

STATE OF WISCONSIN
PHYSICAL THERAPY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	PHYSICAL THERAPY EXAMINING
PHYSICAL THERAPY EXAMINING	:	BOARD
BOARD	:	ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 011-21, was approved by the Governor on February 4, 2021, published in Register 782A2 on February 8, 2021, and approved by the Physical Therapy Examining Board on March 17, 2021. This emergency rule was approved by the Governor on November 18, 2021.

ORDER

An order of the Physical Therapy Examining Board to amend PT 5.01 (2) (b) and (h), relating to supervision of physical therapist assistants

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Physical Therapy Examining Board finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Administrative rules require a physical therapist providing general supervision of a physical therapist assistant to have direct face-to-face contact with the physical therapist assistant at least every 14 calendar days and provide on-site assessment and reevaluation of each patient's treatment a minimum of one time per calendar month or every tenth treatment day, whichever is sooner. The ongoing COVID-19 pandemic, and the resulting safety precautions, have severely limited the ability of physical therapists to adhere to these supervision requirements. An expeditious promulgation of the proposed rule is in the best interest of Wisconsin's economy and public welfare, as it will help ensure continuity of care for individuals in need of physical therapy services.

ANALYSIS

Statutes interpreted: Section 448.56, Stats.

Statutory authority: Sections 15.08 (5) (b), and 448.56 (6), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 448.56 (6), Stats., provides “[a] physical therapist assistant may assist a physical therapist in the practice of physical therapy if the physical therapist provides direct or general supervision of the physical therapist assistant. The examining board shall promulgate rules defining “direct or general supervision” for purposes of this subsection. Nothing in this subsection interferes with delegation authority under any other provision of this chapter.”

Related statute or rule: Chapters PT 1 and 5

Plain language analysis:

The Board’s primary objective is to promulgate an emergency rule that will temporarily suspend the requirements under s. PT 5.01 (2) (b) and (h) that a supervising physical therapist have direct face-to-face contact with the physical therapist assistant at least every 14 calendar days and provide on-site assessment and reevaluation of each patient’s treatment a minimum of one time per calendar month or every tenth treatment day, whichever is sooner.

The Board will also conduct a review of the supervision requirements under s. PT 5.01, which will include evaluating alternative methods for a supervising physical therapist to maintain contact with physical therapist assistants and patients. The Board may, as a result of this evaluation, revise the requirements for supervision of physical therapist assistants under s. PT 5.01. These revisions may be included in the emergency rule, promulgated in a permanent rule, or both.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois:

The Illinois Statutes require physical therapist assistants to perform patient care activities under the general supervision of a licensed physical therapist. The physical therapist must maintain continual contact with the physical therapist assistant including periodic personal supervision and instruction to ensure the safety and welfare of the patient [225 ILCS 90/2].

Iowa:

The Iowa Administrative Code provides that a supervising physical therapist who delegates the performance of physical therapy services to a physical therapist assistant must provide supervision to the physical therapist assistant at all times when the physical therapist assistant is providing delegated physical therapy services. Supervision means that the physical therapist must be readily available on site or telephonically anytime the physical therapist assistant is providing physical therapy services so that the physical

therapist assistant may contact the physical therapist for advice, assistance, or instruction [645 IAC 200.6(1)].

Michigan:

Rules of the Michigan Board of Physical Therapy provide for delegation of acts, tasks, or functions to and supervision of unlicensed persons, including students enrolled in accredited physical therapist or physical therapist assistant educational programs approved by the board. A physical therapist is required to provide "direct supervision" of students, which means the physical therapist is physically present and immediately available for direction and supervision when patients or clients are present at the time the act, task, or function is performed, and the physical therapist has direct contact with the patient or client during each visit [Mich Admin Code, R 338.7139].

Minnesota:

The Minnesota Statutes require a physical therapist must provide on-site observation of treatment and documentation of a patient delegated to a physical therapist assistant, at least every six treatment sessions. The physical therapist does not have to be on-site, but must be easily accessible via telecommunications [Minnesota Statutes, section 148.706].

Summary of factual data and analytical methodologies:

The Board reviewed chs. PT 1 and 5 to clarify the requirements for supervision of physical therapist assistants. The Board also referenced Wisconsin Administrative Code s. Med 24.02 when creating determining appropriate methods of telecommunication and electronic communication when providing such supervision.

Fiscal Estimate:

The Fiscal Estimate is Attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. PT 5.01 (2) (b) and (h) are amended to read:

PT 5.01 (2) (b) Have direct face-to-face contact with the physical therapist assistant at least every 14 calendar days, ~~unless the board approves another type of contact.~~ Electronic face-to-face communications may be used to fulfil this requirement. Audio-only telephone, email messages, text messages, facsimile transmission, mail or parcel service are not considered acceptable electronic communications.

PT 5.01 (2) (h) Provide on-site assessment and reevaluation of each patient ~~patient's treatment~~ at a minimum of one time per calendar month or every tenth treatment day, whichever is sooner, and adjust the treatment plan as appropriate. This requirement may be waived when another type of contact has been approved by the Board.

SECTION 2. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Physical Therapy Examining Board