permanent License Verification.....	\$25.00
11.2.l. Duplicate Wallet Card/License.....	\$5.00
11.2.m. Duplicate Wall Certificate.....	\$15.00
11.2.n. Name Change Requiring New Card/License (Outside of Renewal Season).....	\$5.00
11.2.o. Exam Processing Fee.....	\$25.00
11.2.p. Mailing List/Directory	
 11.2.p.1. Label ready List Rate @ 10 cents/name and address	
 11.2.p.2. Hard copy Directory Rate @ 15 cents/name and address	
 11.2.p.3. Labels Rate @ 30 cents/name and address	
11.2.q. Continuing Education Course Review.....	\$50.00

~~11.2.r. 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.~~