

PROPOSED RULEMAKING

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

Early Exam and Continuing Credit Hours for Clinical Instruction

The State Board of Physical Therapy (Board) proposes to amend §§ 40.1, 40.14, 40.15, 40.61, 40.63, 40.67, 40.163, 40.164 and 40.192 to read as set forth in Annex A. This proposed rulemaking will allow physical therapist (PT) students and physical therapist assistant (PTA) students to sit for the requisite examinations up to 90 days prior to graduation from their respective programs, and it will allow PTs and PTAs to receive a limited amount of continuing education (CE) credit for providing clinical instruction to student PTs and student PTAs at clinical facilities affiliated with accredited programs. Additionally, this proposed rulemaking will allow applicants to directly register for the National examination with the examination provider, by removing the requirement that the applicant first seek the Board's permission, and it will allow applicants to sit for a third or successive examination, after two failures, without first seeking the Board's permission.

Effective Date

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

This proposed rulemaking is authorized under sections 3(a), 5, 6(b), 7.2 and 9.1(a) and (j) of the Physical Therapy Practice Act (act) (63 P.S. §§ 1303(a), 1305, 1306(b), 1307.2 and 1309.1(a) and (j)). "It shall be the duty of the board to pass upon the qualifications of applicants for licensure as physical therapists and certification as physical therapist assistants, to conduct examinations. . . ." 63 P.S. § 1303(a). "[A]n individual who desires and applies to be licensed as a physical therapist shall apply to the board on a form furnished by the board, and such application shall embody *evidence satisfactory to the board of the applicant's possessing the qualifications preliminary to examination required by this act.*" 63 P.S. § 1305 (emphasis added). Accordingly, the Board has broad authority to determine the timeframe in which an applicant may sit for the exam after completion of the didactic portion of their education.

"An applicant for licensure must pass an *examination approved by the board* which shall test the applicant's knowledge of the basic and clinical sciences. . . and such other subjects as the board may deem necessary to test the applicant's fitness to practice physical therapy. No license shall be granted unless an applicant has attained passing scores established by the testing agency and published prior to the administration of the examination." 63 P.S. § 1306(b) (emphasis added). "For each license renewal, a licensee shall complete within the immediately preceding two-year period at least 30 hours of continuing physical therapy education as approved by the board." 63 P.S. § 1307.2. "To be eligible for certification by the board as a physical therapist assistant, an applicant must be . . . successful in passing an examination approved by the

board, subject to rules and regulations established by the board. . . ." 63 P.S. § 1309.1(a). "For each certificate renewal, a certificate holder shall complete within the immediately preceding two-year period at least 30 hours of continuing physical therapy education as approved by the board in accordance with standards and criteria established by the board by regulation." 63 P.S. § 1309.1(j).

Background and Need for the Amendment

The current regulations pose an unnecessary burden to licensure and employment within this Commonwealth, in that there is no reasonable need to require PT students and PTA students to apply to the Board for permission to sit for their respective examinations, when allowing the exam provider to determine eligibility can alleviate pressures on Board staff while simultaneously simplifying and accelerating the examination process. Additionally, there is no reasonable need to require PT students and PTA students to wait until after graduating from their respective programs to sit for their respective examinations.

Section 6(b) of the act, regarding qualifications for license; examinations; failure of examinations; licensure without examination; issuing of license; foreign applicants for licensure; temporary license; perjury, provides that an applicant for licensure must pass an examination approved by the Board. Under section 5 of the act (relating to application for license), "an individual who desires and applies to be licensed as a physical therapist shall apply to the board on a form furnished by the board, and such application shall embody evidence satisfactory to the board of the applicant's possessing the qualifications preliminary to examination required by this act."

Both PT and PTA applicants must successfully pass the Board-approved examination, the National Physical Therapy Examination (NPTE) which was created by the Federation of State Boards of Physical Therapy (FSBPT). As part of an ongoing effort to standardize the examination applications process, the FSBPT contacted the Board in May of 2020 to introduce the Alternative Approval Pathway (AAP). The FSBPT explained that, should the Board decide to participate in the AAP, applicants would contact the FSBPT to register to sit for the NPTE, and the FSBPT would be responsible for making the candidate eligible to sit if they meet all NPTE eligibility requirements. Furthermore, to be consistent with NPTE eligibility requirements, and to participate in the AAP, the Board's regulations must be amended: 1) to allow PT and PTA students to sit for the NPTE prior to graduation; and 2) to remove a provision that requires applicants to request the Board's permission to sit for the examination a third time after two failures. In this proposed rulemaking, §§ 40.14 and 40.164 (relating to examination; failure; reexamination; and physical therapist assistant certification examination) would be amended to implement these requirements.

Sections 40.15(b) (relating to examinations), which is proposed to be renamed licensure by examination, and 40.164(a)(2) currently require PT and PTA applicants to present the required credentials of professional education to the Board. In implementing these provisions, the Board requires proof that applicants graduated from a Board-approved school of physical therapy or completed an approved PTA program before it will permit applicants to sit for the NPTE. In proposing amendments to these

sections, the Board considered the Executive Report on Occupational Licensing as well as legislation that was introduced in this Commonwealth (House Bill 2617 (2018) and House Bill 138 (2019)), which would allow PT students and PTA students, to sit for their respective exams prior to graduating from their respective programs so that they may enter the workforce without unnecessary delay. In reviewing the timing of the examinations, the Board has determined that the existing regulations pose an unnecessary burden to licensure and occupational employment within this Commonwealth, in that there is no reasonable need to require PT students and PTA students to wait until after graduating from their respective programs to sit for the NPTE.

Furthermore, the Board proposes amendments which will allow PTs and PTAs who provide clinical instruction to receive credit for 1 contact hour of CE for each 40 hours of clinical instruction up to a maximum of 4 contact hours per biennial period.

Description of the Proposed Amendments

The Board proposes to amend § 40.1 (relating to definitions) to define “NPTE” as the National Physical Therapy Examination developed, maintained and administered by the FSBPT (“develops, maintains, and administers” is language copied from the FSBPT web site). “FSBPT” is already defined in § 40.1 as the Federation of State Boards of Physical Therapy.

The Board proposes to amend § 40.14 to allow the Board to participate in the AAP. Subsection (a) states applicants shall successfully pass the examination approved by the Board, and subsection (d) references “the examination.” However, subsections (a) and (d) do not currently name the approved examination. The NPTE is the only Nationally recognized physical therapy examination and the only Board-approved examination. Therefore, the Board proposes to amend subsections (a) and (d) to name the NPTE as the approved examination. According to the FSBPT, as of May 2023, 29 states are actively participating in the AAP. In the Northeast region of the United States, Ohio, Maryland, Delaware, New Jersey, Rhode Island, New Hampshire and Maine are actively participating. To participate in the AAP, the Board proposes the following amendments that would remove the Board’s internal approval process relating to administering examinations. The Board proposes to delete subsection (b) which requires applicants to appear before the Board, provide evidence of additional training, and request permission to sit for the examination a third time after two failures. Additionally, the Board proposes to delete subsection (c), which addresses requirements for the Board’s approval to take a third or successive examination.

The Board also proposes amendments to update examination eligibility requirements consistent with NPTE standards. In accordance with section 6(c) of the act, proposed subsection (d) would prohibit an applicant from taking the NPTE more than three times in a consecutive 12-month period. Finally, proposed subsection (e) will be added to allow applicants to take the NPTE up to 90 days prior to graduation from a CAPTE accredited program. Students in physical therapy and PTA programs who are on track to graduate within 90 days will typically have completed the didactic portion of their education and are therefore fully prepared to sit for the NPTE. However, these same students will not qualify for licensure/certification until they have successfully passed the

NPTE, completed the clinical portion of their education and graduated from a physical therapy or PTA program.

The Board no longer provides or accepts paper applications. Accordingly, § 40.15(a) is proposed to be amended to clarify that applications for licensure by examination must be submitted to the Board in a manner and format prescribed by the Board. Applications for licensure by examination must be submitted online.

Subsection (b) currently does not allow a PT applicant to sit for the licensure examination unless and until the applicant has obtained “the required credentials of professional education from an approved institution.” Accordingly, applicants are not currently allowed to sit for the examination until after completion of professional education and graduation from an approved institution. Subsection (b) is proposed to be amended to require that applicants submit to the Board, “at the time of application [for licensure],” the required credentials of professional education from an approved institution; thereby removing the requirement that applicants provide these credentials to be admitted to the examination, an unnecessary burden to licensure and employment.

Subsection (b) requires physical therapy applicants to provide the Board with “the required credentials of professional education from an approved institution.” Proposed subsection (b) will still require applicants to provide the Board with “the required credentials of professional education from an approved institution” which is “a physical therapy program accredited by CAPTE or by another National organization recognized by the Board that accredits physical therapy programs” as per section 6 of the act and § 40.11(a) (relating to educational requirements for licensure by examination).

The Board also proposes to amend § 40.61(a)(2)(i) (relating to certificate of authorization to preventive physical therapy without a referral) to reference the “National Physical Therapy Examination” as “NPTE” as per the proposed definition of NPTE in § 40.1.

Proposed § 40.63(j) (relating to continuing education for direct access certificateholder) will allow PTs with direct access certificates who provide clinical instruction to students in a clinical facility affiliated with a physical therapy program accredited by CAPTE or by another National organization recognized by the Board to receive credit for 1 contact hour of CE for each 40 hours of clinical instruction up to a maximum of 4 contact hours per biennial period.

Proposed § 40.67(c)(7) (relating to continuing education for licensed physical therapist) would be added to allow PTs who do not have direct access certificates, who provide clinical instruction to students in a clinical facility affiliated with a physical therapy program accredited by CAPTE or by another National organization recognized by the Board to receive credit for 1 contact hour of CE for each 40 hours of clinical instruction up to a maximum of 4 contact hours per biennial period. This amendment is also reflected in the proposed restructuring of § 40.67(c)(1) which lists approved sources of CE.

Proposed § 40.163(a) (relating to requirements for certification) will be amended to inform applicants for certification by examination as a PTA that they must pay the fee in § 40.5 (relating to fees) for initial application for PTA certification by exam or endorsement (\$30). This fee requirement is currently located in § 40.164(a)(1) but is being relocated to § 40.163(a) because PTAs will no longer be required to submit an application to the Board prior to sitting for the NPTE.

The Board proposes amendments that would delete the Board’s internal approval process relating to examinations in the same way it is amending regulations relating to PTs. Section 40.164(a) would be amended to move the examination requirement from subsection (a) to paragraph (3). This is necessary because PTAs will no longer be required to submit an application to the Board prior to sitting for the NPTE, thereby rendering obsolete the current language of subsection (a). The Board also proposes to delete paragraphs (1) and (2) because the Board will no longer be involved in examination approvals.

The Board proposes to amend subsection (b) to delete language from paragraph (1) requiring that applicants reapply to the Board after failing the NPTE a first and second time. Additionally, paragraph (2) would be deleted because applicants will no longer file examination applications with the Board. The language of paragraph (3) would be deleted so that applicants will no longer be required to ask the Board’s permission to take the NPTE a third time.

The Board also proposes amendments to update PTA examination eligibility requirements consistent with NPTE standards. Consistent with NPTE standards, proposed paragraph (4) will allow applicants to take the NPTE up to 90 days prior to graduation from a CAPTE accredited program. The Board proposes to add language to subsection (b) to prohibit applicants from taking the NPTE more than three times in a consecutive 12-month period, in accordance with section 6(c) of the act and mirroring the existing requirements for PT licensure under § 40.14(d).

Proposed § 40.192(c)(7) (relating to continuing education for certified physical therapist assistant) would be added to allow PTAs who provide clinical instruction to students in a clinical facility affiliated with a PT program or PTA program accredited by CAPTE or by another National organization recognized by the Board to receive credit for 1 contact hour of CE for each 40 hours of clinical instruction up to a maximum of 4 contact hours per biennial period. This proposed amendment is also reflected in the proposed restructuring of paragraph (1) which lists approved sources of CE.

Fiscal Impact and Paperwork Requirements

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

However, members of the regulated community who provide clinical instruction will be allowed to earn up to 4 credit hours of the required 30 credit hours per biennium by providing clinical instruction (4 credit hours of 30 credit hours equals approximately 13%). Therefore, the Board can ascertain that those able to take full advantage of this amendment should see a cost savings of approximately 13%. Small businesses that cover the cost of CE will benefit in the same fashion.

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 January 12, 2024, 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 chairperson of the Con-

sumer Protection and Professional Licensure Committee of the Senate (SCP/PLC) and the chairperson of the Professional Licensure Committee of the House of Representatives (HPLC). 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) that 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.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Thomas M. Davis, Regulatory Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail at RA-STRegulatoryCounsel@pa.gov, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference “Regulation No. 16A-6522 (Early Exam, CE for Clinical Instruction, and AAP)” when submitting comments.

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Chairperson
State Board of Physical Therapy

ARION R. CLAGGETT,
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Bureau of Professional and Occupational Affairs

Fiscal Note: 16A-6522. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS

GENERAL PROVISIONS

§ 40.1. Definitions.

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

* * * * *

FSBPT—The Federation of State Boards of Physical Therapy.

NPTE—The National Physical Therapy Examination developed, maintained and administered by FSBPT.

Physical therapist—A person licensed under the act and this chapter to provide physical therapy services without restriction in this Commonwealth.

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LICENSURE

§ 40.14. Examination; failure; reexamination.

(a) [**Applicants shall successfully pass, to the satisfaction of the Board, the examination approved**

by the Board. In cases of failure at the first examination, the applicant shall have, after the expiration of 60 days and within 1 year from the date of the first failure, the privilege of a second examination, with the payment of an additional examination fee charged by the vendor] Applicants shall successfully pass the NPTE.

(b) [After a second or successive failure to pass the examination, an applicant desiring to take a third or successive examination shall make a new application within the meaning of section 5 of the act (63 P.S. § 1305) within 6 months from the date of the last failure. However, prior to filing a new application for examination, the Board may require evidence of additional training. If the Board determines that the applicant will be permitted to take a third or successive examination, the Board may authorize in connection with a written examination an oral or practical examination, or both, to test the knowledge and competence of the applicant] [Reserved].

(c) [The granting of permission by the Board to take a third or successive examination is at all times subject to the applicant otherwise qualifying under the requirements in force at the time permission to take the examination is sought] [Reserved].

(d) An applicant may not take the [examination] NPTE more than three times in a consecutive 12-month period.

(e) An applicant may take the NPTE up to 90 days prior to graduation from a CAPTE accredited program.

§ 40.15. [Examinations] Licensure by Examination.

(a) [An application for licensure by examination may be obtained from the State Board of Physical Therapy, Post Office Box 2649, Harrisburg, Pennsylvania, 17105-2649] Applications for licensure by examination must be submitted to the Board in a manner and format prescribed by the Board.

(b) [An applicant may not be admitted to examination who is unable to present, at the time of application, the required credentials of professional education from an approved institution] Applicants who have graduated from a physical therapy program accredited by CAPTE or by another National organization recognized by the Board that accredits physical therapy programs, shall submit to the Board, at the time of application, the required credentials of professional education from an approved institution.

PRACTICE WITHOUT REFERRAL

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

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

- (1) Holds a current license to practice physical therapy in this Commonwealth.
- (2) Has done one of the following:

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

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

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§ 40.63. Continuing education for direct access certificateholder.

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(i) *General continuing education requirement.* Hours of continuing education applied to satisfy the requirement of this section may also be applied to satisfy the requirement of § 40.67 (relating to continuing education for licensed physical therapist). Satisfaction of the continuing education requirement in this section will be deemed to establish satisfaction of the continuing education requirement in § 40.67.

(j) Continuing education credit for clinical instruction. A certificate-holder who provides clinical instruction to students in a clinical facility affiliated with a physical therapy program accredited by CAPTE, or by another National organization recognized by the Board that accredits physical therapy programs, may receive credit for 1 contact hour of continuing education for each 40 hours of clinical instruction up to a maximum of 4 contact hours per biennial period. Credits earned under this subsection will not count toward credits required under § 40.61(a)(2)(ii) (relating to certificate of authorization to practice physical therapy without a referral).

CONTINUING EDUCATION

§ 40.67. Continuing education for licensed physical therapist.

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(c) *Credit for approved continuing education.* Credit for continuing education will be determined in accordance with the following.

(1) Credit for continuing education will be granted only for [courses or programs offered by providers preapproved under subsection (d)(1) or approved by the Board under subsection (d)(2) or for authoring publications as authorized under subsection (e).] the following:

(i) Clinical instruction provided to students under paragraph (7).

(ii) Courses or programs offered by providers preapproved under subsection (d)(1).

(iii) Courses or programs approved by the Board under subsection (d)(2).

(iv) Authoring publications as authorized under subsection (e).

(2) Unless limited by this section, continuing education credit may be earned in a course or program or authoring a publication relating to any of the following:

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(6) If a course or program extends beyond a single biennial renewal period, credit will be awarded in the period in which the course or program is finally completed.

(7) A licensee providing clinical instruction to students in a clinical facility affiliated with a physical therapist program or physical therapist assistant program accredited by CAPTE or by another National organization recognized by the Board that accredits physical therapy programs or physical therapist assistant programs may receive credit for 1 contact hour of continuing education for each 40 hours of clinical instruction up to a maximum of 4 contact hours per biennial period.

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

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**Subchapter C. PHYSICAL THERAPIST ASSISTANTS
CERTIFICATION**

§ 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 **pay the fee in § 40.5 (relating to fees) for initial application for physical therapist assistant certification by exam or endorsement and** 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 CAPTE.

(2) A passing grade on the **[physical therapist assistant certification examination] NPTE.**

(b) Under section 6(d.1) of the act (63 P.S. § 1306(d.1)), an applicant for reciprocal certification shall submit evidence of a valid license, certificate or registration as a physical therapist assistant issued by another state, territory or the District of Columbia, where the requirements for licensure, certification or registration were on the date of issuance substantially the same as those required by this Commonwealth, and which accords similar privileges to persons certified as physical therapist assistants in this Commonwealth.

§ 40.164. Physical therapist assistant certification examination.

(a) *Application procedure.* An applicant applying for certification by examination shall **[take the physical therapist assistant certification examination. The applicant who is taking the examination in this Commonwealth shall]** comply with the following:

(1) **[The applicant shall complete application forms for admission to the examination obtained from the Board and return the completed form with a check or money order for the appropriate fee] [Reserved].**

(2) **[The applicant shall present the required credentials of professional education at the time of application] [Reserved].**

(3) An applicant shall successfully pass the NPTE.

(4) An applicant may take the NPTE up to 90 days prior to graduation from a CAPTE accredited program.

(b) *Failure and re-examination.* In the case of failure of examination, **[the following apply:] an applicant may retest, but may not take the NPTE more than three times in a consecutive 12-month period.**

(1) **[After failing the first examination, the applicant has, after the expiration of 60 days and within 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] [Reserved].**

(2) **[After a second or successive failure to pass the examination, an applicant desiring to take a third or successive examination shall file a new application. The Board may require evidence of additional training prior to allowing a candidate to take a third or successive examination] [Reserved].**

(3) **[The granting of permission to take a third or successive examination is subject to:**

(i) **Authorization by the Board at its discretion to include an oral or practical examination, or both, in connection with the written examination to further test the knowledge, skills and competence of the applicant.**

(ii) **The applicant otherwise qualifying under requirements in force at the time that permission to take the examination is sought] [Reserved].**

CONTINUING EDUCATION

§ 40.192. Continuing education for certified physical therapist assistant.

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(c) *Credit for approved continuing education.* Credit for continuing education will be determined in accordance with the following.

(1) Credit for continuing education will be granted only for **[courses or programs offered by providers preapproved under subsection (d)(1) or approved by the Board under subsection (d)(2) or for authoring publications as authorized under subsection (e).] the following:**

(i) Clinical instruction provided to students under paragraph (7).

(ii) Courses or programs offered by providers preapproved under subsection (d)(1).

(iii) Courses or programs approved by the Board under subsection (d)(2).

(iv) Authoring publications as authorized under subsection (e).

(2) Unless limited by this section, continuing education credit may be earned in a course or program or by authoring a publication relating to any of the following:

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(6) If a course or program extends beyond a single biennial renewal period, credit will be awarded in the period in which the course or program is finally completed.

(7) A certified physical therapist assistant providing clinical instruction to students in a clinical facility affiliated with a physical therapist program or physical therapist assistant program accredited

by CAPTE or by another National organization recognized by the Board that accredits physical therapy programs or physical therapist assistant programs shall receive credit for 1 contact hour of continuing education for each 40 hours of clinical instruction up to a maximum of 4 contact hours per biennial period.

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

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[Pa.B. Doc. No. 24-105. Filed for public inspection January 26, 2024, 9:00 a.m.]
