

Clearinghouse Rule 13-007

STATE OF WISCONSIN
PHYSICAL THERAPY EXAMINING BOARD

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

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PROPOSED ORDER

An order of the Wisconsin Physical Therapy Examining Board to amend PT 7.01 (title) and 8.02; to repeal and recreate PT 7.02; to create PT 7.01 (1) and 7.025 relating to unprofessional conduct and biennial renewal date.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

Statutes interpreted:

ss. 448.527 and 448.57, Stats.

Statutory authority:

ss. 15.08 (5) (b), 227.11 (2) (a), 440.035 (1), 448.527, 448.57, Stats.

Explanation of agency authority:

Examining boards are generally empowered by the legislature pursuant to ss. 15.08 (5) (b), 227.11 (2) (a), and 440.035 (1), Stats. to promulgate rules that govern their profession. The Physical Therapy Examining Board has been specifically empowered by 448.527 and 448.57 to promulgate rules concerning standards of unprofessional conduct that govern licensees within the profession. Therefore, the Physical Therapy Examining Board is authorized both generally and specifically to promulgate these proposed rules.

Related statute or rule:

Wisconsin Administrative Code Chs. PT 7 and PT 8

Plain language analysis:

2009 Wis. Act 149 transformed the Physical Therapy Affiliated Credentialing Board into the Physical Therapy Examining Board. The newly formed examining board decided to review their unprofessional conduct rules. The Board also decided to take this opportunity to bring the current unprofessional conduct rules in line with the American Physical Therapist Association (APTA) "Code of Ethics". The APTA passed a revised "Code of Ethics" in June of 2010 which became effective in July of 2010. The "Code of Ethics" discussed the core values of the physical therapy profession. The core values include accountability, altruism, compassion, excellence, integrity and professional duty and responsibility. The proposed rules seek to encapsulate these principals and modernize the unprofessional conduct standards at the same time.

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

None

Comparison with rules in adjacent states:**Iowa**

Iowa sets forth a code of ethics for physical therapist and physical therapist assistants. The code of ethics details what a licensed Physical therapist or physical therapist assistant must do in order to practice within minimally competent parameters. Iowa Admin. Code r. 645-201.1 (148A.272 C)(2012) Iowa also sets forth its grounds for discipline in which it identifies acts that will result in disciplinary sanctions. Iowa Admin. Code 645.202.2 (272C) (2012)

Illinois

Illinois sets forth its grounds for unprofessional conduct Ill Admin. Code tit. 68 §1340.65 (2012) and incorporates by reference the June of 2000 APTA "Code of Ethics".

Minnesota

Similar to Iowa, Minnesota sets forth its grounds for disciplinary action in Minn. Stat. 148.75 (2011) and a Code of Ethical Practice in Minn. R. 5601.3200(2012) Any violation of the Code of Ethical Practice is also grounds for disciplinary action. Minnesota also incorporates the APTA's Code of Ethics as an aide to interpreting its Code of Ethical Practice.

Michigan

Michigan does not incorporate a code of ethics or maintain grounds for unprofessional conduct with regards to the practice of physical therapy. Michigan does, however, have provisions regarding prohibited conduct under Mich. Admin. Code 3338.7124 (2012)

Summary of factual data and analytical methodologies:

The Board ensures the accuracy, integrity, objectivity and consistency of data that was used in preparing the proposed rule and related analysis. No additional factual data or analytical methodology was used in drafting these proposed rules other than the Board's review of the rule for the purpose of modernization.

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

This proposed rule will not have an impact on small business as defined in s. 227.114 (1), Stats.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Shawn Leatherwood, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, 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, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Shancethea.leatherwood@wisconsin.gov. Comments must be received on or before March 7, 2013 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. PT 7.01 (title) is amended to read:

PT 7.01 (title) Authority and purpose intent. 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.

SECTION 2. PT 7.01 (1) is created to read:

PT 7.01 (1) 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.

SECTION 3. PT 7.02 is repealed and recreated to read:

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" means records as set forth in s. 146.82 (4), Stats.

(3) "Sexual contact" means contact as set forth in s. 948.01 (5), Stats.

(4) "Sexually explicit conduct" means conduct as set forth in s. 948.01 (7), Stats.

SECTION 4. PT 7.025 is created to read:

PT 7.025 Unprofessional conduct. The term "unprofessional conduct" is defined to include, but is not limited to, 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, administrative rule, or any provision of a board order.

(2) 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 APTA's Code of Ethics may be obtained electronically at www.apta.org/ethics.

(3) 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.

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

(5) 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.

(a) 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.

(b) 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.

(6) 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 but not limited to the Department of Safety and Professional Services personnel.

(7) 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.

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

(9) 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.

(10) 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.

(11) 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.

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

(13) 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.

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

(15) 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.

(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) For the purposes of this subsection, 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 subsection 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 subsection 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 but not limited to age, medication, or psychological or cognitive disability.

(16) Illegal or unethical business practices, including but not limited to 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.

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

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

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

(19) Violation or conviction of any federal or state law or rule that is substantially related to the practice of physical therapy.

(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 subsection is conclusive evidence of findings of facts and conclusions of law contained therein.

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

(20) 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.

(21) 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.

(22) 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 but not limited to limitation, restriction, suspension, revocation or any other disciplinary action.

(a) This subsection applies whether the adverse action results in temporary or permanent limitation, restriction, suspension, revocation or disciplinary action;

(b) This subsection applies whether or not the adverse action is accompanied by findings of negligence or unprofessional conduct.

(23) 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.

(24) 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.

(25) 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.

SECTION 6. PT 8.02 is amended to read:

PT 8.02 Renewal required; method of renewal. Each licensee shall renew his or her license biennially with the department. On or before ~~October 1~~ February 1 of each odd-numbered year the department shall mail to each licensee at his or her last known address as it appears in the records of the board an application form for renewal. Each licensee shall complete the application form and return it with the required fee to the department prior to the next succeeding ~~November 1~~ March 1. The department shall notify the licensee within 30 business days of receipt of a completed renewal form whether the application for renewal is approved or denied.

SECTION 7. The rules 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.

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(END OF TEXT OF RULE)

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Dated _____ Agency _____

Chairperson
Physical Therapy Examining Board