



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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11/27/2019 3:06:27 PM

Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Physical Therapy

RULE TYPE: Legislative

TITLE-SERIES: 16-01

RULE NAME: 16-01 General Provisions For Physical
Therapist and Physical Therapy Assistant

CITE AUTHORITY: W. Va. Code §30-20-1, et. seq.

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Nonnie S Ramsey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 16
LEGISLATIVE RULE
WV BOARD OF PHYSICAL THERAPY

SERIES 1
GENERAL PROVISIONS FOR
PHYSICAL THERAPIST AND PHYSICAL THERAPIST ASSISTANT

§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. -- ~~June 16, 2011.~~

1.4. Effective Date. -- ~~June 16, 2011.~~

1.5. ~~Amendment. -- This rule amends title 16, series 1, which was repealed and replaced effective May 15, 2009. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of 10 years from final filing date.~~

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

2.9. “Licensee” means a person holding a license under the provisions of the W. Va. 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 W. Va. Code §30-20-1, *et. seq.*

2.12. “Permittee” means any person holding a temporary permit issued pursuant to the provisions of the W. Va. 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 W. Va. Code §30-20-1, *et. seq.*, and 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.

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.

2.15.a1. A physical therapy aide works under the direct supervision of a physical therapist; provided, that a physical therapist assistant may directly supervise a physical therapy aide in emergency situations necessary to provide patient safety.

2.16. “Practice of physical therapy” or “physiotherapy” means the care and services as described in the W. Va. Code §30-20-1, *et. seq.*

2.17. “Telecommunication” means audio, video or data communication.

2.18. “Unreversed” as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

§16-1-3. Applications.

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

3.1.a1. Personal information;

3.1.b2. Educational information;

3.1.e3. History of previous work experience, if applicable;

3.1.d4. License verification(s) from other jurisdictions that regulate the practice of physical

therapy in their jurisdictions.

- 3.1.e~~5~~. Written responses to questions regarding criminal offenses;
- 3.1.f~~6~~. Written responses to questions regarding child support obligations;
- 3.1.g~~7~~. Name and address of prospective employer in West Virginia if known;
- 3.1.h~~8~~. Photo identification; and
- 3.1.i~~9~~. 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. A license not renewed without specific request to place it in “inactive” status will automatically be placed on delinquent status.

5.4. 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.

5.5. To reinstate an “inactive” license, the licensee must submit an application for renewal along with a non-refundable application fee and license renewal fee.

5.6. A volunteer license will be marked as a “volunteer” license and is restricted to practicing in accordance with W. Va. Code §30-20-13.

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

§16-1-6. Criminal History Record Check.

6.1. In addition to all of the requirements for licensure, all applicants for an initial license to practice as a physical therapist or physical therapist assistant in West Virginia shall submit to a state and a national history record check and authorize this information to be released to the Board.

6.2. The purpose of the criminal history record check is to assist the Board in obtaining information that may relate to the applicant’s fitness for licensure.

6.3. In addition to the State Police, the Board may contract with and designate a company

specializing in the services required by this section instead of requiring the applicant to apply directly to the West Virginia State Police or similar out-of-state agency for the criminal history records checks. Provided, that any such company must utilize protocols consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact.

6.4. The applicant shall furnish to the State Police, or other organization duly designated by the Board, a full set of fingerprints and any additional information required to complete the criminal history record check.

6.5. The applicant is responsible for any fees required by the State Police, or other organization duly designated by the Board, for the actual cost of the fingerprinting and the actual costs of conducting a complete criminal history record check.

6.6. The Board may require the applicant to obtain a criminal history records check from a similar board approved agency or organization in the state of the applicant's residence, if outside of West Virginia.

6.7. The applicant shall authorize the release of all records, not sealed, obtained by the criminal history record check to the Board.

6.8. A criminal history record check submitted in support of an application for licensure must have been requested by the applicant no earlier than twelve (12) months immediately prior to the Board's receipt of the applicant's application for licensure.

6.9. An initial licensure application is not complete until the Board receives the results of a state and a national criminal history record check conducted by the State Police or another entity duly authorized by the Board. The Board shall not grant an application for licensure submitted by any applicant who fails or refuses to submit the criminal history record check required by this section.

6.10. Criminal history record checks shall be verified by a source acceptable to the Board, other than the applicant.

6.11. The results of the state and national criminal history record check may not be released to or by a private entity except:

6.11.1. To the individual who is the subject of the criminal history record check;

6.11.2. With the written authorization of the individual who is the subject of the criminal history record check; or

6.11.3. Pursuant to a court order.

6.12. Criminal history record checks and related records are not public records for the purposes of W. Va. Code 29B-1-1 eq. seq.

6.13. The Board may not disqualify an applicant from initial licensure pursuant to W. Va. Code §30-1-24.

6.14. If an applicant is disqualified for licensure because of a criminal conviction that remains unreversed, the Board shall afford the applicant the opportunity to reapply for licensure after the expiration of five years from the date of the conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period

of time: *Provided*, The convictions for violent or sexual offences or offenses shall subject an individual to a longer period of disqualification, to be determined by the Board.

6.15. An individual with a criminal record who has not previously applied for licensure, certification, or registration may petition the Board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization to practice. This petition shall include sufficient details about the individual's criminal record to enable the Board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Board shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The Board may charge a fee established by rule to recoup its costs for each petition.

§16-1-~~67~~. Temporary Permit for Physical Therapists and Physical Therapist Assistants.

~~67.1.~~ An individual possessing a temporary permit issued by the Board to practice physical therapy or act as a physical therapist assistant in the state of West Virginia 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 physical therapist supervisor within 24 hours.

~~67.2.~~ A temporary permit may be issued only to individuals who have met the eligibility criteria set forth in W. Va. Code §30-20-8, §30-20-10, and §30-20-12, and who have submitted proper application and identification as determined by the Board:

~~67.2.a1.~~ 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).

~~67.2.b2.~~ 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.

~~67.3.~~ The temporary permit is valid only for a period of 90 consecutive days and the permit shall not be renewed.

§16-1-~~78~~. Scope of Practice for Physical Therapists.

~~78.1.~~ A physical therapist may perform the following:

~~78.1.a1.~~ 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;

~~78.1.b2.~~ 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;

~~78.1.e3~~. 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,

~~78.1.f4~~. Engage in administration, consultation, and research.

~~78.2~~. A licensee shall adhere to the standards of ethical practice by practicing in a manner that is moral and honorable.

~~78.3~~. A licensee shall not cheat or assist others in conspiring to cheat on the National Physical Therapy Exam.

~~78.4~~. 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.

~~78.5~~. 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.

~~78.6~~. 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:

~~78.6.a1~~. Failing to assess and evaluate a patient's status;

~~78.6.b2~~. Performing or attempting to perform techniques, procedures, or both in which the licensee is untrained by education or experience;

~~78.6.e3~~. Delegating physical therapy functions or responsibilities to an individual lacking the ability or knowledge to perform the functions or responsibility in question;

~~78.6.f4~~. Causing, or permitting another person to cause, physical or emotional injury to the patient, or depriving the patient of the individual's dignity;

~~78.6.g5~~. 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;

~~78.6.h6~~. 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;

~~78.6.i7~~. 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;

~~78.6.k8~~. Abandoning the patient by inappropriately terminating the patient practitioner relationship by the licensee;

~~78.6.j9~~. Documenting or billing for services not actually provided; or documenting or billing services with the intent to defraud;

~~78.6.l10~~. A licensee shall not maliciously cause harm to another licensee.

8.7. A physical therapist may refer a patient to an appropriate health care practitioner if the physical therapist has reasonable cause to believe that symptoms or conditions are present that require services beyond the scope of the practice of physical therapy.

78.78. A licensee must report to the Board any discipline received in another jurisdiction within 30 days of that discipline. The Board reserves the right to discipline up to and including revocation of a license until disciplinary process in the other jurisdiction is completed. If the licensee fails to report discipline in another jurisdiction, they are subject to disciplinary procedures in our jurisdiction determined by the Board.

§16-1-89. Supervision of a Physical Therapist Assistant.

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

89.1.a1. An initial visit shall be made by a physical therapist for evaluation of the patient and establishment of a plan of care.

89.1.b2. The physical therapist shall make the final visit to terminate the plan of care unless the patient or physician terminates the plan of care.

89.1.e3. No more than 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.

89.1.44. The only exceptions to the level of supervision or supervisory ratio are subsections 89.5 and 89.6, and 89.7 of this section.

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

89.2.a1. When care is delivered in a hospital or other acute-care center, free-standing, outpatient, or independent practice setting, a physical therapist must provide on-site supervision, with the exception that general supervision is permitted in a hospital or other acute-care center, free-standing, outpatient, or independent practice setting 40% of the time once the physical therapist assistant performing treatment has at least 1000 hours of experience. The supervising physical therapists shall document when general supervision is utilized under this subdivision.

89.2.b2. General supervision may be utilized 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, and the following requirements must be observed and documented in the patient records when general supervision is used:

89.2.b2.4a. 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 joint onsite visit with the physical therapist assistant within 24 hours as prudent practice indicates.

89.2.b2.2b. The physical therapist must visit the patient at least once every 10 physical therapist assistant visits, or within 30 calendar days, whichever occurs first.

89.2.b2.3c. In the event that the supervising physical therapist changes, the new supervising physical therapist 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.

§9.3. 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:

- §9.3.a1. Complexity and activity of the patient's needs;
- §9.3.b2. Proximity and accessibility to the physical therapist;
- §9.3.e3. Supervision available in the event of emergencies or critical events; and
- §9.3.d4. Type of setting in which the service is rendered.

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

- §9.4.a1. Interpretation of referrals;
- §9.4.b2. Physical therapy initial evaluation and re-evaluation;
- §9.4.e3. Identification, determination, or modification of plans of care (including goals and treatment programs);
- §9.4.d4. Final discharge assessment/evaluation or establishment of the discharge plan; or
- §9.4.e5. Therapeutic techniques beyond the education, skill and knowledge of the physical therapist assistant.

§9.5. In an emergency situation, such as serious illness or injury of the therapist or therapist's family member or death of a family member, which causes the unanticipated absence of the supervising physical therapist for not more than ~~3~~ three consecutive days, and no more than 12 days per calendar year, 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. When this provision is utilized, the ratio in subdivision ~~8.1.e.~~ 9.1.3. may be exceeded, and the physical therapist shall document the dates and the emergency situation.

§9.6. In a temporary situation, which causes the absence of the supervising physical therapist up to ~~4~~ one day, and no more than 80 hours in a calendar year, a licensed physical therapist assistant may continue to render services, under 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. When this provision is utilized, the level of supervision in subdivision ~~8.2.a~~ 9.2.1. may be exceeded, and the physical therapist shall document the hours, date and temporary situation.

§9.7. A physical therapist assistant shall directly supervise a physical therapy aide only in emergency situations necessary to assure patient's safety.

§16-1-~~9~~10. Licensing Individuals outside the United States.

~~9~~10.1. 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:

~~9~~10.1.a1. Credentials:

~~9~~10.1.a1.4a. The foreign-educated applicant shall present a certificate issued by a board approved prescreening certification agency.

~~9~~10.1.b2. Education.

~~9~~10.1.b2.4a. 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.

~~9~~10.1.b2.2b. Equivalent education shall be reported to the Board through a board approved credentialing agency.

~~9~~10.1.e3. English Proficiency:

~~9~~10.1.e3.4a. Unless the native language is English, the applicant shall demonstrate proficiency in English by passing ~~the test at 1 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 a~~ board approved test with passing scores as determined by the Board.

§16-1-~~10~~1. Continuing Education.

~~10~~1.1. A "unit" is ~~4~~ one clock hour spent in a continuing education activity unless otherwise defined in this section.

~~10~~1.2. All licensees desiring to remain "active" and in good standing must complete 24 units of board approved continuing education within the 2-year licensing period. If the licensee does not complete the 24 units of board approved continuing education within the license period, that licensee will be placed on delinquent status and will be subject to all fees associated with delinquent status.

~~10~~1.2.a1. For those applicants reinstating their license for a period of ~~6~~ six months or less, only ~~6~~ six units are required for that year.

~~10~~1.2.b2. Volunteer licensees need only to complete 20 units of board approved continuing education activities within a ~~2-~~ two-year renewal cycle.

~~10~~1.2.e3. Accumulated CEU's may not be carried over from ~~4~~ one renewal period to another.

~~10~~1.2.44. A new graduate does not need continuing education hours for the current year of graduation.

~~10~~1.3. Completion of examinations, residencies, fellowships, tools, and courses for continuing education credit.

~~10~~1.3.a1. A maximum of ~~8~~ eight units per license period can be obtained from any combination

of clinical instruction or competency tools.

101.3.b2. Passing the following specialty examinations will qualify for 24 contact hours of continuing education in the year the examination is taken:

101.3.b2.1a. Specialty examinations and recertification administered by the American Board of Physical Therapy Specialties (ABPTS).

101.3.b2.2b. The Hand Therapy Certification Commission (HTCC) certification examination.

101.3.b2.3c. Continuing education course instructors can receive 1 one unit per hour of class instruction time will be awarded for board approved continuing education courses in the year the course given. Credit awarded to the instructor for said course will be granted only 1 one time.

101.3.e3. The successful completion of an American Physical Therapy Association credentialed residency or fellowship program will qualify for 24 contact hours of continuing education in the year the residency or fellowship is completed.

101.3.44. The successful completion of a practice review tool of the Federation of State Boards of Physical Therapy pertaining to continued competence will qualify for continuing education.

101.3.44.1a. Eight contact hours of continuing education will be awarded for completion of a practice review tool.

101.3.44.2b. Licensees may use a practice review tool identified in paragraph ~~3.4.1~~ 11.3.4.a of this section no more than every other renewal period.

101.3.e5. Clinical instruction.

101.3.e5.1a. Providing clinical instruction to physical therapist or physical therapist assistant student(s) enrolled in a CAPTE approved physical therapist or physical therapist assistant program can qualify for up to a maximum 8 units per year.

101.3.e5.2b. Four weeks of clinical instruction is equal to 1 one unit of continuing education.

101.3.f6. Continuing education courses are subject to board approval.

101.3.f6.1a. One unit per hour of class instruction time will be awarded for board approved continuing education courses in the year the course is taken.

101.3.g7. One unit per hour of class instruction time shall be awarded and automatically approved for CAPTE College/University, American Physical Therapy Association or West Virginia Physical Therapy Association sponsored continuing education courses in the year the course is taken.

101.3.h8. One unit per hour of class instructions for CAPTE college or university physical therapy or doctorate physical therapy programs.

101.4. The Board may grant a waiver of the continuing education requirements in the case of illness, disability or undue hardship.

101.4.a1. A request for waiver form must be completed in full. In the case of illness or disability,

a physician's statement is required.

101.4.b2. All completed forms must be received by the Board for consideration no later than the first day of October of the year preceding the renewal date.

101.4.e3. A waiver may be granted for any period of time not to exceed ± one renewal cycle.

101.4.f4. In the event that the illness, disability or hardship continues to the next renewal cycle, then a new waiver request is required.

101.4.e5. Should a waiver be granted due to disability or illness, the Board may require the individual to provide appropriate documentation from a physician or another qualified and appropriate practitioner to verify the individual's competency and ability to practice physical therapy in the state of West Virginia prior to the return to active practice of physical therapy in West Virginia.

11.5. The Board reserves the right to conduct randomized continuing education audits.