

<h1 style="text-align: center;">Regulatory Analysis Form</h1>		<p style="text-align: center;">This space for use by IRRC</p> <p style="text-align: center;">2003 FEB 12 11 03:00 IRRC REVIEW COMMISSION</p> <p style="text-align: right;">IRRC Number: <u>2327</u></p>
<p>(1) Agency</p> <p>Department of State, Bureau of Professional and Occupational Affairs, State Board of Physical Therapy</p>		
<p>(2) I.D. Number (Governor's Office Use)</p> <p>16A-659</p>		
<p>(3) Short Title</p> <p style="text-align: center;"><i>Provisions</i> General Revisions</p>		
<p>(4) PA Code Cite</p> <p>49 Pa. Code, Chapter 40</p>	<p>(5) Agency Contacts & Telephone Numbers</p> <p style="text-align: center;">Primary Contact: Beth Sender Michlovitz, Counsel State Board of Physical Therapy (717)783-7200</p> <p style="text-align: center;">Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Regulatory Review (717)783-7200</p>	
<p>(6) Type of Rulemaking (check one)</p> <p><input checked="" type="checkbox"/> Proposed Rulemaking</p> <p><input type="checkbox"/> Final Order Adopting Regulation</p> <p><input type="checkbox"/> Final, Proposed Omitted</p>	<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes: By the Attorney General</p> <p><input type="checkbox"/> Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and nontechnical language.</p> <p>These regulations would amend Chapter 40 by clarifying educational provisions pertaining to physical therapists and physical therapist assistants, amending provisions pertaining to licensure by endorsement and foreign trained endorsement provisions, amending provisions pertaining to scope of practice, non-delegable activities and functions of supportive personnel, amending provisions pertaining to discipline and making general editorial changes.</p>		
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>The regulation is proposed under the authority of Section 812.1 of the Administrative Code of 1929 (71 P.S. §279.3(a)) and Section 3 of the Physical Therapy Practice Act (63 P.S. §1303).</p>		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The current regulatory provisions are outdated and do not reflect current practice. The current regulations are confusing in some respects. For example, §40.4 currently provides for the licensure of applicants. That provision is confusing in that it doesn't specifically indicate that a foreign educated applicant meets the requirements by holding a license in the country where he received his education, holding a license in another state or territory of the United States or by applying for licensure by examination. These regulations would clarify that issue.

The regulations would be amended to reflect the Board's recognition of the Commission on Accreditation in Physical Therapy Education (CAPTE) as the approved accrediting program for educational programs of physical therapy. Beginning January 1, 2002, CAPTE will accredit only programs that offer a post-baccalaureate degree. There are currently 17 accredited programs in Pennsylvania all of which are at the post-baccalaureate level. All physical therapy programs in Pennsylvania are either already accredited by CAPTE or in the process of becoming accredited by CAPTE. These amendments would require an applicant to have graduated from a CAPTE accredited program within 6 months of the effective date of these regulations.

(continued on Page 9)

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation would be a risk to public health and safety in that the public would be receiving care from physical therapists and physical therapist assistants who may not have adequate education and training and may not be providing care appropriate to their level of education and skill.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Members of the public who receive physical therapy care will benefit from the regulations by assuring that licensees are adequately educated and provide care appropriate to their level of skill and expertise. Foreign educated applicants for licensure will benefit from these regulations by being provided with a more clear understanding of the educational requirements they must meet. Licensees will benefit from the regulation by having regulatory provisions that more clearly reflect modern practice.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Physical therapist assistants may be adversely affected by restricting their practice. However, the Board believes that any adverse affect is outweighed by safety to the patients receiving treatment.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Physical therapists and physical therapist assistants will be required to comply with the regulation. There are 9,054 licensed physical therapists in the Commonwealth and 3,126 licensed physical therapist assistants.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In December 1999, the Board sent draft revisions to professional associations, educational institutions and interested individuals who the Board identified as being interested in regulatory measures and asked for public input. The Board received approximately 300 responses. The Board considered these responses in the final drafting of these regulations. The following is a list of all individuals, organizations, educational institutions and professional associations that were contacted: Pennsylvania Physical Therapy Association, Hospital and Health System Association of Pennsylvania, Pennsylvania Association of Rehabilitation Facilities, Pennsylvania Athletic Trainers Society, Beaver College, Chatham College, College Misericordia, Duquesne University, Gannon University, Medical College of Pennsylvania and Hahnemann University, Philadelphia College of Pharmacy and Science, Slippery Rock University, Temple University, Thomas Jefferson University, University of Pittsburgh, University of Scranton, Alvernia College, Central Pennsylvania Business School, Community College of Allegheny County Boyce Campus, Harcum College, Lehigh Carbon Community College, Medical College of Pennsylvania & Hahnemann University, Mercyhurst College, Mount Aloysius College, Penn State University, Penn State University Mont Alto Campus, East Stroudsburg University, Lock Haven University, Pennsylvania State University, California University of Pennsylvania, University of Pittsburgh, Slippery Rock University, West Chester University, Temple University, Messiah College, Waynesburg College, and Mercyhurst College.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There will be no costs and/or savings to the regulated community.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation will not result in costs and/or savings to local government.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulation will not result in costs and/or savings to state government.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
State Board of Physical Therapy	\$239,918.62	\$268,110.98	\$259,949.13	\$262,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered because the only way to update and clarify the pertinent regulatory provisions is through regulations.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

N/A

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

In drafting these regulations, the Board used national models for physical therapy assistant education and guidelines issued by the Federation of State Boards of Physical Therapy. Therefore, these regulations are in accordance with the practice of other state boards of physical therapy, including those in all the states contiguous to Pennsylvania, and will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board has already entertained comments from the public on draft regulations. No further public hearings or informational meetings are scheduled. The Board is continually discussing these revisions at regularly scheduled Board meetings held bi-monthly at 124 Pine Street in Harrisburg, PA. The Board holds bi-monthly public meetings at which information relative to all rulemaking is discussed. Meetings are held in the Board's offices at 116-124 Pine Street, Harrisburg, Pennsylvania. A schedule of Board meeting dates is available on the Department of State's website at www.dos.state.pa.us/bpoa.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Because the Board has determined no special needs of any subset or group, no special provisions have been developed to meet particular needs of affected groups or persons.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication of Final Rulemaking in the Pennsylvania Bulletin. Compliance will be required as of that date.

(31) Provide the schedule for continual review of the regulation.

The Board continuously reviews its regulations, periodically communicates with licensees through newsletters and obtains information and feedback from its licensees on a frequent basis.

(11) continued:

There is a compelling public interest in establishing the professional education required for foreign trained physical therapists who wish to obtain a license in this Commonwealth. Currently, the regulations do not set forth the specific professional education that the Board believes is necessary to establish competency. Foreign educated applicants have had a difficult time complying with the Board's current regulations because it is conditional upon securing a credentials evaluation for all educational requirements. These regulations would explicitly establish the precise professional educational requirements that the Board expects an applicant to have.

There is also a compelling public interest in assuring that the Board's regulations reflect current practice. Accordingly, the Board has proposed regulations permitting physical therapists to perform transdermal administration of over-the-counter and prescriptive drugs and administering electroneuromyography (EMG) and nerve conduction velocity tests (NCV) upon the referral of a physician. These regulations also serve the public interest by specifying that the failure to maintain adequate patient records constitutes unprofessional conduct.

These regulations also promote public safety by specifically stating that a physical therapist may delegate to a physical therapist assistant or supportive personnel that which he or she is educated to perform. It would also clarify that mobilization is not a procedure that a physical therapist would be permitted to assign or delegate to a physical therapist assistant or supportive personnel. The Board believes that public safety dictates that only physical therapists can perform this procedure. Mobilization would be defined as a passive therapeutic movement at any point in the range of motion at variable amplitudes and speeds. Mobilization does not include gross passive movement throughout normal planes of joint motion. In addition, it is critical to patient safety that when patient care services are provided by the physical therapist assistant, the physical therapist reevaluate and adjust the plan of care at intervals not to exceed fourteen days.

The regulations would also prohibit the delegation to physical therapist assistants or supportive personnel, personnel screenings to determine the need for the following: 1) primary, secondary or tertiary services; 2) further examination or intervention; 3) consultation by a physical therapist; 4) referral to another health care practitioner. Screening would be defined as determining the need for further examination and/or intervention by a physical therapist or for referral to another health professional. The Board believes these restrictions are critical to safe patient care.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

2327

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Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

Cristina L. Ferguson
(DEPUTY ATTORNEY GENERAL)

State Board of Physical Therapy
(AGENCY)

John V. Turner

DEC 24 2002

DOCUMENT/FISCAL NOTE NO. 16A-659

DATE OF APPROVAL

DATE OF ADOPTION:

4/29/02
DATE OF APPROVAL

BY:

James S. Irrgang
James S. Irrgang

(Deputy General Counsel
(~~Chief Counsel~~
Independent Agency
(Strike inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 day after submission.

PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY
49 PA. CODE, CHAPTER 40
GENERAL REVISIONS
Provisions

The State Board of Physical Therapy (Board) proposes to amend its regulations at 49 Pa. Code, Chapter 40 by amending the following sections: 40.1, 40.4, 40.11, 40.14, 40.15, 40.16, 40.17, 40.18, 40.21, 40.22, 40.23, 40.24, 40.32, 40.51, 40.52, 40.53, 40.81, 40.161, 40.163 and 40.164. The Board's amendments include educational and licensure provisions pertaining to physical therapists and physical therapist assistants, scope of practice provisions, non-delegable activities and functions of supportive personnel and provisions pertaining to discipline. The Board also proposes to make general editorial amendments.

Effective Date

The amendments will be effective upon publication of final form regulations in the Pennsylvania Bulletin.

Statutory Authority

The amendments are authorized under Section 3 of the Physical Therapy Practice Act (Act), (63 P.S. §1303), as well as Section 812.1 of the Administrative Code of 1929 (71 P.S. §279.3(a)).

Background and Purpose

Most of the Board's regulations have not been amended since the mid-1980s. Many of the Board's current provisions are unnecessary or require clarification. With respect to educational requirements for physical therapists, the regulations need to be updated and refined. Provisions pertaining to the scope of practice of a physical therapist should be updated. The Board also intends to refine and clarify non-delegable activities which may not be assigned to a physical therapist assistant or supportive personnel. The following is a description of the proposed amendments.

Description of Proposed Amendments

Section 40.4(2) would be amended by clarifying that the Board issues licenses by endorsement to applicants who are educated in another state or territory of the United States. Subsection (4) would be amended by updating the word "trained" to "educated" which is a more accurate term of art. The Board proposes to add subsection (5) to this section to make it clear that the Board also issues licenses by endorsement to applicants educated in a foreign country and who are authorized to practice as a physical therapist without limitations in the country where the professional education occurred and who hold a valid license by examination in another state or territory of the United States providing that the requirements were, at the time of receiving the license, substantially equivalent to the requirements set forth in the act. Although the board has always issued such licenses, the regulations did not clearly state that the license by endorsement pertained to a foreign educated applicant who also holds a valid license by examination in another state or territory of the United States.

Section 40.11 pertaining to license by examination would be amended at subsection (1) to reflect the Board's recognition of the Commission on Accreditation in Physical Therapy Education (CAPTE) as the approved accrediting program for educational programs of physical therapy. One of the more rapid changes that is occurring in physical therapy education is the move toward the entry level doctorate in physical therapy (DPT). Beginning January 1, 2002, CAPTE will accredit only programs that offer a post-baccalaureate degree. There are currently 17 accredited programs in Pennsylvania, all of which are at the post-baccalaureate level. All physical therapy programs in Pennsylvania are either already accredited by CAPTE or in the process of becoming accredited by CAPTE. Section 40.11(1) would require an applicant to have graduated from a CAPTE accredited program within 6 months of the effective date of these regulations. Subsection (2) of that section would be amended to clarify that the baccalaureate degree consists of at least 120 semester hours.

Sections 40.15(c) and (d) would be deleted by this proposal because the Board has switched from paper and pencil examinations to computer based testing, which is available on a frequent basis.

Section 40.16, pertaining to licensure by endorsement, would be amended by clarifying that subsection (a) applies to applicants who were educated in a state or territory of the United States and that subsection (b) applies to applicants who were educated in a country or territory outside of the United States. Subparagraph (a)(2) would be deleted because subparagraph (1) already states that the requirements for licensure or regulation in the state from which the applicant was originally licensed must be substantially equal to the requirements for licensure in this Commonwealth. Also, the passing scores for examinations are uniform throughout the United States since the examination is national.

Subsection (b) is added regarding licensure by endorsement for an applicant who was trained in a foreign country. This provision more clearly sets out the requirements for such applicants. The applicant would be required to meet the educational requirements set forth in Section 40.17 pertaining to foreign educated physical therapists applying to take the licensure examination. If the applicant is licensed in a country or territory outside of the United States, the applicant would also be required to submit evidence that the applicant holds that license without restriction. The applicant must also hold a valid license by examination in another state or territory of the United States providing the requirements were, at the time of receiving the license, substantially equivalent to the requirements set forth in this act.

The requirements of Section 40.17 would be amended by requiring the foreign trained applicant to provide evidence that the school of physical therapy where the education occurred is recognized by its own ministry of education, or other authorizing agency or entity, and if the applicant is licensed in the foreign country where he was educated, he must provide proof of authorization to practice in the country where the professional education took place. The applicant must also provide proof of legal authorization to seek employment in the United States or its territories. The Board believes this is necessary to protect the health and safety of the Commonwealth's citizens from licensing illegal aliens. Subsection (5) would amend the educational requirements for foreign trained applicants by referring to general educational

requirements. The applicant would be required to complete 50, rather than 60, credit hours in general education subjects including a minimum of ten credit hours in electives rather than 20 hours. Subsection (6) would be added to establish professional education of 60 credit hours for foreign trained applicants applying to take the licensure examination. These requirements were developed through the use of guidelines set forth by the Federation of State Boards of Physical Therapy.

The Board proposes to delete Section 40.18 pertaining to approved physical therapy schools since the Board sets out previously at Section 40.11(1) that an approved school is one that is accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE).

Section 40.21 would be deleted because licenses issued through the endorsement process are processed quickly obviating the necessity of issuing temporary licenses. This pertains to deleting Sections 40.23 and 40.24 as well. In addition, with respect to Section 40.24, relating to expiration of temporary licenses, the statute does not authorize the Board to renew a temporary permit.

Section 40.22 would be amended by clarifying that a physical therapist holding a temporary license works under the on-premises supervision of a licensed physical therapist with at least two years of experience. This reflects Section 6(g) of the Act (63 P.S. §1306(g)) pertaining to temporary licenses. Section 6(g) of the Act also states that a temporary license expires upon the failure of the first examination or six months after the date of issue, whichever occurs first. Section 40.22(b) of this proposal reflects that statutory provision.

Scope of Practice of Physical Therapists, Supportive Personnel and Physical Therapist Assistants – Sections 40.32, 40.51, 40.53.

Section 40.32 (concerning functions of supportive personnel) would be amended to permit supportive personnel to record the care given to a patient through the use of flow charts and checklists which identify the care or services provided. The Board developed this provision based upon guidelines for physical therapy documentation published by the American Physical Therapy Association.

Section 40.51 would be amended regarding the physical therapist's scope of practice. In particular, current subsection (a) would be deleted and restated as new subsection (a). A new subsection (b) would be added which would authorize a physical therapist to perform transdermal administration of drugs through the use of modalities such as ultrasound and electrical stimulation. The Board has always considered this procedure to be within the scope of practice of a physical therapist. Licensees have questioned the Board on the procedures that physical therapists should follow when administering drugs transdermally (i.e. iontophoretic and phonophoretic). Accordingly, this provision clarifies and reflects current practice. The provision requires that if a prescriptive medication is used, such medication must be prescribed by the referring physician and dispensed in the name of the patient by the referring physician or pharmacist. The remaining medications must be disposed of by the physical therapist or returned

to the patient. Drugs must be properly stored in a manner consistent with pharmaceutical practice.

Section 40.53 (regarding non-delegable activities) would be amended at subsection (a) to state the general rule that a physical therapist may delegate to a physical therapist assistant or supportive personnel that which he or she is educated to perform. Subsection (b)(7) would be amended to clarify that mobilization is not a procedure that a physical therapist would be permitted to assign or delegate to a physical therapist assistant or supportive personnel. Mobilization would be defined as a passive therapeutic movement at any point in the range of motion at variable amplitudes and speeds. The purpose of joint mobilization is to restore accessory joint movements. Mobilization does not include gross passive movement throughout normal planes of joint motions. A physical therapist may still delegate to a physical therapist assistant gross passive movement throughout normal planes of joint motions. The Board does not intend to prohibit a physical therapist from delegating to a physical therapist assistant the performance of range of motion or the performance of exercises to restore the functional motion of the joint. Joint mobilization is used to restore accessory joint motion (i.e., gliding of joint surfaces).

Subsection (d) would be amended to require a physical therapist to reevaluate and adjust a patient's plan of care at intervals not to exceed 14 days rather than 30 days where that plan of care is provided by the physical therapist assistant. The Board recognizes that conditions of patients can change in less than 30 days and that only the physical therapist is authorized to evaluate and change the patient's plan of care. Accordingly, the Board believes this change would result in more effective and safer practice.

Subsection (e) would be added to assure that physical therapists not assign or delegate to physical therapist assistants or supportive personnel the performance of consultations, initial evaluations, reevaluations or discharge summaries and the interpretation of the resulting data collected since these procedures require the skill and expertise of a license physical therapist.

Subsection (f) would prohibit a physical therapist from assigning or delegating to a physical therapist assistant or supportive personnel screenings to determine the need for the following: (1) primary, secondary or tertiary services; (2) further examination or intervention; (3) consultation by a physical therapist; (4) referral to another health care practitioner. For purposes of this section, screening would be defined as determining the need for further examination and/or intervention by a physical therapist or for referral to another health professional. The procedures outlined in subsection (f) pertaining to screening require the skill and knowledge of a physical therapist to evaluate the need for further intervention by a physical therapist. A physical therapist cannot delegate the evaluation of a patient to a physical therapist assistant or supportive personnel. The Board has received numerous requests to clarify this issue.

Registration of Physical Therapist Assistants, and Examination of Physical Therapist Assistants – Sections 40.161, 40.163 and 40.164.

Sections 40.161 and 40.163 (pertaining to physical therapist assistants) would be amended by deleting the reference to nationally recognized accrediting agency and including instead the Commission on Accreditation in Physical Therapy Education (CAPTE). CAPTE is currently the only accrediting body for physical therapy educational programs.

Section 40.164 pertaining to physical therapist assistant registration examination would be amended by deleting Subsections (b) and (d). Subsection (b) would be deleted because the passing score is set by the third party testing service. Subsection (d) is deleted because other provisions of these regulations establish that applicants by endorsement must pass an exam equivalent to that required in the Commonwealth. Accordingly, this provision is unnecessary.

Unprofessional Conduct of Physical Therapists – Section 40.52.

Section 40.52 (pertaining to unprofessional conduct of physical therapists) would be amended at subsection (12) to make it unprofessional for a physical therapist to fail to maintain adequate patient records. Adequate patient records would include at a minimum a summary of the findings of the examination, an evaluation, a diagnosis, the plan of care including desired outcomes, the treatment record, a discharge plan including results of intervention and sufficient information to identify the patient.

Miscellaneous Provisions – Sections 40.1, 40.81.

Section 40.1 would be amended by defining “direct on-premises supervision” to reflect the definition found at Section 9.1 of the Act (63 P.S. §1309.1). In particular, the amendment reflects that the term means “on the premises” where the physical therapist assistant or the supportive personnel is providing patient-care services.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact and impose no additional paperwork requirements on the Board or its licensees.

The proposed amendments should not impose any legal, accounting or reporting requirements on the regulated community.

Compliance With Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and regulated population under the directives of Executive Order 1996-1, Regulatory

Review and Promulgation. The Board solicited pre-draft input of an earlier draft of these amendments from licensees, students, professional associations, educational programs and hospitals. The Board received approximately 300 comments to that earlier draft. A large number of these comments were in opposition to a provision pertaining to the prohibition of delegation of wound care and manual therapy. The Board deleted these provisions in the current proposal. Many comments pertaining to the prohibition of manual therapy by a physical therapist assistant explained that the prohibition was overly broad. The Board agreed. The current proposal is limited to mobilization and is narrowly defined. The proposed regulation addresses a compelling public interest as described in the preamble and otherwise complies with Executive Order 1996-1.

Regulatory Review

Pursuant to section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of this proposed regulation on February 12, 2003, to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, SCP/PLC, and HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the SCP/PLC and HPLC review period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly, and the Governor prior to publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Robert Kline, Administrative Assistant, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-659 (General Revisions), when submitting comments.

JAMES J. IRRGANG, CHAIRPERSON

ANNEX A GENERAL PROVISIONS

§40.1. Definitions.

* * *

Act - The Physical Therapy Practice Act (63 P.S. §§ 1301-[1312] 1313).

* * *

Direct on-premise supervision - The physical presence of a physical therapist [in the facility or location] on the premises where the physical therapist assistant or the supportive personnel is providing patient-care services, so that the physical therapist is immediately available to provide supervision, direction and control.

* * *

§40.4. Admission to practice of physical therapy.

Admission to the practice of physical therapy in this Commonwealth will be granted by the Board as follows:

(1) By the issuance of a license to an applicant who meets the requirements for licensure as set forth in sections 5 and 6 of the act (63 P.S. §§1305 and 1306).

(2) By the issuance of a license by endorsement to an applicant who is educated in another state or territory of the United States and who meets the licensing requirements set forth in section 6 of the act (63 P.S. §1306) and who holds a valid license by [written] examination in another state or territory of the United States, providing the requirements were, at the time of receiving the license, substantially equal to the requirements as set forth in the act.

(3) By the issuance of a temporary license to an applicant who meets the licensing requirements as set forth in section 6 of the act (63 P.S. §1306).

(4) By the issuance of a license to an [foreign trained] applicant educated in a jurisdiction other than a state or territory of the U.S. who meets the licensing requirements as set forth in sections 5 and 6(f) of the act (63 P.S. §§1305 and 1306(f)).

(5) By the issuance of a license by endorsement to an applicant who is educated in a foreign country and who is authorized to practice as a physical therapist without limitations in the country where the professional education occurred and who holds a valid license by examination in another state or territory of the United States providing the requirements were, at the time of receiving the license, substantially equivalent to the requirements as set forth in the act.

* * *

§40.11. License by examination; requirements for examination.

Applicants for license by examination shall meet the following requirements:

(1) Professional requirements consisting of an accredited physical therapy course approved by the American Physical Therapy Association of not less than 12 months in a school of physical therapy established in an accredited medical school, hospital, college or university which course has provided adequate instruction in basic sciences, clinical science and physical therapy theory and procedures. [and the requirements of which course shall be approved by the Board.] Within six months of the effective date of these regulations, an applicant must have graduated from a physical therapy program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) which has provided adequate instruction in basic sciences, clinical science and physical therapy theory and procedures.

(2) Following graduation from the professional study of physical therapy, a physical therapist shall hold a minimum of a baccalaureate degree consisting of at least 120 semester hours from a regionally accredited institution of higher education.

* * *

§40.14. Examination; [F]failure; reexamination.

* * *

§40.15. Examinations.

* * *

[(c) Examinations are conducted by numbers, exclusive of names, and the candidate may in no part of his paper give indication as to his name or school of graduation.

(d) As a means of identifying applicants, two unmounted finished photographs, not proofs, of each applicant shall be furnished, one of which shall be certified by the appropriate officer of the physical therapy school attended and the other of which shall be marked with the number assigned to the candidate and shall be returned to him with a card of admission to the examinations. Each candidate shall bring the admission card and returned photograph to the Board; otherwise, the candidate may not be admitted to the examination.]

§40.16. Licensure by endorsement.

(a) An applicant for licensure by endorsement who is educated in another state or territory of the United States is required to submit the professional credentials in §40.11 (relating to license by examination; requirements for examination), and comply with the following:

(1) Submit a written application on forms provided by the Board, together with evidence satisfactory to the Board that he is licensed or otherwise registered as a physical therapist in another state or territory of the United States, or in the District of Columbia, if the requirements for licensure or registration in the state[,] or territory [or district] were, at the date of his licensure or registration, substantially equal to the requirements for licensure or registration in this Commonwealth under the act.

[(2) In the event that an applicant for licensure by endorsement has taken and failed the Commonwealth examination one or more times but has subsequently taken and passed an examination given in another state or territory of the United States or in the District of Columbia, proof shall be given to the Board by the applicant that the other examination taken and passed by the applicant was in fact equivalent to the examination this Commonwealth offers, before the Board will exercise its discretion in considering endorsing the applicant for licensure.]

[(3)](2) A fee prescribed in §40.5 (relating to fees) shall accompany each application for licensure by endorsement. Reference should be made to section 6(d)(2) of the act (63 P.S. §1306(d)(2)).

(b) An applicant for licensure by endorsement who received education in a country outside of the United States is required to meet the educational requirements as set forth in Section 40.17(5) and (6) and comply with the following:

(1) Submit evidence that the applicant is authorized to practice as a physical therapist without limitation in the country where the professional education occurred.

(2) The applicant must hold a valid license by examination in another state or territory of the United States providing the requirements were, at the time of receiving the license, substantially equivalent to the requirements as set forth in the act.

§40.17. Foreign-[trained] educated physical therapists applying to take the licensure examination and pursue a clinical experience.

To be eligible to take the examination for licensure, foreign-[trained] educated applicants for licensure shall [apply at least 30 days prior to the next scheduled date of the examination and prior to the application date,] comply with the following conditions:

(1) [Evidence.] The applicant shall submit evidence, satisfactory to the Board, indicating that he has met the requirements stated in §40.12(a)(1)-(3) (relating to application for licensure).

(2) The applicant shall provide written proof that the school of physical therapy is recognized by the authorizing agency or entity of the jurisdiction in which the school is situated.

(3) The applicant shall provide written proof of authorization to practice as a physical therapist without limitations in the country where the professional education took place.

(4) The applicant shall provide proof of legal authorization to seek employment in the United States or its territories.

[(2) Educational requirements.] (5) The applicant shall meet general educational requirements by securing a credentials evaluation and by correcting educational deficiencies, if any, as follows:

(i) Credentials evaluation. The applicant shall secure a credentials evaluation from a recognized and accredited credential evaluation agency approved by the Board. Upon request, the Board will forward to the foreign-[trained] educated applicant a list of currently approved credential evaluation agencies. The credentials evaluation shall indicate that the applicant has completed at least [60] 50 credit hours in the following education subjects:

* * *

(E) A minimum of [20] 10 credit hours in electives.

(ii) Educational deficiencies. The applicant may correct general educational deficiencies in the areas specified in paragraph [(2)(i)] (5) (i) by either:

* * *

(I) The CLEP General Examination may be used to satisfy the requirements set forth in paragraph [(2)(i)](5)(i) for credit hours if passing scores are received in the following subjects:

* * *

(II) The CLEP Subject Examination may be used to satisfy the requirements set forth in paragraph [(2)(i)](5)(i) for credit hours if passing scores are received in the following subjects:

* * *

(III) The applicant is responsible for directing that CLEP report his examination scores to the Board.

(6) Professional education. The applicant shall complete sixty (60) credit hours of professional education as follows:

(i) A minimum of three (3) credit hours is required in each of the following basic health science topics:

- (a) Human anatomy (specific to physical therapy)
- (b) Human physiology (specific to physical therapy)
- (c) Neurological science
- (d) Kinesiology or functional anatomy
- (e) Abnormal or developmental psychology
- (f) Pathology

(ii) A minimum, of fifteen (15) credit hours of clinical sciences which shall include all of the following:

(a) Clinical medicine pertinent to physical therapy to include but not be limited to:

- (1) Neurology
- (2) Orthopedics
- (3) Pediatrics
- (4) Geriatrics

(b) Physical therapy course work to include but not be limited to:

- (1) Physical agents
- (2) Musculoskeletal assessments and treatment
- (3) Neuromuscular assessment and treatment
- (4) Cardiopulmonary assessment and treatment

(iii) A minimum of two clinical affiliations of no less than eighteen (18) credit hours which are supervised by a physical therapist.

(iv) A minimum of nine (9) credit hours from the following topics of professional course work:

- (a) Professional ethics
- (b) Administration
- (c) Community health
- (d) Research
- (e) Educational techniques
- (f) Medical terminology

[(3)] (7) Clinical experience. The applicant shall complete, at the Board's discretion, up to 1 year of supervised clinical experience in the United States, as approved by the Board.

* * *

§40.18. [Approved physical therapy schools.]

[(a)] The approved physical therapy schools in the Commonwealth are as follows:

(1) University of Pennsylvania, School of Allied Medical Professions, 3901 Pine Street, Philadelphia, Pennsylvania 19104.

(2) Temple University, Department of Physical Therapy, College of Allied Health Profession, Philadelphia, Pennsylvania 19140.

(3) University of Pittsburgh, Department of Physical Therapy, School of Health Related Professions, Pittsburgh, Pennsylvania 15213.

(b) The Board will also accept for admission to the examination graduates of physical therapy schools approved by the American Physical Therapy Association, providing the credentials of the applicant meet the requirements of §40.11 (relating to license by examination; requirements for examination). The Board will also consult with recognized national accrediting agencies and professional agencies to consider graduates of other fully accredited schools.] Reserved.

* * *

§40.21. [Temporary licenses; physical therapists licensed by other states or territories of the United States.] Reserved.

[(a) Under Section 6(g) of the Act (63 P.S. §1306 (g)), the Board will issue temporary licenses to the following applicants, provided the applicant is licensed by another state or territory or the District of Columbia where the licensing requirements at the time of the applicant's licensing were substantially equal to the requirements of the Act. With respect to this provision, the rules covering endorsement may be applied by the Board:

(1) A person who will be working in this Commonwealth because of medical emergency.

(2) A person who will be working in this Commonwealth on a special physical therapy project, including a foreign exchange visitor.

(b) An applicant shall submit, on forms provided by the Board, the exact nature of the emergency or special project that requires location within this Commonwealth, including the anticipated length of time that the temporary license is requested and the place of residence while in the Commonwealth, and shall submit a fee as prescribed in §40.5 (relating to fees).]

§40.22. Temporary license.[:; graduating students.]

(a) An applicant for temporary license under Section 6[(h)](g) of the Act (63 P.S. §[1306 [(h)]] 1306(g)) shall make application to the Board on forms provided by the Board and meet the following requirements:

(1) Fulfill to the satisfaction of the Board the requirements set forth under Section 6(a) of the Act (63 P.S. §1306(a)).

(2) Have made application to take the examination set forth in Section 6(b) of the Act (63 P.S. §1306(b)) or have taken the examination and be awaiting the results of the examination.

(3) Having received the temporary license from the Board, work only under the direct on premises supervision of a licensed physical therapist [.] with at least two years of experience.

(b) A temporary license issued under 6[(h)] (g) of the Act(63 P.S. §[1306(h)]] 1306(g)) shall be surrendered to the Board immediately upon the failure of the first

examination [The granting of an extension of the temporary license is discretionary with the Board.] or in 6 months after the date of issuance, whichever occurs first.

* * *

§40.23. [Temporary licenses issued at Board's discretion.

The Board, at its discretion, may issue temporary licenses to the following applicants:

(1) A person who has applied to be licensed in this Commonwealth by endorsement but whose Commonwealth work experience begins prior to the time of the approval of the endorsement application.

(2) A person who is foreign trained, and who has properly registered with the Board under §40.17 (relating to foreign trained physical therapists applying to take the licensure examination and pursue a clinical experience.) Reserved.

§40.24. [Expiration of temporary licenses.

Upon an expiration of a temporary license or upon the departure of an individual holding a temporary permit from this Commonwealth with the intention of returning permanently to the domiciliary state or country of such individual, the license shall be returned immediately to the Board. Except for the temporary license under §40.22 (relating to temporary licenses; graduating students), a request for a renewal of a temporary license shall be made to the Board, in writing, at least 30 days prior to the original date of expiration for the temporary license and shall contain an update of the information provided by the applicant when the first temporary license was sought. An approval of a renewal is discretionary with the Board.] Reserved.

[PHYSICAL THERAPIST ASSISTANTS AND] SUPPORTIVE PERSONNEL

* * *

§40.32. Functions of supportive personnel.

* * *

(5) Assistance to patients with nontreatment aspects of activities and attending the personal needs of patients.

(6) Record the care given to a patient through the use of flow sheets and checklists which identify the care/services provided.

* * *

SCOPE OF PRACTICE

§40.51. [Administration of electroneuromyography (EMG) and nerve conduction velocity (NCV) tests.] Scope of Practice; physical therapists.

[(a) EMG and NVC - studies and evaluations - shall be conducted only upon the referral of a physician, under Section 9 of the Act (63 P.S. §1309).]

(a) A physical therapist may administer electroneuromyography (EMG) and nerve conduction velocity (NCV) tests only upon the referral of a physician under Section 9 of the Act (63 P.S. §1309).

[(b)] A licensed physical therapist may not diagnose from the results of the tests, but may prepare a document of his impression of the results of the test to be forwarded to the referring physician for his review and diagnosis.

(b) A physical therapist may perform transdermal administration of drugs through the use of modalities such as ultrasound and electrical stimulation. If a prescriptive medication is used, such medication must be prescribed by the referring physician and dispensed in the name of the patient by the referring physician or pharmacist. The remaining medications must be disposed of by the physical therapist or returned to the patient. Drugs shall be properly stored in a manner consistent with pharmaceutical practice.

§40.52. Unprofessional conduct; physical therapists.

A physical therapist who engages in unprofessional conduct is subject to disciplinary action under section 11(a)(6) of the act (63 P.S. §1311(a)(6)). Unprofessional conduct includes the following:

* * *

(12) Failure to maintain adequate patient records. Adequate patient records include at a minimum a summary of the findings of the examination, an evaluation, a diagnosis, the plan of care including desired outcomes, the treatment record, a discharge plan including results of intervention and sufficient information to identify the patient.

* * *

§40.53. Nondelegable activities; accountability.

(a) A physical therapist may delegate to a physical therapist assistant or supportive personnel that which he/she is educated to perform subject to the limitations set forth in this provision.

[(a)] (b) A physical therapist may not assign or delegate to physical therapist assistants or supportive personnel functions which require the formal education or training and the skill and knowledge of a licensed physical therapist, including the following functions:

* * *

(7) Mobilization. Mobilization is defined as a passive therapeutic movement at any point in the range of motion at variable amplitudes and speeds. The purpose of joint mobilization is to restore accessory joint movements. Mobilization does not include gross passive movement throughout normal planes of joint motions.

[(b)](c) * * *

[(c)](d) Where patient-care services are provided by the physical therapist assistant, the physical therapist shall [document re-evaluations] reevaluate and [adjustments to a] adjust the patient plan of care and goals at intervals not to exceed [30] 14 days.

(e) A physical therapist may not assign or delegate to physical therapist assistants or supportive personnel the performance of consultations, initial evaluations, reevaluations or discharge summaries and the interpretation of resulting data collected.

(f) A physical therapist may not assign or delegate to a physical therapist assistant or supportive personnel screenings to determine the need for the following:

- (1) primary, secondary or tertiary services;
- (2) further examination or intervention;
- (3) consultation by a physical therapist;
- (4) referral to another health care practitioner.

For purposes of this section, screening is defined as determining the need for further examination and/or intervention by a physical therapist or for referral to another health professional.

* * *

Subchapter C. Physical Therapist Assistants General Provisions

* * *

§40.161. Registration of physical therapist assistants; practice; exceptions.

* * *

(c) This subchapter does not prohibit physical therapist assistant students from assisting a physical therapist licensed to practice without restriction in this Commonwealth under the direct on-premises supervision of the physical therapist as is incidental to their course of study in a program which has been approved for the education and training for physical therapist assistants by the [Nationally recognized accrediting agency] Commission on Accreditation in Physical Therapy Education (CAPTE) [for physical therapist assistant education programs.]

* * *

§40.163. Requirements for registration.

(a) Under Section 9.1(a) of the act (63 P.S. §1309.1(a)), an applicant for registration by examination shall submit evidence of the following:

(1) Graduation from a physical therapist assistant program [adopted by the Board,] which program has been approved for the education and training for physical therapist assistants by [a Nationally recognized accrediting agency recognized by the Board.] the Commission on Accreditation in Physical Therapy Education (CAPTE).

* * *

§40.164. Physical therapist assistant registration examination.

* * *

[(b) Passing score. The passing score shall be 75 scaled to the recommended score of third-party testing services.]

[c] (b) Failure and reexamination. In the case of failure of examination, the following apply:

* * *

[(d) Examination taken outside of this Commonwealth. Applicants who take a physical therapist assistant registration examination outside of this Commonwealth are not exempted from achieving the passing score established by the Board or meeting the other registration requirements in this subchapter.]

* * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY

Post Office Box 2649
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February 12, 2003

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Physical Therapy
16A-659: General Provisions

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Physical Therapy pertaining to general provisions.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

James J. Irrgang, Chairperson
State Board of Physical Therapy

JJI/BSM:kp
Enclosure

c: W. Raymond Ketner, Acting Deputy Commissioner
Bureau of Professional and Occupational Affairs
John T. Henderson, Jr., Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Beth Sender Michlovitz, Counsel
State Board of Physical Therapy
State Board of Physical Therapy

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-659
SUBJECT: State Board of Physical Therapy - General
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

NOTICE OF PROPOSED
REGULATIONS
RECEIVED
DEPARTMENT OF STATE
JAN 13 2003

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-12-03	<u>How A. Clark</u>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
2/12/03	<u>Mary Walmer</u>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
2/12/03	<u>Elena Page</u>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL
2/12/03	<u>C. Le B...</u>	LEGISLATIVE REFERENCE BUREAU