

Report From Agency

STATE OF WISCONSIN PHYSICAL THERAPY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 12-002
PHYSICAL THERAPY : (S. 227.19 (3), Stats.)
EXAMINING BOARD :

I. THE PROPOSED RULE:

The proposed rules, including the analysis and text, is attached.

II. REFERENCES TO APPLICABLE FORMS:

The proposed rules do not require new forms.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

2009 Wisconsin Act 149 (2009 AB 275) amended the statutes relating to the Physical Therapy Affiliated Credentialing Board by transforming the affiliated credentialing board into the Physical Therapy Examining Board. As a result, the administrative rules governing physical therapy professionals, ss. PT 1 - PT 9 Wis. Admin. Code, required updating. Prompted by the passage of the Act, the newly formed examining board also revised and clarified other areas of the rules as necessary.

These proposed rules revise s. PT 1.01 regarding authority and purpose and add authority provisions throughout the remaining chapters. New terms, such as candidate for reentry, direct, immediate, on premises supervision, direct, immediate, one-to-one supervision, and general supervision have been added to s. PT 1.02. These terms will aid in clarifying the level of supervision for physical therapist assistants, unlicensed personnel and temporary license holders. Other terms such as informed consent, client, intimate parts, continuing competence, and remedial education, have been added to ss. PT 1.02 and PT 9.02, to provide guidance within the profession on matters related to patient care and professional development. Lastly, the board has created an additional temporary license credential, the temporary reentry license. This credential allows the temporary reentry license holder to practice physical therapy under the supervision of a licensed physical therapist after providing proof of minimal competence and is geared toward applicants who have not engaged in clinical practice for at least three years prior to submitting their application.

V. NOTICE OF PUBLIC HEARING:

The board held a public hearing on February 16, 2012. Written comments were accepted until February 16, 2012. Jeremy Shepherd of Martin Schreiber & Associates, Inc. Madison, WI, appeared for information only. Kip Schick, President of the Wisconsin Physical Therapy Association, Madison, WI, provided testimony and written comments. There was no further testimony presented and no other written comments were received.

SUMMARY OF PUBLIC HEARING COMMENTS:

Kip Schick, President of the Wisconsin Physical Therapy Association, Madison, WI, testified at the hearing in support of the proposed rules. He proposed defining the term supervisor to specify that only physical therapists can provide clinical supervision of other physical therapists, physical therapist assistants, and students. He also suggested amending the definition of informed consent in s. PT 1.01 (8) to address when consent must be obtained and whether a written signature, required in s. PT 1.01 (8) (a), was necessary to document a client's informed consent. He suggested verbal consent could be obtained from the patient and the physical therapist could note the patient's consent in the medical record. Lastly, Mr. Schick argued that s. PT 1.01 (8) (e), requiring clients be informed of the associated costs before receiving service was not practical because practitioners often do not know the actual costs to patients.

BOARD'S RESPONSE TO PUBLIC COMMENTS:

After review and discussion of the comments provided at the public hearing, the following changes were made to the proposed rules:

- (a) The term "supervisor" was defined in s. PT 1.02 (12), as a person holding a regular license as a physical therapist who is competent to coordinate, direct, and inspect the accomplishments of another physical therapist, physical therapist assistant, student, or temporary licensee.
- (b) Section PT 1.02 (8) (a) was amended to allow documentation of informed consent either by written signature or by notation in the patient's health care record.
- (c) Section PT 1.02 (8) (e) was amended to permit physical therapist to inform clients of the general costs associated with the service provided or directing the client to the entity responsible for explaining patient costs.
- (d) The biennial license renewal date was changed from November 1 to March 1.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 1. In s. PT 1.02 (12), it appears that the phrase "or physical therapist assistant" should be deleted, because only physical therapists, and not assistants, are authorized for

temporary licensure by the referenced s. 448.53 (2), Stats. Physical therapists assistants are also not authorized for temporary licensure under their governing statute, s. 448.535, Stats. Consequently, in addition, in s. PT 3.01 and throughout ch. PT 3, all references to a physical therapist assistant having temporary licensure should be deleted. Alternatively, if the board wishes to authorize physical therapists assistants for temporary licensure, it should explain the statutory authority for that decision.

Response: The legislature granted the board authority to grant temporary licensure to physical therapist assistants pursuant to the passage of 2001 Wisconsin Act 70. The Act created provisions mandating the licensure of physical therapist assistants and recognizing physical therapist assistants as health care providers in s. 155.01 (7), Stats. Pursuant to this legislation, the board promulgated s. PT 3.01 (4), providing for the temporary licensure of physical therapy assistants. The legislature adopted CR 03-020, the proposed rule order that set forth s. PT 3.01 (4), in May of 2004. The provision has remained in effect since then. Deleting all references in ch. PT 3 to a physician assistant having temporary licensure would undermine the legislative intent of 2001 Wisconsin Act 70 and the delegated rule-making authority of the board. Instead, the reference in s. PT 1.02 (12) has been amended from s. 448.53 (2), Stats. to ch. PT 3. The legislative history of CR 03-020 is attached.

Comment 2. e. In s. PT 3.002 (3), “Continuing competence”. . . is very vague, and does not provide a clear standard. The definition should be removed or revised.

Response: This definition has been revised and moved to s. PT 9.02 (1m). The term “continuing competence” is now defined as the ongoing self assessment, development and implementation of a personal learning plan that evaluates professional knowledge, skill, behavior, and abilities related to the practice of physical therapy.

Comment 2. j. Is the reference to s. PT 3.02 intended as an exception to the requirements for reinstatement?

Response: It was intended as an exception. The phrase, except for temporary licenses granted pursuant to ch. PT 3, has been added to highlight that point.

Comment 4. a. In s. PT 1.01 (1), the references to ss. 15.405 (7r) and 448.567, Stats., should be deleted, as those are beyond the stated scope of ch. PT 1.

Response: The reference to s. 448.567, Stats., has been deleted but the reference to s. 15.405 (7r) has been retained because it is a reference to the enabling statute that creates the Physical Therapy Examining Board.

Comment 4. b. In s. PT 1.01 (2), “the issuance of licenses to physical therapist assistants under s. 448.53, Stats.,” should be deleted, because the referenced section governs physical therapists, not assistants. Also, the reference to ss. 448.54 and 448.55, Stats., after “ss. 448.535,” should be reworded, as those apply to both physical therapists and assistants, not only to assistants.

Response: The provision was restated as follows:

The rules in this chapter are adopted to govern the issuance of licenses to physical therapists and physical therapist assistants under ss. 448.53, 448.535, 448.54, and 448.55, Stats.

Comment 5. h. Section PT 3.02, as a whole, should be revised.

Response: The section was revised in its entirety.

All other recommendations in the clearinghouse report were accepted and incorporated into the final draft of the proposed rules.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

The proposed rules were posted on the Department of Safety and Professional Services website for 14 days. Comments were solicited from the public. No comments were received indicating there would be any economic impact on specific business sectors or small businesses in general by promulgating the proposed rules. The proposed rules were submitted to the Small Business Regulatory Review Board to determine whether the proposed rules would have a significant economic impact on a substantial number of small businesses. As yet, the SBRRB has not made its determination. The Final Regulatory Flexibility Analysis has been attached.