

**STATE OF WISCONSIN
PHYSICAL THERAPY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 20-056
PHYSICAL THERAPY :
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Physical Therapy Examining Board conducted a comprehensive evaluation of its rules to implement the Physical Therapy Licensure Compact and ensure clarity and consistency with applicable Wisconsin statutes. As a result, updates have been made to do all of the following:

- Create definitions of “physical therapist,” “physical therapist assistant,” and “physical therapy.”
- Amend the definition of “supervisor” to specify it includes a person holding a physical therapist compact privilege granted by the Board, but does not include a person holding a temporary license or a locum tenens license.
- Identify the requirements for obtaining a compact privilege, including a requirement that an individual seeking a compact privilege successfully complete a jurisprudence examination.
- Clarify the requirements for a temporary license to practice as a physical therapist or physical therapist assistant under supervision.
- Clarify that a locum tenens license may not be issued based on a request for services from a person who holds a temporary license as a physical therapist, and specify that a locum tenens license may be issued based on a request for services from a person who holds a physical therapist compact privilege granted by the Board.
- Specify that engaging in fraud, deceit, or misrepresentation in applying for, procuring, or maintaining a compact privilege constitutes unprofessional conduct.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Physical Therapy Examining Board held a public hearing on December 2, 2020. The Board did not receive any public comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

4. The reference in s. PT 1.04 (2) to the fee specified in s. 448.985 (3) (d), Stats., is unclear. That statutory reference specifies only that a member state may charge a fee. How do applicants know the amount of the fee? The rule should be revised to specifically identify the amount of the fee.

The Board did not revise the proposed rule in response to this recommendation. The fee will be clearly identified on the application form. In addition, specifying the amount of the fee in rule would significantly delay the ability to adjust the fee as permitted by statute.

All other Legislative Council recommendations have been incorporated into the proposed rule.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A

STATE OF WISCONSIN
PHYSICAL THERAPY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	PHYSICAL THERAPY
PHYSICAL THERAPY EXAMINING	:	EXAMINING BOARD
BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 20-056)

PROPOSED ORDER

An order of the Physical Therapy Examining Board to **repeal** PT 1.03 (3) (d) (Note 2) and 3.01 (4) (Note); to **renumber and amend** PT 3.01 (1); to **amend** ch. PT 1 (title), 1.01 (1) and (2), 1.02 (12), 3.01 (2) (Note) and (3) to (6), 4.01 (1) (a) (Note) and (d), 5.01 (1), 5.02 (1) and (2) (intro.), and 7.025 (4); and to **create** PT 1.02 (11e), (11m), and (11s), 1.04, 2.001 (2) (Note), and 3.01 (1) (a) to (d), (1g), and (1r), relating to implementation of the Physical Therapy Licensure Compact.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Subchapter IX of ch. 448, Stats.

Statutory authority:

Sections 15.08 (5) (b) and 448.986 (3), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 448.986 (3), Stats., provides that “[t]he examining board may, by rule, require an individual seeking a compact privilege to meet a jurisprudence requirement in accordance with s. 448.985 (4) (a) 7., if such a requirement is imposed by the examining board under s. 448.54 in order to obtain a license under s. 448.53 or 448.535.”

Related statute or rule:

Subchapter IX of ch. 448, Stats., as created by 2019 Wisconsin Act 100, ratifies the Physical Therapy Licensure Compact.

Plain language analysis:

The Physical Therapy Examining Board conducted a comprehensive evaluation of its rules to implement the Physical Therapy Licensure Compact and ensure clarity and consistency with applicable Wisconsin statutes. As a result, updates have been made to do all of the following:

- Create definitions of “physical therapist,” “physical therapist assistant,” and “physical therapy.”
- Amend the definition of “supervisor” to specify it includes a person holding a physical therapist compact privilege granted by the Board, but does not include a person holding a temporary license or a locum tenens license.
- Identify the requirements for obtaining a compact privilege, including a requirement that an individual seeking a compact privilege successfully complete a jurisprudence examination.
- Clarify the requirements for a temporary license to practice as a physical therapist or physical therapist assistant under supervision.
- Clarify that a locum tenens license may not be issued based on a request for services from a person who holds a temporary license as a physical therapist, and specify that a locum tenens license may be issued based on a request for services from a person who holds a physical therapist compact privilege granted by the Board.
- Specify that engaging in fraud, deceit, or misrepresentation in applying for, procuring, or maintaining a compact privilege constitutes unprofessional conduct.

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

None.

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

Illinois is not a member state of the Physical Therapy Licensure Compact.

Iowa:

Iowa is a member state of the Physical Therapy Licensure Compact, and is actively issuing compact privileges. Rules of the Iowa Board of Physical and Occupational Therapy address issuing a compact privilege and the practice of physical therapy under a compact privilege (645 IAC 200.3).

Michigan:

Michigan is not a member state of the Physical Therapy Licensure Compact.

Minnesota:

Minnesota is not a member state of the Physical Therapy Licensure Compact.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing subch. IX of ch. 448, Stats., which ratifies the Physical Therapy Licensure Compact, and conducting a comprehensive evaluation and update of the Physical Therapy Examining Board’s rules in order to implement the Compact.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator, Dan Hereth, may be contacted by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 8:30 a.m. on December 2, 2020, to be included in the record of rule-making proceedings.

TEXT OF RULE

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

CHAPTER PT 1

LICENSE AND COMPACT PRIVILEGE TO PRACTICE PHYSICAL THERAPY

SECTION 2. PT 1.01 (1) and (2) are amended to read:

PT 1.01 (1) The rules in this chapter are adopted by the physical therapy examining board pursuant to the authority delegated by ss. 15.08 (5) (b), ~~and 15.405 (7r)~~, 448.53 (1), and 448.986 (3), Stats.

(2) The rules in this chapter are adopted to govern the issuance of licenses to physical therapists and physical therapist assistants under ss. 448.53, 448.535, 448.54, and 448.55, Stats., and the granting of compact privileges under subch. IX of ch. 448, Stats.

SECTION 3. PT 1.02 (11e), (11m), and (11s) are created to read:

PT 1.02 (11e) “Physical therapist” has the meaning given in s. 448.50 (3), Stats.

(11m) “Physical therapist assistant” has the meaning given in s. 448.50 (3m), Stats.

(11s) “Physical therapy” has the meaning given in s. 448.50 (4), Stats.

SECTION 4. PT 1.02 (12) is amended to read:

PT 1.02 (12) “Supervisor” means a person holding a regular license as a physical therapist issued under s. 448.53 (1), Stats., or a physical therapist compact privilege granted by the board who is competent to coordinate, direct, and inspect the accomplishments of another physical therapist, physical therapist assistant, student, or temporary licensee. “Supervisor” does not include a person holding a license issued under ch. PT 3 or 4.

SECTION 5. PT 1.03 (3) (d) (Note 2) is repealed.

SECTION 6. PT 1.04 is created to read:

PT 1.04 Compact privilege requirements. Every person applying for a compact privilege shall submit to the board all of the following:

(1) A completed application form provided by the board.

(2) The fee specified in s. 448.985 (3) (d), Stats.

(3) Evidence of successful completion of the examination specified in s. PT 2.01 (6) (c).

Note: An application for a compact privilege may be obtained from the department of safety and professional services’ website at www.dsps.wi.gov.

SECTION 7. PT 2.001 (2) (Note) is created to read:

PT 2.001 (2) (Note) The examination requirement for a physical therapist or physical therapist assistant compact privilege is under s. PT 1.04.

SECTION 8. PT 3.01 (1) is renumbered PT 3.01 (1) (intro.) and amended to read:

PT 3.01 (1) (intro.) An applicant for a regular license to practice as a physical therapist ~~or physical therapist assistant, who has not previously been licensed to practice as a physical therapist or as a physical therapist assistant in this state, whichever is applicable, and who is a graduate of an approved school of physical therapy or a physical therapist assistant educational program and has applied to take the national physical therapist examination or the national physical therapist assistant examination and is~~

~~awaiting results and is not required to take an oral examination, may apply to the board for a temporary license to practice as a physical therapist or physical therapist assistant under supervision. The applications and required documents for a regular license and for a temporary license may be reviewed by 2 members of the board, and upon the finding by the 2 members that the applicant is qualified for admission to examination for a regular license to practice as a physical therapist or physical therapist assistant, the board, acting through the 2 members, may issue a temporary license to practice as a physical therapist or physical therapist assistant under supervision to the applicant. An applicant for a temporary license under this subdivision shall meet all of the following requirements:~~

SECTION 9. PT 3.01 (1) (a) to (d), (1g), and (1r) are created to read:

PT 3.01 (1) (a) The applicant has not previously been licensed or granted a compact privilege to practice in this state as a physical therapist.

(b) The applicant is a graduate of an approved school of physical therapy.

(c) The applicant has applied to take the national physical therapist examination and is awaiting results.

(d) The applicant is not required to take an oral examination under s. PT 2.01 (1).

(1g) An applicant for a regular license to practice as a physical therapist assistant may apply to the board for a temporary license to practice as a physical therapist assistant under supervision. An applicant for a temporary license under this subdivision shall meet all of the following requirements:

(a) The applicant has not previously been licensed or granted a compact privilege to practice in this state as a physical therapist assistant.

(b) The applicant is a graduate of an approved physical therapist assistant educational program.

(c) The applicant has applied to take the national physical therapist assistant examination and is awaiting results.

(d) The applicant is not required to take an oral examination under s. PT 2.01 (1).

(1r) The applications and required documents for a regular license and for a temporary license may be reviewed by 2 members of the board, and upon the finding by the 2 members that the applicant is qualified for admission to examination for a regular license, the board, acting through the 2 members, may issue a temporary license to practice under supervision.

SECTION 10. PT 3.01 (2) (Note), (3), and (4) are amended to read:

PT 3.01 (2) (Note) Application forms are available ~~upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708~~ from the department of safety and professional services' website at www.dsps.wi.gov.

(3) The holder of a temporary license to practice physical therapy under supervision may practice physical therapy, ~~as defined in s. 448.50 (4), Stats., providing that~~ provided the entire practice is under the direct, immediate, on-premises supervision of a ~~person validly holding a regular license as a~~ physical therapist. ~~The supervision shall be direct, immediate, and on premises.~~

(4) The holder of a temporary license to practice as a physical therapist assistant under supervision may provide physical therapy ~~services as defined by s. 448.50 (4), Stats., providing that~~ in a manner consistent with the physical therapist assistant's education, training and experience, provided the entire practice is under the direct, immediate, on-premises supervision of a ~~person validly holding a regular license as a~~ physical therapist. ~~The supervision shall be direct, immediate, and on premises.~~

SECTION 11. PT 3.01 (4) (Note) is repealed.

SECTION 12. PT 3.01 (5) and (6) are amended to read:

PT 3.01 (5) The duration of a temporary license to practice physical therapy under supervision granted under this section shall be for a period of 3 months or until the holder receives failing examination results, whichever is ~~shorter~~ sooner, unless the board grants an extension of the temporary license. A temporary license may be renewed for a period of 3 months, and may be renewed a second time for a period of 3 months for reasons of hardship. Practice under a temporary license may not exceed 9 months total duration.

(6) A physical therapist providing supervision under sub. (3) or (4) may supervise no more than a combined total of 4 physical therapists and physical therapist assistants who hold temporary licenses. This number shall be reduced by the number of physical therapist assistants and physical therapy aides unlicensed personnel being supervised by the physical therapist under ~~s. ss. PT 5.01 and~~ 5.02 (2) (k).

SECTION 13. PT 4.01 (1) (a) (Note) and (d) are amended to read:

PT 4.01 (1) (a) (Note) Application forms are available ~~upon request to the board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708~~ from the department of safety and professional services' website at www.dsp.wi.gov.

(d) A letter requesting the applicant's services from a physical therapist licensed ~~in this state requesting the applicant's services~~ under s. 448.53 (1), Stats., an individual who holds a physical therapist compact privilege granted by the board, or a letter from an organization or facility located in this state ~~requesting the applicant's services.~~

SECTION 14. PT 5.01 (1) is amended to read:

PT 5.01 (1) A physical therapist assistant, ~~as defined in s. 448.50 (3m), Stats.,~~ shall assist a physical therapist in the practice of physical therapy under the general supervision of a physical therapist.

SECTION 14. PT 5.01 (1) is amended to read:

PT 5.01 (1) A physical therapist assistant, ~~as defined in s. 448.50 (3m), Stats.,~~ shall assist a physical therapist in the practice of physical therapy under the general supervision of a physical therapist licensed under s. 448.53 (1), Stats., or granted a physical therapist compact privilege by the board.

SECTION 15. PT 5.02 (1) and (2) (intro.) are amended to read:

PT 5.02 (1) A physical therapist licensed under s. 448.53 (1), Stats., or granted a physical therapist compact privilege by the board shall provide direct, immediate, on-premises supervision of unlicensed personnel at all times. ~~A~~ The physical therapist may not direct unlicensed personnel to perform tasks which require the ~~decision-making~~ decision-making or ~~problem-solving~~ problem-solving skills of a physical therapist, including ~~but not limited to~~ patient examination, evaluation, diagnosis, or determination of therapeutic intervention.

(2) (intro.) In providing direct, immediate, on-premises supervision, the physical therapist shall do all of the following:

SECTION 16. PT 7.025 (4) is amended to read:

PT 7.025 (4) Engaging in fraud, deceit, or misrepresentation in applying for or procuring a license or compact privilege to practice physical therapy, in connection with applying for or procuring periodic renewal of a license, or in otherwise maintaining licensure or a compact privilege.

SECTION 17. 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)

This Proposed Order of the Physical Therapy Examining Board is approved for submission to the Governor and Legislature.

Dated 12-4-2020

Agency Shari Berry, PT
Chairperson
Physical Therapy Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date August 31, 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) PT 1 to 10	
4. Subject Implementation of the Physical Therapy Licensure Compact	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.165 (1) (g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The Physical Therapy Examining Board conducted a comprehensive evaluation of its rules to implement the Physical Therapy Licensure Compact and ensure clarity and consistency with applicable Wisconsin statutes. As a result, updates have been made to do all of the following: <ul style="list-style-type: none">• Create definitions of “physical therapist,” “physical therapist assistant,” and “physical therapy.”• Identify the requirements for obtaining a compact privilege, including a requirement that an individual seeking a compact privilege successfully complete a jurisprudence examination.• Specify that a person holding a physical therapist compact privilege granted by the Board may provide supervision of a physical therapist assistant and unlicensed personnel.• Clarify the requirements for a temporary license to practice as a physical therapist or physical therapist assistant under supervision.• Specify that a person holding a physical therapist compact privilege granted by the Board may provide supervision of a temporary licensee.• Clarify that a locum tenens license may not be issued based on a request for services from a person who holds a temporary license as a physical therapist, and specify that a locum tenens license may be issued based on a request for services from a person who holds a physical therapist compact privilege granted by the Board.• Specify that engaging in fraud, deceit, or misrepresentation in applying for, procuring, or maintaining a compact privilege constitutes unprofessional conduct.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.

The Department estimates one-time administrative costs of \$1,020.14. These costs may be absorbed in the agency budget.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit to implementing the rule is to reflect the provisions of subch. IX of ch. 448, Stats., as created by 2019 Wisconsin Act 100, which ratifies the Physical Therapy Licensure Compact. If the rule is not implemented, chs. PT 1 to 10 will not reflect the Compact and applicable Wisconsin statutes.

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is clarity and consistency with the provisions of the Physical Therapy Licensure Compact and applicable Wisconsin statutes.

17. Compare With Approaches Being Used by Federal Government

None

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Illinois is not a member state of the Physical Therapy Licensure Compact.

Iowa:

Iowa is a member state of the Physical Therapy Licensure Compact, and is actively issuing compact privileges. Rules of the Iowa Board of Physical and Occupational Therapy address issuing a compact privilege and the practice of physical therapy under a compact privilege (645 IAC 200.3).

Michigan:

Michigan is not a member state of the Physical Therapy Licensure Compact.

Minnesota:

Minnesota is not a member state of the Physical Therapy Licensure Compact.

19. Contact Name

Dale Kleven

20. Contact Phone Number

(608) 261-4472

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-