
GUIDELINES FOR PHYSICAL THERAPY PRACTICE IN NEW YORK STATE



August 1, 2010

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DEPUTY COMMISSIONER FOR THE PROFESSIONS
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To: New York State Licensed Physical Therapists **Date: August 2010**
New York State Licensed Physical Therapist Assistants
Physical Therapy Educators
Physical Therapy Organizations
Physical Therapy Students and Licensure Applicants
Other Interested Parties

From: Frank Muñoz, Deputy Commissioner, Office of the Professions
Claudia Alexander, Executive Secretary, State Board for Physical Therapy

Subject: Guidelines for Physical Therapy Practice in New York State

The State Education Department and the State Board for Physical Therapy have produced the attached practice guidelines to provide useful information on good and recommended practices in the profession of Physical Therapy. While this information is **not** a substitute for an understanding of the law, rules and regulations governing the practice of physical therapy in New York State, it is a useful supplement that reflects common professional practice issues and concerns. These practice guidelines can help licensed physical therapists and physical therapist assistants to better understand what might lead to professional practice complaints and to take steps to eliminate or minimize those situations.

These practice guidelines reflect the collective experience of the members of the State Board for Physical Therapy along with input from a variety of sources, including physical therapy organizations and practitioners, physical therapy educators, Office of the Professions' staff, and other State Boards for the Professions.

Practice guidelines provide licensees with general guidance to promote good practice and prevent instances of professional misconduct.¹ They can also benefit licensees and consumers by broadening their understanding of the law, rules and regulations that define professional practice, including professional misconduct and unprofessional conduct.

¹Practice guidelines are not intended to establish a standard for the evaluation of issues in civil liability lawsuits involving claims of negligence or malpractice. The intent is to provide a frame of reference to be used with other appropriate considerations for assessment of issues relating to professional misconduct and unprofessional conduct as defined by law, rules or regulations.

Practice guidelines do not have the force of law. While the guidelines may be a resource in understanding good professional conduct in relation to the professional discipline process, they may not be used as the basis for a charge of or a defense against a charge of professional misconduct. A licensee can only be charged with professional misconduct if there is a violation of the Education Law or Regents Rules. Determinations of which complaints lead to professional misconduct charges are made on a case-by-case basis in accordance with Section 6510 of the Education Law.

For a full understanding of the application of practice guidelines, please review the memorandum regarding the purpose and use of practice guidelines contained at the end of this packet.

Relevant sections of Education Law are available through the Office of the Professions website at <http://www.op.nysed.gov/title8/>. Part 29 of the Rules of the Board of Regents on Unprofessional Conduct is accessible at <http://www.op.nysed.gov/title8/part29.htm>. You may access all New York State Law, such as Public Health Law, Civil Practice Law and Rule, and Insurance Law at <http://leginfo.state.ny.us>.

We hope you find these Practice Guidelines useful. If in doubt about the appropriateness of specific practices, you should consult the actual laws, rules or regulations. You may also access these Guidelines on our web site at www.op.nysed.gov. You may direct any questions and comments to Claudia Alexander, Executive Secretary for the State Board for Physical Therapy, at (518) 474-3817 ext. 180, by e-mail at PTBD@mail.nysed.gov, or by fax to (518) 402-5944.

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GUIDELINES FOR PHYSICAL THERAPY PRACTICE IN NEW YORK STATE

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Guideline 1: Defining the Terms for Providing Professional Services

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

- 1.1 At the outset of service, the licensed physical therapist should discuss with the patient/client the delivery of physical therapy services by:
 - a. Providing the client with information on what services you or your agency can provide to clients and what is required of clients receiving physical therapy services, the requirement for a referral from a qualified health care practitioner prior to treatment or, if treating without a referral, the requirement to sign a Notice of Advice Form;
 - b. Involving the client in the mutual development and implementation of any treatment program or other intervention to the fullest extent of his/her abilities;
 - c. Providing the client with a statement, preferably in writing, regarding all fees and relevant business procedures, participation in government programs (e.g., Medicare or Medicaid) or health insurance plans. This includes, but is not limited to, billing and payment procedures, including use of collection agencies, handling of insurance reimbursement, requirements for canceling appointments, charges for missed appointments, and the client's right to access his or her records within the law; and
 - d. Requesting written acknowledgement by the client of the treatment plan, billing arrangements, and informed consent for treatment.
- 1.2 Be sure you understand how to bill insurance companies and other third-party payers in accordance with New York State law, rules and regulations.

- 1.3 If a client stops using your services against your advice and you believe this places the client at risk, develop a clear plan, preferably in writing, for re-engaging the client. The plan should be placed in the client's record and should note why you believe the termination is inappropriate, any alternative services that are available to the client, and the mechanisms for re-entry into your or your agency's care.
- 1.4 If you leave an agency and/or practice, provide reasonable advance notice in writing and a clear and written plan to clients for the continuation of care. Such documents should be placed in the client's record.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6509(9) – *“unprofessional conduct”*
Education Law, Section 6509-a – *“fee splitting”*
Education Law, Section 6731 - *“definition of practice”*
Regents Rule, Part 29.1(b)(2) – *“exercising undue influence”*
Regents Rule, Part 29.1(b)(3) – *“referral fees”*
Regents Rule, Part 29.1(b)(4) – *“fee splitting”*
Regents Rule, Part 29.1(b)(7) – *“failing to release requested records”*
Regents Rule, Part 29.1(b)(11) – *“patient/client authorization of services”*
Regents Rule, Part 29.1(b)(12) – *“advertising not in the public interest”*
Regents Rule, Part 29.2(a)(1) – *“abandoning a patient/client”*
Regents Rule, Part 29.2(b) – *“failing to provide access to records as required by Public Health Law, section 18”*

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Guideline 2: Advertising and Specialty Credentials

Laws, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

- 2.1 No one except physical therapists may advertise that they are providing physical therapy services or use the title “physical therapist.” However, individuals licensed in chiropractic or podiatry may advertise that they are providing chiropractic physiotherapy or podiatric physiotherapy and a licensed physician may advertise his or her services as “physical medicine”.
- 2.2 In order to use a specialty title in the name of a professional corporation or in advertising, the applicant must present evidence of such certification. When private certification does not exist, other titles can be used but require the licensee to bear the burden of proof and substantiate professional superiority.
- 2.3 The initials used in connection with a licensed physical therapist's or physical therapist assistant's name are “P.T.” or “P.T.A.” Although an individual can include the academic degree in one's signature, these designations are neither recognized nor protected by Education Law or the Rules of the Regents. The title should be listed first after the person's name, *i.e.*, Jane Smith, PT, MSPT, DPT, OCS.
- 2.4 Use of the title “doctor” when offering to perform professional services must indicate the profession in which the licensee holds a doctorate (*i.e.*, Dr. Jane Smith, P.T.).
- 2.5 A licensed and registered physical therapist or physical therapist assistant who wishes to perform activities that do not require a license (e.g., Pilates or personal training) may face charges of misconduct for alleging professional superiority and advertising that is not in the public interest. Such licensee may choose to make the professional license inactive to avoid confusion.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6503 - "*practice of a profession*"

Education Law, Section 6509(9) - "*unprofessional conduct*"

Regents Rule, Part 29.1(b)(12)(i)(a) – "*unprofessional conduct*"

Regents Rule, Part 29.1 (b)(12)(i)(d) and (f) – "*unprofessional conduct*"

Regents Rule, Part 29.2(a)(4) – "*unprofessional conduct for health professions*"

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Guideline 3: Documenting the Provision of Services

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

- 3.1 Maintain written records for every visit or encounter with clients. Entries should be written in ink and signed by the licensee using full name and professional designation (e.g., PT or PTA) and date of service as well as:
- a. Reason for encounter, preliminary assessment, and subsequent disposition.
 - b. Comprehensive evaluation of problem, including the interpretation of tests and measurements, to determine intervention and assist in the diagnosis and prognosis.
 - c. Plan for service, including specific goals and the interventions related to each goal. If actions are delegated to another licensed professional, specify those tasks and how the patient's progress will be assessed or reviewed. If plan is modified this should be noted along with recommendations for follow-up or other intervention.
 - d. Date of service and intervention or treatment provided during each contact with client, including specific follow-up actions to be taken, if relevant.
 - e. Discharge summary, including specific notation of any plans for future interventions, home care program, training of caregivers or equipment provided.
 - f. In the event of a referral to another provider or circumstances under which a client stops using services against your advice or because you are leaving the agency and/or practice, the note should include recommended

actions.

- g. Any consultations with other professionals, including reason for consultation and outcome, and client's authorization to release information.
 - h. Education Law is silent regarding the matter of PTs co-signing the notes of PTAs. However, because PTs are responsible for the evaluation, testing, interpretation, planning, and modification of patient programs, it is not uncommon for them to co-sign PTA notes as an indication that they are aware of the actions of PTAs in relation to their plan. Indeed, in some instances, hospitals and long term care facilities have developed policies that require PTs to co-sign the notes of PTAs under their supervision. (It is within the authority of a health care agency to develop and enforce policies and procedures that exceed state or federal requirements.)
 - i. Education law does not require that a licensed physical therapist co-sign the notes of a student, limited permittee or other licensee. The required supervision of a student, limited permittee or physical therapist assistant may be verified through clear documentation of the physical therapist's review of patient progress and changes in the treatment plan. However, insurance companies and other third-party payers may require a co-signature for reimbursement.
- 3.2 Maintain all paper and electronic client records in a secure area accessible only to authorized persons and in a manner that lends itself to substantiating the records to be trustworthy and unalterable.
- 3.3 In the event a record must be corrected or changed, line through, initial and date the change, and note the reason in a separate entry. Do not obliterate or destroy the original entry.
- 3.4 Be aware of retention requirements for client records, including the period required by law and requirements and allowed fees for providing patient access to records. All patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of 21 years. However, insurers, Medicaid, Medicare, or employers may have more stringent requirements that you should know.
- 3.5 It is unprofessional conduct for a licensee to fail to make available to a patient or client, upon request, copies of documents in the possession or under the

control of the licensee which have been prepared and paid for by the patient/client. “Standards of Practice” may not limit access to records since such access is guaranteed by the previously cited provision. Records must be available for inspection within 10 days for a health care provider or 24 hours for a nursing home.

- 3.6 Institutions or employers may establish policies that are more stringent or explicit than Education Law and regulations but the licensed professional is responsible for conforming with applicable law.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6509(9) – “*unprofessional conduct*”

Education Law, Section 6731(a) – “*definition of physical therapy*”

Public Health Law, Section 18 - “*access to records*”

Regents Rule, Part 29.2(a)(3) – “*failing to keep records*”

Regents Rule, Part 29.1(b)(7) – “*failing to make records available*”

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Guideline 4: Maintaining Appropriate Professional Boundaries

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

- 4.1 Physical therapy practice requires the hands-on interaction with clients; therefore, it is advisable to seek the client's informed consent before touching, particularly in genital or private areas.
- 4.2 It is your responsibility, not your client's, to maintain appropriate boundaries in your professional relationship. If a complaint is filed, it will be your responsibility to demonstrate that a client has not been exploited or coerced, intentionally or unintentionally.
- 4.3 Be especially vigilant regarding any conduct that could impair your objectivity and professional judgment in serving your client, and any conduct that carries the risk and/or the appearance of exploitation or potential harm to your client.
- 4.4 Recognize and avoid the dangers of dual relationships when relating to clients in more than one context, whether professional, social, educational, or commercial. Dual relationships can occur simultaneously or consecutively. Prohibited dual relationships include, but are not limited to:
 - a. accepting as a client anyone with whom you have had a prior sexual relationship or forming a sexual relationship with a current or recent client;
 - b. treating clients to whom you are related by blood or legal ties;
 - c. bartering with clients for the provision of services;
 - d. referring clients to services in which you have a financial interest, without disclosing that relationship; and

- e. entering into financial relationships with clients other than their paying for your physical therapy services.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6509(9) – *“unprofessional conduct”*

Regents Rule, Part 29.1(b)(2) – *“exercising undue influence”*

Regents Rule, Part 29.1(b)(5) – *“moral unfitness to practice”*

Regents Rule, Part 29.2(a)(2) – *“patient/client harassment, abuse, intimidation”*

Public Health Law, Section 238 – *“health care practitioner referrals”*

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Guideline 5: Using and Providing Consultation/Supervision

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

Using Consultation

- 5.1 During the initial years of professional practice, you should acquire frequent and regular individual guidance focused primarily on improving skills and knowledge in client care and professional development. The competent practitioner may consult a more experienced person in the same area of physical therapy or, when that is not possible, from a physician (physician's assistant), dentist, podiatrist, nurse practitioner or midwife who may refer for the services.
- 5.2 When practicing independently, you should consult with experienced colleagues particularly whenever you are only minimally qualified in a specific intervention or when you believe a client could benefit from a collaborative approach to service.

Providing Supervision

- 5.3 A physical therapist assistant, with limited exceptions noted in Guideline 5.7, may only work under the on-site supervision of a licensed physical therapist. When the supervising physical therapist is not present, due to vacation, illness, or other commitments, the physical therapist assistant may not provide care.
- 5.4 A physician or other licensed health professional may not supervise a physical therapist assistant.
- 5.5 The supervising physical therapist is responsible for conducting the initial

- evaluation of the patient and developing the plan of care. The physical therapist may delegate to another licensed person (e.g., certified physical therapist assistant, licensed massage therapist, or physical therapist or physical therapist assistant under a limited permit) those activities that are within the scope and not beyond the competency of the supervisee. The Physical Therapist Assistant is prohibited from evaluating, testing, interpreting, or planning, modifying or terminating the treatment plan.
- 5.6 As a supervisor, you are responsible for maintaining appropriate boundaries with all supervisees, including students, employees, and contract supervisees.
 - 5.7 On-site supervision of a physical therapist assistant is not required in certain settings and when the PTA has appropriate experience, as defined in Education Law and regulations. Even in these specific settings, however, the supervising physical therapist must be involved in the implementation of the plan for patient care, including shared visits and evaluations at specified intervals. [See Education Law Section 6738(b)(c)(d)]
 - 5.8 Students fulfilling the clinical portion of a physical therapy or physical therapist assistant education program must be under the on-site but not necessarily direct, personal supervision of a licensed physical therapist. The student must be enrolled in a program conducted in a school of physical therapy approved by the New York State Education Department or in a clinical facility affiliated with the school. Supervision of a PTA student must be by a licensed physical therapist. It must be on-site supervision, but not necessarily direct, personal supervision. A PTA may act as a Clinical Instructor for the PTA student. However, overall responsibility for the supervision of the PTA student rests with the PT.
 - 5.9 A PT may not supervise more than four permittees. On days that the supervising PT is not on-site or a replacement is not available, the permittee is not allowed to provide physical therapy services.
 - 5.10 On-site supervision means that the supervising physical therapist is in the same facility and readily available to the permittee. Supervision of a person on a limited permit need not be on-site when the supervising physical therapist has determined, through evaluation, the setting of goals, and the establishment of a treatment plan, that the program is one of maintenance.

Citations of Pertinent Law, Rules or Regulations:

- Education Law, Section 6509(2) – *“incompetence and negligence”*
- Education Law, Section 6509(7) – *“permitting unlicensed practice”*
- Education Law, Section 6509(9) – *“unprofessional conduct”*
- Regents Rule, Part 29.1(b)(9) – *“practicing beyond competency and without adequate supervision”*
- Regents Rule, Part 29.1(b)(10) – *“improper delegation of duties”*
- Regents Rule, Part 29.2(a)(5) – *“failing to supervise appropriately”*
- Education Law, Section 6735 – *“physical therapist limited permits”*
- Education Law, Section 6738 – *“definition of physical therapist assistant”*
- Commissioner’s Regulation, Subpart 77.6 – *“supervision of physical therapist assistants”*
- Education Law, Section 6741-a – *“physical therapist assistant limited permit”*
- Commissioner’s Regulation, Subpart 77.3 – *“physical therapist limited permits”*
- Commissioner’s Regulation, Subpart 77.8 – *“physical therapist assistant limited permits”*

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Guideline 6: Provision of Physical Therapy Services

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

- 6.1 A physical therapist with three years of experience may treat a patient without a referral for 10 visits or 30 days, whichever comes first, and must have the patient complete a Notice of Advice form. After this, the patient must be referred to a referring practitioner for evaluation.
- 6.2 A physical therapist may treat a patient after receiving a referral from an authorized health care provider (physician, (physician's assistant) nurse practitioner, podiatrist, dentist or midwife) licensed and currently registered to practice in New York State. The referral must be within the level of competency and definition of practice for the referring provider.
- 6.3 There is no statutory time limit beyond which a referral is not valid, but it is ultimately the responsibility of the physical therapist as to whether the treatment is appropriate, based on the referral, or should be revised by the referring provider.
- 6.4 A referral is not required for a physical therapist to evaluate or prevent disability, injury, disease or other condition of health. The physical therapist providing preventive care must maintain a record of activities undertaken with each client and these may not be billed as physical therapy treatment.
- 6.5 A referral from an out-of-state physician is allowed under Section 6526(2) of the Education Law which includes an exemption for a physician who is licensed in a bordering state and who resides near the border of New York. The border vicinity is usually defined as less than 25 miles. There is no similar exemption for other licensed professionals. Physical therapists may accept a

referral from a physician meeting this exemption.

- 6.6 While a dentist, podiatrist or midwife may refer to a physical therapist, such referral would have to be limited to treatment of a condition within the scope of practice of each of these professions.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6509(2) – *“practicing beyond the scope”*

Education Law, Section 6526(2) – *“out-of-state physicians”*

Regents Rule, Part 29.1(b)(9) – *“practicing or offering to practice beyond the authorized scope”*

Regents Rule, Part 29.2(a)(3) – *“record of treatment and evaluation”*

Regents Rule, Part 29.1(b)(9) – *“practicing beyond competency”*

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Guideline 7: Delegation of Tasks

Laws, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

Delegation to Licensed Professionals

- 7.1 You may delegate physical therapy activities that are within the scope of another licensed professional (e.g., physical therapist assistant or massage therapist), as long as the licensee is competent to perform those activities and as long as the tasks are in accordance with any other statutory requirements for supervision.
- 7.2 Delegating tasks that are beyond the defined scope or the personal competency of another licensed individual may result in charges of professional misconduct against the professional who delegated the task and against the licensee.

Delegation to Unlicensed Personnel

- 7.3 You may not delegate to an unlicensed person any tasks included in the scope of practice of physical therapy, even under the direct supervision of a licensed physical therapist. It is unprofessional conduct for a licensee to delegate professional responsibilities when the delegating licensee knows that such a person is not qualified by licensure to perform such responsibilities.
- 7.4 Unlicensed individuals may perform tasks such as answering phones, preparing paperwork, cleaning equipment, and assisting patients to prepare for treatment. An unlicensed assistant may observe patients performing self-directed exercise protocols, but the licensed physical therapist must evaluate or treat the patient during each session. An unlicensed person may not apply hot and cold packs or place electrodes on a patient. Family members or caregivers

may be trained to assist the patient in the performance of self-directed tasks where appropriate (e.g., care at home). Unlicensed persons may act as an extra set of hands for the physical therapist or physical therapist assistant who is actually providing treatment. However, they may not: interpret referrals; perform evaluation procedures; initiate, adjust, or perform treatment programs; or assume responsibilities for planning patient care. The professional judgment of the physical therapist determines what constitutes treatment and the activities that, therefore, may and may not be performed by the unlicensed person.

The exception to this is in a nursing home setting where a certified nurse assistant may perform some tasks that are considered physical therapy treatment. In these settings, the certified nurse assistant is referred to as a physical therapy aide. (See p. 28)

- 7.5 Students fulfilling the clinical portion of a physical therapy or physical therapist assistant education program must be under the on-site but not necessarily direct, personal supervision of a licensed physical therapist. The student must be enrolled in a program conducted in a school of physical therapy approved by the New York State Education Department or in a clinical facility affiliated with the school. Supervision of a PTA student must be by a licensed physical therapist. It must be on-site supervision, but not necessarily direct, personal supervision. A PTA may act as a Clinical Instructor for the PTA student. However, overall responsibility for the supervision of the PTA student rests with the PT.
- 7.6 Using students, persons on a limited permit or physical therapist assistants to provide treatment may be allowed by New York State law, rule, regulation and policy guidelines. However, there are situations where third party insurers, Medicare and Medicaid, and workers' compensation may require that only treatment performed by a physical therapist will be reimbursed, even though the treatment may legally be performed by those mentioned. It is important to know the requirements of each insurance carrier.
- 7.7 Individuals who are licensed in another jurisdiction may conduct clinical seminars for physical therapists without being licensed in New York State. Physical therapists who are licensed in another jurisdiction may attend such programs but may not engage in client-related activities.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6509 - "*professional misconduct*"
Regents Rule, Part 29.1(b) (10) - "*unprofessional conduct*"
Education Law, Section 6731 - "*practice of physical therapy*"
Education Law, Section 6736 - "*exempt persons*"
Education Law, Section 6741 - "*exemption*"

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF THE PROFESSIONS
STATE BOARD FOR PHYSICAL THERAPY

GUIDELINES FOR PHYSICAL THERAPY PRACTICE IN NEW YORK STATE

Guideline 8: Maintaining Continuing Professional Competence

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

- 8.1 Assess and renew your competence throughout your career through self-evaluation, supervision and consultation.
- 8.2 Beginning September 1, 2009, you are required to complete and document at least 36 hours of continuing education during each three-year registration period. (See the web site for more information:
<http://www.op.nysed.gov/prof/pt/ptceapplicantinfo.htm>)
- 8.3 Expand your knowledge and skills during your career through continuing education and training (many specialty credentials have specific continuing education requirements). Be sure to document all activities.
- 8.4 Before using a modality, procedure, or technique within the scope of practice of physical therapy or physical therapist assistant which was not included in your professional training, enroll in and successfully complete programs of study in recognized institutions and/or with recognized authorities to ensure competency.
- 8.5 Physical therapists licensed in other states may teach courses involving clinical demonstrations (interpreted to mean treatment on patients) in connection with a program of basic clinical education, graduate education, or post-graduate education in an approved school of physical therapy or in its affiliated clinical facility or health care agency, or before a group of licensed physical therapists who are members of a professional society.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6509(2) – *“incompetence and negligence”*
Education Law, Section 6509(9) – *“unprofessional conduct”*
Education Law, Section 6742-a – *“mandatory continuing education”*
Regents Rule, Part 29.1(b) (9) – *“practicing beyond competency”*
Commissioner’s Regulation, Subpart 77.10 – *“Continuing education for
physical therapists and physical therapist assistants”*

NEW YORK STATE EDUCATION DEPARTMENT
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GUIDELINES FOR PHYSICAL THERAPY PRACTICE IN NEW YORK STATE

Guideline 9: Closing a Practice

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

Advisory Notice: The following guideline constitutes a general discussion of the issues that may arise when a licensee ceases to practice. The discussion is intended to alert practitioners to questions and concerns that they may want to consider with their legal counsel, and is not to be construed as a directive or other requirement to take any particular action. The Advisory cannot be used as the basis for a charge of professional misconduct. The statements are generally based upon statutory and regulatory provisions relating to the practice of physical therapy, but are not legal interpretations of any of these provisions. The citations to the provisions are included to add clarity to the discussion. Practitioners are advised that if they decide to pursue any course of action based upon this discussion, private counsel should be consulted. There are many factors to be considered in designing a plan to deal with the termination of a practice. Among these factors is the mode of practice, i.e., - sole practitioner, partnership, professional service corporations, professional limited liability company, professional limited liability partnership. The legal structures involved in these practice forms may have a strong influence on the design of any practice termination plan. Moreover, there may be many issues germane to individual practitioners that should be considered. It is important, therefore, that private counsel be consulted in these matters since there may be legal issues beyond those directly inherent in the practice of physical therapy that should be considered.

Introduction

9.1 A physical therapist's professional practice may cease due to illness, disability, retirement, death, or as the result of a disciplinary action. This may occur either gradually or abruptly and may have profound ramifications. There are many legal, ethical, clinical and personal issues for the practicing physical therapist to consider. An overriding issue is that physical therapists have an obligation to their patients to have an organized plan to ensure that the termination of services does not create patient harm. An organized, comprehensive plan should ensure that the needs and rights of patients are recognized and protected, which may be a fundamental aspect of competent service.

While physical therapists frequently turn to the ethical codes of professional

associations or consider other standards of good practice when planning for the termination of practice, they may not recognize the need to incorporate applicable laws, Rules, or regulations of professional licensing in those plans. In preparing for a temporary or permanent cessation of a professional practice (including planning for a 'what if' scenario), physical therapists should be concerned about patient confidentiality, the maintenance and disposition of patient records, patient abandonment, and limitations on the sale of a practice.

Patient Confidentiality

- 9.2 No personally identifiable information about a patient may be revealed to anyone without the patient's written permission unless required by other laws or regulations. Court orders, subpoenas and investigations by the Office of Professional Discipline are examples of disclosures that may be required even in the absence of the patient's consent.

Physical therapists are obligated to maintain the communications of their patients as confidential. Patient information, written or electronic, must be kept secure from loss, theft, or unauthorized access, use or disclosure. Confidential information should be kept out of plain view, and stored in a secure environment. Care should be taken not to talk about patients in public places, even if you are not using the patient's name.

Physical therapists should be aware of the laws regarding patient confidentiality when authorizing individuals to act on their behalf in maintaining patient records, collecting unpaid funds, and responding to inquiries about the patients.

Patient Records

- 9.3 Accurate and complete patient records serve many purposes. For example, patient records can protect both the consumer and the practitioner, guide professional treatment, and facilitate professional consultations. Patient records are important documents in matters pertaining to professional liability and professional discipline.

Practitioners and their patients should be aware that under some conditions other parties might have reason to have access to patient records. For example, in some cases, patient records may be needed by other

professionals to provide requisite patient care. Your records, therefore, should be an accurate and legible account of the evaluation and treatment of the patient.

Patient records must be maintained for at least six years and obstetrical records and records of minor patients must be retained for at least six years and until one year after the minor patient reaches the age of 21 years. This protects the rights of patient, ensuring their access to information for treatment, legal or personal needs, and also protects practitioners in case of charges of professional misconduct or lawsuits against the practitioner's estate.

Under Section 18 of the Public Health Law, patients have the right of access to their records under most circumstances. If you deny access to records to a patient, you have an obligation to inform the patient of his/her right to appeal to the Office of Record Access of the Department of Health. Contact information is available on the New York State Department of Health Web site at www.health.state.ny.us/nysdoh/opmc/medright.htm.

If you dispose of records when there is no longer any obligation or need to maintain them, they should be properly destroyed to safeguard patient confidentiality.

Physical therapists who retire or sell their practices must make provisions for records to be maintained and accessed, if requested. **The obligation to maintain records is not changed by the retirement or sale of a practice by a physical therapist.**

Your records may be your principal defense to charges of professional misconduct. There is no statute of limitations for charges of professional misconduct.

Physical therapists should also make provisions for the maintenance and destruction, as appropriate, of their patients' records in the event of the physical therapist's death.

Confidentiality and the Transfer of Records

- 9.4 Patients possess the right to have all identifying personal information maintained as confidential. This mandate to maintain confidentiality applies to the physical therapist who is responsible for assuring that all persons engaged or employed within the professional business practice maintain

information needed by them in their work as confidential. For example, a secretary who does billing could have access to the name, address and other demographic information of a patient, but the physical therapist would be responsible for preventing the revelation of this information by the employee. Personally identifying information and the contents of records should not be given to anyone outside the physical therapy practice without the consent of the patient, except as otherwise required by law.

The executor of an estate acts to carry out the wishes of the deceased physical therapist and may implement or carry out the physical therapist's directions regarding the patient. This can include creating a location where patient records can be stored, notifying patients of the death of the physical therapist and the location of the records, seeking information from patients regarding the disposition of records, and obtaining the consent of patients to transfer records. Section 18 of the Public Health Law identifies specific reasons why patients may not have access to records and provides a means of appeal for the patients to obtain the records.

Records of patients should not be transferred to other professionals without the consent of the patient, both to transfer the record and to permit the other practitioner to read the record. Patients should have the option of receiving a copy of their record, having their record transferred to another practitioner of their choice, or leaving their record in storage. If the records are stored in the office of another practitioner, the patient should be notified of the location.

Whether records are transferred to another practitioner, sent to the patient, or stored elsewhere, the estate of the physical therapist may wish to maintain an accessible copy since it is possible for the estate to be sued after the death of the physical therapist. The record could become the estate's most important defense.

Patient Abandonment

- 9.5 The abrupt cessation of services by physical therapists who unexpectedly become ill, disabled, or die normally would not be considered abandonment as it is defined, but appropriate planning for such events early in the professional relationship can ensure that patients receive the essential services they need when such emergencies do occur.

Physical therapists who surrender or lose a license as a result of professional disciplinary action should also provide patients with the means to obtain

essential professional services.

Planning for the Unexpected

- 9.6 Illness, injury or death may occur abruptly. To prevent harm to patients and to assist others in implementing a transition plan, physical therapists may want to consider identifying a person who would have access to names of patients, the means of contacting patients, the needs of each patient in the event of an emergency, and the process to follow in responding to requests for records or information about patients/s. Those person(s) who are expected to implement these actions would need to agree to this arrangement and should know how to access addresses, records, and other files. Such persons would be acting for the physical therapist and should be made aware of the laws, Rules and regulations regarding confidentiality and the use and release of records, as well as a patient's right to access records.

Selling a Professional Practice

- 9.7 Physical therapists who are planning to terminate a practice may consider selling the practice. The tangible assets of a practice may be sold, but the patient's names and records may not be sold. Physical therapists who wish to transfer patient records to another practitioner's care could do so by following the recommended process for making this kind of transfer, which includes patient consent for both the release of their name to the other practitioner, as well as consent for the other practitioner to view their records.

Citations of Pertinent Law, Rule or Regulation:

Public Health Law, Section 18 – *“access to patient records”*

Regents Rule, Part 29.2(a)(3) – *“failing to maintain a record”*

Regents Rule, Part 29.1(b)(8) – *“revealing personally identifiable facts, data, or information”*

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GUIDELINES FOR PHYSICAL THERAPY PRACTICE IN NEW YORK STATE

Guideline 10: Engaging in Telepractice

While current law, rules and regulations provide no specific reference to this emerging area of professional practice, all laws, rules and regulations governing professional practice apply to all methods of practice, including telepractice.

“Telepractice” is providing service that is not “in person” **and** is facilitated through the use of technology. Such technology may include, but is not limited to, telephone, telefax, e-mail, internet, or videoconference.

- 10.1 Telepractice, when used as a form of physical therapy practice, is subject to all practice and ethical considerations discussed in this document and in the law, Rules and regulations governing physical therapy practice in New York State.
- 10.2 Consider the particular impact of telepractice on dimensions of physical therapy practice, including, but not limited to:
- a. Awareness and assessment of unobservable behavior;
 - b. Confidentiality and privacy of clients and their transmissions;
 - c. Access issues such as distribution of computers and familiarity with technology;
 - d. Temporal factors such as simultaneous communication, time between responses, and formalized “sessions”; and
 - e. Development of technological proficiencies and on-line culture/language.

Citations of Pertinent Law, Rules or Regulations:

Education Law, Section 6509(2) – “*incompetence and negligence*”



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK /
ALBANY, NY 12234**

DEPUTY COMMISSIONER FOR THE PROFESSIONS
Office of the Professions
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March 15, 1999

To: Professional State Board Members
From: Johanna Duncan-Poitier
Subject: Professional Practice Guidelines

I write to clarify the purpose and use of practice guidelines developed by Professional State Boards. Practice guidelines provide guidance regarding the implementation of Rules of the New York State Board of Regents to practitioners for the promotion of good practice. Because of questions recently posed about the meaning and use of these guidelines, the following is a more detailed description of the purpose, benefits and limitations of this important tool.

In accordance with Section 6504 of Title VIII of the Education Law:

"Admission to the practice of the professions and regulation of such practice shall be supervised by the board of regents and administered by the education department, assisted by a state board for each profession."

The Board of Regents' supervision and the State Education Department's administration of professional regulation is guided by the Education Law, Regents Rules and Commissioner's Regulations. To meet their responsibility to assist in regulating the practice of the professions, several professional State Boards have developed practice guidelines to assist licensed professionals in understanding how to apply the law and accompanying rules and regulations in their daily practice. They are intended to provide licensees with guidance to promote good practice and prevent incidents of professional misconduct.¹

Practice guidelines can benefit licensees and consumers by broadening their understanding of statutory and regulatory language that defines professional practice, including professional misconduct and unprofessional conduct. They inform practitioners of the Office of the Professions' and State Board's perspective of what constitutes good practice in their profession. In the discipline process, practice guidelines can serve as one of many resources that may be referred to by a board member in consultations, early involvement meetings, and informal settlement conferences, all of which seek resolution of complaints. When combined

¹ It should also be understood that it is not the intent of the guidelines to establish a standard for the evaluation of issues in civil liability lawsuits involving claims of negligence or malpractice. The intent is to provide a frame of reference to be used with other appropriate considerations for assessment of issues relating to professional misconduct and unprofessional conduct as defined by statute, Regents Rule or Commissioner's Regulations.

with the board member's education, experience, and prior activity in the profession and the disciplinary process, they can inform a board member's recommendation when consulted upon a complaint.

Practice guidelines, however, are not a substitute for or have the authority of Education Law, Regents Rules, or Commissioner's Regulations. They do not have the force of the law. Therefore, while the guidelines may be a resource in assessing conduct that underlies a violation, they may not be used as the basis for a charge of professional misconduct. Specifically, a professional cannot be charged with professional misconduct based upon a violation of or failure to comply with guidelines. A licensee can only be charged with professional misconduct if there is a violation of the Education Law or Regents Rules. Nor can conformance with guidelines be deemed to immunize a professional from potential charges of misconduct. Those determinations are to be made on a case by case basis by the Professional Conduct Officer in accordance with Section 6510 of the Education Law.

In formal disciplinary hearings, a guideline may not be used in deliberations unless the Administrative Officer determines that it is admissible. Unless guidelines have been legally admitted into evidence upon a motion to be decided by the administrative officer, a panel should not refer to guidelines because a determination should be based solely on the evidence of individual conduct in an individual case. We realize that a panel member may have discussed and contributed to the development of practice guidelines. That is part of the board member's perspective, formed by his or her professional background, education, experience, research, and discussions. When a board member serves on a hearing panel, due process requires that board member to disregard whatever knowledge or insight was developed during the development of the guidelines unless they have been admitted into evidence, as noted above.

A guideline cannot be part of the hearing record or considered as evidence of the respondent's guilt, unless it has been admitted into evidence. In analyzing and interpreting the evidence presented in the hearing record, panel members should not substitute any guideline for evidence or proof of any charge.

As an articulation of good practice, guidelines are a very important tool for the State Education Department in meeting its critical mission of promoting good practice. I appreciate the thoughtfulness and dedication all of the State Professional Board Members bring to matters of professional licensure, practice, and discipline. Your role in the disciplinary process in describing and interpreting what is good practice are essential in assisting the Regents and the Department in matters of practice. If you have any questions in this matter, please contact Doug Lentivech in the Office of Professional Responsibility at (518) 486-1765 or e-mail at dlentivech@mail.nysed.gov.

Again, my appreciation to you for the time, dedication, and professional expertise you devote to regulation.

cc: Frank Muñoz
Fred Burgess
Douglas Lentivech
Executive Secretaries, State Boards and Professional Assistance Committee

Barbara A. Debuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

January 31, 1996

Dear Administrator:

There have been a number of issues raised recently regarding the functioning of physical therapy departments in nursing homes. The more predominant discussion involves the use of aides in the physical therapy department and what tasks these individuals may perform and under whose supervision. The assistive tasks completed by the aides are not to be confused with what physical therapist assistants may perform based on their certification.

This informational announcement defines the use of physical therapy aides and was developed in consultation with the governing authority, the Office of the State Board for Physical Therapy of the State Education Department.

In New York, physical therapists and physical therapist assistants are recognized in statute; in contrast, the role of physical therapy aide is not officially recognized by licensure or certification. When personnel are permitted to function in that title, it is the responsibility of the nursing home to insure these individuals are appropriately trained, knowledgeable, and judged to be competent to perform limited resident specific activities as authorized by a licensed and currently registered physical therapist.

Resident related activities may include assisting with maintenance range of motion exercises and exercises to maintain strength and endurance in residents without related pathology, ambulation of residents who are on a maintenance physical therapy program, and providing superficial hot and cold applications. Physical therapy aides are not permitted to implement restorative or rehabilitative components of a physical therapy treatment plan. Non-resident related duties may include setting up and maintaining treatment areas, preparing and cleaning equipment, answering phones, and scheduling appointments.

Direction and supervision of a physical therapy aide must be provided by a physical therapist. This supervision must include meetings with and direct observation of the aide on a regular basis to assure activities are carried out as planned. Should the physical therapy aide require assistive direction and the physical therapist is not on-site, the skilled nursing facility must have in place, a policy that assists the physical therapy aide through the situation requiring intervention. A physical therapist assistant may supervise a therapy aide under the delegation of a supervising physical therapist.

The provision of maintenance care in a skilled nursing facility may be provided by a physical therapy aide who must be a certified Residential Health Care Facility (RHCF) nurse aide who is listed, in good standing, on the New York State RHCF Nurse Aide Registry. In addition to this basic requisite, the facility must be able to demonstrate additional training the therapy aide received from the physical therapist to carry out assistive resident related tasks, as well as a competency determination of the aide made by the therapist.

We urge you to use caution when assignments are made in your physical therapy department to personnel other than recognized physical therapy professionals. Should you have questions regarding this matter, you may contact Barbara A. Page of my staff at (518) 474-2052.

Sincerely,

Robert S. Beattie
Assistant Director
Bureau of Long Term Care Services