

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PHYSICAL THERAPY
PHYSICAL THERAPY : EXAMINING BOARD
EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 12-002)

PROPOSED ORDER

The Wisconsin Physical Therapy Examining Board proposes an order to repeal PT 3.01 (7); to amend PT1.02 (1) to (6), 1.03 (1) (c), 3.01 (1), 3.01 (4), 4.01 (4), 8.05 (intro.), and 9.01; to repeal and recreate PT 1.01; and to create PT 2.001, 2.01 (1) (j), 3.001, 3.02, 4.001, 5.001, 6.001, 9.02 (1m) and (5), relating to licensure, examinations, temporary licenses, locum tenens license, referrals, and continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 448.53, 448.535, 448.54, 448.55(3), 448.56, Stats. and 2009 Wisconsin Act 149

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 448.53 (2), 448.55(3), and 448.56 (6), Stats.

Explanation of agency authority:

The legislature via ss. 15.08 (5) (b), and 227.11 (2) (a), Stats., confers upon the Physical Therapy Examining Board general powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Sections 448.53(2) and 448.55(3), Stats., especially concerned with regulating health professions, authorizes the Physical Therapy Examining Board to promulgate rules regarding licensure and maintaining competence to practice in the profession. Section 448.56 (6) provides the Physical Therapy Examining Board may promulgate rules defining direct or general supervision of physical therapist assistants. Therefore, the Physical Therapy Examining Board is authorized both generally and specifically to promulgate these proposed rules.

Related statute or rule:

Wis. Admin. Code Chapter PT 1 to PT 9

Plain language analysis:

Due to the passage of 2009 Wisconsin Act 149, the administrative rules governing physical therapy professionals required updating. The legislation transformed the Physical Therapists Affiliated Credentialing Board into the Physical Therapy Examining Board. The newly formed board now functions independently without oversight by the Medical Examining Board. These proposed rules effectuate the changes mandated by the legislation by modernizing existing provisions, upgrading the authority sections in chapters PT 1- 9, adding clarifying terms and revising the provision regarding temporary licensure.

The proposed rule amends the temporary license to practice under supervision in s. PT 3.01 by limiting this license to an applicant who has not practiced as a physical therapist or physical therapist assistant, but has graduated from a school of physical therapy or a physical therapist assistant educational program, and has applied to take the appropriate national examination, or is awaiting exam results, but is not required to take an oral examination. The temporary license to practice under supervision credential holder must practice under the supervision of a licensed physical therapist. The temporary reentry license has been added to ch. PT 3 for applicants who have not engaged in clinical practice for three years prior to submitting their application for a regular physical therapy or physical therapy assistant license. The temporary reentry license holder may practice physical therapy under the supervision of a licensed physical therapist after providing proof of minimum competence.

SECTION 1 repeals the former authority section and recreates s. PT 1.01 as a new statement of authority.

SECTION 2 amends s. PT 1.02 by adding terms such as, “candidate for reentry”, “client”, “direct, immediate, on premises supervision”, “direct, immediate, one-to-one supervision”, “general supervision”, “informed consent” and “intimate parts”. The terms will aid in clarifying the level of supervision for temporary licensees.

SECTION 3 amends s. PT 1.03 (1) (c) to distinguish between the documentary evidence required for graduation for physical therapists and physical therapist assistants.

SECTION 4 creates s. PT 2.001 as statement of authority for chapter PT 2.

SECTION 5 creates s. PT 2.015 (1) (j) adding a new category for applicants required to complete an oral examination to persons who have voluntarily limited the scope of their practice as a result of being investigated by a credentialing authority.

SECTION 6 creates an authority and definitions sections in chapter PT 3.

SECTION 7 amends s. PT 3.01 (1) by renaming the definition of the temporary license to practice under supervision and by limiting the class of temporary license holders under supervision to persons who have not previously been licensed in Wisconsin.

SECTION 8 amends s. PT 3.02 (4) by deleting duplicative language regarding the supervision of physical therapist assistants.

SECTION 9 repeals the renewal provision in s. PT 3.01 (7) for physical therapists and physical therapist assistants under supervision.

SECTION 10 creates s. PT 3.02 regarding the temporary reentry license. Physical therapists and physical therapist assistants who have not engaged in the clinical practice of physical therapy for three years are eligible for the temporary reentry license. The temporary reentry license is valid for one year and is nonrenewable.

SECTION 11, 12, and 13 create authority provisions for chapters PT 4 to PT 6.

SECTION 14 amends s. PT 4.01 (4) by adding language that allows the Physical Therapy Examining Board greater discretion in extending the expiration date of a locum tenens license. Currently, a locum tenens license expires within 90 days of being issued.

SECTION 15 amends s. PT 8.05 (intro.) by adding a renewal exception for the newly created class of temporary reentry applicants.

SECTION 16 amends the authority and purpose provision in s. PT 9.01 to reflect the change in status from affiliated credentialing board to examining board.

SECTION 17 creates ss. PT 9.02 (1m) and (5) adding the terms “continuing competence” and “remedial education”. Remedial education applies to licensees who must obtain continuing education as result of a disciplinary action.

Summary of, and comparison with, existing or proposed federal legislation:

There is no comparative existing or proposed federal rule.

Comparison with rules in adjacent states:

Illinois: Illinois does not issue a temporary license. Illinois allows applicants to apply for restoration of licenses that have expired or have been placed on inactive status for a period of 5 to 10 years. ILL. ADMIN. CODE tit.68 §1340.60 (4) (A) Individuals that have allowed their license to lapse must obtain 160 contact hours under the supervision of a licensed physical therapist, or twenty hours of continuing education on the clinical aspects of physical therapy or a combination of both.

Iowa: The state of Iowa does not issue a temporary license. Iowa allows an individual whose license has been inactive for 5 years or less and an individual whose license has

been inactive for more than 5 years to apply for reactivation of an inactive license. IOWA ADMIN. CODE R. 645-200.15 (17A, 147, 272C) However, Iowa does have provisions enumerating the supervision requirements for physical therapist assistants. IOWA ADMIN. CODE R. 645-200.6 (272C)

Michigan: Michigan issues a nonrenewable temporary license for physical therapists and physical therapist assistants who are applying for re-licensure and whose license has lapsed less than 3 years after their expiration date provided they have completed all other requirements other than examination. MICH. ADMIN. CODE R 338.7149 Michigan also issues a limited license for physical therapist assistants who graduated from a board approved program but still must complete a physical therapist assistant examination. MICH. ADMIN. CODE R 338.7143 Temporary license holders must practice under the supervision of license holders and may not be supervised by limited license holders or temporary license holders. MICH. COMP. LAWS §333.16181

Minnesota: By statute, Minnesota issues temporary permits to practice physical therapy. MINN. STAT. §148.71 The permit, once issued, expires 90 days after the next examination for licensure given by the Board. The temporary permit cannot be renewed. Temporary license holders may be supervised by applicants for physical therapist, physical therapist assistants and licensed physical therapist. The level of supervision must be direct immediate and on premises.

Summary of factual data and analytical methodologies:

The Physical Therapy Examining Board conducted an extensive review of its rules along with legal counsel. The Federation of State Boards of Physical Therapy Model Practice Act was also reviewed. The board and its legal counsel identified key areas that required updating to bring the current regulations into conformity with the passage of 2009 Wisconsin Act 149.

Analysis and supporting documents used to determine effect on small business or in preparation of economic report:

It is anticipated that this rule will have no effect on small business as it is defined in s. 227.114 (1), Stats.

Anticipated costs incurred by the private sector:

The proposed rules will not incur additional costs to the private sector.

Fiscal estimate and Economic Impact Analysis:

With regard to the fiscal impact there would be additional IT costs of approximately \$2,130 related to coding in the licensing system and additional costs of approximately \$340 for updating forms and the website. These costs would be absorbed within the DSPS budget. With regard to the economic impact, the proposed rule language was

made available on the department's website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. The department finds the proposed rule will have no economic impact.

Effect on small business:

This rule will have no effect on small business as it is defined in s. 227.114 (1), Stats. The department's Regulatory Review Coordinator may be contacted by email at Bill.Wendle@wisconsin.gov, or by phone by calling (608) 267-2435.

Agency contact person:

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.Leatherwood@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to Shancethea.Leatherwood@wisconsin.gov. Comments must be received on or before February 16, 2012, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. PT 1.01 is repealed and recreated to read:

PT 1.01 Authority and purpose. (1) The rules in this chapter are adopted by the physical therapy examining board pursuant to the authority delegated by ss. 15.08 (5) (b), and 15.405 (7r), 448.53 (1), Stats.

(2) 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.

SECTION 2. PT 1.02 (1) to (6) are amended to read:

PT 1.02 Definitions. As used in chs. PT 1 to 9:

(1) "Board" means the physical ~~therapists affiliated credentialing therapy~~ examining board.

(2) "Candidate for reentry" means a physical therapist or physical therapist assistant who has not practiced in the 3 years immediately preceding the

application for licensure or renewal of licensure, and who has been issued a temporary license for purposes of establishing competence to reenter clinical practice.

(3) “Client” means a person who has contracted for, who receives, and or who has previously received or contracted for, the professional services of a physical therapist, a physical therapist assistant, student or temporary licensee, whether the physical therapist, student or temporary licensee is paid or unpaid for the service, and regardless of where such services occur. If a client is a person under age 18, the client’s parent or legal guardian are also clients.

(4) “Direct, immediate, on-premises supervision” means face-to-face contact between the supervisor and the person being supervised, as necessary, with the supervisor physically present in the same building when the service is performed by the person being supervised.

(5) “Direct, immediate, one-to-one supervision” means one-to-one supervision with face-to-face contact between the person being supervised and the supervisor. The supervisor may assist the person being supervised as necessary.

(2) (6) “FSBPT” means the Federation of State Boards of Physical Therapy.

(7) “General supervision” means direct, on-premises contact between a supervisor, and a physical therapist, physical therapist assistant, student or temporary licensee being supervised, as necessary. Between direct contacts, a supervisor is required to maintain indirect, off-premises telecommunication contact such that the person being supervised can, within 24 hours, establish direct telecommunication with a supervisor.

(8) “Informed consent” means a client’s voluntary, knowing and understood agreement to the service to be provided by the physical therapist, physical therapist assistant, temporary licensee, candidate for reentry, or student. Informed consent requires, at a minimum, that the licensee has provided information about reasonable alternate modes of diagnosis and treatment, and the risks and benefits of each, that a reasonable person in the client’s position would need before making an informed decision concerning the mode of treatment or diagnosis.

- (a) Informed consent may ordinarily be documented by the written signature of the client, the client’s guardian or the client’s power of attorney for healthcare, or in the alternative by a notation in the patient’s health care record as defined in s. 146.81 (4), Stats. If circumstances prevent signed documentation by the client, the licensee may document verbal consent within the patient’s health care record.
- (b) A client may withdraw informed consent verbally or in writing at any time before a service is completed.
- (c) Informed consent shall include an understanding that the client may, upon request, have a chaperone present while services are provided.

(d) No service or part of a service may be provided without the client's informed consent or after informed consent has been withdrawn.

(e) No service or part of a service may be provided without informing the client of the general nature of the costs associated with the service provided or contact information for the entity who can address billing concerns.

(9) "Intimate parts" has the meaning given in s. 939.22(19), Stats.

~~(3)~~ (10) "License" means any license, permit, certificate or registration issued by the board.

~~(4)~~ (11) "Licensee" means any person validly possessing any license granted and issued to that person by the board.

(12) "Supervisor" means 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.

(13) "Temporary licensee" means a graduate of a physical therapy school or program who has met the requirements for and who has been granted a temporary license to practice as a physical therapist or physical therapist assistant as provided in ch. PT 3.

~~(6)~~ (14) "Unlicensed personnel" means a person other than a physical therapist or physical therapist assistant who performs patient related tasks consistent with the unlicensed personnel's education, training and expertise under the direct on-premises supervision of the physical therapist.

SECTION 3. PT 1.03 (1) (c) is amended to read:

PT 1.03 (1) (c) For a physical therapist, ~~Verified~~ verified documentary evidence of graduation from a school of physical therapy; for a physical therapist assistant, verified documentary evidence of satisfactory completion of a ~~or~~ physical therapist assistant educational program approved by the board.

SECTION 4. PT 2.001 is created to read:

PT 2.001 Authority and purpose. (1) The rules in this chapter are adopted by the board pursuant to the authority delegated by ss. 15.08 (5) (b), 448.53 (1) and 448.54, Stats.

(2) The rules in this chapter are adopted to govern examination of applicants for licensure of physical therapist and physical therapist assistants under ss. 448.53, 448.535, 448.54, and 448.55, Stats.

SECTION 5. PT 2.01 (1) (j) is created to read:

PT 2.01 (1) (j) Has voluntarily limited the scope of his or her practice as a physical therapist or physical therapist assistant after being the subject of an investigation by a credentialing authority or employer.

SECTION 6. PT 3.001 is created to read:

PT 3.001 Authority and purpose. The rules in this chapter are adopted by the board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2) and 448.53 (2), and 448.55 (3), Stats., and govern the various classes of temporary licenses to practice physical therapy.

SECTION 7. PT 3.01 (1) is amended to read:

PT 3.01 (title.) **Temporary license to practice under supervision, initial licensure.** (1) An applicant for a regular license to practice as a physical therapist or physical therapist assistant, who has not previously been licensed to practice as a physical therapist or as a physical therapist assistant in this state, whichever is applicable, and who is a graduate of an approved school of physical therapy or a physical therapist assistant educational program and has applied to take the national physical therapist examination or the national physical therapist assistant examination and is awaiting results and is not required to take an oral examination, may apply to the board for a temporary license to practice as a physical therapist or physical therapist assistant under supervision. The applications and required documents for a regular license and for a temporary license may be reviewed by 2 members of the board, and upon the finding by the 2 members that the applicant is qualified for admission to examination for a regular license to practice as a physical therapist or physical therapist assistant, the board, acting through the 2 members, may issue a temporary license to practice as a physical therapist or physical therapist assistant under supervision to the applicant.

SECTION 8. PT 3.01 (4) is amended to read:

PT 3.01 (4) The holder of a temporary license to practice as a physical therapist assistant under supervision may provide physical therapy services as defined by s. 448.50(4), Stats., providing that the entire practice is under the supervision of a person validly holding a regular license as a physical therapist. The supervision shall be direct, immediate, and on premises. ~~No physical therapist assistant holding a temporary license may provide physical therapy services when the supervising physical therapist is not immediately available to assist.~~

SECTION 9. PT 3.01 (7) is repealed.

SECTION 10. PT 3.02 is created to read:

PT 3.02 Temporary reentry license. The board may issue a temporary reentry license to an applicant for a regular license to practice as a physical therapist or physical therapist assistant, who has met all other requirements for licensure, and has provided proof of minimal competence to the satisfaction of the board, but has not been engaged in clinical practice as a physical therapist or physical therapist assistant for at least 3 years immediately preceding their application.

(1) **PROOF OF COMPETENCE.** A candidate for reentry may provide proof of minimal competence by completing either one of one of the following:

(a) A vocational evaluation by a physical therapist who is preapproved by the board or its designee.

(b) Satisfactory completion of not less than 3 months of clinical practice under the supervision of a professional mentor who has been preapproved by the board or its designee.

(2) **PROFESSIONAL MENTOR.** A professional mentor shall be a person holding a regular license in good standing as a physical therapist, who has no pre-existing personal or professional affiliation with the candidate for reentry. The professional mentor shall provide direct, immediate, on-premises supervision of the candidate for reentry, and insure that clients have given informed consent to treatment by the candidate for reentry under the professional mentor's supervision.

(3) **EVALUATION OF CLINICAL PRACTICE.** After a period of not less than 3 months of clinical practice, a candidate for reentry may petition the board for a regular license to practice as a physical therapist or physical therapist assistant. The board shall grant a regular license to practice as a physical therapist or physical therapist assistant to the candidate for reentry when he or she demonstrates, to the board's satisfaction, minimal competence to practice physical therapy as defined in s. 448.50 (4), Stats., without supervision.

(4) **TERM OF LICENSE.** A temporary reentry license shall be valid for a period not to exceed 1 year, or until the holder of the temporary reentry license receives either a failing evaluation or a regular license to practice as a physical therapist or physical therapist assistant whichever is shorter. A temporary reentry license expires after 1 year and may not be renewed.

SECTION 11. PT 4.001 is created to read:

PT 4.001 Authority and purpose. The rules in this chapter are adopted by the board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2), 448.53 (2), and (3), Stats. and govern locum tenens licenses.

SECTION 12. PT 5.001 is created to read:

PT 5.001 **Authority and purpose.** The rules in this chapter are adopted by the board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2), and 448.56 (6), Stats., and govern physical therapist assistants and unlicensed personnel.

SECTION 13. PT 6.001 is created to read:

PT 6.001 **Authority and purpose.** The rules in this chapter are adopted by the board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2), and 448.56 (1m) (b), Stats., and govern referrals.

SECTION 14. PT 4.01 (4) is amended to read:

PT 4.01 (4) Except as otherwise ordered by the board, A a locum tenens license to practice physical therapy shall expire 90 days from the date of its issuance. For cause shown to its satisfaction, the board, acting through a member of the board, may renew the locum tenens license for additional periods of 90 days each, but the license may not be renewed within 12 months of the date of its original issuance, nor again renewed within 12 months of the date of any subsequent renewal may issue a locum tenens license for a period not to exceed 12 months. The locum tenens license is not renewable.

SECTION 15. PT 8.05 (intro.) is amended to read:

PT 8.05 Requirements for reinstatement. A license shall expire if it is not renewed by ~~November~~ March 1 of odd numbered years, except for temporary licenses granted pursuant to ch. PT 3. A licensee who allows the license to lapse may apply to the board for reinstatement of the license as follows:

SECTION 16. PT 9.01 is amended to read:

PT 9.01 Authority and purpose. The rules in this chapter are adopted by the board pursuant to the authority delegated by ss. ~~15.085~~ 15.08 (5) (b), 227.11 (2) and 448.55 (3), Stats., and govern required biennial continuing education of licensees of the board.

SECTION 17. PT 9.02 (1m), and (5) are created to read:

PT 9.02 (1m) “Continuing competence” means 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.

PT 9.02 (5) “Remedial education” means education undertaken in lieu of or as part of discipline for the purpose of fulfilling a gap in the licensee’s competence.

SECTION 18. EFFECTIVE DATE. The rule adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated _____ Agency _____
Chairperson
Physical Therapy Examining Board

CR 12-002