



Call to Order – Mira H. Mariano, PT, Ph.D., Board President

- Welcome and Introductions
- Mission of the Board
- Emergency Egress Instructions

Approval of Minutes (p. 4-18)

- Board Meeting – February 22, 2024
- Formal Hearing – February 22, 2024
- Legislative/Regulatory Committee Meeting – April 12, 2024

Ordering and Approval of Agenda

Public Comment

The Board will receive public comment on agenda items at this time. The Board will not receive comment on any pending regulation process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

Agency Report – Arne Owens, Director

Staff Reports

- Executive Director’s Report and Physical Therapy Compact Update – **Corie E. Tillman Wolf, JD, Executive Director**
- Discipline Report – **Melanie Pagano, Deputy Executive Director**
- Licensing Report – **Sarah Georgen, Licensing and Operations Supervisor**

Board Counsel Report – Brent Saunders, Senior Assistant Attorney General

Committee and Board Member Reports

- Legislative/Regulatory Committee Meeting Report – **Susan Szasz Palmer**

Legislative and Regulatory Report – Matt Novak, Policy and Economic Analyst

- Report on Status of Regulations

Board Discussion and Actions – Matt Novak, Policy and Economic Analyst and Corie Tillman Wolf, JD, Executive Director

- Completion of Periodic Review - Public Participation Guidelines (18VAC112-11-10 et seq.)
- Board Action on Recommendations from Legislative/Regulatory Committee:

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- Readoption of Guidance Document 112-3, Board Guidance on Receipt of Verbal Orders for Medications by Physical Therapists
 - Review of Guidance Documents for Reclassification
 - 112-1: By-Laws of the Board of Physical Therapy
 - 112-17: Sanction Reference Manual
 - 112-22: Procedures for Auditing Continued Competency Requirements
 - 112-23: Guidelines for Processing Applications for Licensure
 - Adoption of Policy Document, “Processing National Physical Therapy Examination (NPTE) Appeals”
-
-

New Business

- Updates to Workforce Survey Questions – Telehealth and Specialty Areas – **Yetty Shobo, PhD, Director, Healthcare Workforce Data Center, and Corie E. Tillman Wolf, JD, Executive Director**
-
-

Presentation

- Continuing Education Compliance Management – **Amanda Lipinski, CE Broker**
-
-

Next Meeting – August 13, 2024

Business Meeting Adjournment

Probable Cause Review

This information is in **DRAFT** form and is subject to change. The official agenda and packet will be approved by the public body at the meeting and will be available to the public pursuant to the Code of Virginia.

Approval of Minutes

February 22, 2024

The Virginia Board of Physical Therapy convened for a full Board meeting on Thursday, February 22, 2024, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #4, Henrico, Virginia.

BOARD MEMBERS PRESENT

Mira H. Mariano, PT, PhD, President*
Susan Szasz Palmer, MLS, Vice-President
Megan Bureau, PT, DPT
Rebecca Duff, PTA, DHSc
Melissa Fox, PT, DPT
Srilekha Palle, PT, DPT

BOARD MEMBERS NOT PRESENT:

Elizabeth Locke, PT, PhD

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING

Erin Barrett, Director of Legislative and Regulatory Affairs
Sarah Georgen, Licensing and Operations Supervisor
Laura Mueller, Senior Licensing Program Coordinator
Melanie Pagano, Deputy Executive Director
James Rutkowski, Assistant Attorney General, Board Counsel
Corie Tillman Wolf, Executive Director

**Participant indicates attendance to count toward continuing education requirements*

OTHER GUESTS PRESENT:

Helm Simpson
Paige Roberts

CALL TO ORDER

Dr. Mariano called the meeting to order at 10:48 a.m. and asked the Board members and staff to introduce themselves.

With six Board members present at the meeting, a quorum was established.

Dr. Mariano welcomed new Board members, Dr. Palle and Dr. Bureau.

Dr. Mariano read the mission of the Board, which is also the mission of the Department of Health Professions.

Dr. Mariano reminded the Board members and audience about microphones, computer agenda materials, breaks, sign-in sheets, and attendance for continuing education requirements.

Ms. Tillman Wolf then read the emergency egress instructions.

APPROVAL OF MINUTES

Dr. Mariano opened the floor to any edits or corrections regarding the draft minutes for a Board meeting held on August 10, 2023, and a Telephonic Conference held on November 9, 2023. With no additions or edits, the minutes were approved as presented.

ORDERING OF THE AGENDA

Dr. Mariano opened the floor to any additional items to add to the agenda.

Ms. Tillman Wolf noted that Mr. Rutkowski is attending the meeting on behalf of Mr. Saunders as Board Counsel. She also noted that Mr. Owens would not be in attendance and no Agency Report would be provided.

Upon a **MOTION** by Dr. Fox and properly seconded by Dr. Duff, the Board voted to accept the agenda as presented. The motion carried unanimously (6-0).

PUBLIC COMMENT

The Board did not receive any public comment.

STAFF REPORTS

Executive Director's Report – Corie E. Tillman Wolf, J.D., Executive Director

Welcome New Board Members

Ms. Tillman Wolf welcomed Dr. Bureau and Dr. Palle to the Board of Physical Therapy.

Board Updates

Ms. Tillman Wolf reported that since the last meeting, she provided a presentation to third-year DPT students at Old Dominion University on October 5, 2023, providing information on the application and licensure process. Ms. Tillman Wolf reported that Board staff conducted New Board Member Orientation on December 14, 2023, in which Dr. Bureau and Dr. Palle were in attendance.

Ms. Tillman Wolf reported on 2023 accomplishments of the Board to include the initiation of regulatory reduction efforts, updates to the Board website format, the implementation of new licensure functions of

responsive “bots” for application correspondence, document uploads for online applications, and implemented the use of Box for disciplinary cases.

Ms. Tillman Wolf announced 2024 Board initiatives including the finalization of the process for licensing applicants through the Federal Military Spouse Licensing Act, the introduction to CE Broker as a possible tool for licensees, the launch of a Business Process Reengineering review of the licensure process, the development of a flow chart/journey map for students specific to Virginia, the convening of the Legislative/Regulatory Committee meeting in April to review and make recommendations to the full Board on a number of topics, and the implementation of updates to the probable cause review process.

Ms. Tillman Wolf reminded Board Members of the Agency Board Member Training scheduled for March 26, 2024.

FSBPT Updates

Ms. Tillman Wolf reported on attendance of the 2023 Annual Meeting held on October 19-21, 2023, in Jacksonville, Florida, for the Federation of State Boards of Physical Therapy (FSBPT).

Ms. Tillman Wolf also reported on the upcoming FSBPT meetings to include a Regulatory Training for Board Members and Staff scheduled for May 16-18, 2024 (in-person and virtual), the Leadership Issues Forum (LIF) meeting scheduled for July 13-14, in Arlington, Virginia, and the 2024 Annual Meeting scheduled for October 31-November 2, 2024, in Cedar Rapids, Iowa. She provided a reminder that the Board’s President and Vice President typically attend the FSBPT Annual Meeting as the voting delegate and alternate delegate.

FSBPT – Annual Meeting Updates

Ms. Tillman Wolf reported on issues discussed at the Annual Meeting to include efforts in other states, national examination (NPTE) and examination/licensure/discipline database (ELDD) updates, and newly developed resources from the Sexual and Boundary Violations Committee. She noted that Dr. Yetty Shobo, Director of the DHP Healthcare Workforce Data Center, has been asked to participate on a FSBPT Committee related to the Multi-Disciplinary Minimum Data Set. Ms. Tillman Wolf noted ongoing discussion of educator licensure requirements by the Commission on Accreditation of Physical Therapy Education (CAPTE) and provided a brief overview of a recent challenge filed by FSBPT to the trademark application of Life Time, Inc., related to the use of “DPT.”

PT Compact Updates

Ms. Tillman Wolf reported on the national status of the Physical Therapy Compact, including new states that have enacted legislation or have begun issuing privileges. She reported that thirty-seven jurisdictions have passed legislation to join the Compact and that thirty-one jurisdictions are currently issuing privileges as of February 2024. She reported that nine jurisdictions have pending Compact legislation.

Ms. Tillman Wolf provided a copy of a letter to State Insurance Commissioners regarding the equivalency of license and Compact Privileges.

Ms. Tillman Wolf reported on the active committees of the PT Compact including the Rules and Bylaws Committee, the Compliance Committee, and the Education and Outreach Committee.

She noted two current items in Virginia related to the Compact: awareness of the necessity for licensees to renew their Compact Privilege when their home state license is renewed and the interaction between the Compact and the Federal Military/Spouse Licensing Act.

Ms. Tillman Wolf reported on the 2023 Compact Privileges purchased to practice in Virginia. Additionally, she reported that there were 730 active privileges in Virginia (587 Physical Therapists and 143 Physical Therapist Assistants) as of February 20, 2024.

Expenditures and Revenue Summary

Ms. Tillman Wolf presented the Expenditure and Revenue Summary as of June 30, 2023

Cash Balance as of June 30, 2022	\$1,185,352
YTD FY 2023 Revenue	\$1,545,230
<u>Less: YTD FY 2023 Direct and Allocated Expenditures</u>	<u>\$ 756,419</u>
Cash Balance as of June 30, 2023	\$1,974,162

2024 Board Meetings

Ms. Tillman Wolf noted the remaining 2024 Board meeting dates.

- May 14, 2024
- August 13, 2024
- November 13, 2024

Notes and Reminders

Ms. Tillman Wolf provided reminders to Board Members to keep board staff informed of participation in committees or workgroups and any travel needs for FBSPT participation, as travel authorization is required, as well as any change in contact information.

Ms. Tillman Wolf thanked the Board Members for their hard work and dedication.

Dr. Mariano requested clarification on the concern of the term “Dynamic Personal Trainer” or “DPT.” Ms. Tillman Wolf reported that it can be confusing to physical therapy patients/consumers with the “DPT” term that is used in the practice of physical therapy for the degree designation “Doctorate of Physical Therapy” then also being used to abbreviate “Dynamic Personal Trainer” by a fitness entity.

With no additional questions, Ms. Tillman Wolf concluded her report.

Discipline Report

As of January 31, 2024, Ms. Pagano reported the following disciplinary statistics:

- 51 Open cases:
 - 25 Patient Care:
 - 13 at Enforcement/Investigation
 - 9 at Probable Cause
 - 1 at APD
 - 2 at Formal Hearing
 - 26 Non-Patient Care:
 - 3 at Enforcement/Investigation
 - 22 at Probable Cause
 - 1 at Informal Conference

Ms. Pagano reported the following Total Cases Received and Closed:

- Q4 2021 – 20/7
- Q1 2022 – 11/12
- Q2 2022 – 9/8
- Q3 2022 – 15/18
- Q4 2022 – 3/10
- Q1 2023 – 15/21
- Q2 2023 – 13/18
- Q3 2023 – 10/8
- Q4 2023 – 4/5
- Q1 2024 – 10/14
- Q2 2024 – 27/4

Ms. Pagano provided a case status update since the January 2024 Monthly Report and reported the following disciplinary statistics:

- Patient Care:
 - 6 cases closed/pending closure
- Non-Patient Care:
 - 14 Confidential Consent Agreements completed for processing
 - 1 Pre-Hearing Consent Order for consideration by the Board

Ms. Pagano stated that there were no cases ready for probable cause review.

With no questions, Ms. Pagano concluded her report.

Licensure Report – Sarah Georgen, Licensing and Operations Supervisor

Licensure Statistics – All Licenses

Ms. Georgen presented licensure statistics that included the following information and trends in license count:

License	Q1 2024	Q2 2024	Change +/-
Physical Therapist	9,403	9,523	+120
Physical Therapist Assistant	3,758	3,791	+33
Total PT's and PTA.'s	13,161	13,314	+153
Direct Access Certification	1,250	1,257	+7

Criminal Background Check Statistics 2023

Ms. Georgen provided the Criminal Background Check statistics for 2023 that included the following information:

	PT	PTA	Total
Total Applicants	742	197	939
CBC Record Not Disclosed	6	2	8
Self Disclosed	7	4	11
Total Convictions	13	6	19

Ms. Georgen provided data on the trends noted for criminal background checks since 2020.

Examination Statistics

Ms. Georgen presented the Physical Therapist and Physical Therapist Assistant examination statistics from October 2023 and January 2024 administrations and provided information on the examination trends.

Customer Satisfaction

Ms. Georgen reported the customer satisfaction statistics for FY 2023.

Ms. Georgen summarized the written comments from the customer satisfaction survey sent to new licensees.

Call Trends

Ms. Georgen provided a brief report on the call trends from 2019 to 2023. She stated that an average of 5,100 calls are received by the Board each year.

Updates for Expense Reimbursement Vouchers

Ms. Georgen provided information on changes to the Internal Revenue Service (IRS) Standard Mileage Rate increase effective January 1, 2024. She provided information to the Board Members on using an optional

Virginia Department of Accounts Remittance Electronic Data Interchange (REDI) system for pending deposit notifications.

Ms. Georgen provided information on the existing policy regarding compliance with the 30-day requirement to submit Expense Reimbursement Vouchers. She stated that all agencies were required to adhere to these regulations, and there are no exceptions to this policy.

Dr. Palle requested information on the National Physical Therapy Examination comparison to Virginia. Ms. Tillman Wolf said that information could be shared at the next Board meeting.

With no questions, Ms. Georgen concluded her report.

BOARD COUNSEL REPORT

Mr. Rutkowski provided an update on a pending court case involving the Board.

COMMITTEE AND BOARD MEMBER REPORTS

FSBPT Annual Meeting Report – Mira Mariano, PT, PhD

Dr. Mariano reported on the FSBPT Annual Meeting and reviewed the tasked items for 2024.

Board of Health Professions Report – Rebecca Duff, PTA, DHSc

Dr. Duff stated that she had no report to provide.

LEGISLATIVE AND REGULATORY REPORT

Ms. Barrett provided an update on the legislative bills considered by the 2024 General Assembly.

Ms. Palle requested clarification on the regulatory reduction proposed. Ms. Barrett provided clarification that the Board previously reviewed the regulations for duplicate information and guidance document content which would make it difficult for the Board to further reduce regulations. She stated that the review of this information is ongoing, and more information would be provided in the future.

Ms. Tillman Wolf spoke to questions from Dr. Palle regarding the English proficiency examination and review process and the required traineeship for foreign educated applicants.

Ms. Barrett provided an update on the regulatory actions currently in process.

With no questions, Ms. Barrett concluded her report.

BOARD DISCUSSION AND ACTIONS

Consideration and Adoption of Proposed Regulations for Regulatory Reduction (18VAC112-20-10 et seq.)

Ms. Barrett provided an overview of the draft Proposed Regulations for Regulatory Reduction (18VAC112-20-10 et seq.) and noted additional changes to ensure consistency of reference within the regulations, as well as the proposed removal of the requirement for applicants for licensure by endorsement to provide evidence of completion of continuing education in 18VAC112-20-65(B)(4).

Upon a **MOTION** by Dr. Bureau, properly seconded by Dr. Palle, the Board voted to adopt Proposed Regulations for Regulatory Reduction (18VAC112-20-10 et seq.), as amended. The motion carried unanimously (6-0).

Initiation of Fast-Track Regulatory Action Related to Agency Subordinate Proceedings (18VAC112-20-26)

Ms. Barrett provided an overview of a proposed Fast-Track Regulatory Action Related to Agency Subordinate Proceedings (18VAC112-20-26) to conform with a 2023 change to the *Virginia Code*.

Upon a **MOTION** by Ms. Szasz Palmer, properly seconded by Dr. Fox, the Board voted to amend 18VAC112-20-26 by fast-track action as presented. The motion passed unanimously (6-0).

Initiation of Periodic Review - Public Participation Guidelines (18VAC112-11-10 et seq.)

Ms. Barrett provided an overview of the periodic review process and the required review of the Board's Public Participation Guidelines (18VAC112-11-10 et seq.).

Upon a **MOTION** by Dr. Duff, properly seconded by Dr. Palle, the Board voted to initiate periodic review of 18VAC112-11-10 et seq. as presented. The motion carried unanimously (6-0).

Review of Designation of Documents as Guidance Documents

Ms. Barrett provided information related to the review of the Board's guidance documents to determine if they meet the requirements to serve as guidance documents or if they should be labeled as policy documents going forward.

The Board requested the Legislative/Regulatory Committee to review the guidance documents for recommendations and considerations by the full Board.

BREAK

The Board took a break at 12:28 p.m. and reconvened at 12:33 p.m.

NEW BUSINESS

Initial Discussion Regarding CE Broker as Tool for Continuing Education Tracking and Reporting

Ms. Georgen provided an overview of CE Broker as a tool for continuing education tracking and reporting.

The Board requested a presentation from a representative of CE Broker at the next meeting for further discussion and consideration.

Initial Discussion - Developing Guidance on NPTE Appeal Process

Ms. Tillman Wolf initiated discussion on developing guidance from the Board on the process for candidates who seek an appeal of the FSBPT's attempt limits for the National Physical Therapy Examination.

The Board requested the Legislative/Regulatory Committee to review the NPTE Appeal Process for recommendations and considerations by the full Board.

CONSIDERATION OF CONSENT ORDER

Dr. Mariano turned the facilitation of the meeting over to Ms. Szasz Palmer.

Ms. Pagano provided a summary of the Consent Order for case number 226697.

Upon a **MOTION** by Dr. Duff, the Board of Physical Therapy convened in a closed meeting pursuant to Section 2.2-3711(A)(27) of the Code of Virginia for the purpose of deliberation to consider a settlement proposal in a pending disciplinary action regarding Joshua Forrest, Physical Therapist.

She moved that Mr. Rutkowski, Ms. Tillman Wolf, Ms. Pagano, and Ms. Georgen attend the closed meeting because their presence in the closed meeting is deemed necessary and will aid the Board in its consideration of this topic.

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3711(A)(27) of the Code, upon motion by Dr. Duff, the Board reconvened in open session.

Upon a **MOTION** by Dr. Bureau, and duly seconded by Dr. Fox, the Board moved to accept the Consent Order. The motion carried unanimously (6-0).

NEXT MEETING

The next meeting date is May 14, 2024.

ADJOURNMENT

Dr. Mariano called for any objections to adjourn the meeting. Hearing no objections and with all business concluded, the meeting adjourned at 1:10 p.m.

Corie Tillman Wolf, J.D., Executive Director

Date

Unapproved
**VIRGINIA BOARD OF PHYSICAL THERAPY
FORMAL ADMINISTRATIVE HEARING
MINUTES**

Thursday February 22, 2024 **Department of Health Professions
Perimeter Center
9960 Mayland Drive
Henrico, Virginia 23233**

CALL TO ORDER: The formal hearing of the Board was called to order at 1:39 p.m.

MEMBERS PRESENT: Mira Mariano, PT, PhD, Vice President (Chair)
Rebecca Duff, PTA, DHSc
Srilekha Palle, PT, DPT, MBA
Megan Bureau, PT, DPT

BOARD COUNSEL: Jim Rutkowski, Assistant Attorney General

DHP STAFF PRESENT: Corie Tillman Wolf, Executive Director
Sarah Georgen, Licensing and Operations Manager

COURT REPORTER: Cameron Jordan, County Court Reporters

**PARTIES ON BEHALF OF
COMMONWEALTH:** Anne Joseph, Adjudication Consultant, Administrative
Proceedings Division

**COMMONWEALTH'S
WITNESS:** Kelly Ashley, Senior Investigator, DHP

MATTER: **Stephanie Parker Bishop, PTA
License No.: 2306-602190
Case Numbers: 222726**

**ESTABLISHMENT OF A
QUORUM:** With four (4) members present, a quorum was
established.

DISCUSSION: Stephanie Parker Bishop, PTA, did not appear before the Board in accordance with the Notice of Formal Hearing dated January 4, 2024 nor was she represented by counsel at the Formal Hearing.

The Board received evidence and sworn testimony on behalf of the Commonwealth regarding the allegations in the Notice.

CLOSED SESSION: Upon a motion by Dr. Duff, and duly seconded by Dr. Palle, the Board voted to convene a closed meeting, pursuant to §2.2-3711.A (27) of the Code of Virginia, for the purpose of deliberation to reach a decision in the matter of Stephanie Parker Bishop, PTA.

Additionally, Dr. Duff moved that Mr. Ratkowski, Ms. Tillman Wolf, and Ms. Georgen attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RECONVENE: Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

DECISION: Upon a motion by Dr. Duff, and duly seconded by Dr. Bureau, the Board voted to issue an order to Indefinitely Suspend the license of Stephanie Parker Bishop.

The motion carried.

VOTE: The vote was unanimous. (4-0)

ADJOURNMENT: The Board adjourned at 2:13 p.m.

For the Board:

Corie Tillman Wolf, JD, Executive Director

Date

April 12, 2024

The Legislative/Regulatory Committee of the Virginia Board of Physical Therapy convened on Friday, April 12, 2024, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

BOARD MEMBERS PRESENT

Susan Szasz Palmer, MLS, Board Member, Committee Chair
Megan Bureau, PT, DPT, Board Member
Mira H. Mariano, PT, PhD, Board Member, Board President

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING

Erin Barrett, Director of Legislative and Regulatory Affairs
Sarah Georgen, Licensing and Operations Supervisor
Matt Novak, Policy and Economic Analyst
Melanie Pagano, Deputy Executive Director
Brent Saunders, Senior Assistant Attorney General, Board Counsel
Corie Tillman Wolf, Executive Director

OTHER GUESTS PRESENT:

R. Dodson
Joseph Gianfortoni, MD*
Ken Hutcheson
Paige Roberts
Melissa Wyatt

**Participant indicates attendance to count toward continuing education requirements*

CALL TO ORDER

Ms. Szasz Palmer called the meeting to order at 10:00 a.m. and asked the Board members and staff to introduce themselves.

With three Committee members present at the meeting, a quorum was established.

Ms. Szasz Palmer read the mission of the Board, which is also the mission of the Department of Health Professions.

Ms. Szasz Palmer reminded the Board members and audience about microphones, computer agenda materials, breaks, sign-in sheets, and attendance for continuing education requirements.

Ms. Tillman Wolf then read the emergency egress instructions.

APPROVAL OF THE AGENDA

Ms. Szasz Palmer opened the floor to any additional items to add to the agenda.

Upon a **MOTION** by Dr. Bureau and properly seconded by Dr. Mariano, the Board voted to accept the agenda as presented. The motion carried unanimously (3-0).

PUBLIC COMMENT

Dr. Joseph Gianfortoni, MD, provided public comment requesting the Board to convene a regulatory advisory panel to provide specialization and technical assistance for discussion of pelvic floor therapy and the definition of invasive procedures.

DISCUSSION AND COMMITTEE RECOMMENDATIONS

Discussion of Practice of Pelvic Floor Therapy and Definition of Invasive Procedure

Ms. Szasz Palmer opened the meeting to discussion of the practice of pelvic floor therapy and the definition of an invasive procedure. The Committee discussed factors that could potentially be addressed by Board guidance or regulatory amendments.

The Committee discussed the importance of informed consent for all procedures performed, not just invasive procedures, and recent recommendations of the APTA Academy of Pelvic Health regarding the use of chaperones. The Committee requested additional information related to the definitions of pelvic floor therapy and invasive procedures. Ms. Tillman Wolf agreed to gather additional data and information related to federal recent legislation introduced on women's health and post-partum treatment, a comparison of information available from other jurisdictions, information related to enhanced training for pelvic floor therapy, as well as information from the APTA Academy of Public Health as it applies to these topics.

The Committee agreed to convene another Legislative/Regulatory Committee Meeting to discuss the information for further consideration.

Discussion of Use and Impact of Artificial Intelligence (AI) and Digital Technology in the Practice of Physical Therapy

Ms. Tillman Wolf stated that the Board received a question from a licensee prompting a discussion of the use and impact of artificial intelligence (AI) and digital technology in the practice of physical therapy.

The Committee discussed technological advancements that may impact digital practice as it applies to the consumer, the licensee, and the role of currently established telehealth practice.

The Committee discussed including a portion of the existing Guidance Document 112-21, "Guidance on Telehealth" that could provide recommendations and addresses digital technologies in more general terms with telehealth included under the umbrella of digital practice. The Committee agreed to review a draft of proposed amendments to the Guidance Document at the next Legislative/Regulatory Committee Meeting for further consideration.

Review of Guidance Documents for Reclassification

Ms. Barrett provided information for the Committee’s consideration related to the reclassification of Guidance Documents.

Upon a **MOTION** by Dr. Bureau, properly seconded by Dr. Mariano, the Committee voted to submit Guidance Documents 112-1: “By-Laws of the Board of Physical Therapy,” 112-17: “Sanction Reference Manual,” 112-22: “Procedures for Auditing Continued Competency Requirements,” and 112-23: “Guidelines for Processing Applications for Licensure” to Board Counsel for review and recommendation to the Board President as presented. The motion carried unanimously (3-0).

Review and Revise Guidance Document 112-3, Board Guidance on Receipt of Verbal Orders for Medications by Physical Therapists

The Committee discussed Guidance Document 112-3, “Board Guidance on Receipt of Verbal Orders for Medications by Physical Therapists” and determined that no edits were necessary.

Upon a **MOTION** by Dr. Mariano, properly seconded by Dr. Bureau, the Committee voted to recommend to the full Board the readoption of Guidance Document 112-3, “Board Guidance on Receipt of Verbal Orders for Medications by Physical Therapists” as presented. The motion carried unanimously (3-0).

Development of Guidance or Policy Document - Processing National Physical Therapy Examination (NPTE) Appeals

The Committee discussed the proposed document on the processing of National Physical Therapy (NPTE) examination appeals. The Committee discussed inclusion of language that the Board would consider no more than one appeal request from an applicant.

Upon a **MOTION** by Dr. Mariano, properly seconded by Dr. Bureau, the Committee voted to recommend to the full Board the adoption of a policy document on processing appeals to the exam attempt limits for the National Physical Therapy Examination (NPTE) as amended. The motion carried unanimously (3-0).

NEXT STEPS

Ms. Szasz Palmer stated that the recommendations of the Committee as outlined in the motions would be presented to the full Board for consideration at the next scheduled Board meeting on May 14, 2024, and that another Legislative/Regulatory Committee Meeting would be scheduled for a later date for discussion on unfinished business.

ADJOURNMENT

Ms. Szasz Palmer called for any objections to adjourn the meeting. Hearing no objections and with all business concluded, the meeting adjourned at 11:17 a.m.

Corie Tillman Wolf, J.D., Executive Director

Date

Legislative and Regulatory Report

Board of Physical Therapy
Current Regulatory Actions
As of April 27, 2024

In the Governor’s Office

None.

In the Secretary’s Office

VAC	Stage	Subject Matter	Submission from agency	Time in current location	Notes
18VAC110-20	Fast-Track	Changes to comply with Compact rules	5/6/2022	607 days	Changes to licensure for Canadian applicants to comply with Compact requirements
18VAC110-20	Fast-Track	Regulatory amendment to allow agency subordinates to hear credentials cases	2/27/2024	9 days	Change pursuant to legislation to allow agency subordinates to hear application cases.

At DPB

VAC	Stage	Subject Matter	Submission from agency	Time in current location	Notes
18VAC110-20	Proposed	Regulatory reduction	2/27/2024	36 days	Reduction action to reduce requirements.

At OAG

None.

Recently effective or awaiting publication

None.

Board Discussion and Actions

Agenda Item: Completion of periodic review of public participation guidelines contained in 18VAC112-11

Included in your agenda packet:

- Town Hall summary page showing no comments on periodic review
- 18VAC112-11

Staff Note: Agencies are required to conduct periodic reviews of regulatory chapters every four years. Although this particular chapter is only changed when the Department of Planning and Budget provides new model language, the Board was still required to conduct a periodic review. Now that the review is complete, the Board should not initiate any changes, but retain as is until DPB amends the model regulations.

Action Needed:

- Motion to retain 18VAC112-11 as is.



Agency Department of Health Professions

Board Board of Physical Therapy

Chapter Public participation guidelines [18 VAC 112 - 11]

Edit Review

Review 2496

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 2/22/2024

Notice of Periodic Review

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, this regulation is undergoing a periodic review.

The review of this regulation will be guided by the principles in Executive Order 19
<https://TownHall.Virginia.Gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

In order for you to receive a response to your comment, your contact information (preferably an email address or, alternatively, a U.S. mailing address) must accompany your comment. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information

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Publication of Notice in the Register and Public Comment Period

Published in the Virginia Register on 3/25/2024 [Volume: 40 Issue: 16]

Comment Period begins on the publication date and ended on 4/15/2024

Comments Received: 0

Review Result

Pending

TH-07 Periodic Review Report of Findings *(not yet submitted)*

ORM Economic Review Form *(not yet submitted)*

Attorney General Certification

Submitted to OAG: 2/22/2024

Review Completed: 2/22/2024

Result: Certified

 **Review Memo**

This periodic review was created by Erin Barrett on 02/22/2024 at 2:25pm

Commonwealth of Virginia



PUBLIC PARTICIPATION GUIDELINES

VIRGINIA BOARD OF PHYSICAL THERAPY

Title of Regulations: 18 VAC 112-11-10 et seq.

**Statutory Authority: §§ 54.1-2400 and 2.2-4007
of the *Code of Virginia***

Revised Date: March 23, 2017

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Part I

Purpose and Definitions

18VAC112-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Physical Therapy. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC112-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Physical Therapy, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

18VAC112-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC112-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC112-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC112-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § [2.2-4013](#) C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § [2.2-4012](#) E of the Code of Virginia.

18VAC112-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC112-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC112-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. A NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

18VAC112-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC112-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC112-11-110. Periodic review of regulations.

- A. The agency shall conduct a periodic review of its regulations consistent with:
 1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
 2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.
- B. A periodic review may be conducted separately or in conjunction with other regulatory actions.
- C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

Board Action on
Recommendations from
Legislative/Regulatory
Committee

Board of Physical Therapy

Board Guidance on Receipt of Verbal Orders for Medications by Physical Therapists

Question:

May a physical therapist directly receive a verbal order from a physician for changes to medications that are not typically managed by a physical therapist, such as discontinuing an order for a diuretic medication or decreasing the dosage of a blood pressure medication, where the verbal order is documented in the patient's electronic medical record and transmitted to the physician for signature? The question presented distinguishes a situation in which a physical therapist documents a conversation with a physician, transcribes a written order that has been received into the patient's record, or reconciles or compares patient medications to those listed in the patient's record.

Answer:

Physical therapists should not receive verbal orders from prescribing practitioners for medications that are not otherwise authorized for possession or administration by physical therapists pursuant to Virginia Code § 54.1-3408(E), as described below.

Analysis:

The Board's Regulations do not address specifically the issue of receipt of and/or transcription of verbal orders for medications by physical therapists.

However, a separate body of law, the Virginia Drug Control Act, sets forth the provisions related to prescriptions and prescribers. Virginia Code § 54.1-3408(B) sets forth how prescribing practitioners may communicate prescriptions or orders and who may administer those prescriptions.

Physical therapists are not listed among the practitioners in Virginia Code § 54.1-3408(B) who generally administer drugs and devices and are not permitted by the Drug Control Act to administer or possess controlled substances, except in accordance with Virginia Code § 54.1-3408(E), which provides the following:

E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

Of further note, the Virginia Board of Nursing recently revised [Guidance Document 90-2](#) (Transmittal of Orders by Authorized Agents, effective April 3, 2019) and [Guidance Document 90-31](#) (Whether a Nurse May Administer a Medication That Has Been Transmitted Orally Or In Writing By a Pharmacist Acting as the Prescriber's Agent, effective April 3, 2019). While these documents are intended to provide guidance to licensed nurses regarding the transmittal of orders, they shed additional light on the interpretation of which practitioners may receive verbal orders from prescribers.

For example, Guidance Document 90-2 references Virginia Code § 54.1-3408.01(C) which sets forth the following with regard to oral prescriptions (emphasis added):

C. The oral prescription referred to in § [54.1-3408](#) shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.

While this Code section specifically references transmittal of an oral prescription to a pharmacy, the guidance from the Board of Nursing in Guidance Document 90-2 contemplates a broader application of the transmittal of prescriber's orders:

Prescriber's orders should be transmitted by them directly to a licensed nurse. However, when circumstances preclude direct transmittal, such orders may be transmitted through an authorized agent of the prescriber in accordance with § 54.1-3408.01(C) of the Code of Virginia to the licensed nurse.

A physical therapist is not an individual who holds a valid license allowing the administration or dispensing of drugs, except as provided by Virginia Code § 54.1-3408(E), and typically is not an employee under the immediate and personal supervision of a physician (See Virginia Code §§ 54.1-3473, 54.1-3408, 54.1-3408.01).

Finally, with regard to scope of practice, the Board's Regulations, specifically 18VAC112-20-180, provides the following:

[18VAC112-20-180. Practitioner Responsibility.](#)

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent; ...

The definition of the practice of "physical therapy" can be found in [Virginia Code § 54.1-3473](#):

"Practice of physical therapy" means that branch of the healing arts that is concerned with, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders. The practice of physical therapy also includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures within the scope of practice of the physical therapist. However, the practice of physical therapy does not include the medical diagnosis of disease or injury, the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

Accordingly, physical therapists should not receive verbal orders from prescribing practitioners for medications that are not otherwise authorized for possession or administration by physical therapists pursuant to Virginia Code § 54.1-3408(E).

Review of Guidance Documents for Reclassification

**VIRGINIA BOARD OF PHYSICAL THERAPY
BYLAWS**

ARTICLE I: GENERAL

- A. The organizational year for the Board of Physical Therapy shall be from July 1st through June 30th.
- B. Members shall attend all scheduled meetings of the Board and committee to which they serve. In the event of two consecutive unexcused absences at any meeting of the Board or its committees, the President shall make a recommendation about the Board member's continued service to the Director of the Department of Health Professions for referral to the Secretary of Health and Human Resources and Secretary of the Commonwealth.

ARTICLE II: OFFICERS OF THE BOARD

A. Election of Officers

- 1. The officers of the Board of Physical Therapy shall be a President and a Vice-President.
- 2. At the first regularly scheduled meeting of the organizational year, the board shall elect its officers.
- 3. The term of office shall be one year, an officer may be re-elected in that same position for a second consecutive term.
- 4. Nominations for office shall be selected by open ballot, and election shall require a majority of the members present.
- 5. A vacancy occurring in any office shall be filled during the next meeting of the Board.

B. Duties of Officers

- 1. The President presides at all meetings and formal administrative hearings in accordance with parliamentary rules and the Administrative Process Act, and requires adherence of it on the part of the board members. The President shall appoint all committees and committee chairpersons unless otherwise ordered *or delegated* by the Board.
- 2. The Vice-President shall act as President in the absence of the President.
- 3. In the absence of both the President and Vice-President, the President shall appoint another board member to preside at the meeting and/or formal administrative hearing.

4. The Executive Director shall be the custodian of all Board records and all papers of value. She/He shall preserve a correct list of all applicants and licensees. She/He shall manage the correspondence of the Board and shall perform all such other duties as naturally pertain to this position.

ARTICLE III: MEETINGS

- A. For purposes of these Bylaws, the Board schedules full board meetings to take place during each quarter, with the right to change the date or cancel any board meeting, with the exception that a minimum of one meeting shall take place annually.
- B. Board members shall attend all board meetings in person, unless prevented by illness or similar unavoidable cause. A majority of the members of the Board shall constitute a quorum for the transaction of business.
- C. The current edition of Robert's Rules of Order, revised, shall apply unless overruled by these bylaws or when otherwise agreed.
- D. The order of the business shall be as follows:
 1. Call to order with statement made for the record of how many and which board members are present and that it constitutes a quorum.
 2. Approval of minutes.
 3. The Executive Director and the President shall collaborate on the remainder of the agenda.

ARTICLE IV: COMMITTEES

There shall be the following committees:

A. Standing Committees:

1. **Special Conference Committee.** This committee shall consist of two board members who shall review information regarding alleged violations of the physical therapy laws and regulations and determine if probable cause exists to proceed with possible disciplinary action. The President may also designate another board member as an alternate on this committee in the event one of the standing committee members becomes ill or is unable to attend a scheduled conference date. Further, should the caseload increase to the level that additional special conference committees are needed, the President may appoint additional committees.

2. **Credentials Committee.** The committee shall consist of two board members. The members of the committee will review non-routine licensure applications to determine the credentials of the applicant and the applicability of the statutes and regulations.
3. **Legislative/Regulatory Committee.** The committee shall consist of at least three Board members. The Board delegates to the Legislative/Regulatory Committee the authority to recommend actions in response to petitions for rulemaking. This committee is responsible for the development of proposals for new regulations or amendments to existing regulations with all required accompanying documentation; the review or development of proposals for legislative initiatives of the Board; the drafting of Board responses to public comment as required in conjunction with rulemaking; conducting the required review of all existing regulations as required by the Board's Public Participation Guidelines and any Executive Order of the Governor; and other required tasks related to regulations. In accordance with the Administrative Process Act, any proposed draft regulation and response to public comment shall be reviewed and approved by the full Board prior to publication. Any proposed draft legislation shall be reviewed and approved by the full board prior to publication.
4. **Continuing Education Committee.** This committee shall consist of at least two board members who review requests from licensees who seek a waiver or extension of time in complying with their continuing competency requirements.

B. Ad Hoc Committees:

There may be Ad Hoc Committees, appointed by the Board as needed each of which shall consist of at least two persons appointed by the Board who are knowledgeable in the particular area of practice or education under consideration by the Board. The committee shall review matters as requested by the Board and advise the Board relative to the matters or make recommendations for consideration by the Board.

ARTICLE V: GENERAL DELEGATION OF AUTHORITY

A. Delegation to Executive Director and/or Board staff

1. The Board delegates to Board staff the authority to issue and renew licenses, registrations and certificates where minimum qualifications have been met.
2. The Board delegates to the Executive Director the authority to reinstate licenses, registrations and certificates when the reinstatement is due to the lapse of the license, registration or certificate and not due to previous Board disciplinary action, and there is no basis upon which the Board could refuse to reinstate.

3. The Board delegates to Board staff the authority to develop and approve any and all forms used in the daily operations of the Board business, to include, but not limited to, licensure applications, renewal forms, and documents used in the disciplinary process. New or revised application or renewal forms shall be presented to the Board at its next regularly scheduled meeting.
4. The Board delegates to the Executive Director the authority to approve applications with criminal convictions in accordance with Guidance Document 112-23.
5. The Board delegates to the Executive Director the authority to sign as entered any Order or Board-approved Consent Order resulting from the disciplinary process.
6. The Board delegates to the Executive Director, who may consult with a special conference committee member, the authority to provide guidance to the agency's Enforcement Division in situations wherein a complaint is of questionable jurisdiction and an investigation may not be necessary, and the authority to approve requests for disclosure of investigative information pursuant to Virginia Code § 54.1-2400.2 (D) and (F).
7. The Board delegates to the Executive Director the authority to negotiate a Consent Order in consultation with the chair of a Special Conference Committee or formal hearing.
8. The Board delegates to the Executive Director the authority to close non-jurisdictional cases and fee dispute cases without review by a board member.
9. The Board delegates to the Executive Director the authority to offer a confidential consent agreement or a Consent Order for action consistent with any board-approved guidance document.
10. The Board delegates to the Executive Director the authority to represent and to make decisions on behalf of the Board as the designated state representative on the Physical Therapy Compact Commission.
11. The Board delegates to the Executive Director the authority to implement the policies and procedures of the Physical Therapy Licensure Compact as outlined in the current policies manual.

B. Delegation to Board President

The Board delegates to the President, the authority to represent the Board in instances where Board “consultation” or “review” may be requested where a vote of the Board is not required and a meeting is not feasible.

C. Delegation to Agency Subordinate

The Board delegates an informal fact-finding proceeding to any agency subordinate upon determination that probable cause exists that a licensee may be subject to a disciplinary action. Cases that may not be delegated to an agency subordinate include, but are not limited to, those that involve: intentional or negligent conduct that causes or is likely to cause injury to a patient; mandatory suspension resulting from action by another jurisdiction or a felony conviction; impairment with an inability to practice with skill and safety; sexual misconduct; and unauthorized practice. The Board may delegate to the Executive Director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being convened.

ARTICLE VI. AMENDMENTS

A board member or staff personnel may propose amendments to these Bylaws by presenting the amendment in writing to all Board members prior to any regularly scheduled meeting of the Board. Such proposed amendment shall be adopted upon favorable vote of at least two-thirds of the Board members present at said meeting.

Sanctioning

Reference Points

Instruction Manual

Board of Physical Therapy

Guidance Document 112-17
Adopted November 2009
(Revised May 2012)
(Revised November 2017)

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November 2017

Dear Interested Parties:

In the spring of 2001, the Virginia Department of Health Professions approved a workplan to study sanctioning in disciplinary cases for Virginia’s 13 health regulatory boards. The purpose of the study was to “...provide an empirical, systematic analysis of board sanctions for offenses and, based on this analysis, to derive reference points for board members...” The purposes and goals of the study were consistent with state statutes which specify that the Board of Health Professions (BHP) periodically review the investigatory and disciplinary processes to ensure the protection of the public and the fair and equitable treatment of health professionals.

After interviewing Board of Physical Therapy members and staff, a committee of board members, staff, and research consultants assembled a research agenda involving the most exhaustive statistical study of sanctioned Physical Therapists and Physical Therapist Assistants ever conducted in the United States. The analysis included collecting over 100 factors on all Board of Physical Therapy sanctioned cases in Virginia over a ten year period. These factors measured case seriousness, respondent characteristics, and prior disciplinary history. After identifying the factors that were consistently associated with sanctioning, it was decided that the results provided a solid foundation for the creation of sanctioning reference points. Using both the data and collective input from the Board of Physical Therapy and staff, analysts developed a usable sanctioning worksheet as a way to implement the reference system.

More recently, BHP recommended that the SRPs be evaluated to determine if the program had met the objectives set forth in 2001. After conducting board member and staff interviews and an updated analysis to assess worksheet factors, scores, and sanctioning recommendations, the Board of Physical Therapy made a number of revisions to its Sanctioning Reference Points worksheet. This manual reflects those adopted revisions and provides the Board with a new SRP worksheet representing the most current sanctioning data available.

Sincerely yours,

David E. Brown, D.C.
Director
Virginia Department of Health Professions

Cordially,

Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Health Professions

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GENERAL INFORMATION

Overview

The Virginia Board of Health Professions has spent the last 15 years studying sanctioning in disciplinary cases. The study is examining all 13 health regulatory boards. Focusing on the Board of Physical Therapy (PT), this manual contains background on the project, the goals and purposes of the Sanctioning Reference Points (SRP) system, and a revised worksheet with offense and respondent factors that are scored in order to help Board members determine how similarly situated respondents have been treated in the past.

This SRP system is based on a specific sample of cases, and thus only applies to those persons sanctioned by the Virginia Board of Physical Therapy. Moreover, the worksheets and sanctioning thresholds have not been tested or validated on any other groups of persons. Therefore, they should not be used to sanction respondents coming before other health regulatory boards, other states, or other disciplinary bodies.

The current SRP system is comprised of a single worksheet which scores a number of offense and respondent factors identified using quantitative and qualitative analyses and built upon the Department's effort to maintain consistency in sanctioning over time. The original PT SRP Manual was adopted in November 2009, and has been applied to cases closed in violation for the past 8 years.

These instructions and the use of the SRP system fall within current DHP and PT policies and procedures. Furthermore, all sanctioning recommendations are those currently available to and used by the Board and are specified within existing Virginia statutes. If an SRP worksheet recommendation is more or less severe than a Virginia statute or DHP regulation, the existing laws or policy supersedes the worksheet recommendation.

Background

In 2010, the Board of Health Professions (BHP) recommended that the SRPs be evaluated to determine if the program had met the objectives set forth in 2001. The purpose of this study was to evaluate the SRP system against its own unique set of objectives. The SRPs were designed to aid board members, staff and the public in a variety of ways. This Effectiveness Study sought to examine whether or not the SRPs were successful, and if not, which areas required improvement. The study resulted in changes to the manual for the Board of Physical Therapy. This manual is the result of those adopted changes.

Goals

The Board of Health Professions and the Board of Physical Therapy cite the following purposes and goals for establishing Sanctioning Reference Points:

- Making sanctioning decisions more predictable
- Providing an education tool for new Board members
- Adding an empirical element to a process/system that is inherently subjective
- Providing a resource for the Board and those involved in proceedings.
- “Neutralizing” sanctioning inconsistencies
- Validating Board member or staff recall of past cases
- Constraining the influence of undesirable factors— e.g., Board member ID, overall Board makeup, race or ethnic origin, etc.
- Helping predict future caseloads and need for probation services and terms

Methodology

The fundamental question when developing a sanctioning reference system is deciding whether the supporting analysis should be grounded in historical data (a descriptive approach) or whether it should be developed normatively (a prescriptive approach). A normative approach reflects what policymakers feel sanction recommendations should be, as opposed to what they have been. SRPs can also be developed using historical data analysis with normative adjustments. This approach combines information from past practice with policy adjustments, in order to ensure and maintain a system that better reflects current sanctioning practice. The SRP manual adopted in 2009 was based on a descriptive approach with a limited number of normative adjustments. This study was conducted in a similar manner; however, it draws on data covering a more recent historical time period (2012-2016, partial 2017) and relies on the full PT Board's input to inform SRP system modifications.

Qualitative Analysis

Researchers conducted in-depth personal interviews with board members and staff. Researchers also had informal conversations with representatives from the Attorney General's office and the Executive Director of BHP. The interview results were used to build consensus regarding the purpose and utility of SRPs and to further guide this study's analysis. Additionally, interviews helped ensure the factors that board members consider when sanctioning continued to be included during the quantitative phase of the study. Previous scoring factors were examined for their continued relevance and sanctioning influence.

Quantitative Analysis

In 2009, researchers collected detailed information on all PT disciplinary cases ending in a violation between 1999 and 2009; ten years of sanctioning data. Over 100 different factors were collected on each case in order to describe the case attributes board members identified as potentially impacting sanction decisions. Researchers used data available through the DHP's case management system combined with primary data collected from hard copy files. The hard copy files contained investigative reports, board notices, board orders, and all other documentation that is made available to board members when deciding a case sanction.

A comprehensive database was created to analyze the factors that were identified as potentially influencing sanctioning decisions. Using statistical analysis to construct a "historical portrait" of past sanctioning decisions, the relevant factors along with their relative weights were derived. Those factors and weights were formulated into a sanctioning worksheet, which became the SRPs. The current worksheet represents a revised analysis to update the worksheet factors and scores in order to represent the most current practice.

Offense factors such as financial or material gain were examined along with such factors as prior board or criminal history and past substance abuse. Some factors were deemed inappropriate for use in a structured sanctioning reference system. Although many factors, both "legal" and "extra-legal," can help explain sanction variation, only those "legal" factors the Boards felt should consistently play a role in a sanction decision were included on the final worksheet. By using

this method, the hope is to achieve more neutrality in sanctioning by making sure the same set of "legal" factors are considered in every case.

Wide Sanctioning Ranges

The SRPs consider and weigh the circumstances of an offense and the relevant characteristics of the respondent, providing the Boards with a sanctioning model that encompasses roughly 75% of historical practice. This means that approximately 25% of past cases receive sanctions either higher or lower than what the reference points indicate, recognizing that aggravating and mitigating factors play a legitimate role in sanctioning. The wide sanctioning ranges allow the Board to individualize sanctions within the broader SRP recommended range to fit the circumstances of each case.

Voluntary Nature

The SRP system should be viewed as a decision-aid to be used by the Board of Physical Therapy. Sanctioning within the SRP ranges is totally voluntary, meaning that the system is viewed strictly as a tool and the Board may choose any sanction outside the recommendation. The Board maintains complete discretion in determining the sanction handed down. However, a structured sanctioning system is of little value if the Board is not provided with the appropriate coversheet and worksheet in every case eligible for scoring. A coversheet and worksheet should be completed in cases resolved by Informal Conferences and Pre-Hearing Consent Orders. The coversheet and worksheet will be referenced by Board members during Closed Session after a violation has been determined.

Worksheets Not Used in Certain Cases

The SRPs will not be applied in any of the following circumstances:

Formal Hearings — SRPs will not be used in cases that reach a Formal Hearing level.

Mandatory Suspensions – Virginia law requires that under certain circumstances (conviction of a felony, declaration of legal incompetence or incapacitation, license revocation in another jurisdiction) the licensee must be suspended. The sanction is defined by law and is therefore excluded from the SRPs system.

Compliance/Reinstatements – The SRPs should be applied to new cases only.

Action by another Board – When a case which has already been adjudicated by a Board from another state appears before the Virginia Board of Physical Therapy, the Board often attempts to mirror the sanction handed

down by the other Board. The Virginia Board of Physical Therapy usually requires that all conditions set by the other Board are completed or complied with in Virginia. The SRPs do not apply as the case has already been heard and adjudicated by another Board.

Confidential Consent Agreements (CCAs) – SRPs will not be used in cases settled by CCA.

Certain Pre-Defined Sanctions – The Sanctioning Reference Points system does not apply to certain cases that have already been assigned pre-determined actions as set by the health regulatory board. The Board of Physical Therapy has adopted Guidance Documents in the areas of Practicing on an Expired License (Guidance document 112-18) and Continuing Education Deficiencies (Guidance document 112-21) as follows:

Practicing on an Expired License, Guidance document 112-18	Possible Action
First offense; 90 days or less	Confidential Consent Agreement
First offense; 91 days to 6 months	Consent Order; Monetary Penalty of \$1000
First offense; 6 months to one year	Consent Order; Monetary Penalty of \$1500
First offense; over 1 year	Consent Order; Monetary Penalty of \$2500
Second offense	Consent Order; Monetary Penalty of \$2500

Continuing Education Deficiencies, Guidance document 112-21	Possible Action
If the licensee was truthful in responding to the renewal attestation and the licensee has not previously been found in violation of CE or active practice requirements. Issue a CCA for those licensees who fail to meet the CE requirements.	The CCA may require the licensee to submit proof of completion of the missing contact hours(s) within 90 days of the effective date of the CCA. Such contact hours cannot be used toward fulfillment of the next biennial CE requirement for renewal
If the licensee was not truthful in responding to the renewal attestation or if the licensee has previously been found in violation of CE or active practice requirements. The corresponding sanctions may be applied by issuance of a PHCO	(i) Monetary Penalty of \$100 per missing contact hour, up to a maximum of \$1,000; (ii) Monetary Penalty of \$300 for a fraudulent renewal certification; and (iii) For those licensees who fail to meet the CE requirements, submission of proof of completion of the missing contact hour(s) within 90 days of Order entry. These contact hours cannot be used toward the next biennial requirement for renewal.
If the licensee fails to respond to the audit or does not wish to sign the CCA or PHCO that is offered or has previously been disciplined pursuant to a Board Order for not meeting the CE requirements.	The case will be referred to an informal fact-finding conference.

Case Selection When Multiple Cases Exist

When multiple cases have been combined into one “event” (one order) for disposition by the Board, only one coversheet and worksheet should be completed and it should encompass the entire event. If a case (or set of cases) has more than one offense type, one case type is selected for scoring according to the offense group which appears highest on the following table. For example, a respondent found in violation for Practicing Beyond the Scope and Impairment Due to Alcohol would receive 50 points, since Inability to Safely Practice is above Unlicensed Activity in the Case Type Group column and receives more points. If an offense type is not listed, the most analogous offense type is used.

Sanctioning Reference Points Case Type Table

Case Type Group	Included Case Categories	Applicable Points
Abuse/Inappropriate Relationship	<ul style="list-style-type: none"> Any sexual assault or mistreatment of a patient Dual, sexual or other boundary issue Includes inappropriate touching and written or oral communications 	70
Inability to Safely Practice/ Drug Related-Patient Care	<ul style="list-style-type: none"> Impairment due to use of alcohol, illegal substances, or prescription drugs Incapacitation due to mental, physical or medical conditions. Prescription forgery, drug adulteration, patient deprivation, stealing drugs from patients, or personal use 	50
Neglect	<ul style="list-style-type: none"> Inappropriate termination of provider/patient relationship, leaving a patient unattended in a health-care environment, failure to do what a reasonable person would do in a similar situation 	45
Business Practice Issues/ Continuing Education	<ul style="list-style-type: none"> Advertising, solicitation, records, audits, self-referral of patients, required report not filed, or disclosure Failure to obtain or document CE requirements. 	40
Fraud/Standard of Care/ Unlicensed Activity	<ul style="list-style-type: none"> Performing unwarranted/unjust services or the falsification/alteration of patient records Improper patient billing, falsification of licensing/renewal documents. Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues Practicing outside the permitted functions of license granted Other patient care cases that cannot adequately fit into any other standard of care case type Practicing a profession or occupation without holding a valid license as required by statute or regulation to include: practicing on a revoked, suspended, lapsed, non-existent or expired license, as well as aiding and abetting the practice of unlicensed activity 	30

Completing the Coversheet and Worksheet

Ultimately, it is the responsibility of the Board to complete the SRP coversheet and worksheet in all applicable cases. The information relied upon to complete a coversheet and worksheet is derived from the case packet provided to the board and the respondent. It is also possible that information discovered at the time of the informal conference may impact worksheet scoring. The SRP coversheet and worksheet, once completed, are confidential under the Code of Virginia. Additionally, the manual, including blank coversheets and worksheets, can be found on the Department of Health Professions web site: www.dhp.virginia.gov (paper copy also available on request).

Scoring Factor Instructions

To ensure accurate scoring, instructions are provided for scoring each factor on the SRP worksheet. When scoring a worksheet, the numeric values assigned to a

factor on the worksheet *cannot be adjusted*. The scores can only be applied as ‘yes or no’- with all or none of the points applied. In instances where a scoring factor is difficult to interpret, the Board members have final say in how a case is scored.

Using Sanctioning Thresholds to Determine a Specific Sanction

The Physical Therapy worksheet has four scoring thresholds with increasing point values and respectively increasing sanction severities. The table here shows the historically used sanctions for each threshold. The column to the left, “Worksheet Score,” contains the threshold scores located at the bottom of the worksheet. The column to the right, “Available Sanctions,” shows the specific sanction types that each threshold level covers. After considering the sanction recommendation, the Board may fashion a more detailed sanction(s) based on individual case circumstances.

Sanctioning Reference Points Threshold Table

Worksheet Score	Available Sanctions
0 - 49	<ul style="list-style-type: none"> • No Sanction • Reprimand
50 - 129	<ul style="list-style-type: none"> • Reprimand • Monetary Penalty • Continuing Education (CE)
130 - 239	<ul style="list-style-type: none"> • Monetary Penalty • Stayed Suspension • Corrective Action includes the following: <ul style="list-style-type: none"> • Probation • HPMP • Begin/continue treatment for alcohol/substance abuse • Begin/continue therapy/counseling • Quarterly self reports • Quarterly reports from employer • Quarterly reports from therapist, counselor, doctor, etc. • Inform all current and future employers of license status • Provide a copy of order to all current and future employers • Unrestricted communication between the board and employer • Complete FSBPT/oPTion assessment tool • Shall not work in home health setting • <i>Either</i> take CE/oPTion <i>or</i> place license on inactive status • Shall not treat opposite sex patients
240 or more	<ul style="list-style-type: none"> • Revocation • Suspension • Surrender • Refer to Formal Hearing

**Sanctioning Reference Points
Coversheet, Worksheet, & Instructions**

Case Number(s):

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Respondent Name: _____
First Last

License Number: _____

- Case Type:
- Abuse/Inappropriate Relationship
 - Inability to Safely Practice/Drug Related-Patient Care
 - Neglect
 - Business Practice Issues/Continuing Education
 - Fraud/Standard of Care/Unlicensed Activity

- Sanctioning Recommendation:
- No Sanction/Reprimand (0 - 49)
 - Reprimand/Monetary Penalty/Continuing Education (50 - 129)
 - Monetary Penalty/Stayed Suspension/Corrective Action (130 - 239)
 - Loss of License/Refer to Formal (240 or more)

- Imposed Sanction(s):
- No Sanction
 - Reprimand
 - Monetary Penalty: \$_____ enter amount
 - Probation: _____ duration in months
 - Stayed Suspension: _____ duration in months
 - Refer to Formal
 - Accept Surrender
 - Revocation
 - Suspension
 - Other sanction: _____
 - Terms: _____

Was imposed sanction a departure from the recommendation? No Yes, give reason below

Reasons for Departure from Sanction Grid Result (if applicable): _____

Worksheet Preparer's Name: _____

Date Worksheet Completed: _____

Confidential pursuant to § 54.1-2400.2 of the Code of Virginia



Step 1: Case Type – Select the case type from the list and score accordingly. If a case has multiple aspects, enter the point value for the one most serious case type that is highest on the list. (score only one)

Abuse/Inappropriate Relationship – 70 Points

- Any sexual assault, mistreatment of a patient
- Dual, sexual or other boundary issue. Includes inappropriate touching and written or oral communications

Inability to Safely Practice/Drug Related-Patient Care – 50 Points

- Impairment due to use of alcohol, illegal substances, or prescription drugs
- Incapacitation due to mental, physical or medical conditions
- Drug adulteration, patient deprivation, stealing drugs from patients, or personal use

Neglect – 45 Points

- Inappropriate termination of provider/patient relationship, leaving a patient unattended in a health care environment, failure to do what a reasonable person would do in a similar situation

Business Practice Issues/CE – 40 Points

- Records, inspections, audits
- Required report not filed
- Failure to obtain or document CE requirements

Fraud/Standard of Care/Unlicensed Activity – 30 Points

- Performing unwarranted/unjust services
- Falsification/alteration of patient records
- Improper patient billing
- Falsification of licensing/renewal documents
- Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues.
- Practicing outside the permitted functions of license granted
- Practicing a profession or occupation without holding a valid license as required by statute or regulation to include: practicing on a revoked, suspended, lapsed, non-existent or expired license, as well as aiding and abetting the practice of unlicensed activity.

Step 2: Offense and Respondent Factors – Score all factors reflecting the totality of the case(s) presented. (score all that apply)

Enter "50" if a patient was intentionally or unintentionally injured. This includes any injury requiring medical care ranging from first-aid treatment to hospitalization.

Enter "50" if the case involved inappropriate physical contact. Inappropriate contact is indicated by the unwanted/unsolicited physical contact of a patient by the respondent. If this factor is scored, case category should be "Abuse/Inappropriate Relationship."

Enter "50" if the respondent was impaired at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation.

Enter "30" if the respondent failed to take corrective action prior to the time at which the SRP worksheet is being considered.

Enter "30" if the respondent received a sanction from his/her employer in response to the current violation. A sanction from an employer may include: suspension, review, or termination.

Enter "30" if there was a concurrent civil or criminal action related to this case.

Enter "30" if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental capabilities, or physical capabilities. Scored here would be: prior convictions for DUI/DWI, inpatient/outpatient treatment, and bona fide mental health care for a condition affecting the ability to function safely or properly.

Enter "30" if the respondent has previously been sanctioned by any other state or entity. Sanctioning by an employer is not scored here.

Enter "10" if the patient is especially vulnerable. Patients in this category must be at least one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter "10" if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter "10" if the case involved falsification/alteration of patient records. This would include cases in which the respondent did not stay with the patient for as long as records show, or the respondent did not visit the patient at all. This would also include the falsification of medical records such as vital signs.

Enter "10" if the respondent has any prior violations decided by the Virginia Board of Physical Therapy.

Step 3: Add Case Type and Offense and Respondent Factor scores to arrive at a Total Worksheet Score

Step 4: Determining the Sanction Recommendation

The Total Worksheet Score corresponds to the Sanctioning Reference Points recommended sanction located at the bottom of the worksheet. To determine the appropriate recommended sanction, find the range on the left that contains the Total Worksheet Score for the current worksheet. That range has a corresponding range of

recommended sanctions. For instance, a case with a Total Worksheet Score of 100 is recommended for "Reprimand/Monetary Penalty/CE."

Step 5: Coversheet

Complete the coversheet including the SRP sanction result, the imposed sanction and the reasons for departure if applicable. Both a coversheet and worksheet must be completed for applicable cases.

Case Type (score only one)	Points	Score
Abuse/Inappropriate Relationship	70	_____
Inability to Safely Practice/Drug Related-Patient Care	50	_____
Neglect	45	_____
Business Practice Issues/Continuing Education	40	_____
Fraud/Standard of Care/Unlicensed Activity	30	_____

Offense and Respondent Factors (score all that apply)

Patient Injury	50	_____
Inappropriate physical contact	50	_____
Respondent impaired during incident	50	_____
Respondent failed to take corrective action	30	_____
Sanctioned by employer due to incident	30	_____
Concurrent civil or criminal action	30	_____
Past difficulties (drugs, alcohol, mental/cognitive, physical)	30	_____
Sanctioned by another state or entity	30	_____
Patient particularly vulnerable	10	_____
Act of commission	10	_____
Case involved falsification/alteration of patient records	10	_____
Any prior VA Board of Physical Therapy violations	10	_____

Total Worksheet Score

<u>Score</u>	<u>Sanctioning Recommendations</u>
0 - 49	No Sanction/Reprimand
50 - 129	Reprimand/Monetary Penalty/Continuing Education
130 - 239	Monetary Penalty/Stayed Suspension/Corrective Action
240 or more	Loss of License/Refer to Formal

Virginia Board of Physical Therapy

Procedures for Auditing Continued Competency Requirements

The Board of Physical Therapy may audit a random sample of licensees to investigate compliance with the Board's continuing competency requirements and active practice requirements. The Board may also audit active licensees, who by terms of a Confidential Consent Agreement ("CCA") or a Pre-Hearing Consent Order ("PHCO") are required to take continuing education ("CE") courses in addition to the continued competency requirements for renewal of a license.

1. Board staff reviews each audit report and either:
 - a. Sends an acknowledgement letter of fulfillment of the continuing competency requirements and active practice requirements; or
 - b. Opens a case for probable cause.
2. Once a case is opened for probable cause, Board staff may do one of the following:
 - a. Issue a CCA if the licensee was truthful in responding on the renewal attestation and the licensee has not previously been found in violation of CE or active practice requirements.
 1. For those licensees who fail to meet CE requirements, the CCA may require the licensee to submit proof of completion of the missing contact hours(s) within 90 days of the effective date of the CCA. Such contact hours cannot be used toward fulfillment of the next biennial CE requirement for renewal;
 2. For those licensees who fail to meet the active practice requirement, the CCA may require them to submit proof that they meet the active practice requirement within 90 days of entry of the CCA or that they have placed their license on inactive status.
 - b. Issue a PHCO if the licensee was not truthful in responding on the renewal attestation or the licensee has previously been found in violation of CE or active practice requirements. The sanctions listed below may apply to any such PHCO.
 - (i) Monetary Penalty of \$100 per missing contact hour, up to a maximum of \$1,000.
 - (ii) Monetary Penalty of \$300 for a fraudulent renewal attestation.
 - (iii) For those licensees who fail to meet the CE requirements, submission of proof of completion of the missing contact hour(s) within 90 days of Order entry.

These contact hours cannot be used toward the next biennial requirement for renewal.

(iv) For those licensees who fail to meet the active practice requirement, submission of proof that they meet the active practice requirement within 90 days of Order entry, or that they have placed their license on inactive status.

3. The case will be referred to an informal fact-finding conference if the licensee:
 - a. Fails to respond to the audit or does not wish to sign the CCA or PHCO that is offered; or
 - b. Has previously been disciplined pursuant to a Board Order for not meeting CE requirements.

Virginia Board of Physical Therapy

Guidelines for Processing Applications for Licensure: Examination, Endorsement and Reinstatement

Applicants for licensure or registration by examination, endorsement and reinstatement who meet the qualifications as set forth in the law and regulations shall be issued a license, registration, or certificate pursuant to authority delegated to the Executive Director of the Board of Physical Therapy as specified in the Bylaws of the Board. (*See* Article V, Bylaws.)

An applicant whose license, registration, or certificate has been revoked or suspended for any reason other than nonrenewal by another jurisdiction is not eligible for licensure or certification in Virginia unless the credential has been reinstated by the jurisdiction which revoked or suspended it. (Va. Code § 54.1-2408.) A suspension or revocation by another jurisdiction that has been stayed on terms is not considered to be reinstated for purposes of Va. Code § 54.1-2408.

Affirmative responses to any questions on applications for licensure, registration, or certification that might constitute grounds for the Board to refuse to admit a candidate to an examination, refuse to issue a license, registration, or certificate, or impose sanction shall be referred to the Board President for guidance on how to proceed.

Failure to disclose convictions, past actions or possible impairment may result in disciplinary action by the Board.

A criminal conviction for any felony may cause an applicant to be denied licensure or registration. (Va. Code § 54.1-3480.) Each applicant, however, is considered on an individual basis, and there are no criminal convictions or impairments that are an absolute bar to licensure or registration by the Board of Physical Therapy.

Applications for licensure, registration, and certification include questions about the applicant's history, including:

1. Any and all criminal convictions;
2. Any past action taken against the applicant in another state or jurisdiction, including denial of licensure, certification, or registration in another state or jurisdiction; and
3. Any mental or physical illness or chemical dependency condition that could interfere with the applicant's ability to practice.

Replying "yes" to any questions about convictions, past actions, or possible impairment does not mean the application will be denied. It simply means more information must be gathered and considered before a decision can be made. Sometimes an administrative proceeding is required before a decision regarding the application can be made. The Board of Physical Therapy has the ultimate authority to approve or deny an applicant for licensure, registration, or certification. (Va. Code § 54.1-3480.)

The following information will be requested from an applicant with criminal conviction:

- A certified copy of all conviction orders (obtained from the courthouse of record);
- Evidence that all court ordered requirements were met (i.e., letter from the probation officer if on supervised probation, evidence of paid fines and restitution, etc.); and
- A letter from the applicant explaining the factual circumstances leading to the criminal offense(s).

The following information will be requested from an applicant with past disciplinary action or licensure/certification/registration denial in another state (unrelated to criminal convictions):

- A certified copy of the Order for disciplinary action or denial from the other state licensing entity;
- A certified copy of any subsequent actions (i.e. reinstatement), if applicable; and
- A letter from the applicant explaining the factual circumstances leading to the action or denial.

The following information may be requested from applicants with a possible impairment:

- Evidence of any past treatment (i.e., discharge summary from outpatient treatment and inpatient hospitalizations);
- A letter from the applicant's current treating healthcare provider(s) describing diagnosis, treatment regimen, compliance with treatment, and an analysis of the applicant's ability to practice safely; and
- A letter from the applicant explaining the factual circumstances of the condition or impairment and addressing ongoing efforts to function safely (including efforts to remain compliant with treatment, maintain sobriety, attendance at AA/NA meetings, etc.).

The Executive Director may approve the application without referral to the Board President in the following cases:

1. The applicant's history of a criminal conviction was disclosed on an application for licensure and either:
 - a. Does not constitute grounds for denial for Board action pursuant to §54.1-3480 of the Code of Virginia, or
 - b. Does constitute grounds for denial or Board action pursuant to § 54.1-3480 of the Code of Virginia, (specifically any felony or any misdemeanor involving moral turpitude), but the following criteria are met:
 - Conviction history includes only misdemeanors which are greater than 5 years old, as long as court requirements have been met;
 - If one misdemeanor conviction is less than 5 years old, the court requirements have been met, and the crime was unrelated to the license or registration sought; or
 - If the applicant was convicted of one felony more than 10 years ago, when that one felony was non-violent in nature and all court/probationary/parole requirements have been met.
2. The applicant has reported juvenile convictions.
3. The applicant has a conviction history previously reviewed and approved by the Board of Physical Therapy, provided no subsequent criminal convictions exist.

Virginia Board of Physical Therapy**Board Policy on Processing Appeals to the Exam Attempt Limits for the National Physical Therapy Examination (NPTE)**

The Federation of State Boards of Physical Therapy (FSBPT) owns and administers the National Physical Therapy Examination (NPTE). The FSBPT has established eligibility requirements for examination candidates to take the NPTE, which include a limitation on overall exam attempts (a six-time lifetime limit) as well as attempts reflecting low-scores at 400 or below (a two-time low score limit). Where an exam candidate is ineligible to take the NPTE due to the attempt limits, the candidate must present information to the relevant licensing authority that may then request an appeal on the candidate's behalf.

Pursuant to Virginia Code § 54.1-3479(A), "Any applicant who feels aggrieved at the result of his examination may appeal to the Board." The Virginia Board of Physical Therapy ("Board") has interpreted this section and the FSBPT appeal policy to permit applicants who have reached the maximum number of attempts at taking the NPTE to submit information to the Board for its consideration of whether to forward an appeal to the FSBPT on their behalf. Because the FSBPT determines eligibility for the NPTE, the ultimate decision of whether to approve the additional examination attempt rests with the FSBPT.

The Board will forward the applicant's request for an additional examination attempt for consideration by the FSBPT pursuant to the guidelines below.

- The applicant seeking an additional examination attempt has previously applied for licensure with the Virginia Board and has registered for prior attempts at the NPTE as a Virginia applicant. The Board will not consider the submission of appeals from exam candidates who have never previously applied to Virginia for licensure.
- The applicant provides their complete NPTE score history.
- The applicant has not had any disciplinary action taken against them by a state board or by the FSBPT.
- The applicant intends to establish their residence in and/or to practice in Virginia.
- The applicant has otherwise met the requirements for licensure in Virginia with the exception of passage of the NPTE.
- The applicant details the efforts they have made to remediate past NPTE performance issues or to prepare for one additional attempt at taking the NPTE.
- The applicant has not submitted a prior appeal request to the Board.