

Chapter PT 7

UNPROFESSIONAL CONDUCT

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PT 7.01 Authority and intent. (1) The definitions of this chapter are adopted by the board pursuant to the authority delegated by ss. 15.085 (5) (b) and 448.527, Stats., to establish the standards of ethical conduct by physical therapists and physical therapist assistants.

(2) Physical therapists and physical therapist assistants are guided by values of accountability, altruism, compassion, caring, excellence, integrity, professional duty, and responsibility. As representatives of the physical therapy profession, they are obligated to empower, educate, and enable patients to facilitate greater independence, health, wellness, and enhanced quality of life. Physical therapists and physical therapist assistants must therefore act, at all times, with honesty, compliance with the law, reasonable judgment, competence, and respect for the patient's dignity.

History: Cr. Register, September, 1995, No. 477, eff. 10-1-95; CR 03-020: am. Register April 2004 No. 580, eff. 5-1-04; **CR 13-007: renum. to (1) and am., cr. (2) Register November 2013 No. 695, eff. 12-1-13.**

PT 7.02 Definitions. For the purposes of these rules:

(1) "Negligence in the practice of physical therapy" means an act performed without the care and skill of a reasonable physical therapist or physical therapist assistant who performs the act in question, whether or not the negligent care results in actual harm to the patient.

(2) "Patient health care record" has the meaning given in s. 146.81 (4), Stats.

(3) "Sexual contact" has the meaning given in s. 948.01 (5), Stats.

(4) "Sexually explicit conduct" has the meaning given in s. 948.01 (7), Stats.

History: Cr. Register, September, 1995, No. 477, eff. 10-1-95; correction in (18) made under s. 13.93 (2m) (b) 7., Stats.; Register, June, 1998, No. 510; CR 03-020: am. (1), cr. (19), (20) and (21) Register April 2004 No. 580, eff. 5-1-04; **CR 13-007: r. and recr. Register November 2013 No. 695, eff. 12-1-13.**

PT 7.025 Unprofessional conduct. The term "unprofessional conduct" is defined to include violating, aiding, abetting, or conspiring to engage in any of the following:

(1) Violating s. 448.57 (2) (a) to (g), Stats., other provision of chs. 440 and 448, Stats., or any provision of a board order.

(2) Any physical therapist committing any act that constitutes a violation of the "Code of Ethics," effective July 1, 2010, as approved by the American Physical Therapy Association and herein incorporated by reference.

Note: Copies of the American Physical Therapy Association's Code of Ethics may be obtained electronically at www.apta.org/ethics.

(3) Any physical therapist assistant committing any act that constitutes a violation of the "Standards of Ethical Conduct," effective July 1, 2010, as approved by the American Physical Therapy Association and herein incorporated by reference.

Note: Copies of the American Physical Therapy Association's Standards of Ethical Conduct may be obtained electronically at www.apta.org/ethics.

(4) Engaging in fraud, deceit, or misrepresentation in applying for or procuring a license to practice physical therapy, in connection with applying for or procuring periodic renewal of a license, or in otherwise maintaining licensure.

(5) Failing to complete continuing competence requirements within the time period established by law.

(6) Permitting or assisting any person to perform acts constituting the practice of physical therapy without sufficient qualifications, necessary credentials, adequate informed consent, or adequate supervision. The physical therapist is responsible for determining whether general, direct, or one-on-one supervision is necessary to protect the patient from unacceptable risk of harm. The physical therapist retains responsibility for delegated or supervised acts, unless the board determines that the delegate knowingly and willfully violated the supervisor's direction or instruction.

(7) Engaging in any act of fraud, deceit, or misrepresentation, including acts of omission, to the board or any person acting on the board's behalf, including Department of Safety and Professional Services personnel.

(8) Any practice or conduct that falls below the standard of minimal competence within the profession that results in unacceptable risk of harm to the patient, regardless of whether injury results.

(9) Negligence in the practice of physical therapy, regardless of whether injury results.

(10) Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals or alcohol, or by other causes.

(11) Practicing physical therapy with a mental or physical condition that impairs the ability of the licensee to practice within the standard of minimal competence or without exposing the patient to an unacceptable risk of harm.

(12) Performing any act constituting the practice of physical therapy on any patient without the patient's informed consent or after the patient has withdrawn informed consent, whether verbally or in writing, or either of the following:

(a) Failure to document informed consent.

(b) Failure to inform the patient that any act of physical therapy may or will be performed by unlicensed personnel.

(13) Practicing beyond the scope of any professional credential issued by the board or any other state or federal agency.

(14) Knowingly, negligently, or recklessly making any statement, written or oral, in the course of the practice of physical therapy or as a physical therapist assistant, which is likely to deceive, defraud, mislead, or create an unacceptable risk of harm to the patient or the public or both.

(15) Divulging a privileged communication or other confidential patient health care information except as required or permitted by state or federal law.

(16) Engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, a patient's immediate family member, or a person responsible for the patient's welfare. For the purposes of this subsection all of the following may apply:

(a) Sexual motivation may be determined from the totality of the circumstances and is presumed when the physical therapist or

physical therapist assistant has contact with a patient's intimate parts without legitimate professional justification for doing so.

(b) An adult receiving treatment shall continue to be a patient for 6 months after the termination of professional services.

(c) If the person receiving treatment is a minor, the person shall continue to be a patient for the purposes of this paragraph for 2 years after termination of services or for 2 years after the patient reaches the age of majority, whichever is longer.

(d) It is a violation of this paragraph for a physical therapist or physical therapist assistant to engage in any sexual contact or conduct with or in the presence of a patient or former patient who lacks the ability to consent for any reason, including age, medication, or psychological or cognitive disability.

(17) Illegal or unethical business practices, including either of the following:

(a) Fraud, deceit, or misrepresentation in obtaining or attempting to obtain any fee or third-party reimbursement.

(b) Engaging in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.

(18) Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.

(19) Violation or conviction of any federal or state law, including criminal law, which is therefore substantially related to the practice of physical therapy and which bars any of the following conduct:

(a) Theft or fraud.

(b) Violence.

(c) Sexual contact with a patient, patient's guardian or family member, or any act performed in the presence of a patient, patient's guardian or family member, for the purposes of sexual gratification.

(d) Victimization of children, elderly, or other vulnerable person.

(e) Any crime occurring in the course of the practice of physical therapy by a physical therapist or a physical therapist assistant, or in any place in which physical therapy is practiced.

(f) Conclusive evidence of a violation of this subsection shall be a certified copy of any document demonstrating the entry of a guilty plea, nolo contendere plea, alford plea, or entrance into a deferred prosecution agreement, with or without being expunged, pertaining to a crime substantially related to the practice of physical therapy.

(20) Violation or conviction of any federal or state law or rule that is substantially related to the practice of physical therapy. For the purposes of this subsection the following may apply:

(a) Except as otherwise provided by law, a certified copy of a relevant decision by a state or federal court or agency charged with making legal determinations relevant to this paragraph is conclusive evidence of its findings of facts and conclusions of law.

(b) Under this paragraph, the department has the burden of proving that the act is substantially related to the practice of physical therapy.

(21) Failure to establish and maintain accurate and timely patient health care records as required by law and professional standards. Patient health care records are presumed to be untimely if not completed and signed within 60 days of the date of service.

(22) Failure to timely transfer patient health records to any person or practitioner authorized by law to procure the patient health care records. Failure to comply with any lawful request for patient health care records within 30 days of receipt of the request is presumed to be a violation of this subsection.

(23) Having any credential pertaining to the practice of physical therapy result in adverse action by any agency of this or another state, or by any agency or authority within the federal government, which results in any disciplinary action, including limitation, restriction, suspension, revocation, or any other disciplinary action. This paragraph applies whether the adverse action results in temporary or permanent limitation, restriction, suspension, revocation, or disciplinary action. This paragraph applies whether or not the adverse action is accompanied by findings of negligence or unprofessional conduct.

(24) Failure, within 30 days, to report to the board any adverse action, whether final or temporary, taken against the licensee's authority to practice physical therapy as follows:

(a) Any adverse action by another licensing or credentialing jurisdiction concerned with the practice of physical therapy.

(b) Any adverse action by any division of the state or federal government that results in limitation or loss of authority to perform any act constituting the practice of physical therapy or as a physical therapist assistant.

(25) Failure, within 30 days, to report to the board any voluntary agreement to limit, restrict, or relinquish the practice of physical therapy or as a physical therapist assistant entered into with any court or agency of any state or federal government.

(26) Failure to report to the board any incident in which the licensee has direct knowledge of reasonable cause to suspect that a physical therapist or physical therapist assistant has committed any unprofessional, incompetent, or illegal act in violation of state or federal statute, administrative rule, or orders of the board. Reports shall be made within the time necessary to protect patients from further unacceptable risk of harm, but no more than 30 days after the required reporter obtained knowledge of the act.

History: CR 13-007: cr. Register November 2013 No. 695, eff. 12-1-13; corrections in (6), (23) made under s. 13.92 (4) (b) 6., Stats., Register November 2013 No. 695.

PT 7.03 Complaints. Procedures and requirements for filing complaints with the board are set forth in ch. SPS 2.

History: CR 03-020: cr. Register April 2004 No. 580, eff. 5-1-04; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

PT 7.04 Self-audits. The board shall biennially review and evaluate its performance in carrying out its responsibilities under this chapter and in other areas over which the board exercises its independent authority, as defined in s. 440.035, Stats.

History: CR 03-020: cr. Register April 2004 No. 580, eff. 5-1-04.