



STATE OF WISCONSIN

Department of Safety and Professional Services
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Governor Scott Walker Secretary Dave Ross

PHYSICAL THERAPY EXAMINING BOARD
Room 121C, 1400 E. Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
September 26, 2013

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Board.

AGENDA

8:30 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Welcome New Board Member(s)

B. Recognition of Board Member(s)

C. Adoption of Agenda

D. Approval of Minutes – June 27, 2013 (5-8)

E. Administrative Updates

- 1) Staff Updates
- 2) Public Board Agenda Item
- 3) Other

F. 8:35 A.M. - APPEARANCES - DLSC Attorney Kim Kluck and Attorney Timothy Yanacheck – Presentations in the Matter of the Disciplinary Proceedings Against Luke W. Hayes, PT – DHA Case No. SPS-12-0055, DLSC Case No 10 PHT 019

G. FSBPT Annual Meeting – Board Discussion (9-10)

H. Legislation/Administrative Rules Matters

- 1) Adoption of Rulemaking Order CR13/007 Relating to Unprofessional Conduct and Biennial Renewal Date **(11-20)**
- 2) Executive Order 50 – Review of Position Statements – Update from Shari Berry

I. Discussion of PT-PTA Licensure (21-24)

J. NPTE Examination Attempt Limits – Board Discussion (25-26)

K. Discussion of the Proposed Amendments to the 2013 Delegate Assembly in October

L. DLSC Matters

M. Informational Items

N. Items Added After Preparation of Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Presentations of Petition(s) for Summary Suspension
- 3) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 4) Presentation of Final Decisions
- 5) Disciplinary Matters
- 6) Executive Director Matters
- 7) Education and Examination Matters
- 8) Credentialing Matters
- 9) Class 1 Hearing(s)
- 10) Practice Matters
- 11) Legislation/Administrative Rule Matters
- 12) Liaison Report(s)
- 13) Informational Item(s)
- 14) Speaking Engagement(s), Travel, or Public Relation Request(s)

O. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)

P. 10:00 A.M. - Examination of Two (2) Candidates for Licensure (27-28)

Q. Deliberation of Proposed Decision and Order and Consideration of Objections

- 1) Luke W. Hayes, PT – 10 PHT 019 (29-80)

R. Presentation and Deliberation on Proposed Stipulations, Final Decisions and Orders by the Division of Legal Services and Compliance (DLSC):

- 1) Karen Jaeger, PT – 13 PHT 006 (81-86)
 - o Case Advisor – Lori Dominiczak
- 2) Vincent J. Kabbaz, PT – 13 PHT 005 (87-92)
 - o Case Advisor – Michele Thorman

S. Presentation and Deliberation on Proposed Administrative Warning(s)

- 1) 12 PHT 021 (B.R.K., PT) (93-94)
- 2) 12 PHT 021 (M.A.P., PT) (95-96)
- 3) 13 PHT 007 (B.L.A., PTA) (97-98)

T. DLSC Matters:

- 1) Case Status Report (99-100)
- 2) Case Closing(s)

U. Credentialing Matters:

V. Deliberation of Items Received After Printing of the Agenda

- 1) Disciplinary Matters
- 2) Education and Examination Matters
- 3) Credentialing Matters
- 4) Class 1 Hearings
- 5) Monitoring Matters
- 6) Professional Assistance Procedure (PAP) Matters
- 7) Petition(s) for Summary Suspensions
- 8) Petition(s) for Extension of Time
- 9) Proposed Stipulations, Final Decisions and Orders
- 10) Administrative Warnings
- 11) Proposed Decisions
- 12) Matters Relating to Costs
- 13) Motions
- 14) Petitions for Rehearing
- 15) Formal Complaints
- 16) Case Closings
- 17) Appearances from Requests Received or Renewed

W. Consulting with Legal Counsel – **APPEARANCE: Assistant Attorney General – Bruce Olsen**

- 1) Acupuncture Center, Inc., d/b/a Midwest College of Oriental Medicine and Wisconsin Society of Certified Acupuncturists, Inc. v. Wisconsin Department of Safety and Professional Services, Wisconsin Physical Therapy Examining Board, and Wisconsin Joint Committee for Review of Administrative Rules **(101-104)**

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

X. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

ADJOURNMENT

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**PHYSICAL THERAPY EXAMINING BOARD
JUNE 27, 2013
MINUTES**

PRESENT: Shari Berry, PT; Lori Dominiczak, PT; Thomas Murphy; Jane Stroede, PTA;
Michele Thorman, PT

STAFF: Tom Ryan, Executive Director; Karen Rude-Evans, Bureau Assistant

CALL TO ORDER

Michele Thorman, Chair, called the meeting to order at 8:32 a.m. A quorum of five (5) members was present.

ADOPTION OF AGENDA

Amendments:

- CE Audit (open) – Board Discussion
- Item J(open) – Change to Executive Order 50
- Case status report

MOTION: Lori Dominiczak moved, seconded by Jane Stroede, to adopt the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF MARCH 7, 2013

MOTION: Lori Dominiczak moved, seconded by Jane Stroede, to approve the minutes of March 7, 2013 as written. Motion carried unanimously.

DISCUSSION OF FOREIGN TRAINED PHYSICAL THERAPISTS

MOTION: Thomas Murphy moved, seconded by Jane Stroede, to delegate to Shari Berry and Lori Dominiczak the authority to decide whether foreign trained physical therapists can be made eligible to sit for the NPTAE. Motion carried unanimously.

EXECUTIVE ORDER 50 REVIEW

MOTION: Lori Dominiczak moved, seconded by Jane Stroede, to authorize Shari Berry to review all position statements relating to PTs and PTAs and to bring her results back to the Board. Motion carried unanimously.

**PETITION FOR RULES REGARDING PHYSICAL THERAPISTS
AND DRY NEEDLING**

MOTION: Thomas Murphy moved, seconded by Lori Dominiczak, to table the consideration of the petition to the next meeting. Motion failed.

MOTION: Lori Dominiczak moved, seconded by Jane Stroede, to reject the petition for rule making regarding physical therapists and dry needling. Motion carried. Thomas Murphy abstained.

CLOSED SESSION

Chair Michele Thorman read the motion to convene to closed session.

MOTION: Michele Thorman moved, seconded Shari Berry, to convene to closed session to deliberate on cases following hearing (Wis. Stat. § 19.85 (1) (a)); consider closing disciplinary investigation with administrative warning (Wis. Stat. § 19.85 (1) (b), and Wis. Stat. § 440.205); consider individual histories or disciplinary data (Wis. Stat. § 19.85 (1) (f)); and to confer with legal counsel (Wis. Stat. § 19.85 (1) (g)). Roll call vote: Shari Berry-yes; Lori Dominiczak-yes; Thomas Murphy-yes; Jane Stroede-yes; and Michele Thorman-yes. Motion carried unanimously.

The Board convened into closed session at 10:32 a.m.

RECONVENE INTO OPEN SESSION

MOTION: Thomas Murphy moved, seconded by Shari Berry, to reconvene into open session. Motion carried unanimously.

The Board reconvened into open session at 12:47 p.m.

VOTING ON ITEMS CONSIDERED OR DELIBERATED IN CLOSED SESSION

PROPOSED STIPULATION(S), FINAL DECISION(S) AND ORDER(S)

MOTION: Lori Dominiczak moved, seconded by Shari Berry, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the matter of disciplinary proceedings against **Michael J. Wright, Sr., PTA (12 PHT 002)**. Motion carried unanimously.

CASE CLOSING(S)

MOTION: Michele Thorman moved, seconded by Jane Stroede, to close case **12 PHT 018 for no violation**. Motion carried unanimously.

APPLICATION REVIEW(S)

MOTION: Shari Berry moved, seconded by Jane Stroede, to recommend approval of the physical therapist re-registration application of **Paul Abler** and to limit the license subject to all the terms and conditions and limitations outlined in the application file when all requirements are met. Motion carried. Michele Thorman abstained.

MOTION: Shari Berry moved, seconded by Jane Stroede, to authorize Lori Dominiczak to review and approve the limited license order regarding **Paul Abler** on behalf of the board. Motion carried. Michele Thorman abstained.

RATIFICATION OF LICENSES

MOTION: Lori Dominiczak moved, seconded by Shari Berry, to ratify the examination score for the one candidate today and to delegate to the Department the ratification of all licenses issued. Motion carried unanimously.

ADJOURNMENT

MOTION: Shari Berry moved, seconded by Lori Dominiczak, to adjourn the meeting at 2:17 p.m. Motion carried unanimously.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Joshua Archiquette, Bureau Assistant On behalf of Tom Ryan, Executive Director		2) Date When Request Submitted: 9/19/2013 <small>Items will be considered late if submitted after 4:30 p.m. and less than 8 work days before the meeting.</small>	
3) Name of Board, Committee, Council, Sections: Physical Therapy Examining Board			
4) Meeting Date: 9/26/13	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? FSBPT Annual Meeting	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Board discussion of FSBPT Annual Meeting			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Shawn Leatherwood		2) Date When Request Submitted: July 26, 2013	
Items will be considered late if submitted after 4:30 p.m. and less than:			
<ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 			
3) Name of Board, Committee, Council, Sections: Physical Therapy Examining Board			
4) Meeting Date: September 26, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Adoption of Rulemaking Order CR 13-007 relating to unprofessional conduct and biennial renewal date.	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board will adopt the rulemaking order.			
11) Authorization			
Shancethea Leatherwood		July 26, 2013	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents:			
1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
PHYSICAL THERAPY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	PHYSICAL THERAPY
PHYSICAL THERAPY EXAMINING	:	EXAMINING BOARD
BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 13-007)

ORDER

The Wisconsin Physical Therapy Examining Board proposes an order to amend PT 7.01 (1) (title) and PT 8.02; to repeal and recreate PT 7.02; to create PT 7.01 (2) and 7.025 relating to unprofessional conduct and biennial renewal date.

Analysis prepared by the Department of Safety and Professional Services.

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 ss. 448.527 and 448.57, Stats., 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 its 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 principles 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 neighboring state rules and the APTA's Code of ethics.

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.L 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 Policy and Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Shancethea.L 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 (1) (title) is amended to read:

PT 7.01 (title) Authority and purpose intent. (1) 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 (2) is created to read:

PT 7.01 (2) 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" has the meaning given in s. 146.81 (4), Stats.

(3) "Sexual contact" has the meaning given in s. 948.01 (5), Stats.

(4) "Sexually explicit conduct" has the meaning given 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 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, Stats., or any provision of a board order.

(2) Any physical therapist 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 American Physical Therapy Association's Code of Ethics may be obtained electronically at www.apta.org/ethics.

(3) Any physical therapist assistant committing any act that constitutes a violation of the "Standards of Ethical Conduct", effective July 1, 2010, as approved by the American Physical Therapy Association and herein incorporated by reference.

Note: Copies of the American Physical Therapy Association's Standards of Ethical Conduct may be obtained electronically at www.apta.org/ethics.

(4) 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.

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

(6) 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.

(7) 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 Department of Safety and Professional Services personnel.

(8) 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.

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

(10) 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.

(11) 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.

(12) 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.

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

(14) 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.

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

(16) 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. For the purposes of this subsection all of the following may apply:

(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) 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 paragraph 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 paragraph 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 age, medication, or psychological or cognitive disability.

(17) Illegal or unethical business practices, including 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.

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

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

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

(20) Violation or conviction of any federal or state law or rule that is substantially related to the practice of physical therapy. For the purposes of this subsection the following may apply:

(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 paragraph is conclusive evidence of its findings of facts and conclusions of law.

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

(21) 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.

(22) 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.

(23) 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 limitation, restriction, suspension, revocation or any other disciplinary action.

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

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

(24) 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.

(25) 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.

(26) 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. EFFECTIVE DATE 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.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Physical Therapy Examining Board

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, On Behalf of Executive Director Tom Ryan		2) Date When Request Submitted: September 10, 2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Physical Therapy Examining Board			
4) Meeting Date: Sept 26, 2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Discussion of PT-PTA Licensure	
7) Place Item in: <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Review and discuss the attached opinion from Legal Counsel Yoland McGowan.			
11) Authorization			
Karen Rude-Evans			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

MEMORANDUM

DATE: July 5, 2013
TO: Physical Therapy Examining Board
CC: Thomas Ryan, Executive Director & Div. of Professional Credentialing
FROM: Yolanda McGowan, Legal Counsel
SUBJECT: PT's being credentialed as PTAs

BACKGROUND

I was asked to consider and issue an opinion relative the below.

The Physical Therapy Examining Board (Board), through its credentialing liaisons, has been asked to authorize applicants to sit for the physical therapy assistants (PTA) exam who have been educated as a physical therapist (PT), but for various reasons (including an inability to pass the national credentialing exam for physical therapists) decide not to pursue licensure as a PT, but as a PTA. The Board would like an opinion as to what its authority is related to such applicants.

Short answer: the Board has the authority to grant or deny such a request based upon its determination as to whether an applicant who has not completed an approved PTA program meets the statutory and/or rule requirements for licensure.

APPLICABLE LAW

Pursuant to Wis. Stats. s. 448.51, a license is required to practice physical therapy in the state of Wisconsin, except in limited circumstances.¹ The statute also provides title protection for the practice of physical therapy, allowing only those licensed by the Board to use titles which tend to represent that one is a physical therapist. There is also title protection for PTAs.

Licensure of physical therapist assistants is governed by Wis. Stats. s. 448.535 and Wis. Admin. Code chapter PT 1. The statutory provisions require that a person submit evidence satisfactory to the Board that the applicant **is a graduate of a physical therapist assistant educational program** accredited by an agency that is approved by the Board and pass an examination, among other things. See s. 448.535(1)(d) and (e), Stats. (Emphasis added).

The code provisions applicable to licensure of PTs and PTAs contain multiple provisions - a general provision for licensure of PTs and PTAs graduating from an approved program; a provision addressing PTs and PTAs educated in a foreign school, for which an equivalency

¹ Exceptions to this requirement can be found in Wis. Stats. s. 448.52, and except for the provision allowing any person assisting a physical therapist in practice under his or her direct, on-premises supervision, are inapplicable here.

evaluation must be performed; a provision for applicants graduating from a PT or PTA program not approved by the Board and lastly, a provision for reciprocal licensing. See PT 1.03

The only mandate regarding PTA licensure is in the statute. The substantive requirements include passage of an exam and satisfactory evidence of graduation from a PTA educational program from an accrediting agency approved by the Board.

DISCUSSION

In the present case, the ultimate question is whether the Board is required to allow a person who has completed an approved PT educational program to sit for the PTA licensure exam such that he or she can become automatically eligible for licensure as a PTA upon successful completion of the exam. Complicating this matter is what appear to be equivalency evaluation services that are concluding that some PT educational programs are equivalent to PTA educational programs offered by board-approved schools. Notwithstanding that, as indicated above, the answer to the question is “no.” The Board is not required to accept PT education as approved PTA education, even if an evaluation service has concluded that it is equivalent.

PT 1.03 is written to address both PTs and PTAs. In each section of the rule, it first mentions the category of licensure (PT and then PTA) and then it spells out the requirements in the same order (PT and then PTA). In that vein, PT 1.03(1)(c) requires an applicant for *PTA* to submit documentary evidence *satisfactory to the board* of having completed a *PTA* educational program approved by the board. The following section, PT 1.03(1)(d) specifically addresses graduates of foreign schools.² Per that section, an applicant for *PTA* licensure must provide verification that the *PTA* education received is equivalent to the education provided by a board-approved *PTA* educational program.

According to the rule, if the Board is not satisfied by the documentation provided that an applicant for PTA licensure has completed a PTA educational program approved by the board or a PTA educational program equivalent to an approved PTA educational program, it is within the Board’s discretion to deny that applicant a license, and by extension, deny that applicant’s request to sit for the PTA exam. As it relates to equivalency determinations made by a foreign graduate evaluation service which compares a PT educational program to a PTA educational program (which can be thought of as an “apples to pineapple” comparison versus an “apples to apples” comparison), the Board is not bound by such determinations, and may reject them as a matter of course.

In conclusion, the Board has complete authority to require that a PTA licensure applicant complete a PTA educational program approved by the Board, or a PTA educational program that the Board finds to be equivalent to a PTA educational program approved by the Board.

² Given its specific mention of foreign educated graduates, it is arguable as to whether the other two sections (PT 1.03(1)(c) and (2)) were or were not also intended to be applicable. I note that nothing in PT 1.03(1)(c) or PT 1.03(2) specifically prohibits application to foreign trained graduates as well.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Karen Rude-Evans, Bureau Assistant, On Behalf of Executive Director Tom Ryan		2) Date When Request Submitted: August 12, 2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Physical Therapy Examining Board			
4) Meeting Date: Sept 26, 2013	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? NPTE Examination Attempt Limits – Board Discussion	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Board discussion regarding limits on attempts for the NPTE examination.			
11) Authorization			
Karen Rude-Evans		8/12/2013	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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