



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Physical Therapy TITLE-SERIES: 16-05  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 16-05 General Provisions For Athletic Trainers

**PRIMARY CONTACT**

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

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 9/17/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 10/19/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Posted on website and emailed all licensees.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule provides the regulatory framework for licensure, regulation and discipline of athletic trainers who are licensed by the West Virginia Board of Physical Therapy. This rule sets forth; qualifications for licensure as an athletic trainer; requirements for issuance; renewal, reinstatement, and reactivation of expired licenses; criminal history record checks; temporary permits; scope of practice for athletic trainers; the extent to which athletic training students/permittee may practice in the state; continuing education requirements; dry needling and telehealth rules.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The changes to this rule include two new definitions to §16-5-2. These include §16-5-2.8. "Dry Needling" and §16-5-2.15 "Telehealth Services"

This adds a new section §16-5-12 "Dry Needling". This section outlines the rules and regulations regarding dry needling by licensed athletic trainers.

This also adds another new section §16-5-13. "Telehealth". This section outlines the rules and regulations regarding telehealth services by licensed athletic trainers.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>			N/A

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

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 5  
GENERAL PROVISIONS FOR ATHLETIC TRAINERS

**§16-5-1. General.**

1.1. Scope. -- This legislative rule describes and defines requirements on licensure for Athletic Trainers.

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

1.3. Filing Date. -- ~~April 1, 2020.~~

1.4. Effective Date. -- ~~April 1, 2020.~~

1.5. Sunset Provision – ~~This rule shall terminate and have no further force or effect on April 1, 2030.~~  
This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.

**§16-5-2. 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 to act as an athletic trainer under the provisions of the W. Va. Code §30-20A-1, *et. seq.*

2.2. “Athletic injury or condition” means any injury or condition sustained by an individual that occurs during, or as a result of, the individual’s participation in organized athletic or recreational athletic activity that requires physical strength, agility, flexibility, speed, stamina, or range of motion or a substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition.

2.3. “Athletic Trainer” is an individual engaged in the practice of athletic training who holds a license under the provisions of the W. Va. Code §30-20A-1, *et. seq.*

2.4. “Athletic training” and “the practice of athletic training” means the care and services provided by a licensed athletic trainer as described under the provisions of the W. Va. Code §30-20A-1, *et. seq.*

2.5. “Board” means the West Virginia Board of Physical Therapy established under W. Va. Code §30-20-1 *et. seq.*

2.6. “Consulting” means that an athletic trainer renders an opinion or advice to another athletic trainer or health care provider through telecommunication or other means or electronic communication.

2.7. “Direct supervision” means the licensed athletic trainer must be physically present and be able to intervene on behalf of the athletic training student, permittee, and patient when the athletic training student is providing athletic training services.

2.8. “Dry Needling” is a skilled technique performed by an athletic trainer using filiform needles to penetrate the skin and/or underlying tissues to affect changes in body structure and functions for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disability.

2.89. “General supervision” means referral by prescription to treat conditions for an athletic injury or condition from a licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic, podiatrist or physical therapist except that the physical presence of the licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic, podiatrist or physical therapist is not required if the supervising licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic, podiatrist or physical therapist is readily available for consultation by direct communication, radio, telephone, facsimile, telecommunications or other electronic means.

2.910. “License” means an athletic trainer license or license to act as an athletic trainer issued by the Board under the provisions of the W. Va. Code §30-20A-1, *et. seq.*

2.4011. “Licensee” means a person licensed as an athletic trainer under the provisions of the W. Va. Code §30-20A-1, *et. seq.*

2.4112. “Permittee” means any person holding a temporary permit issued pursuant to the provisions of the W. Va. Code §30-20A-1, *et. seq.*

2.4213. “Permit” or “temporary permit” means a temporary permit issued under the provisions of the W. Va. Code §30-20A-1, *et. seq.*

2.4314. “Student” means an individual that’s enrolled in an accredited athletic training program.

2.4415. “Telehealth services” means the use of synchronous or asynchronous telecommunications technology by an athletic trainer to provide athletic training services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services and health administration. This term does not include audio-only telephone calls, email messages, or facsimile transmissions.

2.4416. “The practice of athletic training” means the services as described in W. Va. Code §30-20A-5.

2.4517. “Unreversed” as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

### **§16-5-3. Applications.**

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

3.1.1. Personal information;

3.1.2. Proof of current certification by a National Certifying Board approved by the West Virginia Board of Physical Therapy;

3.1.3. Verification of Licensure, Certification, or Registration from other jurisdictions that regulate the practice of athletic training in their jurisdictions;

- 3.1.4. Written responses to questions regarding criminal offenses;
- 3.1.5. Written responses to questions regarding child support obligations;
- 3.1.6. Name and address of prospective employer in West Virginia if known;
- 3.1.7. Photo Identification;
- 3.1.8. Applicable fee(s);
- 3.1.9. Educational information;
- 3.1.10. History of previous work experience, if applicable; and
- 3.1.11. Complete a criminal background check as required by W. Va. Code §30-1D-1.

**§16-5-4. Scores.**

4.1. The applicant must take a board approved national certifying examination and obtain a passing score as determined by the Board.

**§16-5-5. 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 June 30th 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. Any change in personal contact and employer/supervisor information must be submitted in writing to the Board as changes occur.

**§16-5-6. Criminal History Record Check.**

6.1. Beginning July 1, 2020, and in addition to all of the requirements for licensure, all applicants for an initial license to practice as an athletic trainer 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, *et. seq.*

6.13. The Board may not disqualify an applicant from initial licensure pursuant to WV 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.

#### **§16-5-7. Temporary Permit for Athletic Trainers**

7.1. An individual possessing a temporary permit issued by the Board to practice athletic training or act as an athletic trainer in the state of West Virginia shall practice under the direct supervision of a licensed athletic trainer. All progress notes written by the athletic trainer with a temporary permit shall be cosigned by an athletic trainer supervisor within 24 hours.

7.2. A temporary permit may be issued only to individuals who have met the eligibility criteria set forth in W. Va. Code §30-20A-4, and §30-20A-7, and who have submitted proper application and identification as determined by the Board:

7.2.1. Pending examinations, to any athletic training applicant who is a new graduate of a program approved by the Commission on Accreditation of Athletic Training Education (CAATE).

7.2.2. To a person who possesses an unencumbered credential in another jurisdiction and provides satisfactory evidence that the applicant's education is substantially equivalent to the educational requirements for athletic trainers under the provisions of this article.

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

#### **§16-5-8. Scope of Practice for Athletic Trainers.**

8.1. An athletic trainer may perform the following:

8.1.1. The practice of athletic training is defined as the application of principles, methods, and procedures for managing athletic injuries or conditions, which shall include the prevention, emergency care, clinical examination and assessment, therapeutic intervention, and treatment of athletic injuries or conditions through the use of appropriate preventative and support devices, and within the professional preparation and education of a licensed athletic trainer subject to the general supervision. Athletic training includes recognizing illness and referring to the appropriate health care professional and implementation of treatment pursuant to the orders of those professions listed under general supervision. Athletic training also includes instruction to coaches, athletes, parents, medical personnel, and communities in the area of care and prevention of athletic injuries or conditions.

8.1.2. Engage in administration, consultation, and research.

8.2. A licensee shall adhere to the standards of ethical practice as defined by the Board and practice in a manner that is moral and honorable.

8.3. A licensee shall not cheat or assist others in conspiring to cheat on the Board approved national certifying examination.

8.4. 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.

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

8.6. 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:

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

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

8.6.3. Delegating athletic training functions or responsibilities to an individual lacking the ability or knowledge to perform the functions or responsibility in question;

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

8.6.5. 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;

8.6.6. 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;

8.6.7. Abandoning the patient by inappropriately terminating the patient practitioner relationship by the licensee;

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

8.6.9. A licensee shall not maliciously cause harm to another licensee;

8.7. The scope of practice in this section does not include the practice of physical therapy, the practice of occupational therapy, the practice of medicine, the practice of osteopathic medicine, surgery, the practice of chiropractic, or the management of systemic medical or neurological conditions or diseases of body systems that are not within the professional preparation and education of a licensed athletic trainer.

8.8. 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.

**§16-5-9. Athletic Training student and/or permittee.**

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

9.1.1. No more than four athletic training students and or athletic trainers holding a temporary permit, or any combination thereof, can be supervised by a licensed athletic trainer at any one time.

9.2. Supervision requirements of athletic training student(s) and/or permittee(s) are as follows:

9.2.1. Athletic training students must practice under direct supervision of a licensed athletic trainer. Healthcare skills or techniques not specific to athletic training may be supervised by a licensed athletic trainer, or board approved licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic, podiatrist, or physical therapist.

9.2.2. Athletic training permittee(s) must practice under the direct supervision of a licensed athletic trainer.

9.3. A student athletic trainer may not use the title “student athletic trainer” or the abbreviation “SAT” unless the student is enrolled in an approved athletic trainer program.

**§16-5-10. Licensing Individuals outside the United States.**

10.1. An applicant for an athletic training license who was educated outside the United States shall meet the following criteria in order to be eligible for licensure by the Board:

10.1.1. Credentials:

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

10.1.2. Education:

10.1.2.a. The applicant shall be an athletic training graduate of a foreign institution of higher learning with at least the equivalent of a bachelor’s degree in athletic training as determined by the Board.

10.1.2.b. Equivalent education shall be reported to the Board through a board approved credentialing agency.

10.1.2.c. Applicant shall complete additional requirements of the Board.

10.1.3. English Proficiency:

10.1.3.a. Unless the native language is English, the applicant shall demonstrate proficiency in English by passing a board approved test with passing scores as determined by the Board.

**§16-5-11. Continuing Education.**

11.1. A “unit” is one clock hour spent in a continuing education activity unless otherwise defined in this section.

11.2. All licensees desiring to remain “active” and in good standing must complete 50 units of board approved continuing education within the two-year licensing period. If the licensee does not complete the 50 units of board approved continuing education within the licensing period, that license will be placed on delinquent/lapsed status and will be subject to all fees associated with delinquent/lapsed status.

11.2.1. Accumulated CEU’s may not be carried over from one renewal period to another.

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

11.3. Completion of examinations, residencies, fellowships, tools, and courses for continuing education credit.

11.3.1. Providing clinical instruction to an athletic training student(s) enrolled in a board approved athletic training program can qualify for up to a maximum of 10 units per licensing period.

11.3.2. Continuing education courses are subject to board approval.

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

11.3.3. One unit per hour of class instruction time shall be awarded and automatically approved for CAATE College/University, Board of Certification (BOC), National Athletic Trainers Association (NATA) or West Virginia Athletic Trainers Association sponsored continuing education courses in the year the course is taken.

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

11.4.1. A request for a waiver form must be completed in full. In the case of illness or disability, a physician’s statement is required.

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

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

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

11.4.5. 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 athletic training in the state of West Virginia prior to the return to active practice of athletic training in West Virginia.

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

**§16-5-12. Dry Needling**

12.1. In order to perform dry needling, an athletic trainer must obtain educational instruction approved by the West Virginia Board of Physical Therapy.

12.1.1. Dry needling by an athletic trainer must be performed under general supervision as described in W. Va. Code R. §16-5-2.9.

12.1.2. A licensed athletic trainer is prohibited from performing dry needling within the primary and secondary school settings.

### **§16-5-13. Telehealth**

13.1. Telehealth services means the use of synchronous or asynchronous telecommunications technology by an athletic trainer to provide athletic training services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services and health administration. This term does not include audio-only telephone calls, email messages, or facsimile transmissions.

13.2. Telehealth is the use of telecommunications or information technology to provide athletic training services to a patient who is physically located at a site in West Virginia, or who has established a prior professional relationship with an athletic trainer, whether or not in West Virginia.

13.2.1. The originating site is the location of the person receiving care, whether or not accompanied by an athletic trainer at the time services are provided through telehealth, including but not limited to, an out-patient facility, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university based health centers, or the work location of a patient.

13.3. Athletic training telehealth services must be provided by an athletic trainer who possesses a current unrestricted West Virginia license.

13.4. The provision of athletic training services via telehealth requires synchronous audiovisual interaction between the athletic trainer and the patient/client, which may be accompanied by the use of asynchronous store and forward technology.

13.5. Standard of Care. An athletic trainer that provides telehealth services:

13.5.1. is subject to the same standard of care that would apply to the provision of the same athletic training service in an in-person setting; and

13.5.2. may only be performed once an in-person evaluation has been performed and a professional relationship with the patient has been established.

13.6. Informed Consent. An athletic trainer that provides telehealth services must obtain and maintain the informed consent of the patient, or of another individual authorized to make health care treatment decisions for the patient, prior to the provision of telehealth services.

13.7. Confidentiality. An athletic trainer that provides telehealth services must ensure that the privacy and confidentiality of the patient's medical information is maintained during and following the provision of telehealth services, including compliance with HIPAA regulations and other federal and state law.

13.8. The failure of an athletic trainer to comply with this section shall constitute detrimental practice and could subject the licensee to disciplinary action by the Board.

13.9. Telehealth is a mode for providing one-on-one athletic training services to a patient/client.

13.10. The Board will investigate complaints regarding services provided via telehealth in the same manner as it investigates other complaints as set in statute and rule.