

# Regulatory Analysis Form

This space for use by IRRC  
2004 MAY -7 PM 2:05

(1) Agency

Department of State, Bureau of Professional and Occupational  
Affairs, State Board of Physical Therapy

REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

16A-6510

IRRC Number: 2369

(3) Short Title

**Certificate of Authorization**

(4) PA Code Cite

49 Pa. Code, Chapter 40  
§§40.2, 40.5 and 40.61-40.63

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Beth Sender Michlovitz, Counsel**  
**State Board of Physical Therapy**  
**(717)783-7200**  
Secondary Contact: **Joyce McKeever, Deputy Chief**  
**Counsel, Regulatory Review**  
**(717)783-7200**

(6) Type of Rulemaking (check one)

Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final, Proposed Omitted

(7) Is a 120-Day Emergency Certification  
Attached?

No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

**These regulations implement Act 6 of February 21, 2002, which amended the Physical Therapy Act to permit a physical therapist to practice physical therapy without obtaining a referral from a physician if the physical therapist qualifies for and obtains from the State Board of Physical Therapy a certificate of authorization to practice physical therapy without a referral.**

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

**Section 812.1 of the Administrative Code of 1929 (71 P.S. §279.3a), Act 6 of February 21, 2002 and Section 3 of the Physical Therapy Practice Act (63 P.S. §1303).**

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(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.

**The regulation is mandated by Act 6 of February 21, 2002 authorizing a physical therapist to practice physical therapy without obtaining a referral from a physician. There is no deadline for action.**

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

**Act 6 of February 21, 2002 authorizes the Board to issue to physical therapists who meet the standards set forth in the Act a certificate of authorization to practice physical therapy without the required referral of a physician if a physical therapist qualifies for and obtains a certificate of authorization to practice physical therapy without a referral. The Act requires that regulations be adopted to implement these statutory provisions. There is a compelling public interest in issuing certificates of authorization to physical therapists so that patients can be seen directly by a physical therapist rather than being referred first by a physician.**

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

**Nonregulation would result in the failure by the Board to provide efficient physical therapy services to the public in that certificates of authorization to practice physical therapy without obtaining a referral from a physician would not be available to licensees.**

(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 permitting licensees who meet the standards and qualifications of Act 6 and these regulations to provide direct access of physical therapy services without requiring a physician referral. Licensees will benefit from the regulation by being authorized to practice independently.**

### 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.)

**No groups have been identified who will be adversely affected by the regulation.**

(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.)

**Licensed physical therapists applying for certificates of authorization will be required to comply with the regulation. It is expected that approximately 5500 licensees will initially apply for certificates of authorization.**

(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 2002, 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 eight 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 Association of Pennsylvania, Pennsylvania Association of Rehabilitation Facilities, 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 and Hahnemann Hospital, Mercyhurst College, Mount Aloysius College, Penn State University, Penn State University Mount Alto Campus, East Stroudsburg University, Lock Haven University, Pennsylvania State University, California University of Pennsylvania, University of Pittsburgh, West Chester University, Temple University, Messiah College, Waynesburg College, Mercyhurst College, Cheri Rinehart, Richard Dumaresq, Ed.D., Pennsylvania Medical Society, Pennsylvania Osteopathic Society and Widener University.**

### Regulatory Analysis Form

(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.

**Licensed physical therapists who apply for a certificate of authorization to practice physical therapy without a referral from the physician will be required to pay an application fee of \$30 and a \$37 fee for biennial renewal of the certificate. Certificate holders will be required to pay costs associated with taking continuing education courses. Also, applicants for approval of continuing education as a provider or program will be required to pay a fee of \$40 for each course approved by the Board.**

(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 additional costs/savings to state government because expenses related to the processing of applications for certificates and the biennial renewal of certificates will be offset by application fees designed to cover the cost of administration.**

### 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community	\$165,000	\$22,000	\$247,000	\$22,000	\$292,100	\$22,000
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue</b>						

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

The cost estimates are based upon the number of applicants which the Board estimates will avail themselves of the specified service over a fiscal year period.

- |  |                                   |
|--|-----------------------------------|
| a) Application for Certificate of Authorization to Practice without a physician's referral.                | <b>\$30 © x 5,500 = \$165,000</b> |
| b) Initial application during renewal periods  | <b>\$30 © x 600 = \$18,000</b>    |
| c) Renewal application fees for FY+2   | <b>\$37 © x 6,100 = \$225,700</b> |
| d) Renewal application fees for FY+4   | <b>\$37 © x 7,300 = \$270,100</b> |
| e) Application for approval as a Continuing Education Provider or Program Approval during each fiscal year | <b>\$40 © x 100 = \$4,000</b>     |

**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	\$268,110.98	\$259,358.51	\$206,679.59	\$287,000.00

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

**The benefits of allowing physical therapists to practice without a referral from a physician outweigh the costs involved because the public will be better served by having direct access to a physical therapist for most types of care.**

(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 implement Act 6 is through regulations.**

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

**No other regulatory schemes were considered.**

### 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.

**There are no federal standards applicable to the practice of physical therapy.**

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

**These regulations are in accordance with the practice of other state boards of physical therapy and will not put Pennsylvania at a competitive disadvantage with other states. In particular, 48 states have some form of direct access regulations. Of those states, 29 permit direct access to a physical therapist but the authority is limited by the time in which a physical therapist may treat a patient before referring the patient to a physician. Pennsylvania is one of these 29 states. The remaining 18 states permit unlimited direct access to a physical therapist. Fifteen states permit direct access of evaluations only.**

**The following neighboring states have some type of direct access provisions:**

**New York – direct access only for evaluations**

**Connecticut – direct access only for evaluations**

**New Jersey – direct access only for evaluations**

**Delaware – direct access limited to number of days of treatment before referring to doctor**

(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 regulations at regularly scheduled Board meetings held bi-monthly at 2601 North 3<sup>rd</sup> 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 2601 North 3<sup>rd</sup> Street, Harrisburg, Pennsylvania. A schedule of Board meeting dates is available on the Department of State's website at [www.dos.state.pa.us](http://www.dos.state.pa.us).**

### 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.

**New application forms will be required to be developed for applicants desiring a certificate of authorization. Also, there will be paperwork associated with the auditing of the continuing education requirement.**

(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 identified no special needs of any subset or groups, 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.**



FACE SHEET  
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REVIEW COMMISSION

#2369

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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.

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Physical Therapy  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-6510

*Tanya C. ...*  
5/5/04  
DATE OF APPROVAL

\_\_\_\_\_  
DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

BY: *J. J. ...*  
James J. ...

(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.

FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF PHYSICAL THERAPY  
49 PA. CODE, CHAPTER 40  
CERTIFICATE OF AUTHORIZATION

The State Board of Physical Therapy (Board) amends §40.5 (relating to fees) and adds §§40.61-40.63 (relating to certificate of authorization to practice physical therapy without a referral; professional liability insurance; and continuing education) to read as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication in the Pennsylvania Bulletin.

B. Statutory Authority

These amendments are adopted by the Board under Section 3 of the Physical Therapy Practice Act (act) (63 P.S. §1303) and Section 812.1 of the Administrative Code of 1929 (71 P.S. §279.3a). The act of February 21, 2002 (P.L. 234, No. 6)(Act 6) (63 P.S. §1309) amended the act to permit a physical therapist to practice physical therapy without obtaining a referral from a physician if the physical therapist qualifies for and obtains from the Board a certificate of authorization to practice physical therapy without a referral. These amendments implement Act 6.

C. Background and Purpose

These amendments provide for the issuance of a certificate of authorization by the Board under Act 6. The regulations establish a fee for the issuance of a certificate and otherwise establish the requirements and conditions for obtaining and practicing under a certificate.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of the proposed rulemaking was published at 33 Pa.B. 5742 (November 22, 2003). The Board received comments from the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC), the Pennsylvania Medical Society (PMS), the Pennsylvania Physical Therapy Association (PPTA), and NovaCare Rehabilitation. The Senate Consumer Protection and Professional Licensure Committee did not submit comments. Responses to these comments are organized by subject as follows.

§ 40.2. Practice of medicine prohibited.

IRRC pointed out that the existing §40.2 (relating to practice of medicine prohibited) states, "The license issued to those practicing physical therapy does not authorize...the right to apply any of these treatments except upon the referral of a physician...." Act 6 of 2002 amended Section 9(a) of the act (63 P.S. §1309(a)) to state, "Except as provided in subsection (b), no person licensed under this act as a physical therapist shall treat human ailments by physical therapy or otherwise except by referral." Subsection (b) provides the conditions for practice without referral. IRRC suggested that § 40.2 be made consistent with Section 9 of the act as amended. The Board has agreed with this suggestion and has amended § 40.2 to be consistent with section 9 of the act.

§40.61. Certificate of authorization to practice physical therapy without a referral.

IRRC, PMS and the HPLC commented that § 40.61 does not reflect the requirement of Section 9(d)(3) of the act whereby a physical therapist must refer patients to a licensed physician or other appropriate health care practitioner in “cases for which treatment is beyond the education, expertise or experience of the Physical therapist.” The Board has added these statutory limitations to §40.61(d).

HPLC and PMS asked if the Board would consider including in these regulations the list of prohibited acts set forth in Section 9(b) of Act 6. The Board has agreed to include the list under §40.16(f).

IRRC asked the Board to explain its process in determining that “continuous practice” should consist of 200 hours each year of physical therapy in the delivery of patient care. The Board arrived at the 200 hours based upon the standard used by the American Board of Physical Therapist Specialists that requires 2000 hours of practice over 10 years in order to maintain certification as a specialist. The Board averaged this out to total 200 hours per year.

IRRC also recommended that the definition of “continuous practice” in subsection (a) should be moved from paragraph (5) to paragraph (3) for clarity purposes. The Board agrees and has implemented this suggestion.

PPTA, HPLC and NovaCare Rehabilitation asked the Board to consider other types of settings other than the delivery of patient care as meeting the “continuous practice” requirement of 200 hours each year of the practice of physical therapy in the delivery of direct patient care. In particular, the PPTA commented that an individual in an academic setting that may qualify as a course sponsor/presenter might not meet this clinical requirement. Similarly, an individual who is involved in the management of a practice and is regularly determining appropriateness of care, adequacy of documentation, and quality of care may not meet this requirement. PPTA contends that these individuals would be in a position of decision making with regard to an applicant’s ability to practice physical therapy without a referral but would not be able to do so themselves. The Board considered this comment but notes that in order to meet this requirement, academics would only need to practice 4 hours each week and that most institutions provide that clinical opportunity. In addition, the 200 hours per year is only required for initial certification, not for renewal of the certification. Accordingly, the Board does not believe that a revision to this requirement is necessary.

The PPTA also asked how the 200 hours will be tracked and how the Board will verify the 200 hour requirement. The Board intends to require the applicant on the application for initial certification to attest that the applicant has completed at least 200 hours each year in the delivery of direct patient care for at least 2 years immediately preceding the filing of the application. If the

Board has reason to suspect that the applicant's statement is incorrect, the applicant will be required to provide documentation or other evidence in support of the statement.

PPTA and NovaCare Rehabilitation also asked for clarification on whether the 200 hours of direct patient care would only be required for initial certification or if it would also be required for purposes of renewal of the certification. NovaCare Rehabilitation asked if part of the 200 hours could be acquired through additional continuing education rather than through direct patient care. Under Act 6, the 200 hour "continuous practice" requirement relates only to initial certification, not to renewal of the certificate. The regulation tracks the act and requires the 200 hours for purposes of initial certification only.

§40.63. Continuing Education.

The PPTA asks for an explanation as to why continuing education is not required until after the first renewal of the certificate of authorization. The reason is that the licensee would not normally have had the entire renewal period to complete the required credit hours. For example, a licensee who receives the initial certificate midway through the renewal cycle would only have half the time to complete all the credits. This would be inherently unfair to the certificate holder.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

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

F. Fiscal Impact and Paperwork Requirements

There should be no adverse fiscal impact or additional paperwork requirements incurred by the Board, political divisions or the private sector.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §§ 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking published at 33 Pa.B. 5742 on November 22, 2003 to IRRC, the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with Section 5(c) of the

Regulatory Review Act (71 P.S. §745(c)), the Board also provided the Committees and IRRC with a copy of all comments received, as well as other documents.

In preparing this final-form rulemaking, the Board has considered all comments received from IRRC, the House Professional Licensure Committee and the public. No comments were received from the Senate Consumer Protection and Professional Licensure Committee.

Under Section 5.1(j.2) of the Regulatory Review Act (71 P.S. §745.5a(j.2)) this final-form rulemaking was (deemed) approved by the House Committee on \_\_\_\_\_ and (deemed) approved by the Senate Committee on \_\_\_\_\_. IRRC met on \_\_\_\_\_, and approved the regulation in accordance with Section 5.1(e) of the Regulatory Review Act (71 P.S. §745.5a(e)).

I. Contact Person

Interested persons may obtain information regarding the amendments by writing to Robert Kline, Board Administrator, State Board of Physical Therapy, P.O. Box 2649, 2601 North 3<sup>rd</sup> Street, Harrisburg, PA 17105-2649.

J. Findings.

The Board finds that:

(1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to the final rulemaking do not enlarge the purpose of the proposed rulemaking published at 33 Pa.B. 5742 (November 22, 2003).

(4) The rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble.

K. Order.

The Board, acting under its authorizing statute, orders that:

(1) The regulations of the Board, 49 Pa. Code, Chapter 40, are amended to read as set forth in Annex A.

(2) The Board shall submit this Order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(3) The Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This Order shall take effect upon publication in the Pennsylvania Bulletin.

JAMES J. IRRGANG, CHAIRPERSON

Annex A  
**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**  
**PART I. DEPARTMENT OF STATE**  
**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**  
**CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY**  
**Subchapter A. PHYSICAL THERAPISTS**

**GENERAL PROVISIONS**

**§40.2. Practice of medicine prohibited.**

The license issued to those practicing physical therapy does not authorize the right to use the title "Doctor of Medicine[.]" [the right to apply any of these treatments except upon the referral of a physician or other person authorized by law to order the same, nor] or the right to use drugs administered internally. EXCEPT AS AUTHORIZED IN SECTION 9 OF THE ACT (63P.S. §1309), NO PERSON LICENSED UNDER THE ACT AS A PHYSICAL THERAPIST SHALL TREAT HUMAN AILMENTS BY PHYSICAL THERAPY OR OTHERWISE EXCEPT UPON THE REFERRAL OF A PHYSICIAN OR OTHER PERSON AUTHORIZED BY LAW TO ORDER THE SAME.

**§40.5. Fees**

The following fees are charged by the Board:

*Physical therapist:*

\* \* \*

<u>Application for Certificate to Practice Physical Therapy without a referral.....</u>	<u>\$30</u>
<u>Biennial renewal of Certificate to Practice Physical Therapy without a referral.....</u>	<u>\$37</u>
<u>Application for approval of continuing education provider or program (per each course offered).....</u>	<u>\$40</u>

\* \* \*

§ 40.61. Certificate of authorization to practice physical therapy without a referral.

(a) An applicant for certification of authorization to practice physical therapy without the referral of a licensed physician shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following requirements:

(1) Holds a current license to practice physical therapy in this Commonwealth.

(2) Has done one of the following:

(i) Passed the National Physical Therapy Examination (NPTE) after January 1, 1990.

(ii) Passed the NPTE prior to January 1, 1990 and successfully completed, within 2 years prior to application, a Board approved course consisting of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. The Board will maintain a list of currently approved courses.

(3) Has done one of the following:

(i) Practiced physical therapy in the delivery of patient care on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(ii) Been licensed by endorsement and practiced physical therapy in the delivery of patient care as a licensed physical therapist in the other state on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.



(iii) Provided proof of meeting these practice requirements through any combination of (i) and (ii).

(iv) FOR PURPOSES OF THIS SECTION, PRACTICE OF PHYSICAL THERAPY ON A CONTINUOUS BASIS IS DEFINED AS A MINIMUM OF 200 HOURS EACH YEAR IN THE DELIVERY OF DIRECT PATIENT CARE.

~~(4) Has obtained professional liability insurance under the requirements of §40.62 (relating to liability insurance).~~

~~(5) For purposes of this section, continuous practice is defined as a minimum of 200 hours each year in the delivery of direct patient care.~~

~~(b) A certificate holder shall display the certificate of authorization in a manner conspicuous to the public.~~

~~(c) A certificate holder may not delegate the care of a patient being treated without a referral to a physical therapist who is not a certificate holder.~~

~~(d) A CERTIFICATE HOLDER SHALL REFER PATIENTS TO A LICENSED PHYSICIAN OR OTHER APPROPRIATE HEALTH CARE PRACTITIONER IN ANY OF THE FOLLOWING CASES:~~

~~(1) CASES WHERE SYMPTOMS ARE PRESENT FOR WHICH PHYSICAL THERAPY IS A CONTRAINDICATION.~~

~~(2) CASES FOR WHICH TREATMENT IS OUTSIDE THE SCOPE OF PRACTICE OF PHYSICAL THERAPY.~~

~~(3) CASES FOR WHICH TREATMENT IS BEYOND THE EDUCATION, EXPERTISE OR EXPERIENCE OF THE PHYSICAL THERAPIST.~~

(E) A certificate holder may treat a person without a referral as provided in this chapter for up to 30 calendar days from the date of the first treatment. A physical therapist may not treat a person beyond 30 days from the date of the first treatment unless the person has obtained a referral from a licensed physician, dentist or podiatrist. The date of the first treatment for purposes of this subsection is the date the person is treated by any physical therapist treating without a referral.

(F) A CERTIFICATE HOLDER MAY NOT TREAT A CONDITION IN ANY PERSON WHICH IS A NONNEUROLOGIC, NONMUSCULAR OR NONSKELETAL CONDITION OR TREAT A PERSON WHO HAS AN ACUTE CARDIAC OR ACUTE PULMONARY CONDITION UNLESS THE CERTIFICATE HOLDER HAS CONSULTED WITH THE PERSON'S LICENSED PHYSICIAN, DENTIST OR PODIATRIST REGARDING THE PERSON'S CONDITION AND THE PHYSICAL THERAPY TREATMENT PLAN OR HAS REFERRED THE PERSON TO A LICENSED PHYSICIAN, DENTIST OR PODIATRIST FOR DIAGNOSIS AND REFERRAL.

**§ 40.62. Professional Liability insurance**

(a) Beginning January 1, 2005, or upon applying for a certificate of authorization, whichever occurs earlier, a licensee who applies for and obtains a certificate of authorization shall obtain and maintain professional liability insurance coverage in the minimum amount required to be maintained by physicians under Section 711 of the Medical Care Availability and Reduction of Error (Mcare) Act, (40 P.S. §1303.711).

(b) A certificate holder shall notify the Board within 30 days of the holder's lapse in coverage of the required insurance.

- (c) The certificate of authorization shall WILL automatically be suspended upon failure to be covered by the required insurance and will not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance.
- (d) Satisfactory evidence of insurance coverage is any one of the following:
- (1) A self-insurance plan that meets the standards and procedures established by the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).
  - (2) Personally purchased professional liability insurance.
  - (3) Professional liability insurance, coverage provided by the licensee's employer.
  - (4) A similar type of coverage.

**§40.63. Continuing education**

- (a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:
- Certificate holder—A licensed physical therapist who holds a certificate of authorization to practice physical therapy without a referral.
- Contact hour—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program.
- (b) Continuing education requirement for renewal of certificate of authorization. Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have completed during the preceding biennium a minimum of 20 contact hours of physical therapy continuing education related to keeping the certificate holder apprised of advancements and new developments in the practice of

the physical therapy profession. At least 10 of the 20 contact hours shall be in evaluative procedures to treat a person without a referral.

(c) Reports to the Board. A certificate holder shall certify compliance with the continuing education hours requirement at the time of biennial renewal of the certificate. A certificate holder shall retain for at least 4 years, certificates, transcripts or other documentation showing completion of the prescribed number of hours. These records are subject to audit by the Board.

(d) Approved sponsors; acceptable courses and programs.

(1) Courses and programs provided by Board-approved sponsors will be accepted as satisfying the continuing education requirement. It is the responsibility of the certificate holder to ascertain the approval status of the sponsor before undertaking a continuing education activity.

(2) Irrespective of the sponsor, the Board reserves the right to reject a continuing education course or program submitted by a certificate holder if it is outside the scope of practice of physical therapy. The Board will not accept courses or programs which are unrelated to the actual practice of physical therapy—for example, instruction in office management or practice building. A certificate holder will be notified of a rejected course or program in writing, along with the reason for the rejection.

(3) Sponsors of physical therapy continuing education seeking Board approval shall submit an application on forms provided by the Board and pay the required fee. The applicant will be notified of approval or disapproval in writing. Notifications

of disapproval will set forth reasons. The Board will not approve a sponsor unless

it:

- (i) Offers courses or programs, or both, with specific learning objectives geared to improve the professional competence of the participant.
  - (ii) Verifies attendance of the course.
  - (iii) Provides each attendee with a certificate which includes participant's name, date, place, course title, presenter and number of contact hours.
- (4) The Board may withdraw approval of a sponsor for cause. The sponsor will be notified in writing of the reasons for withdrawal of approval.
- (e) Distance education. A certificate holder may accrue all required hours in distance education courses offered by approved sponsors of continuing education as long as the course sponsor evaluates and assesses the extent of learning that has taken place.
- (f) Reinstatement of certificate. Reinstatement of certificate shall be subject to the following conditions:
- (1) A person whose certificate has lapsed or been inactive shall show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement.
  - (2) A person whose certificate has been suspended or restricted shall show compliance with the continuing education requirement during the entire period of suspension or restriction.
- (g) Waivers; exemptions for continuing education. The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the

requirements. No waiver or extension of time will be granted unless a written request is submitted by the licensee; or in cases of physical disability or illness, by a physician licensed in this state or another state or territory of the United States or the District of Columbia and whose license is in good standing, or both. All necessary documentation must be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of any waiver granted require the applicant to make up all or part of the continuing education waived.

## FEE REPORT FORM

Agency: State - BPOA

Date: January 29, 2003

Contact: W. Raymond Ketner

Phone No. 783-7194

### Fee Title, Rate and Estimated Collections:

Biennial Renewal-Cert. of Authorization to Practice without a Physician Referral: \$37.00

Estimated Biennial Revenue: \$251,600.00 (6,800 renewals x \$37.00)

### Fee Description:

The fee will be charged biennially for every Certificate of Authorization to Practice without a Physician Referral renewal request.

### Fee Objective:

The fee should defray a portion of the State Board of Physical Therapy's general operating costs.

### Analysis, Comment, and Recommendation:

It is recommended that a fee of \$37.00 be established for renewal of Certificate of Authorization to Practice without a Physician Referral, thereby causing those certificate holders to contribute to the operational costs of the State Board Physical Therapy.

## FEE REPORT FORM

Agency: State - BPOA Date: 01/29/2003  
Contact: W. Raymond Ketner  
Phone No. 783-7194

### Fee Title, Rate and Estimated Collections:

App Fee-Cert. of Authorization to Practice without a Physician Referral: \$30.00  
Estimated Biennial Revenue: (1<sup>st</sup> cycle only) \$165,000.00 (5,500 applications x \$30.00)  
Each Biennial Cycle Thereafter: \$39,000.00 (1,300 applications x \$30.00)

### Fee Description:

The fee will be charged to each applicant who requests a Certificate of Authorization to Practice without a physician referral.

### Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Physical Therapy to review and process an application and (2) defray a portion of the Board's administrative overhead.

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### Fee-Related Activities and Costs:

Board Staff- review application:	(.50/hr)	12.74
Avg. cost per application-board administrator:		.83
Avg. cost per application-legal office:		.43
Avg. cost per application-board member:		1.00
Administrative Overhead:		13.27

Total Estimated Cost: 28.24

Proposed Fee: \$ 30.00

### Analysis, Comment, and Recommendation:

It is recommended that a fee of \$30.00 be established to process a request for a Certification of Authority to Practice without a Physician Referral.



Board staff receives application, contacts applicant to request any missing information, reviews for completeness, enters data into computer, verifies status of Physical Therapy license, verifies proof of insurance and other supporting documents. Issues Certification of Authorization when all requirements are met or sends letter of discrepancy if applicable. Board Administrator evaluates documentation of experience in the delivery of patient care and casework involving evaluative procedures to treat a person without physician referral.

It is estimated that 10% of all applications will require additional review by the Legal Office and/or a board member because of responses or information provided on the application. The total cost of the additional review and processing has been averaged over the total number of anticipated applications since it is impossible to know in advance which applications will require additional review.

## FEE REPORT FORM

Agency: State - BPOA

Date: April 10, 2003

Contact: Scott Messing

Phone No. 783-7194

### Fee Title, Rate and Estimated Collections:

Application for Approval as a Continuing Education Provider or Program  
Approval: \$40.00  
Estimated Biennial Revenue: \$4,000 (100 applications x \$40.00)

### Fee Description:

The fee will be charged to every applicant for approval as a continuing education provider or request for program approval.

### Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Physical Therapy to review and process an application for approval of a continuing education provider and program and (2) defray a portion of the Board's administrative overhead.

### Fee-Related Activities and Costs:

Staff time-app review	(0.50 hr.)	10.73
Board administrator: app. preparation	(0.25 hr.)	7.98
Board member review - avg. time to review	(1.00 hr.)	8.00
Administrative Overhead:		<u>13.27</u>
	Total Estimated Cost:	\$ 39.98
	Proposed Fee:	\$ 40.00

### Analysis, Comment, and Recommendation:

It is recommended that a fee of \$40.00 be established to process an application for approval of as a continuing education provider or request for program approval.

**Page 2 App. for Approval of Continuing Education Program: April 10, 2003**

Board Staff: receives request from a provider of continuing education requesting approval as a provider or approval of program(s) that licensees are required to complete as a condition of license renewal. Board administrator sends the application and supporting documents to a board member for evaluation and recommendation to approve or deny. Following decision, applicant is notified of decision; if approved, program is entered into computer system.

by the required fee, certified check, cashier's check or money order made payable to "Commonwealth of Pennsylvania." Applicants may not send cash. Refund policies for application and examination fees shall be as specified in the application ] along with the appropriate fee.

(c) An application for examination shall be submitted [ by February 10 ] directly to the professional testing organization along with the fee in accordance with the deadline provided by the professional testing organization.

\* \* \* \* \*

§ 15.12. Fees.

Following is the schedule of fees charged by the Board:

- (1) [ Application for examination..... \$40
- (2) ] Application for licensure under § 15.54(b)(1), (2) and (3) or § 15.56(a)(3) ..... \$60
- [ (3) ] (2) \* \* \*
- [ (4) ] (3) \* \* \*
- [ (5) ] (4) \* \* \*
- [ (6) Administration of examination for one section or more ..... \$45
- (7) ] (5) \* \* \*
- [ (8) ] (6) \* \* \*
- [ (9) ] (7) \* \* \*
- [ (10) ] (8) \* \* \*
- [ (11) ] (9) \* \* \*
- [ (12) ] (10) \* \* \*

EXAMINATIONS

§ 15.51. Eligibility.

An applicant qualifying under section 6(b) of the act (63 P. S. § 906(b)) is eligible to take the regular examination which will be [ a written ] an examination administered on the dates and times and at the places established by the [ Board ] professional testing organization. A copy of the instructions will be furnished to the applicant.

(1) [ *Yearly examination* ] *Examination.* The [ LARE ] examination will be given [ in June on a date selected by CLARB ] on dates selected by the professional testing organization.

\* \* \* \* \*

(4) [ *Admittance.* An applicant shall present his admission letter and photograph identification to the proctor for admittance to the examination.

(5) ] \* \* \*

[ (6) *Inactive record.* Records of applicants for registration that are inactive for 5 years will be destroyed. A record will be considered inactive if an applicant has taken the examination, has failed one or more parts of the examination and has failed to retake those failed parts of the examination for 5 years, or if an applicant has been declared eligible

to sit for the examination and fails to sit for the examination for 5 years. ]

§ 15.52. [ Examination procedure ] (Reserved).

[ (a) *Examination of applicants.* The Board, in consultation with the Bureau, will contract for the preparation, administration and evaluation of its licensure examination.

(b) *Proctors.* The professional testing organization will arrange for proctors to administer the conduct of the examination. The proctor shall confiscate the examination paper of the applicant found copying, photographing or using unauthorized materials. The applicant shall be dismissed from the examination and may be disqualified from future examinations. ]

§ 15.53. Grading.

(a) [ The examination will be graded using procedures developed by CLARB in consultation with a professional testing organization under contract to the Bureau. ] Test results will be recorded by the Board in a permanent record of the applicant.

\* \* \* \* \*

[Pa.B. Doc. No. 03-2231. Filed for public inspection November 21, 2003. 9:00 a.m.]

# STATE BOARD OF PHYSICAL THERAPY

## [49 PA. CODE CH. 40] Certificate of Authorization

The State Board of Physical Therapy (Board) proposes to amend § 40.5 (relating to fees) and add §§ 40.61—40.63 (relating to certificate of authorization to practice physical therapy without a referral; professional liability insurance; and continuing education) to read as set forth in Annex A.

*Effective Date*

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin*.

*Statutory Authority*

The proposed rulemaking is authorized under section 3 of the Physical Therapy Practice Act (act) (63 P. S. § 1303) and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a). The act of February 21, 2002 (P. L. 234, No. 6) (Act 6) (63 P. S. § 1309) amended the act to permit a physical therapist to practice physical therapy without obtaining a referral from a physician if the physical therapist qualifies for and obtains from the Board a certificate of authorization to practice physical therapy without a referral. The proposed rulemaking implements Act 6.

*Background and Purpose*

The proposed rulemaking provides for the issuance of a certificate of authorization by the Board under Act 6. The

proposed rulemaking establishes a fee for the issuance of a certificate and otherwise establishes the requirements and conditions for obtaining and practicing under a certificate. The following is a description of the proposed amendments.

*Section 40.5*—Section 8(b) of the act (63 P. S. § 1308(b)) requires the Board to set all fees by regulation. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from revenues and are funded through fees. The cost of providing the service forms the basis for the fee.

It was determined that upon the implementation of Act 6, approximately 5,500 applications would be submitted to the Board for initial certificates of authorization to practice physical therapy without a physician's referral with approximately 1,300 new applications being submitted each biennial cycle thereafter. The analysis undertaken by the Budget Office of the Department of State establishes a fee of \$30 for the initial certificate. It was also estimated that approximately 6,800 biennial renewal applications would be submitted each biennium and that a biennial renewal fee of \$37 should be established. The Board plans on monitoring the numbers of applications received and adjusting these fees by further regulation as necessary.

*Section 40.61*—Section 40.61 reflects the requirements and language of Act 6 pertaining to the eligibility of a licensee to obtain a certificate. Act 6 requires that an applicant must be licensed in this Commonwealth as a physical therapist. Therefore, this requirement is in § 40.61(a)(1). Also, Act 6 requires that the licensee must have either passed an examination for licensure which included testing on the appropriate evaluative procedures to treat a person without a referral or have passed an examination for licensure prior to 1990 and successfully completed a course approved by the Board on the appropriate evaluative procedures to treat a person without a referral. In implementing these statutory provisions, the Board notes that its recognized examination is the National Physical Therapy Examination (NPTE). After January 1, 1990, the NPTE included testing on the appropriate evaluative procedures to treat a patient without a referral. Prior to January 1, 1990, the NPTE did not include this testing. Therefore, § 40.61(a)(2)(ii) requires that a licensee who passed the NPTE prior to January 1, 1990, must have successfully completed within the 2 years preceding application a Board-approved course consisting of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. This subsection would require the Board to maintain a list of currently approved courses meeting the Board's criteria. The Board believes that requiring at least 10 hours within 2 years preceding application is the minimum number of hours acceptable to assure that licensees are fresh and knowledgeable in this area to practice safely.

In addition to the educational requirement of Act 6, the statute requires that the licensees have practiced physical therapy in this Commonwealth or in a reciprocal state in the delivery of patient care on a continuous basis for at least 2 years immediately preceding application for the certificate or through the combination of 2 years practice in this Commonwealth and a reciprocal state. These requirements are in § 40.61(a)(3).

Subsection (b) would define "continuous practice" as a minimum of 200 hours each year in the delivery of direct

patient care. The Board has determined that 200 hours each year represents approximately 10% of a physical therapist's annual practice time. Subsection (c) reflects the requirement in the act that certificates of authorization be displayed in a conspicuous manner to the public.

Act 6 requires that only a licensee holding a certificate of authorization may practice without the required referral from a physician. Subsection (d) clarifies that a physical therapist who holds a certificate cannot delegate the care of a patient to another physical therapist who does not have a certificate.

*Section 40.62*—Section 9(b)(4) of the act (63 P. S. § 1309(b)(4)) was amended by Act 6 to require that a certificate holder have professional liability insurance in the minimum amounts required to be maintained by physicians under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006). The Board notes, in implementing this statutory provision, that the Health Care Services Malpractice Act was subsequently replaced by the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P. S. §§ 1303.101—1303.5108). Specifically, section 711 of the MCARE Act (40 P. S. § 1303.711) sets forth the insurance requirements. Accordingly, the Board references section 711 of the MCARE Act in § 40.62(a).

Act 6 sets forth the requirement that a licensee shall notify the Board within 30 days of the licensee's failure to be covered by the required insurance. Also, Act 6 provides for the automatic suspension of a certificate upon the failure to be covered by the required insurance and that the certificate not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance. Section 40.62(b) and (c) mirrors these statutory provisions.

Act 6 amended section 9(b)(iii) of the act to set forth the kinds of insurance satisfactory for compliance with this requirement. Section 40.62(c) reflects these options. With respect to self-insurance, section 9(b)(iv) of the act requires that the Board adopt by regulation standards and procedures established by the Insurance Commissioner for self-insurance. This has been accomplished through § 40.62(c)(1) of the proposed rulemaking.

*Section 40.63*—Act 6 requires that for a licensee to biennially renew a certificate, the licensee must complete, within the biennial period, at least 20 hours of continuing education regarding keeping the certificate holder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 20 hours are required to be in appropriate evaluative procedures to treat a person without a referral. Act 6 further requires that the Board approve continuing education programs and program providers in accordance with standards and criteria approved by the Board by regulation including any fees necessary to implement these provisions.

Section 40.63 implements these provisions of Act 6. First, the Board defines appropriate terms used in this section. In particular, the term "contact hour" would be defined as "a unit of measure equaling 60 minutes of participation in an approved continuing education course or program."

Subsections (b) and (c) mirror the continuing education requirements of Act 6. Subsection (c) further provides for the keeping of continuing education records for 4 years and for the auditing of continuing education records by the Board.

Subsection (d) establishes sponsors and acceptable courses and programs. Section 40.63(d)(1) clarifies that it is the responsibility of the certificate holder to ascertain the approval status of the sponsor before taking a course. Paragraph (2) provides that even if a sponsor is approved, a course may be rejected by the Board if the course is outside the scope of practice of physical therapy. Also, this provision mirrors the act in that credit will not be given for courses in office management or practice building. Paragraph (2) provided that a certificate holder will be notified of a rejected course in writing along with the reason for the rejection.

Section 40.63(d)(3) sets forth the process for applying for approval as a sponsor of continuing education and the criteria for approval. Under § 40.63(e), home study courses would be authorized if given by approved sponsors. Subsection (f) reflects the statutory provision that the continuing education requirements do not apply until after the first renewal of the certificate of authorization.

Subsection (g) required that for a certificate to be reinstated or reactivated, continuing education compliance must be substantiated. Subsection (h) provides for waivers of the continuing education requirement due to illness or hardship as set forth in section 9(c)(2) of the act.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no fiscal impact and will not impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 12, 2003, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking 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*. Reference No. 16A-651, Practice of Physical Therapy without Referral, when submitting comments.

JAMES J. IRRGANG,  
*Chairperson*

**Fiscal Note:** 16A-6510. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS

GENERAL PROVISIONS

§ 40.5. Fees.

The following fees are charged by the Board:

*Physical therapist:*

\* \* \* \* \*

Application for Certificate to Practice Physical Therapy without a referral ..... \$30

Biennial renewal of Certificate to Practice Physical Therapy without a referral ..... \$37

Application for approval of continuing education provider or program (per each course offered).. \$40

\* \* \* \* \*

*(Editor's Note.* Sections 40.61—40.63 are new. They are printed in regular type to enhance readability.)

PRACTICE WITHOUT PHYSICIAN REFERRAL

§ 40.61. Certificate of authorization to practice physical therapy without a referral.

(a) An applicant for certification of authorization to practice physical therapy without the referral of a licensed physician shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following requirements:

(1) Holds a current license to practice physical therapy in this Commonwealth.

(2) Has done one of the following:

(i) Passed the National Physical Therapy Examination (NPTE) after January 1, 1990.

(ii) Passed the NPTE prior to January 1, 1990 and successfully completed, within 2 years prior to application, a Board approved course consisting of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. The Board will maintain a list of currently approved courses.

(3) Has done one of the following:

(i) Practiced physical therapy in the delivery of patient care on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(ii) Been licensed by endorsement and practiced physical therapy in the delivery of patient care as a licensed physical therapist in the other state on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(iii) Provided proof of meeting these practice requirements through any combination of subparagraphs (i) and (ii).

(4) Has obtained professional liability insurance under the requirements of § 40.62 (relating to professional liability insurance).

(5) For purposes of this section, continuous practice is defined as a minimum of 200 hours each year in the delivery of direct patient care.

(b) A certificate holder shall display the certificate of authorization in a manner conspicuous to the public.

(c) A certificate holder may not delegate the care of a patient being treated without a referral to a physical therapist who is not a certificate holder.

(d) A certificate holder may treat a person without a referral as provided in this chapter for up to 30 calendar days from the date of the first treatment. A physical therapist may not treat a person beyond 30 days from the date of the first treatment unless the person has obtained a referral from a licensed physician, dentist or podiatrist. The date of the first treatment for purposes of this subsection is the date the person is treated by any physical therapist treating without a referral.

#### § 40.62. Professional liability insurance.

(a) Beginning January 1, 2005, or upon applying for a certificate of authorization, whichever occurs earlier, a licensee who applies for and obtains a certificate of authorization shall obtain and maintain professional liability insurance coverage in the minimum amount required to be maintained by physicians under section 711 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.711).

(b) A certificate holder shall notify the Board within 30 days of the holder's lapse in coverage of the required insurance.

(c) The certificate of authorization shall automatically be suspended upon failure to be covered by the required insurance and will not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance.

(d) Satisfactory evidence of insurance coverage is any one of the following:

(1) A self-insurance plan that meets the standards and procedures established by the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(2) Personally purchased professional liability insurance.

(3) Professional liability insurance, coverage provided by the licensee's employer.

(4) A similar type of coverage.

#### § 40.63. Continuing education

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Certificate holder*—A licensed physical therapist who holds a certificate of authorization to practice physical therapy without a referral.

*Contact hour*—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program.

(b) *Continuing education requirement for renewal of certificate of authorization.* Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have com-

pleted during the preceding biennium a minimum of 20 contact hours of physical therapy continuing education related to keeping the certificate holder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 20 contact hours shall be in evaluative procedures to treat a person without a referral.

(c) *Reports to the Board.* A certificate holder shall certify compliance with the continuing education hours requirement at the time of biennial renewal of the certificate. A certificate holder shall retain for at least 4 years, certificates, transcripts or other documentation showing completion of the prescribed number of hours. These records are subject to audit by the Board.

(d) *Approved sponsors; acceptable courses and programs.*

(1) Courses and programs provided by Board-approved sponsors will be accepted as satisfying the continuing education requirement. It is the responsibility of the certificate holder to ascertain the approval status of the sponsor before undertaking a continuing education activity.

(2) Irrespective of the sponsor, the Board reserves the right to reject a continuing education course or program submitted by a certificate holder if it is outside the scope of practice of physical therapy. The Board will not accept courses or programs which are unrelated to the actual practice of physical therapy—for example, instruction in office management or practice building. A certificate holder will be notified of a rejected course or program in writing, along with the reason for the rejection.

(3) Sponsors of physical therapy continuing education seeking Board approval shall submit an application on forms provided by the Board and pay the required fee. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons. The Board will not approve a sponsor unless it:

(i) Offers courses or programs, or both, with specific learning objectives geared to improve the professional competence of the participant.

(ii) Verifies attendance of the course.

(iii) Provides each attendee with a certificate which includes participant's name, date, place, course title, presenter and number of contact hours.

(4) The Board may withdraw approval of a sponsor for cause. The sponsor will be notified in writing of the reasons for withdrawal of approval.

(e) *Distance education.* A certificate holder may accrue all required hours in distance education courses offered by approved sponsors of continuing education as long as the course sponsor evaluates and assesses the extent of learning that has taken place.

(f) *Reinstatement of certificate.* Reinstatement of certificate shall be subject to the following conditions:

(1) A person whose certificate has lapsed or been inactive shall show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement.

(2) A person whose certificate has been suspended or restricted shall show compliance with the continuing education requirement during the entire period of suspension or restriction.

(g) *Waivers; exemptions for continuing education.* The Board may, in individual cases involving physical disabil-

ity or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. No waiver or extension of time will be granted unless a written request is submitted by the licensee; or in cases of physical disability or illness, by a physician licensed in this state or another state or territory of the United States or the District of Columbia and whose license is in good standing, or both. All necessary documentation must be received by the Board no later than 90 days preceding the

biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of any waiver granted require the applicant to make up all or part of the continuing education waived.

[Pa.B. Doc. No. 03-2232. Filed for public inspection November 21, 2003, 9:00 a.m.]



# Comments of the Independent Regulatory Review Commission

on

## State Board of Physical Therapy Regulation No. 16A-6510

### Certificate of Authorization

January 21, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Physical Therapy (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on December 22, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Section 40.2. Practice of medicine prohibited. – Consistency with statute.**

This existing section states, “[T]he license issued to those practicing physical therapy does not authorize . . . the right to apply any of these treatments except upon the referral of a physician . . . .” Act 6 of 2002 amended 63 P.S. § 1309(a) to state, “Except as provided in subsection (b), no person licensed under this act as a physical therapist shall treat human ailments by physical therapy or otherwise except by referral . . . .” Subsection (b) of this statutory section provides the conditions for practice without referral. In addition to the amendments proposed, Section 40.2 of the regulations should be amended to be consistent with 63 P.S. § 1309.

**2. Section 40.61. Certificate of authorization to practice physical therapy without a referral. – Consistency with statute; Reasonableness; Clarity.**

There are three concerns with this section.

First, a physical therapist is required to refer patients to a licensed physician or other appropriate health care practitioner in “cases for which treatment is beyond the education, expertise or experience of the physical therapist.” (63 P.S. § 1309(d)(3)). This provision is not reflected in the regulation. For example, Subsections (a)(3)(i) and (ii) do not relate the type of patient care delivered in the past to the type of physical therapy that can be practiced without a referral. The statutory limitations of 63 P.S. § 1309(d)(3) should be added to the regulation.

Second, Subsection (a)(5) defines continuous practice “as a minimum of 200 hours each year in the delivery of direct patient care.” The Preamble explains that the Board determined that 200 hours per year represents approximately 10% of annual practice. How was this determined to be continuous practice? Why is a minimum of 200 hours per year the appropriate amount of experience to allow a physical therapist to practice without referral?

Finally, Subsection (a) includes a list of requirements that a physical therapist must meet to be eligible to obtain a certificate of authorization. This list includes Paragraph (5) which is a definition of "continuous practice." Since this is a definition, it should not be listed as a requirement. For clarity, the Board should move this definition to Paragraph (3) where the term is applicable.

Regulation 16A-6510

State Board of Physical Therapy

**PROPOSAL:** Regulation 16A-6510 amends 49 PA Code, Chapter 40, regulations of the State Board of Physical Therapy. The amendments make revisions to the Board's regulations as authorized by Act 6 of 2002, permitting specially certified physical therapists to practice physical therapy without a referral from a physician.

The proposed Rulemaking was published in the Pennsylvania Bulletin on November 22, 2003.

**ANALYSIS:** The proposed regulation would implement the provisions of Act 6 of 2002 which authorizes the Board to issue certificates of authorization for qualified physical therapists to render physical therapy services to patients without a referral from a licensed physician. The following fees would be added to the Board's schedule of fees.

<u>Application/Service</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Application for Certificate to Practice Physical Therapy without a Referral	None	\$30.00
Biennial Renewal of Certificate to Practice Physical Therapy without a Referral	None	\$37.00
Application for Approval of Continuing Education Provider or Program (per each course offered)	None	\$40.00

Section 40.61 would be added, reflecting the requirements of Act 6 pertaining to eligibility to obtain a certificate. An applicant must be licensed to practice physical therapy in Pennsylvania. An applicant must have passed the state licensure examination, which is the National Physical Therapy Examination (NPTE), after January 1, 1990 since it has been after that time that the exam has included testing on the appropriate evaluative procedures to treat a person without a referral. An applicant who passed the NPTE prior to January 1, 1990 must successfully complete a Board approved course of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. The Board will maintain a list of currently approved courses.

Applicants must also have practiced physical therapy in the delivery of patient care on a continuous basis for at least 2 years immediately preceding the application. Continuous practice would be defined as a minimum of 200 hours each year in the delivery of patient care. Certificate holders would be prohibited from delegating the care of a patient being treated without a referral to physical therapists who are not certificate holders. A patient may be treated without a referral for up to 30 calendar days from the date of the first treatment. Treatment may

not continue beyond 30 days unless a referral is obtained from a licensed physician, dentist or podiatrist.

Section 40.62 would be added to reflect the statutory requirement that certificate holders maintain professional liability insurance coverage in the minimum amount required to be maintained by physicians under Sec. 711 of the Medical Care Availability and Reduction of Error (MCare) Act, (40 P.S. Sec. 1303.711). A certificate of authorization would be automatically suspended upon a certificate holder's failure to maintain the required coverage.

Section 40.63 would be added to reflect the statutory requirement that as a condition of biennial certificate renewal, certificate holders must complete 20 contact hours of continuing physical therapy education related to keeping the certificate holder apprised of advancement and new developments in the practice of the physical therapy profession. Certificate holders would be required to retain documentation of completion of continuing education for at least 4 years.

Only courses and programs provided by Board-approved sponsors will be accepted as satisfying the continuing education requirement. Certificate holders will be responsible for ascertaining the approval status of a sponsor. Continuing education sponsors must seek Board approval by submitting an application with the required fee. The Board will not approve a sponsor unless it offers courses or programs with specific learning objectives geared to improve the professional competence of the participant, verifies attendance of the course, and provides each attendee with a certificate which includes the participant's name, date, place, course title, presenter or presenters and number of contact hours. Required hours may be accrued through distance education courses offered by approved sponsors as long as the course sponsor evaluates and assesses the extent of learning that has taken place.

A person seeking reinstatement of a certificate that has lapsed or been inactive must show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement. A person seeking reinstatement of a suspended or restricted certificate must show compliance during the entire period of suspension or restriction. The Board would be authorized to grant waivers or extensions of time for cases involving physical disability or illness or undue hardship. Requests for same must be submitted in writing no later than 90 days preceding the biennial renewal.

**RECOMMENDATIONS:** It is recommended that the Professional Licensure Committee take no formal action until final form regulations are promulgated. However, the Committee submits the following comments:

1. The Committee notes the comments submitted by the Pennsylvania Physical Therapy Association (PPTA) relevant to the Board's definition of "continuous practice" as a minimum of 200 hours each year in the delivery of direct patient care. The Committee asks if the Board has given consideration to the concerns of the PPTA that this standard would disqualify otherwise qualified licensees who are currently practicing in management, research or academic settings from obtaining certificates of authorization.

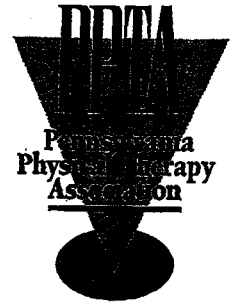
2. The Committee notes the comments submitted by the Pennsylvania Medical Society (PMS) regarding the omission of statutory language pertaining to the prohibition against treatment of certain conditions, and language outlining the standards for referral to a licensed physician or other appropriate health care provider. The Committee asks if the Board has given consideration to the concerns raised by the PMS in that regard.

House of Representatives  
Professional Licensure Committee  
January 12, 2004

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DEC 22 2003

Health Licensing Boards



December 17, 2003

Mr. Robert Kline  
Administrative Assistant  
State Board of Physical Therapy  
Commonwealth of Pennsylvania  
P.O. Box 2649  
Harrisburg, PA 17105-2649

RE: Reference No. 16A-651, Practice of Physical Therapy Without Referral

Suite 106  
4701 Devonshire Road  
Harrisburg, PA 17109.1746  
717.541.9169  
1.800.962.PPTA  
717.541.9182 FAX  
PAPTASSN@aol.com  
www.ppta.org

Dear Mr. Kline:

Representatives of the Pennsylvania Physical Therapy Association (PPTA) have reviewed the Proposed Rulemaking by the State Board of Physical Therapy regarding the Certificate of Authorization for the Practice of Physical Therapy Without Referral. The following comments are submitted regarding this proposal. For ease of reference the comments are presented by Section.

**Section 40.61. Certificate of authorization to practice physical therapy without a referral.**

(a) (5): For purposes of this section, continuous practice is defined as a minimum of 200 hours each year in the delivery of direct patient care.

The Board should give consideration to the following: An individual in an academic setting that may qualify as a course sponsor/presenter may not meet this clinical requirement. Similarly an individual that is involved in the management of a practice and is regularly determining appropriateness of care, adequacy of documentation, and quality of care may not meet this requirement. In a sense these individuals would be in a position of decision making with regard to an applicant's ability to practice physical therapy without a referral but would not be able to do so themselves.

officers

Paul Rockar, PT, MS  
President

Suzanne D. Aycock-McGuire, PT  
Vice President

Ivan Mulligan, PT, ATC  
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**Section 40.61. Certificate of authorization to practice physical therapy without a referral.**

- (a) (5): **For purposes of this section, continuous practice is defined as a minimum of 200 hours each year in the delivery of direct patient care. (continued)**

There are currently licensed individuals in the Commonwealth that are leading researchers and instructors in their respective area of physical therapy. These individuals provide patient care on an intermittent basis (2-3 hours per week). Although they are well known for their expertise and knowledge, these individuals would not be able to see a patient without a referral. This would be a disservice to the public.

If the Board decides to maintain the 200 hour requirement, consideration should be given to the hours spent in the activities described above.

In addition, other issues should be considered: How will these hours be tracked? In the event of a reported violation how will be the Board verify an individual has met the 200 hour requirement? Will HIPAA permit patient charts or billing records to be utilized to verify the clinician actually spent 200 hours in the clinic?

There is no clear delineation of the need for 200 hours of direct patient care for an individual renewing his/her certificate of authorization. As currently written it could be interpreted that an initial applicant needs to meet the 200 hour requirement but an individual renewing his/her certificate only needs to meet the continuing education requirement. If this is the case the initial 200 hour requirement should be deleted.

**40.63. Continuing Education.**

- (b): **Continuing education requirement for renewal of certificate of authorization.** Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have completed during the preceding biennium a minimum of 20 contact hours of physical therapy continuing education related to keeping the certificate holder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 20 contact hours shall be in evaluative procedures to treat a person without a referral.

As written the above does not indicate continuing education is a requirement for the first renewal of the certificate of authorization. Why would the physical therapist in the first two years of a Certificate of Authorization to practice physical therapy without a referral not be required to complete the continuing education requirements?

If you have any questions please do not hesitate to contact me.

Sincerely,

*Paul Rockar*

Paul Rockar, PT, MS  
President

cc: Jay Irrgang, PT, PhD, ATC, Chair, Pennsylvania State Board  
of Physical Therapy  
Beth Sender Michlovitz, Counsel, State Board of Physical Therapy  
J. Kent Culley, Legal Counsel, Pennsylvania Physical Therapy  
Association  
Kim Annibali, Executive Director, Pennsylvania Physical Therapy  
Association





Pennsylvania  
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December 22, 2003

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*Secretary*

ROGER F. MECUM  
*Executive Vice President*

Mr. Robert Kline  
Administrative Assistant  
State Board of Physical Therapy  
P.O. Box 2649  
Harrisburg, PA 17105-2649

Re: State Board of Physical Therapy Proposed Rulemaking; Certificate of Authorization to Practice without Referral

Dear Mr. Kline:

I am writing as President of the Pennsylvania Medical Society to comment on the proposed rulemaking published in the Pennsylvania Bulletin on November 22, 2003 concerning the granting of a certificate of Authorization of qualified physical therapists to practice without referral by the State Board of Physical Therapy.

Generally, the Medical Society is pleased that the Physical Therapy Board has closely followed the provisions of Act 6 of 2002 with respect to the requirements for training, insurance coverage, etc. to enable a physical therapist to practice without a referral from a physician, dentist, or podiatrist. One omission is the prohibition against treatment of certain conditions. Act 6 does not authorize a physical therapist "either to treat a condition in any person which is a nonneurologic, nonmuscular, or nonskeletal condition or to treat a person who has an acute cardiac or acute pulmonary condition unless the physical therapist has consulted with the person's licensed physician, dentist, or podiatrist regarding the person's condition and the physical therapy treatment plan or has referred the person to a licensed physician, dentist, or podiatrist for diagnosis and referral." The Society believes that the physical therapist must be aware of these limitations. Since it is more likely that a physical therapist applying for a certificate of authorization will see the regulations rather than the practice act, the Society recommends that a prohibited acts section be included in the regulations to address these limitations.

Secondly, language from the statute outlining the standards for referral to a licensed physician or other appropriate health care practitioner has been omitted from the regulations.

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DOS LEGAL COUNSEL

777 East Park Drive

P.O. Box 8820

Harrisburg, PA 17105-8820

Tel: 717-558-7750

Fax: 717-558-7840

E-Mail: [stat@pamedsoc.org](mailto:stat@pamedsoc.org)

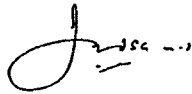
[www.pamedsoc.org](http://www.pamedsoc.org)

The requirements include referral when the symptoms are a contraindication for physical therapy; when the treatment is beyond the scope of physical therapy; or when the treatment is beyond the education, expertise or experience of the physical therapist. Again these are important limitations on independent practice that should be known to the physical therapist. Placing an appropriate section in the regulations appears to be a practical way of informing potential applicants for the certificate of authorization of these limitations.

The Pennsylvania Medical Society has shared these comments with the specialty organizations representing orthopaedic surgery and physical Medicine and rehabilitation and believes that those organizations are in general agreement with the Society's comments and recommendations.

The Society would be pleased to discuss these comments with representatives of the State Board of Physical Therapy and will be communicating them to the legislative oversight committees and to the Independent Regulatory Review Commission.

Sincerely,



Jitendra M. Desai, MD  
President

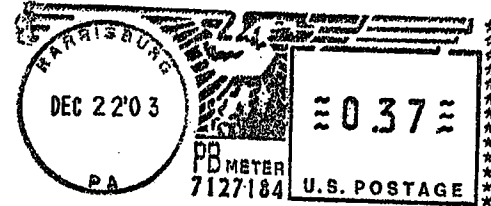
Cc: Chairs, Senate Consumer Protection and Professional Licensure Committee  
Chairs, House Professional Licensure Committee  
Chair, Independent Regulatory Review Commission  
Pennsylvania Orthopaedic Society  
Pennsylvania Academy of Physical Medicine and Rehabilitation



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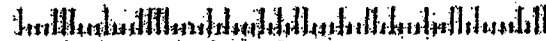
777 East Park Drive  
P.O. Box 8820  
Harrisburg, PA 17105-8820

Address Service Requested



Mr. Robert Kline  
Administrative Assistant  
State Board of Physical Therapy  
P.O. Box 2649  
Harrisburg, PA 17105-2649

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November 24, 2003

Mr. Robert Kline  
Administrative Assistant  
State Board of Physical Therapy  
P.O. Box 2649  
Harrisburg, PA 17105-2649

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**DOS LEGAL COUNSEL**

Reference #: 16A-651, Practice of Physical Therapy without Referral

Dear Mr. Kline:

I am a Physical Therapist, licensed in Pennsylvania since January 03, 1997 and I am extremely happy and proud of the steps that are being taken on behalf of our profession to allow the practice of physical therapy without obtaining a referral from a physician.

In reading the proposed rulemaking in the PT Bulletin, Doc. 03-2232 and allowing public comment, I do have one comment regarding the wording of the definition of "continuous practice" as a minimum of 200 hours each year in the delivery of direct patient care. If a Physical Therapist meets the continuing education requirements, liability insurance coverage requirements AND works in an administrative capacity within the practice of physical therapy (ie dealing daily with patient care issues, auditing charts for clinical competency, compliance, etc...) at least on a part-time basis (ie 1040 hours/year), I believe the definition should reflect this aspect as part of "direct patient care".

A possible compromise for a Physical Therapist, holding an administrative or academic position, would be to require proof of an additional 10-20 hours of continuing education in a non-administrative tract or clinical tract that would satisfy the State Board. I am sure there are other alternative compromises that would be amiable to clinicians in an administrative or academic tract of the profession.

Please feel free to contact me at 724-746-0604 if you would like to discuss this further.

Respectfully,

Christopher V. Zanke, MS, MPT  
Clinical Operations Director

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Health Licensing Boards

**NovaCare, Inc.**

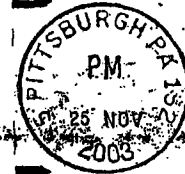
2403 Washington Road Canonsburg, PA 15317 724.745.7788 Fax 724.745.8848



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Canonsburg, PA 15317

*C/o Christopher V. Zanke*



Mr. Robert Kline  
Administrative Assistant  
State Board of Physical Therapy  
P.O. Box 2649  
Harrisburg, PA 17105-2649

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

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-7134

May 7, 2004

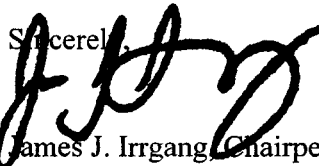
The Honorable John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harrisstown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Physical Therapy  
16A-6510: Certificate of Authorization

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Physical Therapy pertaining to Certificate of Authorization.

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:law

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Linda C. Barrett, 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-6510  
SUBJECT: Certificate of Authorization  
AGENCY: DEPARTMENT OF STATE

# 2369

**TYPE OF REGULATION**

- 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

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REGULATORY COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
5/7/04	<i>Paula Hand</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
5/7/04	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
5/7/04	<i>Joseph F. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 6, 2004