

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>	
<p>(1) Agency</p> <p>Department of State, Bureau of Professional and Occupational Affairs, State Board of Physical Therapy</p>		<p style="writing-mode: vertical-rl; transform: rotate(180deg);">RECEIVED IRRC 2018 MAR - 8 A 9 42</p>	
<p>(2) Agency Number: 16A</p> <p>Identification Number: 6517</p>		<p>IRRC Number: 3148</p>	
<p>(3) PA Code Cite:</p> <p>49 Pa. Code §§ 40.16, 40.17, 40.20, 40.63, 40.67, 40.69, 40.152, 40.161, 40.163, 40.164, 40.165, 40.181 and 40.192</p>			
<p>(4) Short Title:</p> <p>Post-Act 38 Revisions</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Thomas A. Blackburn, Senior Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) tblackburn@pa.gov</p> <p>Secondary Contact: Cynthia K. Montgomery, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> FINAL REGULATION</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>On December 22, 2012, at 42 Pa.B. 7652, the State Board of Physical Therapy amended its regulations to implement amendments to the Physical Therapy Practice Act made by Act 38 of 2008. Act 38 included qualifications for licensure as a physical therapist, continuing education for all physical therapists and physical therapist assistants, professional liability insurance for all physical therapists, physician referral, and supervision of physical therapist assistants by physical therapists on a basis that may be less than direct on-premises supervision. After final promulgation, the Board discovered various typographical errors, necessary clarity edits and other items that were not, but could have been, addressed in the prior rulemaking. This rulemaking addresses those items.</p>			

(8) State the statutory authority for the regulation. Include specific statutory citation.

The rulemaking is adopted under sections 3(a), 4(a), 6, 7.2, 9.1(j), and 11(a) of the Physical Therapy Practice Act (63 P.S. §§ 1303(a), 1304(a), 1306, 1307.2, 1309.1(j) and 1311(a)).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This regulation is not mandated by any Federal or State law or court order or Federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

After promulgating its regulations to implement Act 38, the Board noticed certain typographical errors, necessary clarity edits and other items that had not been addressed in the prior rulemaking. This rulemaking corrects those errors and clarifies the other questions, so that licensees and certificate holders should have a clearer understanding of what is required of them.

(11) 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 regulations.

The rulemaking does not overlap or conflict with any Federal requirements.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The rulemaking, which provides corrections and clarity edits, will not put Pennsylvania at a competitive disadvantage with other states.

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

This rulemaking has no effect on other regulations of the Board or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Board discussed this proposed rulemaking in public session during the Board's meetings in January and March, 2013. On July 25, 2013, the Board discussed and approved the rulemaking for publication as proposed rulemaking. After publication as proposed, the Board discussed IRRC's comments at its meeting September 29, 2016. The Board further discussed and approved this final rulemaking at its meeting January 19, 2017. All of the Board's public meetings are generally attended by representatives of associations of members of the regulated community.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Currently, there are approximately 14,179 licensed physical therapists, an additional 2,920 physical therapists who are certified for direct access, 1,355 certified physical therapist assistants and an additional 4,387 physical therapist assistants who are authorized to provide services under indirect supervision.

According to the Pennsylvania Department of Labor and Industry (L&I) in 2014, the greatest percentage of physical therapists (PTs), 40.9%, work in offices of other health practitioners as do 55.7% of physical therapy assistants (PTAs). Also, 19.5% of PTs and 18.2% of PTAs work in general medical and surgical hospitals, 12.1% of PTs and 4.3% of PTAs work for home health care services, 5.3% of PTs and 7.8% of PTAs work in nursing care facilities, 3.2% of PTs and 1% of PTAs are self-employed, 3.9% of PTs and 2.9% of PTAs work in offices of physicians, 1.9% of PTs and 1.8% of PTAs work in community care facilities for the elderly, 1.3% of PTs and only a few PTAs work in outpatient care centers, 1.1% of PTs and less than 1% of PTAs work in elementary and secondary schools, and 0.6% of PTs work for the Federal government, while 6.8% of PTAs work in specialty (except for psychiatric or substance abuse) hospitals.

For the business entities listed above, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR § 121.201 for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where physical therapists and physical therapist assistants work, a small business in the categories of offices of physical, occupational and speech therapists and audiologists and offices of all other miscellaneous health practitioners are those with \$7.5 million or less in average annual receipts. For physician offices, the threshold is less than \$11.0 million. Small businesses in general medical and surgical hospitals, psychiatric and substance abuse hospitals, and other specialty hospitals are those with \$38.5 million or less in average annual receipts. The threshold for home health care services is \$15.0 million and in skilled nursing care facilities, it is \$27.5 million. Small businesses in outpatient care centers are those with \$20.5 million or less in average annual receipts. For assisted living facilities for the elderly and other residential care facilities, the small business threshold is \$11.0 million in average annual receipts.

In considering all of these small business thresholds set by the SBA for the businesses in which physical therapists and physical therapists assistants work, it is probable that most of the licensed physical therapists and physical therapists assistants work in small businesses.

As noted in the answer to question 7, this rulemaking only makes minor edits to the prior rulemaking that implemented Act 38. The provisions in this rulemaking apply only to licensees and have no effect upon the employers of the licensees, most of which are small businesses. For those direct access certificate holder licensees who are self-employed, requirements such as retaining proof of completion of continuing education for direct access certificate holders at § 40.63 (relating to continuing education for direct access certificate holder) only has a minimal effect upon these few licensees. For other individual licensees who are self-employed, the provisions at § 40.20(b) (relating to inactive status of physical therapist license) prohibiting physical therapists from practicing on a

lapsed license and at § 40.181 (relating to refusal, suspension or revocation of certification) do not adversely affect licensees unless they engage in these prohibited activities.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All physical therapists and physical therapist assistants will be required to comply with the proposed rulemaking. The Board currently has approximately 14,179 licensed physical therapists, an additional 2,920 physical therapists who are certified for direct access, 1,355 certified physical therapist assistants and an additional 4,387 physical therapist assistants who are authorized to provide services under indirect supervision.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As noted in the last paragraph of the answer to question 15, this rulemaking does not have an adverse financial, economic or social impact on small businesses, businesses and labor communities and other public and private organizations. This regulation only has a small impact on any licensees who are self-employed.

As noted in the answer to question 10, after promulgating its regulations to implement Act 38, the Board noticed certain typographical errors, necessary clarity edits and other items that had not been addressed in the prior rulemaking. This rulemaking corrects those errors and clarifies the other questions, so that licensees and certificate holders should have a clearer understanding of what is required of them.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any cost.

(19) 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. Explain how the dollar estimates were derived.

There are no costs or savings to the regulated community associated with compliance with the rulemaking.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or saving to state government associated with implementation of the proposed rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There are no legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork required for implementation of the regulation.

22a) Are forms required for implementation of the regulation?

No forms are required for implementation of the regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) 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 2016-17	FY +1 2017-18	FY +2 2018-19	FY +3 2019-20	FY +4 2020-21	FY +5 2021-22
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2014-15	FY -2 2015-16	FY -1 2016-17	Current FY 2017-18
State Bd. of Physical Therapy	(actual) \$651,986	(actual) \$556,930	(actual) \$757,547	(budgeted) \$774,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

As stated in the answers to questions 15 and 17 – 19 above, this regulation will not have an adverse impact on small businesses.

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

The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As stated in the answers to questions 15, 17 and 24, this regulation will not have an adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The rulemaking is not based upon any scientific data, studies or references.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: **30 days after publ. as proposed**
- B. The date or dates on which any public meetings or hearings will be held:
The Board discussed this proposed rulemaking in public session during the Board's meetings in January and March, 2013. After publication as proposed, the Board discussed IRRC's comments at its meeting September 29, 2016. The Board further discussed and approved this final rulemaking at its meeting January 19, 2017. All of the Board's public meetings are generally attended by representatives of associations of members of the regulated community. The Board considers all regulatory proposals at its regularly scheduled public meetings, generally held the third Thursday of each odd-numbered month.
- C. The expected date of delivery of the final-form regulation: **Spring of 2018**
- D. The expected effective date of the final-form regulation:
Upon publication in the Pennsylvania Bulletin
- E. The expected date by which compliance with the final-form regulation will be required:
Compliance will be required upon the effective date (publication in the Pennsylvania Bulletin).
- F. The expected date by which required permits, licenses or other approvals must be obtained:
N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally held bi-monthly (each odd-numbered month). The Board will meet on the following dates in 2018: January 18, March 22, May 17, July 19, September 20, and November 15. More information can be found on the Board's website (linked under boards & commissions from professional licensing on the Department's website at www.dos.pa.gov).

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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(Pursuant to Commonwealth Documents Law)

2018 MAR -8 A 9 42

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>State Board of Physical Therapy</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>16A-6517</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Cynthia L. Potter</u> Cynthia L. Potter, PT, DPT</p> <p>TITLE: <u>Chairperson</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p><u>Marisa H. Z. Lehr</u></p> <p><u>FEB 26 2018</u> DATE OF APPROVAL</p> <p>Deputy General Counsel (Chief Counsel, Independent Agency). (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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FINAL RULEMAKING

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

49 Pa. Code Ch. 40

POST-ACT 38 REVISIONS

The State Board of Physical Therapy (Board) hereby amends §§ 40.16, 40.17, 40.20, 40.63, 40.67, 40.69, 40.152, 40.161, 40.163, 40.164, 40.165, 40.181 and 40.192 to read as set forth in Annex A.

Effective date

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

Statutory Authority

The final rulemaking is authorized under sections 3(a), 4(a), 6, 7.2, 9.1 and 11(a) of the Physical Therapy Practice Act (act) (63 P.S. §§ 1303(a), 1304(a), 1306, 1307.2, 1309.1 and 1311(a)).

Description and Need for the Rulemaking

The act of July 4, 2008 (P.L. 293, No. 38) (Act 38) substantially amended the act, including qualifications for licensure as a physical therapist, continuing education for all physical therapists and physical therapist assistants, professional liability insurance for all physical therapists, physician referral, and supervision of physical therapist assistants by physical therapists on a basis that may be less than direct on-premises supervision. Due to the extensive nature and breadth of these amendments, the Board amended its regulations to implement Act 38 at 42 Pa.B. 7652 (December 22, 2012). After final promulgation, the Board discovered various typographical errors, necessary clarity edits and other items that were not, but could have been, addressed in the prior rulemaking. This rulemaking addresses those items.

Summary of Comments to the Proposed Rulemaking and the Board's Response

The Board published notice of proposed rulemaking at 46 Pa.B. 2417 (May 14, 2016) with a 30-day public comment period. The Board received no comments from the public. The Board received comments from the Independent Regulatory Review Commission (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.14). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) or the House Professional Licensure Committee (HPLC).

Act 38 added new section 6(i) of the act (63 P.S. § 1306(i)) to require a foreign-educated applicant to apply, pay the appropriate fee and provide proof of “holding” an unrestricted license in the country where the applicant was educated, that the applicant’s education is substantially equivalent to the education generally required for licensure and that the applicant passed the licensure examination. To implement these changes, the Board had amended § 40.17 (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience). However, at that time, the Board did not amend paragraph (3), which requires the applicant to provide written documentation of authorization to practice as a physical therapist without limitations in the country where the professional education took place. In the proposed rulemaking, the Board explained its interpretation of section 6(i) of the act as requiring an applicant educated in a foreign country to have held an active, unrestricted license in the country where the

applicant was educated, but not that the applicant must continue to hold that license indefinitely. The Board explained that a foreign-educated physical therapist applying for licensure in this Commonwealth generally no longer has any need to retain current authorization to practice in the foreign country in which the physical therapist was educated. Moreover, it is not unreasonable to foresee that some foreign jurisdictions might rescind the professional authorization to practice of one who has immigrated to the United States.

Noting that it understands and agrees with the Board's explanation for the proposed changes to paragraph (3), IRRC suggested including language in the final-form rulemaking to clarify that if the unrestricted license in the country where the applicant was educated is not active at the time of application that such license was in good standing at the time its active status was terminated. In response to this comment, the Board has revised the rulemaking to make clear that the foreign jurisdiction authorization to practice is either current or was in effect and to require that, if not current, the applicant's authorization to practice must have been in good standing immediately prior to expiring or being placed on inactive status.

Summary of Other Amendments to the Final-form Rulemaking

Act 38 added sections 7.2 and 9.1(j) of the act (63 P.S. §§ 1307.2 and 1309.1(j)) to require all physical therapists and physical therapist assistants to complete at least 30 hours of continuing physical therapy education during each 2-year renewal period. In 2012, the Board added §§ 40.67 and 40.193 (relating to continuing education for licensed physical therapist; and continuing education for certified physical therapist assistant) to implement this requirement. In addition to others, the regulations recognize the American Physical Therapy Association (APTA) and its components and the Federation of State Boards of Physical Therapy (FSBPT) and its jurisdictions as preapproved providers. Because FSBPT's affiliate, ProCert, reviews and certifies continuing education courses for FSBPT standards, the Board proposed to amend §§ 40.67(d)(1)(i) and 40.192(d)(1)(i) to add to the list of preapproved providers "any provider whose course or program is certified by ProCert, for those courses or programs so certified." In response to questions about processing applications for approval of continuing education courses where APTA and FSBPT are not the actual provider of the course, but instead have "approved" a course being provided by another entity as meeting their standards, the Board has also concluded that it should similarly add those providers whose courses are approved by FSBPT or its jurisdictions or are approved by APTA or its components to the list of preapproved providers.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 15, 2016, the Board submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 2417, to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.

In preparing the final-form rulemaking, the Board has considered all comments received from IRRC. The Board received no comments from the HPLC, the SCP/PLC or the public to consider.

On _____, 2018, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2018, the final-form rulemaking was deemed approved by the HPLC and by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2018, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Michelle Roberts, Board Administrator, State Board of Physical Therapy, P.O. Box 2649, Harrisburg, PA 17105-2649, ra-physical@pa.gov.

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) and regulations promulgated thereunder, 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 this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 46 Pa.B. 2417.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Physical Therapy Practice Act.

Order

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

- (a) The regulations of the Board at 49 Pa. Code, Chapter 40 are amended, by amending §§ 40.16, 40.17, 40.20, 40.63, 40.67, 40.69, 40.152, 40.161, 40.163, 40.164, 40.165, 40.181, and 40.192 to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General, the Office of General Counsel for approval as required by law.

- (c) The Board shall submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.
- (d) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (e) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Cynthia L. Potter, PT, DPT, Chairperson
State Board of Physical Therapy

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

LICENSURE

§ 40.16. Licensure by endorsement.

* * * * *

(b) [An] In addition to the requirements of subsection (a), 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 § 40.17(5) and (6) (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience) [and comply with the following:].

[(1) The applicant shall submit documentary 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 shall 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 the act.]

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

To be eligible to take the examination for licensure, foreign-educated applicants for

licensure shall comply with the following conditions:

* * * * *

(3) The applicant shall provide written documentation [of] THAT THE APPLICANT HOLDS OR having held legal authorization to practice as a physical therapist without limitations in the country where the professional education took place. IF AN APPLICANT'S AUTHORIZATION TO PRACTICE IN THE FOREIGN JURISDICTION IS NOT CURRENT AT THE TIME OF APPLYING TO THE BOARD, THAT AUTHORIZATION MUST HAVE BEEN UNRESTRICTED IMMEDIATELY PRIOR TO EXPIRING OR BEING PLACED ON INACTIVE STATUS.

* * * * *

§ 40.20. Inactive status of physical therapist license.

* * * * *

(b) A [physical therapist] licensee whose license has expired or been placed on inactive status may not practice as a physical therapist in this Commonwealth until the license has been reactivated. A licensee who practices the profession in this Commonwealth after the license has expired and before it has been renewed or reactivated is subject to disciplinary action under sections 4(a) and 11(a)(6) of the act (63 P.S. §§ 1304(a) and 1311(a)(6)), as set forth at § 40.52(11) (relating to unprofessional conduct; physical therapists). A licensee who has engaged in practice during a period in which the license was not active may be subject to criminal prosecution under section 12 of the act (63 P.S. § 1312).

* * * * *

(e) In addition to the other requirements of this section, a licensee whose license has been inactive for 5 years or more shall demonstrate current competence to practice as a physical

therapist by at least one of the following:

(1) Successful completion of the licensure examination required under § 40.13 (relating to areas of examination) and section 6(b) of the act (63 P.S. § 1306(b)).

(2) Satisfaction of the requirements of § 40.16 (relating to licensure by endorsement) and proof of licensed practice of physical therapy in one or more other jurisdictions of the United States or Canada for at least 36 months of the 5 years immediately preceding application for reactivation.

* * * * *

[(f) A licensee who has not renewed the license may not practice the profession in this commonwealth until the license has been renewed or reactivated. A licensee who practices the profession in this Commonwealth after the license has expired and before it has been renewed or reactivated is subject to disciplinary action under section 4(a) and 11(6) of the act, as set forth at § 40.52(11) (relating to unprofessional conduct; physical therapists). A licensee who has engaged in practice during a period in which the license was not active may be subject to criminal prosecution under section 12 of the act (63 P.S. § 1312).]

PRACTICE WITHOUT REFERRAL

§ 40.63. Continuing education for direct access certificateholder.

* * * * *

(c) *Reports to the Board.* A certificateholder shall certify compliance with the continuing education hours requirement at the time of biennial renewal of the certificate. A certificateholder shall retain [for at least 4 years certificates, transcripts or other documentation showing completion of the prescribed number of hours] proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the

renewal period during which the continuing education was required or applied, whichever is later.

These records are subject to audit by the Board.

* * * * *

CONTINUING EDUCATION

§ 40.67. Continuing education for licensed physical therapist.

* * * * *

(d) *Approval of continuing education courses and programs.* Continuing education courses and programs may be approved in accordance with this subsection.

(1) Provided that the course or program otherwise meets the requirements of subsection (c)(2) and the provider issues to each attending licensee a certificate of completion record in accordance with subsection (b)(1), a course or program of continuing education from a provider preapproved under this paragraph is approved by the Board.

(i) The following providers are preapproved:

* * * * *

(G) The American Board of Physical Therapy Specialization or its successor organization, only for specialty certification.

(H) Any provider whose course or program is certified by FSBPT's ProCert, APPROVED BY FSBPT OR ITS JURISDICTIONS OR APPROVED BY APTA OR ITS COMPONENTS, for those courses or programs so certified OR APPROVED.

(ii) Any other provider seeking preapproved provider status shall:

* * * * *

PROFESSIONAL LIABILITY INSURANCE

§ 40.69. Professional liability insurance.

(a) *Professional liability insurance requirements.* As required under section [9.1(b)(4)] 9(b)(4) of the act (63 P.S. § [1309.1(b)(4)] 1309(b)(4)), a licensed physical therapist shall maintain professional liability insurance in the minimum amount of \$1 million per occurrence or claims made as a condition of practicing as a physical therapist in this Commonwealth. Coverage may be provided through:

* * * * *

Subchapter C. PHYSICAL THERAPIST ASSISTANTS

GENERAL PROVISIONS

§ 40.152. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

APTA – The American Physical Therapy Association.

Act – The Physical Therapy Practice Act (63 P.S. §§ 1301-1313).

CAPTE – The Commission on Accreditation in Physical Therapy Education.

FSBPT – The Federation of State Boards of Physical Therapy.

Indirect supervision – Supervision of a physical therapist assistant by a licensed physical therapist that is not direct on-premises supervision, as authorized under section 9.1(c) of the act (63 P.S. § 1309(c)) and this subchapter, including § 40.173 (relating to supervision of physical therapist assistant by licensed physical therapist).

* * * * *

CERTIFICATION

§ 40.161. Certification as 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 Commission on Accreditation in Physical Therapy Education (CAPTE)] CAPTE.

* * * * *

§ 40.163. Requirements for certification.

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

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

* * * * *

40.164. Physical therapist assistant certification examination.

* * * * *

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

(1) After failing the first examination, the applicant has, after the expiration of [6 months] 60 days and within [2 years] 1 year of the date of the first failure, the privilege of a second examination upon the filing of a new application under subsection (a) and payment of the appropriate fee.

* * * * *

§ 40.165. Authorization to provide services as a physical therapist assistant under indirect supervision.

* * * * *

(b) Unless there are grounds to deny the application under § 40.181 (relating to refusal, suspension or revocation of certification), the Board will grant a certificate of authority as described in this section to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of §§ 40.161-40.164.

(2) Demonstrates that the applicant satisfies the requirements of section 9.1(c)(4) of the act (63 P.S. § 1309.1(c)(4)) for certification to provide services as a physical therapist assistant under indirect supervision of a licensed physical therapist by either verifying that the applicant:

(i) Has at least 2,000 hours of experience providing patient-related acts and services while certified to do so under §§ 40.161—40.165 or predecessor registration or equivalent authorization in another jurisdiction under the supervision of one or more licensed physical therapists, as verified by those physical therapists.

* * * * *

DISCIPLINE

§ 40.181. Refusal, suspension or revocation of certification.

(a) Under section 9.1(f) of the act (63 P.S. § 1309.1(f)), the Board may refuse, suspend or revoke the certification of a person who has:

* * * * *

(11) Provided services as a physical therapist assistant under indirect supervision other than as authorized by section 9.1(c) of the act and § 40.173 (relating to supervision of physical therapist assistant by licensed physical therapist).

(12) Harassed, abused or intimidated a patient.

(13) Revealed information obtained as a result of the therapist-patient relationship to a third party who is not involved in the patient's care, without the prior written consent of the patient, except as authorized or required by statute.

(14) Violated a provision of the act or this chapter that establishes a standard of conduct.

(b) Actions taken by the Board regarding the refusal, suspension or revocation of a registration are taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom under 2 Pa.C.S. §§ 501-508 and 701-704 (relating to [the] Administrative Agency Law).

MAINTENANCE OF CERTIFICATION

§ 40.192. Continuing education for certified physical therapist assistant.

* * * * *

(d) *Approval of continuing education courses.* Continuing education courses or programs may be approved in accordance with this subsection.

(1) Provided that the course or program otherwise meets the requirements in subsection (c)(2) and the course or program provider issues to each attending certified physical therapist assistant a certificate of completion record in accordance with subsection (b)(1), a course or program of continuing education from a provider preapproved under this paragraph is approved by the Board.

(i) The following providers are preapproved:

(A) [The American Physical Therapy Association] APTA or its components.

(B) [The Federation of State Boards of Physical Therapy] FSBPT and its jurisdictions.

(C) A physical therapist or physical therapist assistant educational program accredited by [the Commission on Accreditation in Physical Therapy Education] CAPTE.

(D) The American Heart Association and the American Red Cross and their component organizations, only for the purposes of providing continuing education in identifying and responding to emergency health conditions as required under subsection (a)(1).

(E) Any provider whose course or program is certified by FSBPT's ProCert, APPROVED BY FSBPT OR ITS JURISDICTIONS OR APPROVED BY APTA OR ITS COMPONENTS, for those courses or programs so certified OR APPROVED.

(ii) Any other provider seeking preapproved provider status shall:

* * * * *



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

March 8, 2018

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Physical Therapy
16A-6517: POST-ACT 38 REVISIONS

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the State Board of Physical Therapy pertaining to Post-Act 38 Revisions.

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

Sincerely,


Cynthia L. Potter, PT, DPT, Chairperson
State Board of Physical Therapy

CLP/TAB:rs

Enclosure

cc: Ian J. Harlow, Commissioner of
Professional and Occupational Affairs
Kalonji Johnson, Director of Policy, Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Juan A. Ruiz, 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-6517
SUBJECT: Post-Act 38 Revisions
AGENCY: DEPARTMENT OF STATE
 Bureau of Professional and Occupational Affairs
 State Board of Physical Therapy

TYPE OF REGULATION

- Proposed Regulation
- X 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 Disapproved Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 IRRRC
 2018 MAR -8 A 9 42

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
3/8/18	<i>T. Gletner</i>	MAJORITY CHAIR <u>Mark T. Musto</u>
3-8-18	<i>Mark Musto</i>	MINORITY CHAIR <u>Harry A. Readshaw</u>
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>
3/8/18	<i>Cammy M. Blouch</i>	MAJORITY CHAIR <u>Robt. Tomlinson</u>
3/8/18	<i>[Signature]</i>	MINORITY CHAIR <u>Lisa Roscola</u>
3/8/18	<i>K Cooper</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
-----	-----	<i>ATTORNEY GENERAL (for Final Omitted only)</i>
-----	-----	<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>