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CLEARINGHOUSE RULE 94-220

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

It appears that s. PT 2.01 (8) conflicts with s. 448.54 (3), Stats. Section 448.54 (3), Stats., provides generally that the board may not require an applicant to take an oral examination or an examination to test proficiency in the English language for the sole reason that the applicant was educated at a physical therapy school that is not in the United States if the applicant establishes that he or she satisfies certain conditions relating to the equivalency of his or her physical therapy education. Section PT 2.01 (8) provides that any applicant who is a graduate of a school in a program of physical therapy in which English is not the primary language may be examined by the board on his or her proficiency on the English language. The rule does not provide an exception for an individual applicant who satisfies the requirements of s. 448.53 (3), Stats.

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, “such” should either be deleted or replaced by an article. [See s. 1.01 (9) (c), Manual.]

b. Because subs. (5) and (6) in s. PT 1.03 are not items to be submitted to the board, they could be set off as separate sections of the rule. In the alternative, s. PT 1.03 (intro.) could be designated sub. (1) and current subs. (1) through (4) could be designated pars. (a) through (d) and the phrase “is required” could be deleted from current sub. (4). Current pars. (a) through (d) could then be designated subs. 1 through 4. Finally, subs. (5) and (6) could be renumbered

subs. (2) and (3). Other cross-references throughout the rule may need to be modified in light of this change. In addition, the rule should identify the person who must do the various verifications in s. PT 1.03.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Generally, throughout the rule, the rule refers to various application fees. However, the rule does not provide any indication of how much those fees are or where a listing of those fees may be found. The rule should be revised to either provide a listing of those fees or adequate cross-references to the statutory citations for those fees.

b. In s. PT 3.02 (3), the statutory reference to s. 448.01 (1) (e), Stats., is incorrect. It appears that the proper statutory reference should be to s. 448.50 (4), Stats.

c. The statutory reference to s. 448.04 (1) (e), Stats., in s. PT 4.01 (3) is incorrect. That section does not exist.

d. In s. PT 5.01 (intro.), the statutory reference to s. 448.03 (2) (fm), Stats., is incorrect. That section does not exist. Perhaps the correct statutory citation is s. 448.52 (3), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. PT 1.01, the word “license” should be plural.

b. In s. PT 1.02 (4), the phrase “, permit or certificate” should be deleted because a license is defined to include those things.

c. For purposes of clarity, the publisher or sponsor of the test of English as a foreign language (TOEFL) should be identified in s. PT 1.02 (5) to distinguish the test contemplated in the rule from other similar tests.

d. In s. PT 1.03 (2), the phrase “8 by 12 cm.” should be written “8 cm. by 12 cm.”.

e. Does s. PT 1.03 (5) apply only to graduates of a foreign school of physical therapy? If so, sub. (5) should be clarified accordingly. In addition, the first sentence is unclear. Does the first sentence refer to the equivalence relative to a board-approved domestic school of physical therapy? Finally, “, as it deems appropriate,” should be deleted since the word “may” already makes this action discretionary.

f. In s. PT 1.03 (6) (c), “educational” should replace “education.”

g. In s. PT 1.04, the term “fully” is redundant and should be deleted. In addition, s. PT 1.04 could be clarified by including a rule or a statutory citation for the referenced examination and fees. Finally, the reference to the required fees in the second sentence should be incorporated into the first sentence and the direction to make remittances payable to the Wisconsin Department of Regulation and Licensing should be relegated to a note.

h. In s. PT 2.01 (1) (d), are “controlled dangerous substances” different than “controlled substances” regulated under ch. 161, Stats. If so, controlled dangerous substances should be better identified in the rule. If the terms are not different, the phrase “controlled dangerous substances” should be changed to “controlled substances.”

i. In s. PT 2.01 (1) (e), what does the phrase “adverse formal action” refer to? Must the adverse formal action have been somehow related to the applicant’s physical therapy education, training or practice?

j. In s. PT 2.01 (2), it would appear that the phrase “the application review panel” should be “an application review panel.” In addition, the word “consisting” or “comprised” should be inserted between the words “panel” and “of” in the first sentence.

k. In s. PT 2.01 (5), the word “will” should be replaced by the word “shall.” In addition, the subsection refers to an applicant being “found eligible” for examination. However, the rule does not specify any eligibility criteria for taking an examination. In fact, s. PT 2.01 (1) provides that all applicants must complete a written examination. What eligibility criteria must an applicant meet to take an examination? Finally, the second sentence of s. PT 2.01 (5) is unclear. Is the applicant’s application voided even if the applicant has made prior scheduling arrangements? Does the phrase “prior scheduling arrangements” mean alternative arrangements for taking the examination prior to the scheduled examination? This sentence should be clarified.

l. In s. PT 2.01 (6) (a) and (b), the distinction between the score required to pass an examination and the passing grade is not clear. Are the passing grades based on a percentage of questions answered correctly? If so, why must the passing score be determined by the board? Also, in par. (c), the word “will” should be “shall.” In addition, the word “this” is vague and should be replaced by a more appropriate term. Finally, the last sentence of par. (c) is vague and unclear. Does this mean that the applicant must prove the equivalence of the applicant’s license?

m. Section PT 2.01 (7) should be rewritten in the active voice. It should begin “Members of the board shall conduct....”

n. Since “TOEFL” is defined in the definition section of the rule, there is no need to use the phrase “test of English as a foreign language” in s. PT 2.01 (8).

o. Section PT 2.02 is confusing. If an applicant violates the rules of conduct, will the examination be terminated and will the applicant fail, or is there discretionary power in the board to allow the applicant to continue taking the examination and to pass the examination? In addition, will the board itself terminate the examination or will the proctor or the board’s designee terminate the examination for the applicant who violates the rules of conduct? In addition, in the first sentence, the word “will” should be changed to the word “shall.” Finally, what is the “opening of the examinations”? It might be appropriate to redraft the first sentence of s. PT 2.01 in substantially the following form: “_____ shall provide an applicant with rules of conduct prior to an examination.”

p. Section PT 2.03, and the entire rule, should avoid using vague words and phrases like “therefor” and “such.” [See s. 1.01 (9) (c), Manual.] The entire rule should be reviewed to avoid usage of these vague terms. For example, the section could be rewritten as follows:

An applicant who fails to achieve passing grades on the examinations required under this chapter may apply for reexamination on forms provided by the board. For each reexamination, the application shall be accompanied by the reexamination fee. If an applicant for reexamination fails to achieve passing grades on the second reexamination, the applicant may not be admitted to further examination until the applicant reapplies for licensure and presents to the board evidence of further professional training or education as the board may consider appropriate in the applicant's specific case.

In addition, a note could be included identifying where the application for reexamination can be obtained.

q. In s. PT 3.01 (1), does the phrase "no further written examinations" imply that the applicant has taken and passed the required written examinations. If so, the first sentence should be rewritten to provide that: "An applicant who is a graduate of a board-approved physical therapy school and who has taken and passed the required written examinations under ch. PT 2 may apply to the board for a temporary license prior to regular license." The statutory reference in the second sentence of s. PT 3.01 (1) to s. 15.08 (3) (b), Stats., is confusing. That statutory provision provides that the Medical Examining Board shall meet at least 12 times annually. It does not refer to a specific date nor does it refer to a date set by the board for the granting of a license. This statutory reference should be clarified. In the third sentence of s. PT 3.01 (1), what are the "required documents" that must be reviewed along with the applications? In addition, the word "will" should be replaced by the word "shall." Finally, the word "such" in the third sentence of s. PT 3.01 (1) should be removed and the phrase "acting through such 2 members" should also be removed.

r. Section PT 3.01 (2) should be rewritten to provide: "The required fees shall accompany the application for the temporary license prior to regular license." A note should be added stating that all remittances should be made payable to the Wisconsin Department of Regulation and Licensing.

s. As drafted, s. PT 3.01 (3) is confusing. The subsection should be rewritten as follows:

PT 3.01 (3) A temporary license prior to a regular license granted under this chapter shall expire on the earlier of the following:

(a) The date on which the board grants or denies the applicant a regular license to practice physical therapy.

(b) The date on which the applicant is notified that he or she has failed any of the required examinations for a regular license to practice physical therapy.

In addition, a distinction should be made in the rule between a temporary license prior to a regular license, a regular license to practice physical therapy, a temporary license to practice under supervision under s. PT 3.02 and a *locum tenens* license under s. PT 4.01.

t. It is not clear from the rule what authority or supervision, if any, is required of a person practicing under a temporary license prior to a regular license. The rule would be more clear if this were better defined.

u. In s. PT 3.01 (4), the word “shall” should be replaced by the word “may.”

v. The word “also” in the first sentence of s. PT 3.02 (1) should be deleted. The word “a” should be inserted before “regular” on the second line. In addition, s. PT 3.02 (1) provides for a permissive review by two members of the board of an application for a temporary license to practice under supervision. Is it the rule’s intent to provide for discretionary review by two members of the board, or must two members of the board review an application for a temporary license to practice under supervision?

w. In s. PT 3.02 (2), and in other provisions of the rule, the word “must” should be replaced by the word “shall.” In addition, it appears that the phrase “temporary and permanent application” should be replaced by the phrase “application for a temporary license to practice under supervision.” Finally, the clause after the comma should be moved to a note.

x. The words “however” and “automatically” in the second sentence of s. PT 3.02 (4) should be deleted.

y. Generally, ch. PT 4 applies to *locum tenens* licenses. However, s. 1.01 (1), Manual, directs that rules avoid the use of Latin and other foreign terms. A more appropriate term should be used throughout ch. PT 4.

z. In s. PT 4.01 (1) (e), a period should be inserted after the word “fees” and the phrase “must accompany the application” should be deleted. The remainder of the sentence beginning with the word “and” should be moved to a note.

aa. In s. PT 4.01 (2), the word “will” should be replaced by the word “shall.”

ab. The final clause of s. PT 4.01 (3) implies a *locum tenens* license may only be issued for a certain geographical area. If there are geographical restrictions on a *locum tenens* license, those should be identified in the rule.

ac. It seems that the first sentence of s. PT 5.01 (4) is confusing. Perhaps that sentence could be rewritten as follows: “Limit the number of physical therapist assistants supervised to a number appropriate to the setting in which physical therapy is administered, to ensure that all patients under the care of the physical therapist receive services that are consistent with accepted standards of care and consistent with all other requirements under this chapter.” In addition, the final sentence of sub. (4) should be rewritten to provide “No physical therapist may supervise more than 5 physical therapist assistants full-time equivalents at any time.” A “full-time equivalent” should be defined in the rule.

ad. In s. PT 5.01 (5), for whom is the written and oral communication policy and procedure designed?

ae. Section PT 6.01 is confusing because s. 448.56 (1), Stats., provides in part that a person may practice physical therapy only upon the written referral of a physician, chiropractor,

dentist or podiatrist. Therefore, to clarify the first sentence of s. PT 6.01, those specific services for which a written referral is not required should be specified in the rule.

af. It seems inappropriate to say “For the purposes of this chapter,” in s. PT 7.02 (intro.). The term “unprofessional conduct” is being defined for purposes of s. 448.57 (2) (f), Stats., rather than for purposes of ch. PT 7.

ag. The word “a” should be inserted before “license” in s. PT 7.02 (3) and (4) and before “change” in s. PT 7.02 (6). Also, in sub. (8), “a patient or the public” should replace “patient or public.”

ah. It would seem that the final clause of s. PT 7.02 (15) could be set off in a separate subsection.

ai. In s. PT 7.02 (16), the word “or” after the phrase “practice physical therapy” should be deleted.

aj. In s. PT 7.02 (17), the word “thereof” should be replaced by the phrase “of the conviction.”

ak. In s. PT 8.02, the address of the board office can be removed from the substantive provision of the rule and placed in a note.

al. In s. PT 8.04, the word “will” in the first sentence should be replaced by the word “may.”

am. Section PT 8.05 (1) should be redrafted as follows: “No person may exercise the rights or privileges conferred by any license or certificate granted by the board unless currently registered with the board.”

an. The first sentence of s. PT 8.05 (2) should be rewritten as follows: “A license shall expire if it is not renewed by November 1 of odd-numbered years.” Also, either par. (a) or (b) should cover the situation in which a person applies for renewal of a license exactly five years after its expiration.