

**MINNESOTA BOARD OF PHYSICAL THERAPY
STATEMENT OF NEED AND REASONABLENESS**

OAH Docket No. 82-9041-34878

REVISOR'S ID NUMBER RD4066

GOVERNOR'S OFFICE TRACKING NUMBER RD4066 (formerly AR 1086)

Proposed Amendments to Rules Governing Renewal Requirements, Continuing Education, and Continuing Competence for Physical Therapists and Physical Therapist Assistants, Minnesota Rules, Chapter 5601

5601.1700 Renewal of Licensure

5601.2100 Continuing Education Requirements

5601.2200 Two-Year Continuing Education Cycle

5601.2300 Categories of Credited Activities

5601.2400 Category 1 Credit

5601.2600 Verification of Compliance

5601.3200 Code of Ethical Practice

Proposed Repeal to Rules Governing Continuing Education for Physical Therapists and Physical Therapist Assistants, Minnesota Rules, Chapter 5601

5601.2200, subp. 2. Two-Year Continuing Education Cycle

INTRODUCTION

The Minnesota Board of Physical Therapy (“Board”) licenses and regulates physical therapists and physical therapist assistants in the State of Minnesota. The Board is seeking amendments to the rules listed above. The amendments fall into one of following two categories:

- Housekeeping amendments to the renewal of licensure, continuing education requirements, continuing education cycle, categories of credited activities, verification of compliance, and code of ethical practice rules to clarify that these rules apply to physical therapist assistants, to reflect the use of online verification systems, and to update the Code of Ethical Practice with the date of more recent literature.
- Substantive amendments to the renewal of licensure, continuing education requirements, categories of credited activities, and credit approval rules to reflect the addition of a jurisprudence exam upon re-licensure, to mandate that two out of 20 hours of continuing education need to be in professional ethics, and to change the categories of credited activities to more allow for more effective means for licensees to stay current on educational standards.

In drafting the proposed rules, the Board’s Rules Committee met in properly noticed public meetings. Members of the public were invited to and did participate in the meetings.

Representatives from the Minnesota Chapter of the American Physical Therapy Association (“MAPTA”) attended the meetings and provided input as well.

In order to adopt these proposed rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. These requirements are as follows: 1) there is statutory authority to adopt rules; 2) the rules are necessary and reasonable; 3) all necessary procedural steps have been taken; and 4) any additional requirements imposed by law have been satisfied. This statement of need and reasonableness (“SONAR”) demonstrates that the Board has met these requirements.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact:

Erin DeTomaso, Executive Director
Minnesota Board of Physical Therapy
2829 University Ave. S.E., Suite 420
Minneapolis, MN 55414
(612) 627-5406
TTY users may call the Department at 1-800-627-3529.

STATUTORY AUTHORITY

Minnesota Statutes sections 148.66(1) and 148.74 authorize the Board to adopt rules necessary to administer and enforce sections 148.65 to 148.78. This rulemaking is an amendment of rules for which the Legislature has not revised or modified the original statutory authority and has not authorized new statutory authority, so Minn. Stat. § 14.125 does not apply.

REGULATORY ANALYSIS

Minnesota Statutes section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency’s response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The persons who will be most affected by the proposed amendments are physical therapists and physical therapist assistants in Minnesota. Physical therapists and physical therapist assistants will benefit from additional guidance on how to complete renewal requirements, how to complete continuing educational requirements, and verification that the Code of Ethical Practice governs physical therapist assistants. Additionally, the patients of physical therapists and physical therapist assistants will benefit from the further professional growth and development resulting from the continuing education.

The costs of the proposed rules will be borne by the physical therapists and physical therapist assistants and by the Board. These proposed rules, however, do not create significant additional costs or burdens for physical therapists and physical therapist assistants beyond those already established. The only addition is the requirement that physical therapists and physical therapist assistants successfully pass a jurisprudence examination each license renewal period. This exam is part of the online re-licensure process, is “open-book” because licensees are allowed to use the rules and statutes to answer the exam questions, and is included in the current annual re-licensure fee.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The addition of the jurisprudence examination will cost the Board (1) a one-time developer fee of less than \$15,000 to have the exam added to the online renewal process, and (2) annual staff time and Board member per diem of approximately \$1,575 per year to write the exam questions.

Beyond the costs associated with the Board’s promulgation of the other rules, it is not anticipated that implementation and enforcement will result in additional costs to the Board or any other state agency. Additionally, it is not anticipated that these rules will have any effect on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

Because the purposes of the proposed amendments are clarification and updating content, no other methods would be appropriate. With respect to the substantive amendments, the Board is not increasing continuing education requirements, only clarifying the scope and broadening the methods of satisfying continuing education requirements. There is not a less costly or less intrusive method of allowing for these continuing education requirements and for ensuring that all licensees have a working understanding of the statutes and rules governing the practice of physical therapy in Minnesota.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

The alternative to not updating the rules would result in continuation of unclear rule language and obsolete continuing education rules, both of which represent a less effective method of serving licensees and the public. For this reason, the Board rejected the only alternative, delayed implementation.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The probable costs of the proposed amendments will be borne by physical therapists and physical therapist assistants. These costs are estimated to be no greater than compliance with the current requirements.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

Due to an ever-increasing licensure base, not adopting the proposed amendments will most likely result in increased inquiries from licensees to the Board, seeking clarification of rule requirements. This, in turn, will result in increased expenses for the Board, and potentially, increased licensure fees to licensees. Additionally, physical therapists and physical therapist assistants will be deprived of the greater access and opportunities for completing continuing education requirements that the proposed amendments will provide.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

There are no federal rules regulating continuing education, licensure renewal, or ethics for physical therapists and physical therapist assistants, so no analysis is possible.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

There are no federal rules or other state rules regulating continuing education, licensure renewal, or ethics for physical therapists and physical therapist assistants. Accordingly, no such assessment may be made.

PERFORMANCE-BASED RULES

In drafting its proposed amendments on continuing education and renewal requirements, the Board achieved a balance between providing guidance to its licensees in how to comply with their continuing education and renewal requirements and maximizing flexibility for licensees in complying with these requirements. The proposed amendments are more clear and provide more opportunities for licensees to comply with continuing education requirements than the current rules. With respect to the ethics housekeeping amendments, the Board sought to clarify currently-existing norms and practices. There is no substantive change.

ADDITIONAL NOTICE

The Board’s notice plan includes the following mandated statutory actions:

1. A copy of the Notice of Hearing and proposed rules shall be mailed to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, Section 14.14, subdivision 1a; and
2. A copy of the Notice of Hearing, proposed rules, and this Statement of Need and Reasonableness shall be mailed to the Legislature according to Minnesota Statutes, section 14.116. The following is a list of the Legislators:
 - a. House – Health and Human Services Finance Committee Chair and Lead;
 - b. House – Health and Human Services Reform Chair and Lead;
 - c. House – Rules and Legislative Administration Chair and Lead;
 - d. Senate – Health and Human Services Finance and Policy Committee Chair and Ranking Minority Member;
 - e. Senate – Rules and Administration Committee Chair and Ranking Majority Member;
 - f. Legislative Coordinating Commission.

Minnesota sections 14.131 and 14.23, require that the Board also describe its efforts to provide additional notice to persons who may be affected by the proposed rules. The Board's Additional Notice Plan includes the following:

1. To develop the proposed rules, the Board's Continuing Competence Task Force met on January 26, 2012, and August 7, 2014, in properly-noticed meetings. The Board disseminated notice of these public meetings to those who are directly affected by the rules or who expressed an interest in the rules. Drafts of the proposed rules were reviewed during these public meetings.
2. The Request for Comments was mailed to all persons on the Board's rulemaking mailing list prior to publication of the Request for Comments in the State Register on March 31, 2014.
3. On September 25, 2014, during the public portion of the Board's regularly-scheduled meeting, the Board approved the draft rulemaking language. Drafts of the proposed rules were reviewed during these public meetings. On March 9 and May 11, 2017, during the public portion of the Board's regularly-scheduled meeting, the Board approved edits to the proposed rulemaking language. Drafts of the proposed rules were reviewed during these public meetings.
4. On or before March 31, 2014, the Board posted a draft copy of the proposed rule changes on the Board's website, making it accessible to PTs, PTAs, students in PT or PTA programs, state legislators, educational institutions, other health boards, and members of the general public. Since 2014, the Board has posted revised copies of the proposed rules on the Board's website, again making them accessible to PTs, PTAs, students in PT or PTA programs, state legislators, educational institutions, other health boards, and members of the general public.
5. All future notices involving these proposed rules will also be posted on the Board's website.
6. Moreover, the Board will also send via email to all licensees, to all individuals on the newsletter distribution list, to the Minnesota-based association that represents PTs and PTAs, and to all educational institutions who educate PTs and PTAs, notice that the hearing-related documents, including this SONAR, the Notice to

Adopt Rules Without a Hearing, the Proposed Rules and all other filings related to the Board's rulemaking process, are available on the Board's website.

The Board will follow the same procedure outlined above, including the mailing, the email notification, and the posting on the Board's website, for the Notice and all other notices required throughout the rulemaking process.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board consulted with Minnesota Management and Budget (MMB)). The Board sent copies of the Governor's Office Proposed Rule Form, the proposed rules, and the SONAR to Chardae Kimber, the Board's Executive Budget Officer with MMB. The Board will submit a copy of the cover correspondence and the response received from MMB to the OAH at the hearing or with the documents it submits for OAH review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board has determined that they do not because the proposed amendments only apply to continuing education and renewal of physical therapists and physical therapist assistants. The Board was unable to identify any local ordinances or regulations that would require amendment in order to implement the proposed amendments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Board reached this determination because the proposed rules are not intended to increase costs to physical therapists or physical therapist assistants. Because the rules allow for more clear and greater opportunities for licensees to complete continuing education requirements, it may actually result in reduced costs.

LIST OF WITNESSES

Erin DeTomaso, Executive Director
Linda Gustafson, P.T., Board chair and Rules Committee member

RULE-BY-RULE ANALYSIS

In order to facilitate discussion, the proposed amendments are reproduced below, followed by a discussion of the reasonableness and necessity of the rules item by item, where appropriate.

5601.1700 RENEWAL OF LICENSURE; PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS.

Subpart 1. Practice requirement; physical therapists and physical therapist assistants. ~~When they renew their licenses~~ Each year upon license renewal in compliance with Minnesota Statutes, section 148.73, physical therapists and physical therapist assistants must submit lists of locations or institutions where they have practiced during the past five years. Applicants for licensure who have not ~~practiced the equivalent of eight full weeks~~ engaged in the practice of physical therapy as defined in Minnesota Statutes, section 148.65, subdivision 1, for 320 hours during the past five years are required to achieve a passing score on retaking the licensure examination or complete no less than ~~eight weeks~~ 320 hours of board-approved clinical experience with a broad base of ~~treatment modalities~~ interventions and patient diagnoses. In addition, every two years, the applicant must submit verification of compliance with the continuing education requirements of parts 5601.2100 to 5601.2500. An application submitted after the deadline date must be accompanied by the late fee described in ~~part 5601.3000~~ Minnesota Statutes, section 148.715.

Subp. 2. Jurisprudence continuing education; physical therapists and physical therapist assistants. Beginning January 1, 2019, when a license is renewed each year in compliance with Minnesota Statutes, section 148.73, a licensee must complete self-study and take a jurisprudence examination on the Board of Physical Therapy Practice Act, and receive a passing score as established by the board on an open-book examination. The examination may be retaken as many times as is necessary to pass.

The proposed amendments to Subpart 1 are for purposes of clarification. Currently, statute requires that licensees demonstrate that they have practiced physical therapy for “eight full weeks” during the preceding five years. “Eight full weeks” is ambiguous because, on its face, it seems to not allow for part-time work to satisfy the practice requirement. For example, a licensee working a 0.6 shift on a weekly basis may never work even one “full workweek” of 40 hours. It was never the Board’s intent to prohibit part-time shifts from satisfying the practice requirement in subpart 1. The Board receives a number of inquiries about this requirement each year. As a result, the proposed amendment clarifies that the Board requires 320 hours of clinical experience, with no implied requirement of a 40-hour workweek, in order to renew. This amendment creates no additional burden or requirement for the licensee beyond that currently set forth in rules.

Subpart 2 is a new requirement for renewal. Currently, the Board does not have a jurisprudence examination for either licensure or renewal. The proposed amendment would require all physical therapists and physical therapist assistants to take and pass a jurisprudence examination as part of the online renewal process. The examination would be “open book,” allowing applicants for renewal to use the Board’s statutes and rules as reference materials during the examination, and the applicants will be permitted to re-take the examination until they

receive a passing score.

The Board believes it is reasonable to require licensees to be familiar with the statutes and rules that govern their profession, and it is further believed that requiring this jurisprudence examination as a condition of renewal will have such a result. Even those licensees who do not attempt to memorize the statutes and rules, and resort to utilizing the “open book” provision, will become more knowledgeable through the process of reviewing the statutes and rules and responding to the exam questions.

5601.2100 CONTINUING EDUCATION REQUIREMENT; PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS.

Every two years, each physical therapist and physical therapist assistant licensed by the board shall obtain 20 contact hours of continuing education credit as required by parts 5601.2200 to 5601.2600. A minimum of two of the 20 hours of continuing education each cycle shall be on professional ethics directly related to the practice of physical therapy.

There are two proposed modifications to this rule. The first is a housekeeping matter, and merely clarifies, in accordance with Minnesota Statutes, section 148.741, that the continuing education requirements apply to physical therapist assistants as well as physical therapists. The second requires that of the 20 hours of continuing education required each cycle, at least two of the hours be on professional ethics directly related to the practice of physical therapy.

It is the position of the Board that maintaining professional ethics on the part of licensees is important for public protection. The Minnesota legislature shares the view that professional ethics are important in the practice of physical therapy because Minn. Stat. § 148.66 required the Board to promulgate rules prescribing a code of ethics. The Board has rules prescribing a code of ethics, but the Board also finds it reasonable to require that licensees obtain at least two hours of professional ethics continuing education every renewal cycle to ensure that licensees stay current on emerging ethical issues. Other professions that work with vulnerable populations, including for example attorneys and doctors of chiropractic licensed in Minnesota, are required to complete continuing education in professional ethics and professional boundaries, respectively, each renewal cycle.

5601.2200 TWO-YEAR CONTINUING EDUCATION CYCLE; PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS.

Subpart 1. ~~Initial registration or licensure on or after January 1, 1991.~~ For physical therapists ~~initially registered or licensed on or after January 1, 1991,~~ and physical therapist assistants, the first two-year continuing education cycle begins on the January 1 following the date of initial ~~registration or licensure.~~ Future cycles will run consecutively from that point. Continuing education courses taken between the date of initial ~~registration or licensure~~ and January 1 of the following year may be credited toward the first cycle.

Subp. 2. [See repealer.]

The proposed amendment to this rule is housekeeping in nature and clarifies, in accordance with Minnesota Statutes section 148.741, that the two-year continuing education cycle applies to physical therapist assistants as well as physical therapists.

The proposed repeal of subpart 2 is also housekeeping in nature. That subpart applied to licensees who were already registered prior to January 1, 1991, to clarify that those licensees had different start dates for the first continuing education cycle. Because the continuing education cycles have now long been established and the first continuing education cycle expired in 1994, this subpart is obsolete.

5601.2300 CATEGORIES OF CREDITED ACTIVITIES FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS.

Continuing education credit for physical therapists and physical therapist assistants may be obtained from the following activities:

A. Category 1: No less than ten hours of credit must be obtained in a cycle by attendance at educational activities recognized by the board under part 5601.2400. Physical therapists who must submit 30 hours of credit under part 5601.2200, subpart 2, item B, must obtain no less than 15 hours of credit under this item.

B. Category 2: No more than ten hours of credit may be obtained in a cycle through in-service educational activities sponsored by organizations or individuals not designated in Category 1. Physical therapists who must submit 30 hours of credit under part 5601.2200, subpart 2, item B, must obtain no more than 15 hours of credit under this item.

C. Category 3: No more than four hours of credit may be obtained in a cycle through teaching, lecturing, or similar presentation programs. Physical therapists who must submit 30 hours of credit under part 5601.2200, subpart 2, item B, must obtain no more than six hours of credit under this item.

A. Scholarship. Up to nine total hours may be earned by a physical therapist or physical therapist assistant for any combination of the following activities:

(1) authoring a book, chapter, or article directly relating to the practice of physical therapy. The publication must be peer-reviewed; and

(2) preparing and presenting a scientific poster, directly related to the practice of physical therapy. The poster must be peer-reviewed and continuing education hours may be earned only for the first time the licensee presents the poster.

B. Education and teaching. Up to nine total hours may be earned by a physical therapist or physical therapist assistant for any combination of the following activities:

(1) developing and teaching an academic course in physical therapy at an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the licensee teaches the

course. For purposes of this item, an updated course is considered a new course if 51 percent of the content has been changed;

(2) serving as a guest lecturer for an academic course in physical therapy at an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the licensee teaches the course. For purposes of this item, an updated course is considered a new course if 51 percent of the content has been changed. The licensee may claim up to two hours of credit for preparation per one hour of presentation claimed;

(3) developing and presenting a course for a workshop or seminar approved under part 5601.2400. Continuing education hours may be earned only for development for the licensee's first presentation on the subject developed. For purposes of this item, an updated course is considered a new course if 51 percent of the content has been changed. The licensee may claim up to two hours of credit for preparation per one hour of presentation claimed; and

(4) for physical therapists serving as a mentor for a physical therapy residency or fellowship credentialed by the American Physical Therapy Association (APTA).

C. Coursework. A maximum of 18 hours may be earned for the following activities:

(1) for physical therapists and physical therapist assistants, successful completion of an academic course in physical therapy at an institution accredited by a regional accrediting association;

(2) for physical therapists, completing a physical therapy clinical residency program or fellowship credentialed by the APTA;

(3) for physical therapists, completion of an APTA American Board of Physical Therapy Specialties (ABPTS) certification;

(4) for physical therapist assistants, completion of an APTA advanced proficiency program certification; and

(5) for physical therapists and physical therapist assistants, attendance at workshops, seminars, or conferences approved under part 5601.2400.

D. Self-assessment. A maximum of three hours may be earned for completion of the Federation of State Boards of Physical Therapy (FSBPT) self-assessment tools or APTA self-assessment tools.

The proposed changes to this rule represent a modernization of the types of activities licensees may use to meet their continuing education requirements and the amount of credits that may be earned for each category. The current continuing education rules were promulgated over 20 years ago and do not adequately reflect the vast changes in continuing education and continuing competence activities and opportunities that are available to licensees. Although it is anticipated that the majority of licensees will continue to complete their mandated continuing education requirement by attending traditional continuing education classes, the Board recognizes that not all licensees will have the opportunity or resources to do so, and the Board

further recognizes that there are other types of activities a licensee can complete that will meet the purpose of mandatory continuing education. Therefore, it is reasonable to modify the current education requirements to reflect current educational opportunities and philosophies.

The proposed modifications eliminate the outdated “category 1, category 2 and category 3” classification of continuing education activities and, instead, set forth the specific types of activities that may be utilized. This will provide specific guidance to licensees and minimize the number of inquiries to the Board as to whether a specific activity is eligible for credit.

Item A allows credit for scholarship. The Board recognizes the inherent educational benefit to licensees for performing these activities. The Board capped the credit hours allowed to reasonably ensure that a licensee does not receive all of his or her continuing education by, for example, authoring a book.

Similar to Item A, Item B recognizes the inherent educational benefit derived by a licensee in preparing for and teaching academic courses, as well as making presentations to others in a professional meeting format. Again, the Board capped the credit hours to reasonably ensure that a licensee participates in a variety of continuing education activities and does not satisfy all of his or her continuing education by performing one activity.

Item C recognizes the value of licensees in obtaining continuing education credit via traditional coursework activities. Again, the Board capped the credit hours to reasonably ensure that a licensee participates in a variety of continuing education activities and does not satisfy all of his or her continuing education by performing one activity.

Finally, Item D recognizes the value in ongoing self-assessment and allows a licensee to obtain credit for completing either the Federation of State Boards of Physical Therapy (FSBPT) Practice Review Tool or APTA self-assessment tools. The Board believes it is reasonable to limit the number of hours to three, which is the anticipated number of hours it takes to complete a self-assessment.

5601.2400 CATEGORY 1 CREDIT APPROVAL.

Subpart 1. **Courses.** The board shall automatically grant Category 1 continuing education credit meeting the standards of part 5601.2500 for educational activities in items A to C as follows:

A. any course planned, sponsored, or cosponsored by an accredited university or college, medical school, state or national medical or osteopathic association, or a national medical specialty society;

B. any course planned, sponsored, or cosponsored by the American Physical Therapy Association or other national or state physical therapy association; and

C. any course ~~planned, sponsored, or cosponsored by the Arthritis Foundation, American Heart Association, or other national or state health organization~~ approved by the FSBPT for the credit hours awarded by FSBPT.

Subp. 2. **Other educational activity.** Any educational activity not included under

subpart 1 that meets the standards of part 5601.2500 shall be approved for ~~Category 1~~ continuing education credit by the board.

An individual or organization seeking board approval of an educational activity for ~~Category 1~~ continuing education credit as provided under this subpart shall provide to the board documents describing the name and address of the organization sponsoring the activity, the name and address of the facility at which the activity will be presented, the name and credentials of each instructor or person making a presentation, and the course content in detail, including a time schedule for the activity.

Subpart 1 clarifies that automatic approval of continuing education courses that meet the criteria set forth in current rule language. The Board proposes to delete the references in Item C to the Arthritis Foundation, the American Heart Association or other national or state health organization as being redundant with Item A. Additionally, the Board proposes to give automatic credit for courses approved by the Federation of State Boards of Physical Therapy. The Board feels this is reasonable given that this organization is the national organization charged with assisting state boards in maintaining the ongoing competence of its licensees.

Subpart 2 deletes the reference to “Category 1” continuing education credits to ensure that the rule is consistent with the proposed elimination of current categories of continuing education credits referenced above.

5601.2600 VERIFICATION OF COMPLIANCE; PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS.

At the ~~January~~ license renewal immediately following ~~their the physical therapist and physical therapist assistant~~ two-year continuing education cycle, licensees shall ~~provide a signed statement to the board on a form provided by the board indicating attest to~~ compliance with parts 5601.2100 to 5601.2500. ~~The board shall also accept certification of other state regulatory agencies whose continuing education requirements are equal to or greater than those in parts 5601.2100 to 5601.2500.~~

Periodically, the board shall select a sample of the licensed physical therapists and physical therapist assistants and request evidence of the continuing education to which they attested. The board may request evidence of continuing education for up to two consecutive compliance periods. The compliance period or periods for which the board requests evidence of continuing education must be those immediately preceding the current compliance period. Documentation may come directly from the licensee or from state or national organizations that maintain those types of records.

A licensee failing to submit a statement or who submits a statement that, on its face, indicates noncompliance with parts 5601.2100 to 5601.2500 may be subject to the disciplinary provisions in part 5601.2700.

This propose of the proposed amendments to this rule are two-fold. First, it clarifies, in accordance with Minnesota Statutes section 148.741, that the compliance verification requirements for two-year continuing education cycle apply to physical therapist assistants as well as physical therapists. Additionally, it deletes the requirement that licensees submit a “signed statement” indicating compliance, and it replaces it with a requirement that licensees “attest” to compliance. It is reasonable for the Board to make this modification because renewals are processed online, and licensees do not submit signed statements regarding compliance with continuing education. As part of the online renewal process, licensees “attest” to the accuracy of the information they provide. The rule also now specifies that licensees must keep compliance

information, for purposes of an audit, for two compliance periods. The rule in its previous form did not specify how far back the Board could request evidence of continuing education compliance.

5601.3200 CODE OF ETHICAL PRACTICE; PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS.

Subpart 1. **Scope.** Unless otherwise specified, the code of ethical practice for licensees and applicants constitutes the code of ethics required by Minnesota Statutes, section 148.66, clause (7).

Subp. 2. **Prohibited activities.** Violation of the conduct rules in items A to E is prohibited and is grounds for disciplinary action under Minnesota Statutes, section 148.75, paragraph (a), clause ~~(5)~~ (6).

A. Physical therapists and physical therapist assistants shall not engage in conduct that constitutes harassment or abuse of, or unlawful discrimination against, patients.

B. Information relating to the physical therapist-patient and physical therapist assistant-patient relationship is confidential and may not be communicated to a third party not involved in that patient's care without the prior written consent of the patient or patient's representative, or unless otherwise allowed by law. Information must be disclosed when required by law for the protection of the patient or the public.

C. Physical therapists and physical therapist assistants shall not engage in any sexual relationship or activity with any patient, or engage in any conduct that may reasonably be interpreted by the patient to be sexual, whether consensual or nonconsensual, while a physical therapist-patient or physical therapist assistant-patient relationship exists. A physical therapist or physical therapist assistant shall not exploit the physical therapist-patient relationship for sexual purposes, and termination of the physical therapist-patient relationship is not a defense to exploitation involving sexual misconduct.

D. A physical therapist, unless otherwise allowed by law, shall not provide patient care without disclosing benefits and substantial risks, if any, of the recommended examination, intervention, and the alternatives to the patient or patient's legal representative.

E. A physical therapist or physical therapist assistant shall not provide care to patients when impaired by illness, chemical use, or chemical dependency that affects the physical therapist's licensee's ability to practice with reasonable skill and safety.

Subp. 3. **Reporting requirements.** A physical therapist or physical therapist assistant shall self report to the board within 30 days:

A. any personal actions which may be grounds for disciplinary actions in Minnesota Statutes, sections 148.75 and 148.76;

B. impairment by illness, chemical use, or chemical dependency that affects the practitioner's ability to practice with reasonable skill and safety; a report of the impairment to the health professional services program satisfies this reporting obligation;

C. conviction of a misdemeanor, gross misdemeanor, or felony relating to patient care; and

D. the termination, revocation, or suspension of membership by a state or national physical therapy professional association.

Failure to comply with items A to D is ~~considered conduct detrimental to the best interests of the public~~ constitutes failure to conform to minimum standards of acceptable and prevailing practice and grounds for disciplinary action under Minnesota Statutes, section 148.75, paragraph (a), clause ~~(5)~~ (6).

Subp. 4. **Cooperation.** A physical therapist or physical therapist assistant shall cooperate with an investigation of the board. Failure to cooperate is conduct detrimental to the best interest of the public and grounds for disciplinary action under Minnesota Statutes, section 148.75, paragraph (a), clause ~~(5)~~ (6). Cooperation includes responding fully and promptly to any question raised by the board and providing copies of the medical records and other documents requested by the board.

Subp. 5. **Ethical integrity.** Physical therapist and physical therapist assistant licensees and applicants shall use the principles in items A to H as ~~nonbinding~~ guidelines for promoting ethical integrity and professionalism.

A. A physical therapist or physical therapist assistant shall respect the rights and dignity of all patients and provide compassionate care as described in subitems (1) and (2).

(1) A physical therapist or physical therapist assistant shall recognize individual differences with patients and shall respect and be responsive to those differences.

(2) A physical therapist or physical therapist assistant shall be guided by concern for the physical, psychological, and socioeconomic welfare of patients.

B. A physical therapist or physical therapist assistant shall exercise sound judgment and act in a trustworthy manner toward patients and in all other aspects of physical therapy practice. Regardless of practice setting, physical therapists and physical therapist assistants shall maintain the ability to make independent judgments. A physical therapist or physical therapist assistant shall strive to effect changes that benefit patients.

C. A physical therapist or physical therapist assistant shall maintain professional competence and promote high standards for physical therapy practice, education, and research. Physical therapists and physical therapist assistants shall participate in educational activities that enhance their basic knowledge and provide new knowledge.

D. A physical therapist or physical therapist assistant shall seek only such remuneration as is deserved and reasonable for physical therapy services performed and shall never place the therapist's own financial interest above the welfare of patients under the therapist's care.

E. A physical therapist or physical therapist assistant shall endeavor to address the health needs of society.

F. A physical therapist or physical therapist assistant shall respect the rights, knowledge, and skills of colleagues and other health care professionals.

G. A physical therapist or physical therapist assistant shall safeguard the public

from underutilization or overutilization of physical therapy services.

H. A physical therapist or physical therapist assistant shall provide and make available accurate and relevant information to patients about their care and to the public about physical therapy services.

Subp. 6. **Aid to interpretation.** The American Physical Therapy Association (APTA) Code of Ethics for the Physical Therapist and Standards of Ethical Conduct for the Physical Therapist Assistant and APTA Guide for Professional Conduct and Guide for Conduct of the Physical Therapist Assistant shall be used as aids in resolving any ambiguity that may arise in the interpretation of this part. However, in a conflict between this part and the APTA Code of Ethics for the Physical Therapist and Standards of Ethical Conduct for the Physical Therapist Assistant, and Guide for Professional Conduct and Guide for Conduct of the Physical Therapist Assistant, this part shall prevail.

Subp. 6a. **Incorporations by reference.** The Code of Ethics for the Physical Therapist and Standards of Ethical Conduct for the Physical Therapist Assistant published by the American Physical Therapy Association in ~~July 2000~~ June 2010, and Guide for Professional Conduct and Guide for Conduct of the Physical Therapist Assistant published by the American Physical Therapy Association in ~~January 2001~~ November 2010, are incorporated by reference, are available at the State Law Library, and are not subject to frequent change.

Subp. 7. **Interpretation.** The conduct rules found under subparts 2, items A to D; 3; and 4, do not represent the exclusive grounds for disciplinary action under Minnesota Statutes, section 148.75, paragraph (a), clause ~~(5)~~ (6), and must not be construed as limiting the grounds for disciplinary action under Minnesota Statutes, section 148.75, paragraph (a), clause ~~(5)~~ (6), for conduct not listed in this part. Violation of the guidelines in subpart 5 is not grounds for disciplinary action under Minnesota Statutes, section 148.75, paragraph (a), clause ~~(5)~~ (6).

REPEALER. Minnesota Rules, part 5601.2200, subpart 2, is repealed.

The proposed amendments to Minn.R. 5601.3200, the Code of Ethical Practice, are housekeeping in nature. When the rule was originally promulgated, the Board only licensed physical therapists and only physical therapists are referenced in the rule. In 2007 and in accordance with Minnesota Statute section 148.741, the Board began licensing physical therapist assistants and they became subject to the Code of Ethical Practice. Nevertheless, because only physical therapists are referenced in the rule, there is confusion among licensees and members of the public. In order to eliminate this confusion and make the rule consistent with the statute, it is reasonable for the Board to amend the rule to include references to physical therapist assistants where appropriate.

With respect to subps. 2, 3, 4, and 7, the Board is seeking another housekeeping amendment. Those sections currently reference the provision that allows the Board to take disciplinary action on a license for obtaining or attempting to obtain “a license or approval of continuing education activities, or passed an examination, by fraud or deception.” Minn. Stat. §148.75, subd (a)(5). The Board believes it to be more appropriate to reference subdivision (a)(6), which allows the Board to take action on a license for engaging in “unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established.” Minn. Stat. §148.75, subd. (a)(6).

Finally,with respect to subp. 6a, the Board is seeking housekeeping amendments to reflect the current dates and titles of the literature establishing the Code of Ethics.

LIST OF EXHIBITS

In support of the need for and reasonableness of the proposed rules, the Board anticipates that it will enter the following exhibits into the record:

Revisor's Final Draft of Rules

Memo from Chardae Kimber, Minnesota Management and Budget

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

December 15, 2017

Date

/s/ Erin DeTomaso

Erin DeTomaso

Executive Director

Minnesota Board of Physical Therapy