

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency  
**Department of State, Bureau of Professional and Occupational Affairs, State Board of Physical Therapy**

(2) Agency Number: 16A  
Identification Number: 6517

IRRC Number: 3148

(3) PA Code Cite:  
49 Pa. Code §§ 40.16, 40.17, 40.20, 40.63, 40.67, 40.152, 40.161, 40.164, 40.165, 40.181 and 40.192

(4) Short Title:  
**Post-Act 38 Revisions**

(5) Agency Contacts (List Telephone Number and Email Address):  
Primary Contact: **Thomas A. Blackburn, Regulatory Unit counsel, Department of State;**  
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; [tblackburn@pa.gov](mailto:tblackburn@pa.gov)  
Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State**  
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; [cymontgome@pa.gov](mailto:cymontgome@pa.gov)

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation  
 Final Regulation  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

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 to correct, necessary clarity edits and other items that were not, but could have been, addressed in the prior rulemaking. This rulemaking proposes to address those items.

(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.

**The rulemaking is not mandated by any federal or state law or court order.**

(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 would have 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 this proposed rulemaking. 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 13,608 licensed physical therapists in Pennsylvania, an additional 2,245 physical therapists who are certified for direct access, 1,636 certified physical therapist assistants and an additional 3,712 physical therapist assistants who are authorized to**

provide services under indirect supervision.

According to the Pennsylvania Department of Labor and Industry (L&I) in 2010, the greatest percentage of physical therapists (PTs), 37.4%, work in offices of other health practitioners as do 51.2% of physical therapy assistants (PTAs). 21.8% of PTs and 19.5% of PTAs work in general medical and surgical hospitals, 8.4% of PTAs work in other hospitals, 9.1% of PTs and 2.3% of PTAs work for home health care services, 6.2% of PTs and 9.3% of PTAs work in nursing care facilities, 5.9% of PTs and no PTAs are self-employed, 2.7% of PTs and 3.4% of PTAs work in offices of physicians, 1.6 % of PTs and no PTAs work in community care facilities for the elderly, 1.2 % of PTs and only a few PTAs work in outpatient care centers, 1.1% of PTs and no PTAs work in elementary and secondary schools, and 0.9% of PTs and no PTAs work for individual and family services, while 0.5% of PTAs work in private households. Finally, only a few PTAs work in medical and diagnostic laboratories and other ambulatory health care services.

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 ones with \$7.0 million or less in average annual receipts. Small businesses in general medical and surgical hospitals and specialty hospitals (except for psychiatric and substance abuse hospitals) are those with \$35.5 million or less in average annual receipts. The NAICS threshold for home health care services is \$14.0 million or less in average annual receipts. Furthermore, small businesses in skilled nursing care facilities are those with \$25.5 million or less in average annual receipts. Small businesses in outpatient care centers are those with \$19 million or less in average annual receipts. For elementary and secondary schools as well as individual and family services and offices of physicians (except mental health specialists), the NAICS thresholds are \$10 million or less in average annual receipts. In considering all of these small business thresholds set by NAICS for the businesses in which physical therapists and physical therapist assistants work, it is probable that most of the licensed physical therapists and physical therapist assistants work in small businesses.

As noted in the answer to question 7, this proposed 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, which regulations are necessary to protect public health and safety.

(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 13,608 licensed physical therapists, an additional 2,245 physical therapists who are certified for direct access, 1,636 certified physical therapist assistants and an additional 3,712 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.**

(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 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>	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>	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 (FY 12-13)	FY -2 (FY 13-14)	FY -1 (FY 14-15)	Current FY (FY 15-16)
Pa. State Bd. of Physical Therapy	actual \$523,826	actual \$461,078	actual \$651,986	budget \$665,000

(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 noted in the answers to questions 15 and 17, this regulation does 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 schemes 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 performing 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 noted in the answers to questions 15, 17 and 24, this regulation does 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.

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

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

- |   |                                   |
|---|-----------------------------------|
| A. The date by which the agency must receive public comments:                               | <b><u>30 days after publ.</u></b> |
| B. The date or dates on which public meetings or hearings will be held:                     | <b><u>N/A</u></b>                 |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <b><u>Within 2 years</u></b>      |
| D. The expected effective date of the final-form regulation:                                | <b><u>Upon publication</u></b>    |
| E. The date by which compliance with the final-form regulation will be required:            | <b><u>Effective date</u></b>      |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <b><u>N/A</u></b>                 |

(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 the third Thursday of each even-numbered month. The Board will meet on the following remaining dates in 2016: May 26, July 28, September 29, and November 18. 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](http://www.dos.pa.gov)).**

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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: [Signature]  
(DEPUTY ATTORNEY GENERAL)

State Board of Physical Therapy  
(AGENCY)

[Signature]

DOCUMENT/FISCAL NOTE NO. 16A-6517

4/5/16  
DATE OF APPROVAL

1/28/16  
DATE OF APPROVAL

DATE OF ADOPTION:

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

BY: [Signature]  
Susan L. Whitney, PT

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

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

PROPOSED RULEMAKING

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

49 Pa. Code Ch. 40

POST-ACT 38 REVISIONS

The State Board of Physical Therapy (Board) proposes to amend §§ 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 amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

#### Statutory Authority

The amendments are 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)).

#### Background and Need for the Amendment

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, on December 22, 2012, at 42 *Pa.B.* 7652, the Board amended its regulations to implement Act 38. After final promulgation, the Board discovered various typographical errors to correct, necessary clarity edits and other items that were not, but could have been, addressed in the prior rulemaking. This rulemaking proposes to address those items.

#### Description of the Proposed Amendments

In its Act 38 amendments, the Board added § 40.20 (relating to inactive status of physical therapist license). Subsection (b) provided that a physical therapist whose license had expired or been placed on inactive status may not practice until the license has been reactivated. At the time while reviewing comments on the proposed provisions concerning renewal of certification of physical therapist assistants, the Board concluded that it should clearly prohibit a physical therapist from practicing on a lapsed license and provide that one who does so is subject to disciplinary action under section 4(a) and 11(a)(6) of the act (63 P.S. §§ 1304(a) and 1311(a)(6)). Without recognizing the existence of subsection (b), the Board added subsection (f) to the final-form rulemaking to do so. To remove this redundancy, the Board now proposes to delete subsection (f) and move its provisions into subsection (b).

Act 38 added section 9(b)(4)(iii.1) of the act (63 P.S. § 1309(b)(4)(iii.1)) to require a licensee practicing in this Commonwealth to maintain a level of professional liability insurance coverage in the minimum amount of \$1,000,000 per occurrence or claims made with coverage provided through self-insurance, personally purchased liability insurance, or professional liability insurance provided through the physical therapist's employer or similar group. The Board added § 40.69 (relating to professional liability insurance) repeating those requirements in subsection (a).

However, this provision incorrectly cited to section 9.1(b)(4) of the act, rather than section 9(b)(4). The Board proposes to amend this subsection to correct the citation.

The Board also amended § 40.1 (relating to definitions) to define terms including APTA, CAPTE and FSBPT, which are the commonly used acronyms of the American Physical Therapy Association, the Commission on Accreditation in Physical Therapy Education, and the Federation of State Boards of Physical Therapy. These defined terms were then used throughout Chapter 40. However, § 40.1 limits those definitions to use in Subchapter A (relating to physical therapists). The Board did not amend § 40.152 (relating to definitions) to define these terms for use in Subchapter C (relating to physical therapist assistants). Because of this oversight, in printing the final-form rulemaking, the Legislative Reference Bureau utilized the full names, rather than the defined acronyms, throughout Subchapter C. The Board now proposes to amend § 40.152 to define these acronyms and to amend § 40.161(c), 40.163(a)(1), and § 40.192(d)(1)(i) (relating to certification as physical therapist assistants; practice; exceptions; requirements for certification; and continuing education for certified physical therapist assistant) to use the acronyms.

Section 6(c) of the act (63 P.S. § 1306(c)) previously permitted an applicant who had failed the physical therapist licensure examination the privilege of a second examination after the expiration of 6 months and within 2 years from the first failure. Section 40.14(a) (relating to examination; failure; reexamination) repeated this provision. Section 9.1(c) of the act (63 P.S. § 1309.1(c)) contained an identical provision for a physical therapist assistant, which was repeated in § 40.164(b)(1) (relating to physical therapist assistant certification examination). Act 38 amended both section 6(c) and section 9.1(c) to allow for reexamination after 60 days and within 1 year of the failure. The Board then amended § 40.14(a) accordingly, but did not amend § 40.164(b)(1). The Board now proposes to amend § 40.164(b)(1) to permit reexamination upon a first failure of the physical therapist assistant certification examination after the expiration of 60 days and within 1 year of the date of the first failure.

Section 6(f) of the act (63 P.S. § 1306(f)) previously authorized the Board to license foreign-educated physical therapists of appropriate age, good moral character, without addiction, who have completed educational requirements substantially equal to those of the act, and passed the licensure examination and, in the Board's discretion, have completed a supervised clinical program of up to 1 year. Act 38 amended this section to delete all the provisions except the discretionary clinical experience. In place of those deleted provisions, Act 38 added new section 6(i) of the act (63 P.S. § 1306(i)) to require that a foreign-educated applicant applies, pays the appropriate fee and provides 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 the applicant passes the licensure examination. To implement these changes, the Board amended § 40.17 (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience) by amending paragraph (1) to require the applicant to apply and pay the fee, amending paragraph (2) to require the applicant to provide documentation that the applicant has graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy (in addition to the existing requirement that the school is recognized by the authorizing agency of that jurisdiction), and by amending paragraph (5) to require satisfactory evidence via credentials evaluation that the applicant's education is substantially equivalent to the

education of physical therapists in accredited programs in this country or that the program is accredited by CAPTE or other National organization recognized by the Board that accredits physical therapy programs. 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. A 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. Accordingly, the Board construes the requirement of “holding an unrestricted license in the country where the applicant was educated” to be not limited to the present time but instead having previously held such a license. The Board proposes to amend § 40.17(3) to require a foreign-educated applicant to provide documentation of “having held authorization” to practice in the country of professional education. The Board believes that this construction is consistent with section 6(i)(2) of the act.

The Board further considered § 40.16 (relating to licensure by endorsement), which addresses applicants for licensure who are currently licensed in another state or territory of the United States. This section was not amended as a result of Act 38. The Board first proposes to amend § 40.16(b) to provide that an applicant for licensure by endorsement who was educated in a foreign country must also comply with the requirements of § 40.16(a) for an applicant for licensure by endorsement. Existing § 40.16(b) requires applicants for licensure by endorsement who were educated in a foreign country to comply with the educational requirements of § 40.17. Existing § 40.16(b) also requires an applicant for licensure by endorsement who was educated in a foreign country to submit documentary evidence that the applicant is authorized to practice as a physical therapist without limitation in the foreign country of education and hold a valid license by examination in the other state or territory of the United States. However, any applicant for licensure by endorsement, whether educated in a foreign country or in another state or territory of the United States, is required by section 6(d.1) of the act (63 P.S. § 1306(d.1)) to hold a valid license in the other state or territory in order to become licensed without further examination. In addition, the existing provisions of § 40.16(a)(1) (now incorporated by reference for a foreign-educated applicant) already require an applicant for licensure by examination to hold a valid license in another state or territory of the United States. Therefore, the requirement of § 40.16(b)(2) that an applicant hold a valid license by examination is redundant. Additionally, for an applicant who has become licensed in another state or territory of the United States, whether that applicant was authorized to practice in the country of education as required by § 40.16(b)(1) is essentially irrelevant. Accordingly, the Board proposes to amend § 40.16(b) to delete these two requirements.

Act 38 added section 7.2 of the act (63 P.S. § 1307.2) to require all physical therapists to complete at least 30 hours of continuing physical therapy education during each 2-year renewal period. Act 38 also added section 9.1(j) of the act (63 P.S. § 1309.1(j)) to require physical therapist assistants to complete at least 30 hours of continuing physical therapy education for each certificate renewal. 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 new CE requirement. As part of these additions, §§ 40.67(d)(1)(i) and 40.192(d)(1)(i)

recognize as preapproved providers APTA and its components, FSBPT and its jurisdictions, physical therapist and physical therapist assistant programs accredited by CAPTE, and the American Heart Association and the American Red Cross and their component organizations for continuing education in identifying and responding to emergency health conditions. Section 40.67(d)(1)(i) also recognizes as preapproved organizations credentialed by APTA to confer a fellowship or offer a residency program, but only for those purposes. The Board also provided in §§ 40.67(d)(1)(ii) and 40.192(d)(1)(ii) that any other provider could apply for preapproved provider status. Under §§ 40.67(d)(1) and 40.192(d)(1), a course or program of continuing education credit of a preapproved provider is approved for credit if it otherwise meets the content requirements of subsection (c)(2). Although not considered by the Board at the time, ProCert is an affiliate of FSBPT that reviews and certifies continuing education courses for FSBPT standards. Accordingly, the Board proposes 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 FSBPT's ProCert, only for those courses or programs so certified. Additionally, §§ 40.67(b)(2) and 40.192(b)(2) require licensed physical therapists and certified physical therapist assistants, respectively, to maintain records of continuing education for 5 years. In its existing regulations at § 40.63(c) (relating to continuing education for direct access certificateholders), the Board requires those physical therapists who are certified to provide services for a limited period of time without referral from a physician or other authorized referrer to maintain records of continuing education for 4 years. To make the requirements consistent, the Board proposes amending § 40.63(c) to require direct access certificateholders to maintain records of continuing education for 5 years, using the same language as in §§ 40.67(b)(2) and 40.192(b)(2).

Act 38 amended the act to permit a physical therapist assistant, in certain situations, to provide services under supervision by a physical therapist that is less than direct on-premises supervision. However, section 9.1(c)(4) of the act (63 P.S. § 1309.1(c)(4)) provides that a physical therapist assistant must remain under the direct on-premises supervision of a physical therapist until being approved by the Board, based upon having either: at least 2,000 hours of experience providing patient-related acts and services verified by a supervising licensed physical therapist or employment as a physical therapist assistant for at least 3 of the 5 years immediately preceding the effective date of section 9.1(c)(4). In response, the Board added § 40.165 (relating to authorization to provide services as a physical therapist assistant under indirect supervision). Section 40.165(b)(2)(i) requires that the applicant have at least 2,000 hours of experience providing patient-related services under the supervision of a licensed physical therapist, as verified by the prior supervising physical therapists. Section 40.165(b)(2)(ii) alternatively permits the applicant to provide documentation verifying that the applicant worked as a physical therapist assistant for at least 3 years between October 2, 2003, and October 2, 2008, the 5-year period immediately preceding the effective date of Act 38. Act 38 also added section 9.1(a.1) of the act (63 P.S. § 1309.1(a.1)) to allow for temporary certification as a physical therapist assistant, limited to providing services only under the direct on-premises supervision of a licensed physical therapist, by one who meets all requirements for certification except the examination. The temporary certificate is good for up to 6 months, but expires upon failure of the examination. The Board promulgated § 40.166 (relating to temporary certificate to provide services as a physical therapist assistant) to implement this new provision. However, no consideration was given to whether experience providing services under a temporary certificate could be used to demonstrate qualification to provide services under less than direct on-premises supervision. Although the

supervisory requirements for providing services under a temporary certificate are the same as those for providing services as a certified physical therapist assistant, the Board has concluded that experience under a temporary certificate should not be considered. A temporary certificate holder, though having completed the educational component, has not passed the examination and fully demonstrated competence to provide services. Accordingly, the Board proposes to amend § 40.165(b)(2)(i) to require that the 2,000 hours of experience providing patient-related acts and services be while certified to do so under §§ 40.161—40.165 or predecessor registration or equivalent authorization in another jurisdiction.

The Board amended § 40.181 (relating to refusal, suspension or revocation of certification) to include as disciplinary grounds providing services under less than direct on-premises without authorization from the Board or other than as authorized by the act or this chapter. The Board did not consider other grounds for disciplinary action that could be implicated by providing services under less than direct on-premises supervision. The Board currently provides at § 40.52 (relating to unprofessional conduct; physical therapists) various grounds for disciplinary action. The Board may take disciplinary action against a physical therapist for harassing, abusing or intimidating a patient; revealing 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; or violating a provision of the act or Board regulations that establish a standard of conduct. The disciplinary grounds at § 40.181 do not include similar provisions. With lesser supervision, there may be greater need to protect patients from such actions. The Board therefore proposes to amend § 40.181(a) to include these grounds for disciplinary action of a physical therapist assistant.

#### Fiscal Impact and Paperwork Requirements

The proposed amendments would have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### Sunset Date

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

#### 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 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 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 this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649, or by email at [RA-STRegulatoryCounsel@pa.gov](mailto:RA-STRegulatoryCounsel@pa.gov), within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-6517 (Post-Act 38 revisions), when submitting comments.

Norman L. Johnson, PT  
Vice Chairman  
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 having held legal authorization to practice as a physical therapist without limitations in the country where the professional education took place.

\* \* \* \* \*

**§ 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, 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).

\* \* \* \* \*

[(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 [PHYSICIAN] REFERRAL**

\* \* \* \* \*

#### **§ 40.63. Continuing education for direct access certificate holder.**

\* \* \* \* \*

(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:

\* \* \* \* \*

(H) Any provider whose course or program is certified by FSBPT's ProCert, for those courses or programs so certified.

\* \* \* \* \*

### **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.

CAPTE – The Commission on Accreditation in Physical Therapy Education.

FSBPT – The Federation of State Boards of Physical Therapy.

\* \* \* \* \*

**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 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:

\* \* \* \* \*

(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:

\* \* \* \* \*

(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.

\* \* \* \* \*

## 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.

\* \* \* \* \*

(E) Any provider whose course or program is certified by FSBPT's ProCert, for those courses or programs so certified.

\* \* \* \* \*



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

April 15, 2016

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

Re: Proposed Regulation  
State Board of Physical Therapy  
16A-6517: Post-Act 38 Revisions

Dear Chairman Mizner:

Enclosed is a copy of a proposed 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,

A handwritten signature in blue ink that reads "Norman L. Johnson for".

Norman L. Johnson, PT, Vice Chairperson  
State Board of Physical Therapy

SLW/TL:js

Enclosure

cc: Ian J. Harlow, Commissioner of  
Professional and Occupational Affairs  
Leigh Chapman, Director of Policy, Department of State  
Timothy Gates, Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Teresa Lazo, 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  
STATE BOARD OF PHYSICAL THERAPY

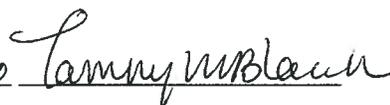
**TYPE OF REGULATION**

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

2016 APR 15 AM 11:12

RECEIVED  
HRRG

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
4/15/16		MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION &amp; PROFESSIONAL LICENSURE</i>
4/15/16		MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
		MINORITY CHAIR _____
		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
4/15/16		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)
4/15/16		