

PROPOSED CHANGES IN PHYSICAL THERAPY PRACTICE ACT

RED = Delete **GREEN** = Addition

11/28/2018

§ 43-26.1-01. Definitions

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of physical therapy.
2. "Competence" is the application of knowledge, skills and behaviors required to function effectively, safely, ethically and legally within the context of the patient's or client's environment.
3. "Continuing competence" is the lifelong process of maintaining and documenting competence through on-going self-assessment, development and implementation of a personal learning plan, along with subsequent reassessment.
4. "Direct supervision" means the physical therapist is physically present on the premises and immediately available for direction and supervision. The physical therapist will have direct contact with the patient during each visit and will complete all components of care that requires skilled therapy services. Telehealth does not meet the requirement for direct supervision
5. "Electronic Communications" means the science and technology of communication (the process of exchanging information) over any distance by electronic transmission of impulses, including activities that involve using electronic communications to store, organize, send, retrieve and convey information.
- ~~2. 6.~~ "Examination" means a national examination approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.
7. "General Supervision" means the physical therapist is onsite and present where services are provided or is immediately available to the physical therapist assistant being supervised by means of electronic communications. The supervising physical therapist will maintain continual involvement in the appropriate aspects of patient care. The supervising physical therapist has primary responsibility for all patient care services rendered by physical therapist assistants.

8. "Jurisdiction of the United States" means any state, the District of Columbia, the Commonwealth of Puerto Rico or any other American territory.

~~3.~~ 9. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.

~~4.~~ 10. "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session in which a student physical therapist or a student physical therapist assistant ~~or a physical therapy aide~~ is involved in components of care.-

~~5.~~ 11. "Physical therapist" means a person licensed under this chapter to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" under this chapter.

~~6.~~ 12. "Physical therapist assistant" means a person who is licensed under this chapter and who assists the physical therapist in selected components of physical therapy intervention.

~~7.~~ 13. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed under this chapter.

~~8.~~ 14. "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.

~~9.~~ 15. "Practice of physical therapy" means:

a. Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health and movement-related conditions in order to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.

b. Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work

integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.

- c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
- d. Engaging as a physical therapist in administration, consultation, education, and research.

~~40-16~~. "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.

17. "Telehealth" is the use of electronic communications to provide and deliver a host of health-related information and healthcare services, including, but not limited to, physical therapy related information and services, over large and small distances. Telehealth encompasses a variety of healthcare and health promotion activities, including, but not limited to, education, advice, reminders, interventions and the monitoring of interventions.

~~44-18~~. "Testing" means standard methods and techniques used to gather data about the patient.

§ 43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies

The board of physical therapy shall administer this chapter. The board consists of three licensed physical therapists, ~~two~~ one licensed physicians, one licensed physical therapist assistant, and ~~a citizen who is not a health care professional~~ two public members. The governor shall appoint the board members for a term of five years, staggered so the terms of no more than two members expire each year. A person may not serve more than two full consecutive terms. Terms begin on July first. Appointments to the board to fill a vacancy occurring for other than the expiration of a term may only be made for the remainder of the unexpired term. Each physical therapist and physical

therapist assistant appointed must have had at least three years of physical therapy experience in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each physician appointed must have practiced medicine at least three years in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each board member shall take and file with the secretary of state the oath of office prescribed for state officials before entering upon the discharge of the member's duties. Each member of the board is entitled to mileage reimbursement as provided for in section 54-06-09 and to reimbursement for actual and necessary expenses in the amounts provided by law for state officers in section 44-08-04.

§ 43-26.1-03. Powers of the board

The board may:

1. Evaluate the qualifications of applicants for licensure.
2. Provide for the examination of physical therapists and physical therapist assistants and adopt passing scores for the examinations.
3. Issue licenses to persons who meet the requirements of this chapter.
4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
5. Adopt and revise rules consistent with this chapter.
6. Meet at least annually and such other times as deemed necessary. A majority of board members shall constitute a quorum for the transaction of business.
7. Establish mechanisms for assessing the continuing professional competence of physical therapists and physical therapist assistants to engage in the practice of physical therapy.
8. Establish and collect fees for sustaining the necessary operation and expenses of the board.
9. Elect officers from its members necessary for the operations and obligations of the board. Terms of office shall be one year.
10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, and board rules, policies, and procedures.

11. Maintain a current list of all persons regulated under this chapter. This contact information includes the person's name, current business address, business telephone number, e-mail address and board license number.
12. Provide information to the public regarding the complaint process.
13. Employ necessary personnel to carry out the administrative work of the board.
14. Enter into contracts for services necessary for enforcement of this chapter.
15. Report final disciplinary action taken against a licensee to a national disciplinary database recognized by the board or as required by law.
16. Review and investigate all complaints it receives against licensees concerning violations of this chapter and shall keep all information relating to the receipt and investigation of the complaints confidential until the information is disclosed in the course of the investigation or any subsequent proceeding, or until disclosure is required by law. Patient records, including clinical records, files, any other report or oral statement relating to diagnostic findings of patients or treatment of patients, any information from which a patient or the patient's family might be identified, or information received and records or reports kept by the board as a result of its investigation, shall be confidential.

§ 43-26.1-04. Qualifications for licensure

1. Before being approved for a license as a physical therapist or physical therapist assistant, an applicant shall:
 - a. Be of good moral character.
 - b. Complete the application process.
 - c. Be a graduate of a professional physical therapy education program accredited by a national accreditation agency approved by the board.
 - d. Pass the examination approved by the board.
2. An applicant for a license as a physical therapist who has been educated outside of the United States shall:

- a. Be of good moral character.
 - b. Complete the application process.
 - c. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in an accredited education program as determined by the board. For the purpose of this section, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:
 - (1) Graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical therapy without restriction.
 - (2) Provided written proof that the applicant's school of physical therapy education is recognized by its own ministry of education or other appropriate education agency.
 - (3) Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule.
 - (4) Completed any additional education or clinical experience as required by the board.
 - d. Pass the board-approved English proficiency examinations if the applicant's native language is not English.
 - e. Pass the examination approved by the board.
 - f. Obtain a criminal background check as referenced in section 43-26.1-05.1 and required under chapter 43-26.2, article III.
3. Notwithstanding the provisions of subsection 2, if the applicant is educated outside of the United States and is a graduate of a professional physical therapy educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in subdivision c of subsection 2.

§ 43-26.1-05. Application and examination

1. An applicant for licensure shall file a complete application as required by the board. The applicant shall include application fees as prescribed in this chapter and under applicable rules.
2. The board shall provide examinations at times and places it determines. The board shall determine the passing score.
3. An applicant for licensure as a physical therapist may take the examination after the application process has been completed. The examination shall test entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.
4. An applicant for licensure as a physical therapist assistant may take the examination after the application process has been completed. The examination shall test for requisite knowledge and skills in the technical application of physical therapy services.
5. An applicant for licensure who does not pass the examination on the first attempt may retake the examination ~~one additional time without reapplication for licensure within six months of the first failure. Before the board may approve an applicant for subsequent testing beyond two attempts, an applicant shall reapply for licensure and shall submit evidence satisfactory to the board of having successfully completed additional clinical training or coursework, or both, as the board determines up to a~~ maximum of six attempts in their lifetime. There is a limit of two attempts for scores below four hundred.
6. If the board determines that an applicant or examinee has engaged, or has attempted to engage, in conduct that subverts or undermines the integrity of the examination process, the board may disqualify the applicant from taking the examination.

§ 43-26.1-08. License renewal - Changes

A licensee shall renew the license annually pursuant to board rules. A licensee who fails to renew the license on or before the expiration date shall not practice as a physical therapist or physical therapist assistant in this state, and may be subject to a late renewal fee. Each licensee is responsible for reporting to the board a ~~name change~~

~~and changes in business and home address~~ change in contact information within thirty days of the date of change.

§ 43-26.1-10. Fees

The board shall establish and collect fees not to exceed:

1. Two hundred dollars for an application for an original license. This fee is nonrefundable.
2. One hundred dollars for an annual renewal of the license.
3. Two hundred dollars for an application for reinstatement of a license.
4. Fifty dollars for late renewal of a license.
5. Forty dollars for the compact privilege.

§ 43-26.1-11. Patient care management

1. A physical therapist is responsible for managing all aspects of each patient's physical therapy. A physical therapist shall provide:
 - a. Each patient's initial evaluation and documentation.
 - b. Periodic re-evaluation and documentation of each patient.
 - c. The documented discharge of the patient, including the response to therapeutic intervention at the time of discharge.
2. If the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise, a physical therapist shall so inform the patient or client and refer to an appropriate practitioner.
3. A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides under the physical therapist's direction and supervision.
4. For each patient on each date of service, a physical therapist shall provide all of the therapeutic intervention that requires the expertise of a physical therapist and shall determine the use of physical therapist assistants ~~or physical therapy aides~~ that provide for the delivery of care that is safe, effective, and efficient.

- a. A physical therapist assistant shall work under the supervision of a physical therapist. A physical therapist assistant may document care provided without the cosignature of the supervising physical therapist.
 - b. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the direct supervision of a physical therapist. This supervision may extend to ~~offsite~~ general supervision of the aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient-related tasks.
5. A physical therapist's or physical therapist assistant's responsibility for patient care management shall include accurate documentation and billing of the services provided.
 6. The physical therapist shall communicate the overall plan of care with the patient or the patient' legally authorized representative.

§ 43-26.1-13. Grounds for disciplinary actions

The board may refuse to license any physical therapist or physical therapist assistant, may discipline, or may suspend or revoke the license of any physical therapist or physical therapist assistant for any of the following grounds:

1. Violating any provision of this chapter, board rules, or a written order of the board.
2. Practicing or offering to practice beyond the scope of the practice of physical therapy.
3. Failing to refer a patient or client to an appropriate practitioner if the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise.
4. Obtaining or attempting to obtain a license by fraud or misrepresentation.
5. Engaging in the performance of substandard physical therapy care due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.

6. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected by the supervising physical therapist regardless of whether actual injury to the patient is established.
7. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this chapter and board rules.
8. A determination by the board that a licensee's conviction of an offense has a direct bearing on the licensee's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated as provided under section 12.1-33-02.1.
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, alcohol, or by other causes.
10. Having had a license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.
11. Engaging in sexual misconduct. For the purpose of this subsection sexual misconduct includes:
 - a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant-patient relationship exists, except with a spouse.
 - b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.
 - c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
12. Failing to adhere to the standards of ethics of the physical therapy profession adopted by rule by the board.

13. Charging unreasonable or fraudulent fees for services performed or not performed.
14. Making misleading, deceptive, untrue, or fraudulent representations in violation of this chapter or in the practice of the profession.
15. Having been adjudged mentally incompetent by a court.
16. Aiding and abetting a person who is not licensed in this state in the performance of activities requiring a license.
17. Failing to report to the board, when there is direct knowledge, any unprofessional, incompetent, or illegal acts that appear to be in violation of this chapter or any rules established by the board.
18. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.
19. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that contain at a minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record, and a discharge plan.
20. Failing to maintain patient confidentiality without the written authorization of the patient or unless otherwise permitted by law. All records used or resulting from a consultation under section 43-51-03 are part of a patient's records and are subject to applicable confidentiality requirements.
21. Promoting any unnecessary device, treatment intervention, or service resulting in the financial gain of the practitioner or of a third party.
22. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
23. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.
24. Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process, including, but not limited to, a violation of security and copyright provisions related to the national

licensure exam, utilizing in any manner recalled or memorized examination questions from or with any person or entity, failing to comply with all test center security procedures, communicating or attempting to communicate with other examinees during the test, or copying or sharing examination questions or portions of questions.

§ 43-26.1-14. Lawful practice

1. A physical therapist or physical therapist assistant licensed under this chapter is fully authorized to practice physical therapy as defined herein. The board shall require each licensee to provide the board with evidence of competence regarding the various elements of manual therapy the licensee practices so that the board may determine satisfactory competency levels and requirements as provided under section 43-26.1-03.
2. A physical therapist or physical therapist assistant shall adhere to the standards of ethics of the physical therapy profession as established by rule.
3. A physical therapist may purchase, store, and administer topical medications, including aerosol medications as part of the practice of physical therapy as defined herein, but shall not dispense or sell any of the medications to patients. A physical therapist shall comply with any regulation adopted by the United States pharmacopoeia specifying protocols for storage of medications.

§ 43-26.1-15. Terms and titles

1. A physical therapist shall use the letters "PT" in connection with the physical therapist's name or place of business to denote licensure under this chapter.
2. Except as otherwise provided by law, a person or business entity, and its employees, agents, or representatives, shall not use in connection with that person's or entity's name or activity the words "physical therapy", "physical therapist", "physiotherapist", "registered physical therapist", the letters "PT", "MPT", "DPT", "LPT", "RPT", or any other words, abbreviation, or insignia indicating or implying directly or indirectly that physical therapy

is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this chapter. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this chapter. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as "physical therapy" unless the individual performing that service is licensed as a physical therapist under this chapter.

3. A physical therapist assistant shall use the letters "PTA" in connection with that person's name to denote licensure under this chapter.
4. A person shall not use the title "physical therapist assistant", the letters "PTA", or any other words, abbreviations, or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is licensed under this chapter.
5. Physical therapists who have graduated from a doctor of physical therapy program may use the title "doctor of physical therapy." A physical therapist holding a doctor of physical therapy or other doctoral degree shall not use the title "doctor" without also clearly informing the public of his or her licensure as a physical therapist.