The Model Practice Act for Physical Therapy

A Tool for Public Protection and Legislative Change

Fifth Edition

Revised 2011(Original Printing 1997)

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Preface

The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change (MPA) is the preeminent standard and most effective tool available for revising and modernizing physical therapy practice acts. The continuing movement to update physical therapy practice acts helps ensure that they provide the legal authority to fully protect the public while allowing for the effective regulation of the profession.

This is the Fifth Edition of the Model Practice Act. Differences from the Fourth Edition can be compared in Appendix A. The structure of the Model Practice Act has remained consistent and is a model worthy of use in all jurisdiction practice acts. The statute language has remained clear and understandable throughout each edition and will continue to influence greater uniformity in practice acts now and in the future.

Delegate Assembly motion DEL-02-07 encouraged each jurisdiction to review, improve and strengthen practice acts and to use the latest edition of the Model Practice Act as a resource in that task. Even where sections of existing jurisdiction law may differ from the Model Practice Act, there is much that can be learned from MPA model statute language and the commentary that can be applied to many regulatory situations or questions.

The Federation of State Boards of Physical Therapy welcomes recommendations relative to any aspect of *The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change*. Recommendations may be sent to the Federation for consideration in later revisions that will be initiated by the Ethics and Legislation Committee. The committee remains a continuing resource for any jurisdiction contemplating practice act changes. The Federation invites your use of this Model Practice Act for Physical Therapy and pledges its resources for your ongoing support.

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Acknowledgements

The Model Practice Act Task Force of the Federation of State Boards of Physical Therapy served from November 1994 until the completion of their task in March 1997. Acknowledgement and appreciation are extended to them, to Federation staff and to many others who reviewed an contributed comments on early drafts and on the field review. Acknowledgement and appreciation are also extended to the Ethics and Legislation Committee, which continues the work of the original task force by periodically updating and revising the Model Practice Act as needed. The Federation is also grateful to the many jurisdiction licensing boards and APTA chapters that have already used this tool to effectively modernize jurisdiction practice acts.

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Introduction

The Federation of State Boards of Physical Therapy was organized in 1986. Soon thereafter, discussion began about the feasibility of developing model language for physical therapy practice acts. It wasn't until 1994 that the FSBPT Board of Directors appointed an eight-member task force, and their work was completed in 1997 with the publication of *The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change*.

Over decades the various physical therapy practice acts have contained functional and useful regulatory language but also some problematic language. Most jurisdictional practice acts had their origins in the 1950s and early 1960s, and amendments have turned some practice acts into cobbled-together collections of regulatory language that are very diverse in their approach to the basic board responsibility of protecting the public and regulating the profession.

The task force originally envisioned a model act that could be used cafeteria style to allow states to change a specific section of a practice act as needed. While the Model Practice Act can be used effectively this way, those who study this document will find a tightly constructed and integrated model for the regulation of physical therapy. The component sections of this model fit together well and complement other sections. Certain areas of this model act are indispensable from others and changes in one of these areas will require additional modification of a jurisdiction's practice act in other areas. The commentary sections of this Model Practice Act will identify important cross-links in statute language. Since 1997 many states have enacted large portions and, in some instances, nearly the entire Model Practice Act as their jurisdiction statute.

As regulatory changes are made in jurisdiction practice acts, the Federation suggests the use of terms and statute language as recommended in this model act. This underscores the importance of a "model" act and will help avoid further confusion of terminology and regulation from jurisdiction to jurisdiction and occasionally within the same practice act.

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Model Practice Act Language

Introductory Notes

- This is the Federation of State Boards of Physical Therapy's model physical therapy practice act.
- The numerical paragraph references used with each paragraph are only for organizational purposes within this model act. Each jurisdiction should use a numbering system that conforms to its own statutory classification system.
- Bracketed areas in the model language throughout the Model Practice Act indicate optional language each jurisdiction should adapt to its own needs. For example, the use of [act] in this model is a drafting option for statutory references such as "chapter," "act," "section" or "law" used commonly in practice acts. Each jurisdiction should use the term applicable to its statutes. The optional [certificate] and [certificate holder] apply if physical therapist assistants are certified by a jurisdiction. However, if physical therapist assistants are licensed by a jurisdiction this particular bracket option would not apply. Other bracketed options are explained in the context of the paragraphs where they appear or in commentary.
- Several other documents are referenced throughout the Model Practice Act. A few of these are included in the Appendix. Others may be referenced on websites of the Federation of State Boards of Physical Therapy or the American Physical Therapy Association.

Physical Therapy Practice Act

[Include proper numerical statute reference, e.g., Chapter # and/or Title #]

Article 1: General Provisions

1.01 Legislative Intent

This [act] is enacted for the purpose of protecting the public health, safety, and welfare, and provides for jurisdiction administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the legislature's intent that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this [act]. This [act] shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

1.02 Definitions

As specifically used in this [act], the following terms have the meanings set forth below, unless the context requires otherwise.

1. "Board" means the [specify the jurisdiction] board of physical therapy.

2. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this [act]. The term "physiotherapy" shall be synonymous with "physical therapy" pursuant to this [act].

3. "Physical therapist" means a person who is licensed pursuant to this [act] to practice physical therapy. The term "physiotherapist" shall be synonymous with "physical therapist" pursuant to this [act].

4. "Practice of physical therapy" means:
   a. Examining, evaluating and testing patients/clients with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement-related conditions in order to determine a diagnosis, prognosis and plan of treatment intervention, and to assess the ongoing effects of intervention.
   b. Alleviating impairments, functional limitations and disabilities by designing, implementing and modifying treatment interventions that may include, but are not limited to: therapeutic exercise, functional training in self-care and in home, community or work integration or reintegration, manual therapy including soft tissue and joint mobilization/manipulation, therapeutic massage,

prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment, airway clearance techniques, integumentary protection and repair techniques, debridement and wound care, physical agents or modalities, mechanical and electrotherapeutic modalities, and patient-related instruction.
c. Reducing the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
d. Engaging in administration, consultation, education, and research.

5. "Physical therapist assistant" means a person who is [certified/licensed] pursuant to this [act] and who assists the physical therapist in selected components of the physical therapy treatment intervention.

6. "Physical therapy aide" means a person trained by or under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy services.

7. "Restricted license" for a physical therapist means a license on which the board has placed any restrictions and/or conditions as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of individual to whom the licensee may provide services.

8. "Restricted [certificate/license]" for a physical therapist assistant means a [certificate/license] on which the board has placed any restrictions and/or condition as to scope of work, place of work, duration of certified or licensed status, or type or condition of patient/client to whom the certificate holder or licensee may provide services.

9. "Onsite supervision" means supervision provided by a physical therapist who is continuously onsite and present in the department or facility where services are provided. The supervising therapist is immediately available to the person being supervised and maintains continued involvement in the necessary aspects of patient care.

10. "Testing" means standard methods and techniques used to gather data about the patient/client, including electrodiagnostic and electrophysiologic tests and measures.

11. "Consultation by telehealth" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or professional healthcare provider via electronic communications or computer technology from a distant location.

12. "Jurisdiction of the United States" means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any American territory.

13. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the [certification/licensure] of a physical therapist assistant.

14. "Competence" is the application of knowledge, skills, and behaviors required to function effectively, safely, ethically and legally within the context of the patient/client's's role and environment.

15. "Continuing competence" is the lifelong process of maintaining and documenting competence through ongoing self-assessment, development, and implementation of a personal learning plan, and subsequent reassessment.

16. "Telehealth" is the use of electronic communications to provide and deliver a host of health-related information and healthcare services, including, but not limited to physical therapy related information and services, over large and small distances. Telehealth encompasses a variety of healthcare and health promotion activities, including, but not limited to, education, advice, reminders, interventions, and monitoring of interventions.

17. “Electronic Communications” means the science and technology of communication (the process of exchanging information) over any distance by electronic transmission of impulses including activities that involve using electronic communications to store, organize, send, retrieve, and/or convey information.

Article 2: Board of Physical Therapy

2.01 Board of Physical Therapy

A. The board of physical therapy shall consist of [seven] members appointed by the governor. [Four] members shall be physical therapists who are residents of this jurisdiction, possess unrestricted licenses to practice physical therapy in this jurisdiction and have been practicing in this jurisdiction for no less than five years before their appointments. [One] member shall be a physical therapist assistant who is a resident of this jurisdiction and possesses an unrestricted [certificate/license]. The governor shall also appoint [two] public members who shall be residents of this jurisdiction and who are not affiliated with, nor have a financial interest in, any healthcare profession and who have an interest in consumer rights.

B. Board members serve staggered four-year terms. Board members shall serve no more than two successive four-year terms or for more than ten consecutive years. By approval of the majority of the board, the service of a member may be extended at the completion of a four-year term until a new member is appointed or the current member is reappointed.

C. If requested by the board, the governor may remove any member of the board for misconduct, incompetence or neglect of duty.

D. Board members are eligible for reimbursement of expenses pursuant to [cite applicable statute relating to reimbursement] to cover necessary expenses for attending each board meeting or for representing the board in an official board-approved activity.

E. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the member’s action is warranted by law, is immune from civil liability.

2.02 Powers and Duties of the Board

The board shall:

1. Evaluate the qualifications of applicants for licensure [and certification].

2. Provide for the examination of physical therapists and physical therapist assistants.

3. Issue licenses [or certificates] to persons who meet the qualifications of this [act].

4. Regulate the practice of physical therapy by interpreting and enforcing this [act].

5. Issue advisory opinions upon request regarding this [act].

6. Adopt and revise rules consistent with this [act]. Such rules, when lawfully adopted, shall have the effect of law.

7. Meet at least once each quarter in compliance with the open meeting requirements of [cite applicable statute]. A majority of board members shall constitute a quorum for the transaction of business. The board shall keep an official record of its meetings.

8. Establish mechanisms for assessing the continuing competence of physical therapists to practice physical therapy.

9. Establish mechanisms for assessing the continuing competence of physical therapist assistants to work in the profession of physical therapy.

10. Establish and collect fees for sustaining the necessary operation and expenses of the board.

11. Elect officers from its members necessary for the operations and obligations of the board. Terms of office shall be one year.

12. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this [act], and board rules, policies and procedures.

13. Maintain a current list of all persons regulated under this [act]. This information includes the person's name, current business and residential address, email address, telephone numbers, and license [or certificate] number.

14. Provide information to the public regarding the complaint process.

15. Employ necessary personnel to carry out the administrative work of the board. Board personnel are eligible to receive compensation pursuant to [cite specific statute].

16. Enter into contracts for services necessary for enforcement of this [act].

17. Report final disciplinary action taken against a licensee [or certificate holder] to a national disciplinary database recognized by the board or as required by law.

18. Report information of alleged unlawful conduct by licensees [or certificate holders], unlicensed individuals, other healthcare providers, and entities to the appropriate county, jurisdiction, or federal authority.

19. Publish, at least annually, final adverse action taken against a licensee [or certificate holder].

20. Publish at least annually, board rulings, opinions, and interpretations of statutes or rules in order to guide persons regulated pursuant to this [act].

21. Participate in or conduct performance audits.

2.03 Disposition of Funds

(No model language is offered under this section heading. See *Commentary* for further information.)

Article 3: Examination and Licensure

3.01 Examination

A. The board shall provide for examinations within the jurisdiction.

B. The physical therapist examination is a national examination that tests entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention and consultation.

C. The physical therapist assistant examination is a national examination that tests for requisite knowledge and skills in the technical application of physical therapy services.

D. Licensure applicants must agree to abide by security and copyright provisions related to the national licensure examination. If the board determines that an applicant has violated any of these provisions or engaged in or attempted to engage in any other conduct that subverts or undermines the integrity of

the examination process or validity of examination results, the board may disqualify the applicant from taking or retaking the examination permanently or for a specified period of time.

E. Any violation of security and copyright provisions related to the national licensure examination, subversion or attempts to subvert the national examination shall be reported by the board to the Federation of State Boards of Physical Therapy.

F. If the board determines that an applicant has engaged or has attempted to engage in conduct that subverts or undermines the integrity of the examination process, including a violation of security and copyright provisions related to the national licensure examination, the board may disqualify the applicant from taking or retaking the examination for a specified period of time.

3.02 Qualifications for Licensure [and Certification]

A. An applicant for a license as a physical therapist shall:
1. Complete the application process including payment of fees.
2. Submit proof of graduation from a professional physical therapy education program accredited by a national accreditation agency approved by the board.
3. Pass an examination approved by the board.
4. Meet the requirements established by board rule if applicable.

B. An applicant for a license as a physical therapist who has been educated outside of the United States shall:
1. Complete the application process including payment of fees.
2. Provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapists educated in an accredited entry-level program as determined by the board. Graduation outside the United States from a professional education program accredited by the same accrediting agency that the board approves for programs within the United States constitutes evidence of substantial equivalency. In all other instances, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:
   a. Graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy;
   b. Provided written proof that the applicant's school of physical therapy is recognized by its own ministry of education;
   c. Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule; and
3. Completed any additional education as required by the board.
4. Pass a board-approved English proficiency examination if the applicant's native language is not English.
5. Pass an examination approved by the board.
6. Complete supervised clinical practice as defined by rules with a restricted license.
7. Meet the requirements established by board rule if applicable.

C. An applicant for a [certificate/license] as a physical therapist assistant shall:
1. Complete the application process including payment of fees.
2. Submit proof of graduation from a physical therapist assistant education program accredited by a national accreditation agency approved by the board.
3. Pass an examination approved by the board.
4. Meet the requirements established by board rule if applicable.

D. An applicant for a [certificate/license] as a physical therapist assistant who has been educated outside of the United States shall:
1. Complete the application process including payment of fees.
2. Provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapist assistants educated in an accredited entry-level program as

determined by the board. Graduation outside the United States from an education program accredited by the same accrediting agency that the board approves for programs within the United States constitutes evidence of substantial equivalency. In all other instances, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:

a. Graduated from a physical therapist assistant educational program that prepares the applicant to work as a physical therapist assistant;

b. Provided written proof that the applicant's physical therapist assistant school is recognized by its own ministry of education;

c. Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule; and

d. Completed any additional education as required by the board.

3. Pass a board-approved English proficiency examinations if the applicant's native language is not English.
4. Pass the examination approved by the board.
5. Complete supervised clinical practice as defined by rules with a restricted license.
6. Meet the requirements established by board rule if applicable.

3.03 Licensure [and Certification] by Endorsement

The board shall issue a license to a physical therapist or a license [certificate] to a physical therapist assistant who has a current unrestricted license [certificate] from another jurisdiction of the United States if that person meets all qualifications prescribed in [*Qualifications for Licensure and Certification*, Article 3.02] at the time of the applicant's initial licensure.

3.04 Exemptions from Licensure [or Certification]

A. This [act] does not restrict a person licensed under any other law of this jurisdiction from engaging in the profession or practice for which that person is licensed if that person does not represent, imply or claim that he/she is a physical therapist, physical therapist assistant, or a provider of physical therapy as defined in Article 1, 1.02B.

B. The following persons are exempt from the licensure requirements of this [act] when engaged in the following activities:

1. A person in an entry-level professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist education while under onsite supervision of a physical therapist.
2. A physical therapist who is practicing in the United States Armed Services, United States Public Health Service or Veterans Administration pursuant to federal regulations for jurisdiction licensure of healthcare providers. If such person, while federally employed as a physical therapist, shall engage in the practice of physical therapy outside the course and scope of such federal employment, he/she shall then be required to obtain a license in accordance with this [act].
3. A physical therapist who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if that person is teaching, demonstrating or providing physical therapy services in connection with teaching or participating in an educational seminar of no more than 60 days in a calendar year.
4. A physical therapist who is licensed in another jurisdiction of the United States if that person is providing consultation by telehealth, as defined in [Definitions, Article 1.02], to a physical therapist licensed under this [act].
5. A physical therapist who is licensed in a jurisdiction of the United States or credentialed in another country, if that person by contract or employment is providing physical therapy to patients/clients affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in the jurisdiction for no more than 60 days in a calendar year.
6. A physical therapist who is licensed in a jurisdiction of the United States and who enters this jurisdiction to provide physical therapy during a declared local, jurisdictional or national disaster or emergency. This exemption applies for no longer than 60 days following the declaration of the

emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.

7. A physical therapist licensed in a jurisdiction of the United States who is forced to leave his/her residence or place of employment due to a declared local, jurisdictional or national disaster or emergency and due to such displacement seeks to practice physical therapy. This exemption applies for no more than 60 days following the declaration of the emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.

C. A physical therapist assistant who is [certified/licensed] in a jurisdiction of the United States and is assisting a physical therapist engaged specifically in activities related to [subparagraphs (B) 2, 3, 5, 6 and 7 of this section] is exempt from the requirement of [certification/licensure] under this [act].

3.05 License [or Certificate] Renewal

A. A physical therapist applying for renewal of the license shall:
1. Complete a renewal application including payment of fees.
2. Demonstrate evidence of continuing competence as defined by rule.

B. A physical therapist assistant applying for renewal of the license [certificate] shall:
1. Complete a renewal application including payment of fees.
2. Demonstrate evidence of continuing competence as defined by rule.

3.06 Changes of Name, Address or Telephone Number

Each licensee [and certificate holder] is responsible for reporting a name change and changes in business and home address, email address and telephone numbers to the board within 30 days.

3.07 Reinstatement of License [or Certificate]

A. The board may reinstate a lapsed license [or certificate] upon completion of a reinstatement application including payment of fees, as defined by rule.

B. If a physical therapist's license has lapsed for a specified time period, as defined by rules, that person shall fulfill all requirements of [3.07 A] and demonstrate to the board's satisfaction competence to practice physical therapy by one or more of the following as determined by the board:
1. Complete supervised clinical practice as defined by rule with a restricted license.
2. Demonstrate or complete continued competence requirements, as defined by rule, required during lapsed licensure period.
3. Pass examination(s) approved by the board.
4. Provide proof of licensed practice in another jurisdiction.

C. If a physical therapist assistant's [certificate/ license] has lapsed for a specified time period, as defined by rule, that person shall fulfill all requirements of [3.07 A] and demonstrate to the board's satisfaction competence to work as a physical therapist assistant by one or more of the following as determined by the board:
1. Complete supervised clinical practice as defined by rules with a restricted license.
2. Demonstrate or complete continued competence requirements, as defined by rule, required during lapsed licensure period.
3. Pass examination(s) approved by the board.
4. Provide proof of licensed [certified] work as a physical therapist assistant in another jurisdiction.

D. The board may reinstate a suspended or revoked physical therapist's license upon completion of the requirements in [3.07 A] and evidence of satisfactory completion of all requirements for reinstatement that were stipulated in a consent order at the time of discipline. The board may further require evidence of competence to practice physical therapy through the following activities:
1. Complete supervised clinical practice, as defined by rule, with a restricted license.
2. Demonstrate or complete continued competence requirements, defined by rule, required during the suspended or revoked licensure period.
3. Successfully complete examinations or assessment tools approved by the board.

E. The board may reinstate a suspended or revoked physical therapist assistant's [certificate/license] upon completion of the requirements in [3.07 A] and evidence of satisfactory completion of all requirements for reinstatement that were stipulated in a consent order at the time of discipline. The board may further require evidence of the physical therapist assistant's competence to work in the profession of physical therapy through the following activities.
   1. Complete supervised clinical practice with a restricted license under a qualified and approved supervisor.
   2. Demonstrate or complete continued competence requirements, defined by rule, required during revoked licensure period.
   3. Successfully complete examinations or assessment tools approved by the board.

[3.08 Fees]

(This is optional statute language for states requiring maximum fee ceilings within their statutes.)

A. The board shall establish and collect fees not to exceed:
   1. _____ dollars for an application for an original license [or certificate]. This fee is nonrefundable.
   2. _____ dollars for a certificate of renewal of a license [or certificate].
   3. _____ dollars for an application for reinstatement of a license [or certificate].
   4. _____ dollars for each duplicate license [or certificate].

Article 4: Regulation of Physical Therapy

4.01 Ethics in the Physical Therapy Profession

A. A physical therapist shall adhere to the recognized standards of ethics of the physical therapy profession as established by rule.
B. A physical therapist assistant shall adhere to the recognized standards of ethical conduct of the physical therapy profession as established by rule.

4.02 Use of Titles and Terms; Restrictions; Classification of Violation

A. A physical therapist shall use the letters "PT" or the term "physical therapist" immediately following his or her name to designate licensure under this [act].

B. A person or business entity, its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business, the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "registered physical therapist," "doctor of physical therapy," the letters "PT," "DPT," "LPT," "RPT," or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this [act]. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this act. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as "physical therapy" or "physiotherapy" unless the individual performing those services is a person licensed as a physical therapist under this [act].

C. Physical therapists who have graduated from a DPT program may use the title "Doctor of Physical Therapy." A physical therapist holding a DPT or other doctoral degree shall not use the title "Doctor" without also clearly informing the public of his or her profession as a physical therapist. Use of the title shall be in accordance with jurisdictional law.

D. A physical therapist assistant shall use the letters "PTA" immediately following his or her name to designate [certification/licensure] under this [act].

E. A person shall not use the title "physical therapist assistant," the letters "PTA," or any other words, abbreviations or insignia in connection with that person's name to indicate or imply, directly or

indirectly, that the person is a physical therapist assistant unless that person is [certified/licensed] as a physical therapist assistant pursuant to this [act].

F. A person or business entity that violates paragraphs (B) or (E) of this section is guilty of a [cite specific legal sanction]. The board shall have authority to impose a civil penalty, in an amount not to exceed [specify number of dollars] per violation, against any person or business entity that violates paragraphs (B) or (E). In addition, the board shall seek an injunction against conduct in violation of paragraphs (B) or (E) in any court of competent jurisdiction. For purposes of this [act], the board, in seeking an injunction, need only show that the defendant violated paragraphs (B) and (E) of this section to establish irreparable injury or a likelihood of a continuation of the violation.

4.03 Patient Care Management

A. A physical therapist is fully responsible for managing all aspects of the physical therapy care of each patient. A physical therapist shall provide:

1. The initial evaluation, determination of diagnosis, prognosis, and plan of treatment intervention and documentation of each encounter with each patient;
2. Periodic reevaluation and documentation of each patient;
3. The documented discharge of the patient, including the patient's response to treatment intervention at the time of discharge.

B. A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides under his or her direction and supervision.

C. For each patient on each date of service, a physical therapist shall provide all of the treatment intervention that requires the education, skills, and knowledge of a physical therapist and shall determine the use of physical therapist assistants or physical therapy aides to ensure that the delivery of care that is safe, effective, and efficient.

1. A physical therapist assistant shall work under a physical therapist's supervision. A physical therapist assistant shall document the care he/she provides.
2. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the supervision of a physical therapist.

D. The physical therapist shall communicate the overall plan of care with the patient or the patient's legally authorized representative.

E. A physical therapist's responsibility shall include accurate documentation and billing of the services provided.

F. A physical therapist assistant's responsibility shall include accurate documentation and billing of the services provided.

4.04 Grounds for Denial of a License [and Certificate]; Disciplinary Action

A. The following are grounds for denial of a license [and certificate] or disciplinary action:

1. Violating any provision of this [act], board rules or a written order of the board.
2. Obtaining or attempting to obtain a license [or certificate] by fraud or misrepresentation.
3. Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process including, but not limited to, a violation of security and copyright provisions related to the national licensure exam, utilizing in any manner recalled or memorized examination questions from or with any person or entity, failing to comply with all test center security procedures, communicating or attempting to communicate with other examinees during the test, or copying or sharing examination questions or portions of questions.
4. Practicing or offering to practice beyond the scope of the practice of physical therapy.
5. Acting in a manner inconsistent with generally accepted standards of physical therapy practice, regardless of whether actual injury to the patient is established.
6. Failing to adhere to the recognized standards of ethics of the physical therapy profession as established by rule.

7. Failing to complete continuing competence requirements as established by rule.
8. Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that contain at minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record and a discharge plan.
9. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this [act] and board rules.
10. Failing to report to the board, where there is direct knowledge, any unprofessional, incompetent, or illegal acts that appear to be in violation of this [act] or any rules established by the board.
11. Engaging in sexual misconduct. For the purpose of this paragraph sexual misconduct includes:
    a. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists.
    b. Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.
    c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
12. Having had a license [or certificate] revoked or suspended, other disciplinary action taken, or an application for licensure [or certification] refused, revoked or suspended by the proper authorities of another jurisdiction, territory, or country.
13. Having been convicted of or pled guilty to a felony in the courts of this jurisdiction or any other jurisdiction, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilt, an Alfred plea, or a plea of *nolo contendere*.
14. Aiding and abetting the unlicensed practice of physical therapy.
15. Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. This does not prohibit the members of any regularly and properly organized business entity recognized by law and comprising physical therapists from dividing fees received for professional services among themselves as they determine necessary.
16. Promoting any unnecessary device, treatment intervention, or service resulting in the financial gain of the practitioner or of a third party.
17. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
18. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.
19. Charging fraudulent fees for services performed or not performed.
20. Making misleading, deceptive, untrue or fraudulent representations in violation of this [act] or in the practice of the profession.
21. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals or alcohol, or by other causes.
22. Practicing physical therapy with a mental or physical condition that impairs the ability of the licensee to practice with skill and safety.
23. Practicing after having been adjudged mentally incompetent by a court of competent jurisdiction.
24. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.
25. Failing to maintain patient confidentiality without documented authorization of the patient or unless otherwise required by law. All records used or resulting from a consultation by telehealth, as defined in [*Definitions,* Article 1.02], are part of a patient's records and are subject to applicable confidentiality requirements.

4.05 Investigative Powers; Emergency Action; Hearing Officers

A. To enforce this [act], the board is authorized to:

1. Receive complaints filed against licensees [or certificate holders] and conduct a timely investigation.
2. Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of this [act].
3. Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.
4. Take emergency action ordering the summary suspension of a license [or certificate] or the restriction of a physical therapist's practice or a physical therapist assistant's employment pending proceedings by the board.
5. Appoint hearing officers authorized to conduct hearings. Hearing officers shall prepare and submit to the board findings of fact, conclusions of law and a recommendation for Board action that shall be reviewed and voted on by the board.
6. Require a physical therapist to be examined in order to determine his or her mental or physical ability to practice physical therapy.
7. Require a physical therapist assistant to be examined in order to determine his or her mental or physical ability to work in the profession of physical therapy.

B. If the board finds that the information received in a complaint or an investigation does not merit disciplinary action against a licensee [or certificate holder] it may take one of the following actions:

1. Dismiss the complaint.
2. Issue an advisory letter to the licensee [or certificate holder]. An advisory letter is non-disciplinary and notifies a licensee [or certificate holder] that, while there is no evidence to merit disciplinary action, the board believes that the licensee [or certificate holder] should become educated about the requirements of this [act] and board rules.

4.06 Hearings

(No model statute language is offered under this section heading. See *Commentary* for additional information.)

4.07 Disciplinary Actions; Penalties

Upon proof that any grounds prescribed in section [*Grounds for Denial of License [and Certificate]; Disciplinary Action*, Article 4.04], have been violated, the board may take the following disciplinary actions singly or in combination.

1. Issue a censure.
2. Restrict a license [or certificate]. The board may require a licensee [or certificate holder] to report regularly to the board on matters related to the grounds for the restricted license [or certificate].
3. Suspend a license [or certificate] for a period prescribed by the board.
4. Revoke a license [or certificate].
5. Refuse to issue or renew a license [or certificate].
6. Impose a civil penalty of at least _____ but not more than _____. (Include minimum and maximum dollar amounts of civil penalties.)
7. Accept a voluntary surrendering of a license [or certificate] based on an order of consent from the board.

4.08 Procedural Due Process

Actions of the board shall be taken subject to the right of notice, opportunity to be heard, and the right of appeal in accordance with [specify the jurisdiction] law relating to administrative law and procedure.

4.09 Unlawful Practice; Classification; Civil Penalties; Injunctive Relief

A. It is unlawful for any person or business entity, its employees, agents, or representatives not licensed as a physical therapist under this [act] to engage in the practice of physical therapy. Any person who violates this paragraph [(A) or *Use of Titles and Terms, Restrictions; Classification of*

Violation, Article 4.02], is guilty of [cite specific criminal sanction, e.g., class 1 misdemeanor] and subject to any other remedies specified in this [act].

B. The board shall investigate any person or business entity to the extent necessary to determine whether the person or business entity is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person or business entity is practicing physical therapy unlawfully, the board shall inform the person or the business entity of the alleged violation. The board may refer the matter for prosecution regardless of whether the person or business entity ceases the unlawful practice of physical therapy.

C. The board shall apply to any court of competent jurisdiction for an order enjoining any person or business entity from committing any violation of this [act]. Injunction proceedings under this paragraph shall be in addition to, and not in lieu of, all penalties and other remedies prescribed in this [act].

D. If a person or business entity knowingly violates this [act] or board rules, fraudulently uses or permits the use of a license [or certificate] number, or knowingly aids or requires another person to violate this [act] or board rules, the board may impose upon such person a civil penalty of not more than [dollar amount of penalty] for the first violation and not more than [dollar amount of penalty] for each subsequent violation.

[Optional Statute]

E. The board shall transmit all monies it collects from civil penalties pursuant to this [act] to the [specify the disposition of these funds if different from other funds].

4.10 Reporting Violations; Immunity

A. A person, including but not limited to a licensee [or certificate holder], corporation, insurance company, healthcare organization or healthcare facility and jurisdiction or local governmental agencies, shall report to the board any conviction or determination by an agency or court that a licensee [or certificate holder] has committed an act that constitutes a violation of [*Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04].

B. A person is immune from civil liability, whether direct or derivative, for reporting such facts as set forth in "A" above to the board in good faith and participating in the board's investigation and subsequent disciplinary process, if applicable.

C. The board shall not disclose the identity of a person who provides information unless such information is essential to proceedings conducted pursuant to [*Investigative Powers; Emergency Action; Hearing Officers* and *Hearings*, Articles 4.05 and 4.06], or unless required by a court of law.

4.11 Substance Abuse Recovery Program

A. The board may permit a licensee [or certificate holder] to actively participate in a board-approved substance abuse recovery program if:
   1. The board has evidence that the licensee [or certificate holder] is impaired.
   2. The licensee [or certificate holder] enters into a written agreement with the board for a restricted license [or certificate] and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on his or her practice or employment imposed by the board to protect the public. Failure to enter into such an agreement shall activate an immediate investigation and disciplinary proceeding by the board.
   3. As part of the agreement established between the licensee [or certificate holder] and the board, the licensee [or certificate holder] signs a waiver allowing the substance abuse program to release information to the board if the licensee [or certificate holder] does not comply with the requirements of this section or is unable to practice or work with reasonable skill or safety.

4.12 Rights of Consumers

A. The public shall have access to the following information:

1. A list of licensees [and certificate holders] that includes place of employment, address and telephone number of record, license [or certificate] number, date of license [or certificate] expiration and status of license [or certificate].
2. A list of final adverse actions taken by the board.
3. The address, website, email and phone number of the board.

B. Each licensee [and certificate holder] shall display a copy of his or her license [or certificate] in a location accessible to public view or produce a copy immediately upon request.

C. Each licensee [and certificate holder] shall provide the public with information on how to file a complaint with the board against a licensee [or certificate holder].

D. Any person may submit a complaint regarding any licensee, [certificate holder] or any other person potentially in violation of this [act]. Confidentiality shall be maintained subject to law.

E. The home address, email address and home telephone numbers of physical therapists and physical therapist assistants are not public records and shall be kept confidential by the board unless they are the only addresses and telephone numbers of record.

F. A patient has freedom of choice in selection of services and products.

G. Information relating to the physical therapist-patient relationship is confidential and shall not be communicated to a third party who is not involved in that patient's care without the written authorization of the patient. The physical therapist-patient privilege does not extend to cases in which the physical therapist has a duty to report information as required by law.

H. The board shall keep all information relating to the receipt and investigation of complaints filed against licensees [or certificate holders] confidential until the information is disclosed in the course of the investigation or any subsequent proceeding or until disclosure is required by law. Patient records, including clinical records, files, any other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or his family might be identified, or information received and records or reports kept by the board as a result of an investigation made pursuant to this [act] shall not be available to the public and shall be kept confidential by the board.

Model Statutes with Commentary

Introductory Notes

This section of the Model Practice Act is divided into two distinct areas for easy reference:

- The Model Language (in bold text) for each statutory section
- The Commentary that clarifies the intent or adds other information about the suggested model language

Physical Therapy Practice Act

[Include proper numerical statute reference, e.g., Chapter # and/or Title #]

Article 1: General Provisions

1.01 Legislative Intent

This [act] is enacted for the purpose of protecting the public health, safety and welfare, and provides for jurisdiction administrative control, supervision, licensure and regulation of the practice of physical therapy. It is the legislature's intent that only individuals who meet and maintain prescribed standards of competence and conduct shall engage in the practice of physical therapy as authorized by this [act]. This [act] shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

Commentary

A statement of legislative intent makes explicit the desire of the legislature to place public interest first and foremost in the law that governs physical therapy. There is an inherent benefit to society and to individuals when public health, safety and welfare are protected through licensure. Licensing boards are obligated to ensure that the public actually realizes these benefits from the law.

Licensure is inherently restrictive for the licensee and exclusive to the particular profession. Only those who "meet and maintain prescribed standards" established by the board will, for the protection and benefit of the public, be allowed to profess their qualifications and provide their services to the public. The public is dependent upon the jurisdiction to evaluate and affirm the qualifications for licensure of physical therapists.

The use of "maintain" in the model statute refers to the licensee's ongoing commitment to maintain minimal standards of practice throughout a career, also known as continuing competence. The Model Practice Act addresses continuing competence and provides the regulatory authority for this responsibility in the additional paragraphs: *Powers and Duties of the Board*, Article 2.02.8, *License [or Certificate] Renewal*, Article 3.05.A.2, *Reinstatement of License [or Certificate]*, Articles 3.07.B and C.

The last sentence of the model statute mandates that all interpretations of the practice act and associated rules refer back to this initial intent statement. The benefit that an intent statement adds to licensing and regulation is apparent. The entire practice act, including accompanying rules, constitutes the law governing physical therapy practice within a state.

1.02 Definitions

As specifically used in this [act], the following terms have the meanings set forth below, unless the context requires otherwise.

Commentary

More exact language in the law produces more consistent understanding of the law by the public, the profession and the regulatory agencies created to enforce the law. Clear and concise laws require fewer modifications and less legal interpretation by attorneys, courts or by the office of the state attorney general.

Practice acts achieve clarity of intent and internal consistency by including definitions of the terms and phrases used within the act. Some of these are operational definitions that have more significance in a specific practice act because of the language used in that jurisdiction's laws. Other terms have overall significance in all practice acts because they define to *whom* and *what* is being regulated. These are the terms recommended for inclusion in the Definitions section of the law: Board, Physical Therapy, Physical Therapist, Practice of Physical Therapy, Physical Therapist Assistant, Physical Therapy Aide, Restricted License, Restricted Certificate, Onsite Supervision, Testing, Consultation by Telehealth, Jurisdiction of the United States, Examination, Competence, Continuing Competence, Telehealth, and Electronic Communications.

1. "Board" means the [specify the jurisdiction] board of physical therapy.

Commentary
This model language indicates a preference for an independent physical therapy licensing board structure. Most jurisdictions have independent boards but some jurisdictions have physical therapy boards as part of jurisdiction medical boards or combined with other professions. There are also a few "super boards" where all regulatory activities are subordinate to one board, with distinct committees or commissions for the various professions. Independent licensing boards are preferred because they provide the necessary expertise for regulation of the practice of physical therapy. (See additional discussion in *Board of Physical Therapy*, Article 2.01).

2. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this [act]. The term "physiotherapy" shall be synonymous with "physical therapy" pursuant to this [act].

Commentary
"Physical therapy" and "physiotherapy" are not generic terms. The *combined* language of the three definitions, "physical therapy," "physical therapist" and the "practice of physical therapy," is crucial to curtail frequent misrepresentation in the use of these terms and thus strengthen physical therapy practice acts. When changes to any of these definitions are made they should be examined and changed in concert. It is equally important that the exclusive use of titles and terms be included whenever changes in definitions are made. (See *Examination*, Article 3.01, *Use of Titles and Terms, Restrictions; Classification of Violation,* Article 4.02, and *Unlawful Practice; Classification; Civil Penalties; Injunctive Relief,*Article 4.09.)

The public expects the jurisdiction to ensure that practitioners of every profession practice competently within their scope. Jurisdiction regulation includes restrictions on how licensees represent themselves and the use of titles and/or letters and representations that do not mislead the public. For example, a medical or osteopathic physician practices and represents to the public that he or she practices medicine but not dentistry. When practitioners other than physical therapists represent that they are providing "physical therapy" or "physiotherapy," they are violating the very spirit and core of licensure laws by misrepresenting themselves to the public.

"Physiotherapy" is included in the definition as synonymous with "physical therapy." This strengthens the protection of the term "physiotherapy," a historically significant term and current international title, and one that is often used as a generic term and misrepresented by other disciplines.

In the past the practice of physical therapy was defined by listing various physical agents and modalities such as heat, ice, ultrasound, etc. This perpetuated the false concept that physical therapy was a generic term since these physical agents and modalities have not been the exclusive domain of physical therapy.

The solution to strengthening practice acts is to clearly define "physical therapy" as "the care and services provided by *(and only by)* a physical therapist." Additional strengthening comes from a more modernized definition of the "Practice of physical therapy" that describes current scope of practice and from language

in *Use of Titles and Terms; Restrictions; Classification of Violation*, Article 4.02 that protects the public from misrepresentation by others.

Removing the term *individuals* provides opportunity for boards to allow the practice of animal physical therapy for those boards who wish to address animal physical therapy.

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3. "Physical therapist" means a person who is licensed pursuant to this [act] to practice physical therapy. The term "physiotherapist" shall be synonymous with "physical therapist" pursuant to this [act].

Commentary
Only a licensed physical therapist shall use the professional designation of "physical therapist." Physiotherapist is included in the definition as synonymous with physical therapist to strengthen use of that title only by physical therapists. (See additional discussion under *Use of Titles and Terms; Restrictions; Classification of Violation*, Article 4.02.)

Several jurisdictions have used the definition of "physical therapist" to introduce other concepts that are better addressed in other areas of a practice act. Language concerning supervision, educational preparation, exclusive use of titles and practice restrictions (no X-rays, surgery, etc.) are sometimes included in this definition in older practice acts but are more appropriately addressed elsewhere in the law.

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4. "Practice of physical therapy" means:

a**. Examining, evaluating and testing patients/clients with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement-related conditions in order to determine a diagnosis, prognosis and plan of treatment intervention, and to assess the ongoing effects of intervention.**

b. Alleviating impairments, functional limitations and disabilities by designing, implementing and modifying treatment interventions that may include, but are not limited to: therapeutic exercise, functional training in self-care and in home, community or work integration or reintegration, manual therapy including soft tissue and joint mobilization/manipulation, therapeutic massage, prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment, airway clearance techniques, integumentary protection and repair techniques, debridement and wound care, physical agents or modalities, mechanical and electrotherapeutic modalities, and patient-related instruction.

c. Reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and wellness in populations of all ages.

d. Engaging in administration, consultation, education and research.

Commentary
This language represents the "statutory" definition of the scope of physical therapist practice by identifying the main elements included within the scope. It also supports the two preceding definitions of the profession (physical therapy) and the professional (physical therapist).

The component elements of a profession's "scope of practice" include three determinants: 1) an established history of inclusion in education and training; 2) an established history of inclusion in clinical practice; and 3) specific statutory authority. When the first two determinants are well established, then specific statutory authority shall also be substituted by the "*absence of* statutory prohibition." For example, where a practice act is silent on the issue of needle insertion EMG, the fact that there is a long history of educational inclusion and an established history of clinical practice in physical therapy substantiates this procedure as being within the scope of practice of physical therapy. Legal opinions in the form of affirmative court decisions also play a role in defining scope of practice, as they have in this specific example. The Model Practice Act offers additional definition language under Paragraph 10 for testing that allows for electrodiagnostic procedures.

The definition of the practice of physical therapy in the MPA gives a clear description of current practice. This definition forms a well-organized and structured outline for the scope of contemporary physical therapy practice. A few additional points regarding this model definition are important to highlight.

The wording “patients with mechanical, physiological and developmental impairments, functional limitations and disability or other health and movement-related conditions” is sufficiently broad to allow for inclusion of any type of patient that physical therapists encounter. Physical therapists must examine and evaluate each patient prior to initiating treatment interventions.

Determining “a diagnosis” rather than “diagnosis” or “the diagnosis” is a subtle but very important point. Direct patient access to physical therapy services is now a reality in the majority of jurisdictions. Physical therapists must determine a diagnosis regarding the patient’s specific condition for which they will be providing treatment intervention prior to making patient management decisions. A diagnosis from a referral source does not rule out a physical therapist’s responsibility to arrive at a diagnosis specific to the condition for which the therapist’s treatment plan and intervention will be directed. By contrast, an inappropriate phrase and one strongly advised against, is “a physical therapy diagnosis.” “Diagnosis for physical therapy,” on the other hand, would be appropriate. Although diagnostic labels, tests or tools shall vary, the process of diagnosis is consistent among health professionals and should not be compartmentalized by provider.

The evaluative and diagnostic process should also include a prognosis or an expectation of outcome associated with treatment intervention. This shall also include time or outcome expectations. The end result of the evaluative process is the design of the treatment intervention. The effects of the treatment intervention are assessed regularly in order to make modifications to the intervention.

It is not necessary or advisable to list the tests and measures used by physical therapists within the definition of the “Practice of physical therapy.” The use of this definition of the “Practice of physical therapy,” should prevent any unreasonable restrictions on current or developing evaluative procedures used by physical therapists.

In Paragraph4.b., it is appropriate to list some of the typical interventions used in physical therapy. This helps to exemplify the breadth and scope of practice based on education and training. A stand-alone list of physical agents or modalities is not recommended.

Because of political sensitivities over the term “manipulation,” it shall occasionally be necessary to find an acceptable alternative that still authorizes, and in no way limits, the use of manipulative therapy procedures by physical therapists. An acceptable alternative is to retain in Paragraph 4.bthe term “manual therapy” or “manual therapy techniques” (without using the term “manipulation”) and then further define “manual therapy” in statutes or rules. In 1998 the American Medical Association approved specific CPT coding for use by M.D. physicians and physical therapists for “manual therapy techniques.” This code also contains the terms “mobilization” and “manipulation” as part of the CPT code description.

If an additional description or clarification is needed for “debridement and wound care,” it should be further specified in statutes or rules. (See *Guidelines for Rules.*)

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5. “Physical therapist assistant” means a person who is [certified/licensed] pursuant to this [act] and who assists the physical therapist in selected components of physical therapy treatment intervention.

Commentary
Several jurisdictions continue to use language that designates that the “assistant” assists in practice (physical *therapy* assistant), rather than language that defines the “assistant” as one who assists the physical therapist (physical *therapist* assistant). Language that equates physical *therapy* assistant with

physical therapist assistant is best handled in *Use of Titles and Terms; Restrictions; Classification of Violation*, Article 4.02.

The requirement that a physical therapist assistant "has met the conditions of this [act]" refers to applicant qualifications and requirements addressed in *Examination and Licensure*, Article 3. Educational requirements, such as being a graduate of an accredited physical therapist assistant education program, are best addressed in other areas of the practice act, not in definitions.

Other role delineation or restrictions a board shall wish to include should be specified in rules. The Model Practice Act includes language for both certification and licensure. A jurisdiction shall select its preferred form of regulation for PTAs and apply the appropriate term throughout the practice act.

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6. "Physical therapy aide" means a person trained by or under the direction of a physical therapist who performs designated and supervised components of care related to physical therapy services.

Commentary
Physical therapy aides are generally trained on the job. Physical therapy aides are also known as, but not limited to: technicians (techs), rehabilitation(rehab) aides, or rehabilitation technicians (rehab techs). This does not preclude vocational or technical training that shall exist for physical therapy aides or "techs." However, such training does not relieve the supervising physical therapist of responsibility for further on-the-job training. What this training is, and the documentation of the training, should be specifically addressed in rules. Regulation beyond this definition is not recommended for aides.

Massage therapists, exercise physiologists, athletic trainers or other persons who have technical or professional education or training, and who assist the physical therapist, should be considered physical therapy aides and be represented as such. The only exception to this is if such persons are providing consultative services and their particular service is not represented or billed as physical therapy.

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7. "Restricted license" for a physical therapist means a license on which the board has placed any restrictions and/or conditions, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee shall provide services.

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8. "Restricted [certificate/license]" for a physical therapist assistant means a [certificate/license] on which the board has placed any restrictions and/or condition as to scope of work, place of work, duration of certified or licensed status, or type or condition of patient or client to whom the certificate holder or licensee may provide services.

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9. "Onsite supervision" means supervision by a physical therapist who is continuously onsite and present in the department or facility where services are provided. The supervising therapist is immediately available to the person being supervised and maintains continued involvement in the necessary aspects of patient care.

Commentary
"Onsite supervision" is an important inclusion in the definitions section. Some practice acts have very specific definitions where, for example, "onsite" is further defined as meaning direct visual contact, or defining "immediately available" within a time parameter of so many seconds or minutes. Such definitions are overly restrictive. The supervising physical therapist remains professionally and legally responsible for care rendered under the physical therapist's license.

The Model Practice Act language recommends that the supervisor should be within close proximity—in the department or facility—*and* immediately available. "Immediately available" is a term frequently used in healthcare statutes and in Medicare rules. It denotes a sense of urgency in delivery of care, not a sense, necessarily, of standing next to the person being supervised at all times.

The phrase, "maintains continued involvement in the necessary aspects of patient care**,"** is emphasized and suggests that supervising physical therapists are responsible for provided physical therapy interventions. Supervising physical therapists should remain actively involved on a daily basis with those persons who are under their care and supervision. The definition has been broadened to be inclusive of various types of onsite supervision and may include but not limited to the supervision of physical therapy assistants, physical therapy aides as well as supervision of personnel under restrictive licensure.

There is another subtle point worth an explanation. Within patient management, "direction" and "supervision" are functions that belong solely to the licensed physical therapist. The physical therapist assistant shall receive help from a physical therapy aide when performing certain tasks or procedures, but the physical therapist assistant does not assume the responsibility to "direct and supervise" the provision of care. That responsibility remains with the supervising physical therapist and, by law, cannot be relinquished to another.

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10. "Testing" means standard methods and techniques used to gather data about the patient, including electrodiagnostic and electrophysiologic tests and measures.

Commentary
The definition of "Practice of physical therapy," Paragraph 4a, includes a reference to "testing." That statutory definition is purposely and necessarily broad and does not specify any particular tests (see *Commentary* under Paragraph 4). This statutory Paragraph 10 accomplishes two things: it incorporates the profession's accepted standard definition of "tests and measures," and it also includes a reference to particular diagnostic testing procedures that are within the scope of physical therapy practice but have occasionally been challenged legally or legislatively.

Some jurisdictions already have, and others shall wish to include, rules that specify additional training requirements and certification procedures relative to physical therapists performing electrodiagnostic and electrophysiologic procedures.

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11. "Consultation by telehealth" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or professional healthcare provider via electronic communications or computer technology from a distant location.

Commentary
For the purposes of the Model Practice Act, per the definition of professional employee from the National Labor Relations Act , physical therapist assistants would be exempt from the status of "professional employee."
"(15) "professional employee" means—
(A) an employee engaged in the performance of work—
(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);
(ii) requiring the consistent exercise of discretion and judgment in its performance;
(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and
(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;"

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12. "Jurisdiction of the United States" means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any American territory.

Commentary
This necessary clarifying definition specifies the range of possible licensing jurisdictions within the United States.

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13. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the [certification/licensure] of a physical therapist assistant.

Commentary
This definition for examination clarifies that each jurisdiction's practice act requires a national examination approved by the Board for licensure or certification. It also allows for the term "examination" to be used consistently throughout the act. The name of the examination shall be specified in rules, as many jurisdictions now specify the National Physical Therapy Examination of the Federation of State Boards of Physical Therapy.

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14. "Competence" is the application of knowledge, skills, and behaviors required to function effectively, safely, ethically and legally within the context of the patient/client's's role and environment.

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15 "Continuing competence" is the lifelong process of maintaining and documenting competence through ongoing self-assessment, development, and implementation of a personal learning plan, and subsequent reassessment.

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16. "Telehealth" is the use of electronic communications to provide and deliver a host of health-related information and healthcare services, including, but not limited to physical therapy related information and services, over large and small distances. Telehealth encompasses a variety of healthcare and health promotion activities, including, but not limited to, education, advice, reminders, interventions, and monitoring of interventions.

Commentary
Telehealth includes the review or transfer of patient records or related information by means electronic communications. This definition is tied to a specific exemption (see *Exemptions from Licensure [or Certification]*, Article 3.04) that relates to the emergence of telehealth as a means of delivering professional services. The nature of physical therapy practice requires that the evaluative components of practice occur when at least one physical therapist is in the physical presence of the patient. The patient is protected as long as a physical therapist 1) is physically present, 2) provides the evaluative components of practice either solely or in combination with a consultant, and 3) remains solely responsible for the patient's care. When these elements are present, there is no additional need for restrictions on telehealth. Many jurisdictions have provisions for offsite supervision of physical therapist assistants. The way in which components of intervention are rendered by physical therapist assistants under offsite supervision, or interventions rendered directly to a patient by a physical therapist through some means of electronic communications, shall be areas of statute or rules needing further clarification.

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17. "Electronic Communications" means the science and technology of communication (the process of exchanging information) over any distance by electronic transmission of impulses including activities that involve using electronic communications to store, organize, send, retrieve, and/or convey information.

Commentary
Electronic communications more accurately reflects the rapid change in technology and possible means of communications rather than the term telecommunications.

Article 2: Board of Physical Therapy
2.01 Board of Physical Therapy

Commentary
The language in this section is constructed upon the model of an independent licensing board. The title for this section could easily be modified, if necessary, to apply to other board structures. For example, if a jurisdiction board is actually a panel within a larger Board of Healing Arts, the title might be *The Physical Therapy Panel of the State Board of Healing Arts*.

A. The board of physical therapy shall consist of [seven] members appointed by the governor. [Four] members shall be physical therapists who are residents of this jurisdiction, possess unrestricted licenses to practice physical therapy in this jurisdiction and have been practicing in this jurisdiction for no less than five years before their appointments. [One] member shall be a physical therapist assistant who is a resident of this jurisdiction and possesses an unrestricted [certificate/license]. The governor shall also appoint [two] public members who shall be residents of this jurisdiction and who are not affiliated with, nor have a financial interest in, any healthcare profession and who have an interest in consumer rights.

Commentary
Most jurisdictions have licensing board members who are appointed by an elected official, usually the governor. Public members are commonly included on boards, but often there is only one public member. Some jurisdictions currently have fewer than five total board members, while larger jursidictions have far greater numbers serving on their boards.

The language in the Model Practice Act of having no fewer than seven board members is based on the recommendation that boards have a minimum of two public board members. With that minimum, there should also be at least three professional members. The following ratios of professional to public members are the recommended ratios for various board sizes:

Board Size	Professional Members – PT Members	PTA Members	Public Members
7	4	1	2
8	4	1	3
9	5	1	3
10	6	1	3

A board comprising a majority of professionals along with a well-represented component of public members is capable of addressing the many complex and technical issues related to educational preparation and practice procedures. Public representation on boards is essential. Public members heighten the sensitivity of the board to public concerns and consumer protection.

Physical therapist and physical therapist assistant members of the board must reside in the jurisdiction, have practiced for a period of five years preceding their appointments, and have no restrictions on their licenses. The Model Practice Act makes no reference to a nomination process or guarantee of a position on the board from a professional association. This does not preclude a professional association or any

other organization from making a nomination. Requirements for a nomination from the physical therapy professional association in the statute is an inappropriate link between a public board and a private professional association.

Public appointees should be competent to serve and effectively advocate for the public. Public members should not be members of any other healthcare discipline or be close enough to one that they shall have a financial or professional interest in the decisions made. In addition to those actually working as healthcare providers, this model language precludes appointment of spouses or immediate family members and those employed by any healthcare provider or organization. The intent is to obtain representation by public members who can be uncompromised in their interests and advocacy on behalf of the public.

B. Board members serve staggered four-year terms. Board members shall serve no more than two successive four year terms or for more than ten consecutive years. By approval of the majority of the board, the service of a member shall be extended at the completion of a four-year term until a new member is appointed or the current member is reappointed.

Commentary
A four-year term provides sufficient time to become thoroughly familiar with board functions and processes. Serving two consecutive four-year terms for a total of eight years should not be as imposing an obstacle as serving two five-year terms. The ten consecutive year provision addresses the circumstances in which someone is appointed to fill a partial term and, in addition, fills two consecutive terms.

C. If requested by the board, the governor shall remove any member of the board for misconduct, incompetence or neglect of duty.

Commentary
Many statutes specify that a member shall be removed for cause and list several causes, but they do not specify a mechanism. The governor appoints those who serve on licensing boards, often subject to legislative approval, and should also retain the power to remove members, with certain restrictions. The causes for removal, the process for board consideration and action, and the recommendation to the governor for removal should all be specified in rules. Such language in statutes and rules shall also preclude mass reappointment of board members due to political reasons, i.e. change in governor or party affiliation. Preventing mass changeover will also help preserve the board's history and continuity.

D. Board members are eligible for reimbursement of expenses pursuant to [cite applicable statute relating to reimbursement] to cover necessary expenses for attending each board meeting or for representing the board in an official board-approved activity.

Commentary
Most jurisdictions provide a *per diem* and reimbursement for members, but the method varies. Reimbursement procedures should be specified by reference to applicable statutes or in rules.

E. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the member's action is warranted by law, is immune from civil liability.
Commentary

Commentary
Typically, members have absolute or qualified immunity from liability or suit while serving on a licensing board. This paragraph points out that even this protection has its limits if a board member's conduct is determined to be unwarranted or with malice.

Although many jurisdictions have separate statutes dealing with board member immunity from liability, each jurisdiction's law should be carefully analyzed to ensure that no further mention need be made in the jurisdiction's practice act. In light of the increased threat of litigation against jurisdiction administrative

bodies, it is better to ensure, by way of the statute, the immunity of board members when acting without malice and in the scope of their duties.

2.02 Powers and Duties of the Board

The board shall:

1. Evaluate the qualifications of applicants for licensure [and certification].

Commentary

Establishing application requirements and reviewing credentials and other application material is often the first interaction a board has with a prospective licensee. This is the first duty and power listed. "Qualifications" such as graduation from an accredited education program or passing the national licensing examination are generally identical from jurisdiction to jurisdiction. Additional jurisdiction "requirements" are often specified in rules and include specific application questions or details that shall be particular to a given jurisdiction. Meeting the qualifications includes also meeting board requirements if statute language as in *Qualifications for Licensure and Certification,* Article 3.02A is used in a practice act. This is because the "qualifications" as listed under 3.02.A also include meeting jurisdiction "requirements" that shall be further defined in rules.

2. Provide for the examination of physical therapists and physical therapist assistants.

Commentary

This language authorizes testing of both physical therapists and physical therapist assistants by standardized national examinations approved by the board. The name of the examinations can be specified in rules.

3. Issue licenses [or certificates] to persons who meet the qualifications of this [act].

Commentary

Boards are authorized by this paragraph to issue the appropriate license or certificate after all qualifications (including board requirements) as stated in statutes and rules have been met.

4. Regulate the practice of physical therapy by interpreting and enforcing this [act].

Commentary

A significant responsibility of licensing boards is interpreting and enforcing the statutes and rules of the practice act. Interpreting the practice act often is derived from a consistent pattern of board actions over time that guides further actions consistent with the statutes and rules. Substantive board policy and opinions are also derived from these consistent actions and interpretations. Rules provide a more formal process for recording and compiling substantive board policy, decisions and opinions. Board decisions shall also provide a valuable guide to the court in the event of an appeal from the administrative hearing level. Jurisdictions shall also have other administrative statutes relating to substantive board policies or opinions. Discipline, including consent orders that are part of the disciplinary process, is a component of the board's authority to regulate and enforce the practice act. The statutory authority of the board for this role should be clearly stated so that an assistant attorney general, in their role of protecting the interest of the jurisdiction, does not tie the hands of board members in their statutory role of interpreting and enforcing the practice act.

5. Issue advisory opinions upon request regarding this [act].

Commentary

A necessary tool that a board should possess for interpreting and enforcing the statutes and rules is to share opinions and substantive policies and respond to requests about such interpretations. Advisory opinions serve a clarifying function and shall also serve a preventive function against potential practice

act violations. Advisory opinions should address scope of practice issues and provide a disclaimer that they are not legal opinions.

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6. Adopt and revise rules consistent with this [act]. Such rules, when lawfully adopted, shall have the effect of law.

Commentary
This rule-making authority is essential to the regulatory process. The Model Practice Act attempts to include only necessary, empowering or authorizing language in statutes, leaving the remainder of administrative process and procedure to rules. It is important to clearly define that legally promulgated rules have the effect of statutory law, especially where there is any chance that rulemaking shall only be given the weight of *policy.* Policy decisions, normally, are not legally enforceable.

Jurisdictions vary considerably in the process used to adopt rules. Some licensing boards have wide latitude and discretion; others are under governor or jurisdiction legislative oversight nearly as restrictive as that required to change the statutes. There are generally other administrative codes or laws that address the rule-making procedure. (See additional discussion in *Guidelines for Rules*.)

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7. Meet at least once each quarter in compliance with the open meeting requirements of [cite applicable statute]. A majority of board members shall constitute a quorum for the transaction of business. The board shall keep an official record of its meetings.

Commentary
This language sets a minimum meeting frequency to comply with the law. Board meetings are subject to open meeting laws, and administrative procedures acts specify when executive sessions are permissible or advisable. Of necessity, boards require that a majority of members be present to conduct business. Recordkeeping is legally required.

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8. Establish mechanisms for assessing the continuing competence of physical therapists to practice physical therapy.

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9. Establish mechanisms for assessing the continuing competence of physical therapist assistants to work in the profession of physical therapy.

Commentary
This paragraph empowers the board to set the requirements for assessing continuing competence to practice physical therapy.

The public has been increasingly concerned that licensed professionals demonstrate competence to practice, and all healthcare professions are developing appropriate models to provide for the valid and measurable assessment of continuing competence. Mandatory continuing education as the sole method for meeting requirements for licensure renewal is not recommended. There is no empirical evidence that mandatory continuing education ensures continuing competence of licensees. This Model Practice Act recommends that demonstrating continued competence to practice physical therapy applies only to license renewal of physical therapists.

Continuing competence requirements should not be applied to renewal of a certificate or license of physical therapist assistants as such a requirement would be overly burdensome. Physical therapist assistants should be encouraged by their supervising physical therapists to maintain and improve their knowledge and skills.

Models or processes that shall be considered for assessing the continuing competence of physical therapists are outlined in *Guidelines for Rules*.

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10. Establish and collect fees for sustaining the necessary operation and expenses of the board.

Commentary
This clause empowers boards to establish and collect fees. Placing the listing of specific fees in the rules gives greater latitude for changes in fee structure that shall occur from time to time. Rules should include a breakout of all the fees, including application fees for licensure and certification, testing fees, renewal fees, reinstatement fees, late penalties, etc.

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11. Elect officers from its members necessary for the operations and obligations of the board. Terms of office shall be one year.

Commentary
Eligibility requirements and any particular duties related to the various offices should be specified in rules.

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12. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this [act], and board rules, policies and procedures.

Commentary
Several practice acts fail to include requirements for orientation and training of new board members. For the benefit and protection of the public, timely and adequate training of new appointees needs to be a statutory requirement. Responsibility for board orientation and training should be that of the board officers assisted by staff. Appropriate materials provided to a new appointee shall include the statutes and rules, substantive board policies, other board operational policies, contracts, minutes, sunset reviews, legislative audits, procedures and historical documents.

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13. Maintain a current list of all persons regulated under this [act]. This information includes each person's name, current business and residential address, email address, telephone numbers, and license [or certificate] number.

Commentary
Boards should exercise discretion in how they distribute or share such information, subject to the jurisdiction's open records act. For example, board policy shall need to include whether information is shared or sold to patient/client'sor organizations for commercial purposes. The public should have access to information regarding those licensed or certified by the jurisdiction. A jurisdiction board directory of licensees and certificate holders shall be one appropriate mechanism for sharing this information. Technological advances shall provide other avenues of electronic access to this information. It is important to note that home addresses and telephone numbers are not public information unless they are the only address and telephone numbers of record, as stated in *Rights of Consumers*, Article 4.12. An email address is becoming increasingly important for board communication with licensees but also is not a public record under *Rights of Consumers*, Article 4.12.

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14. Provide information to the public regarding the complaint process.

Commentary
Boards should provide the public with assistance to facilitate the complaint process. The board should have easy-to-follow information available to aid a person who wishes to file a complaint against a licensee or certificate holder. Some jurisdictions require the posting of a public notice in each physical therapy

facility that includes contact information for filing a complaint with the Board. Some jurisdictions require the posting of copies of jurisdiction licenses of those individuals providing services in that facility. Such a requirement with the actual language to be used could be specified in rules.

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15. Employ necessary personnel to carry out the administrative work of the board. Board personnel are eligible to receive compensation pursuant to [cite specific statute].

Commentary
The board should have statutory authority to employ necessary personnel to carry out duties of the board. The board must comply with jurisdiction administrative employment guidelines, including relevant compensation guidelines. Final decisions to hire, release, give direction relative to duties, review for pay increases, etc., should reside with the board.

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16. Enter into contracts for services necessary for enforcement of this [act].

Commentary
This provides for additional activities that shall be needed to carry out the work of the board. This shall include contracts for investigators, administrative law judges or hearing officers, board consultants, outside legal counsel where permitted by law or regulation, and for other services deemed necessary by the board.

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17. Report final disciplinary action taken against a licensee [or certificate holder] to a national disciplinary database recognized by the board or as required by law.

Commentary
The ending phrase, "…or as required by law," is in reference to the federally mandated reporting system known as the Healthcare Integrity and Protection Data Bank (HIPDB). Since 1999, jurisdiction boards have been required to report "final adverse action" against anyone regulated by the board to the HIPDB. This requirement is a result of the Health Insurance Portability and Accountability Act (HIPAA), which was signed into law in 1996.

Naming the Federation of State Boards of Physical Therapy as the jurisdictional board's agent or intermediary for reporting adverse action to the HIPDB facilitates the gathering of data and jurisdictional access to that information in the Federation's national database of disciplinary actions. The Federation of State Boards of Physical Therapy will automatically supply this information when it sends a score report for an applicant currently licensed or certified in another jurisdiction. The effect of this program will be to prevent someone from moving from one jurisdiction to another to escape disciplinary consequences. *Grounds for Denial of License [and Certificate]; Disciplinary Action,* Article 4.04, contains the statute clause allowing previous disciplinary action to be sufficient grounds to continue a disciplinary action in the new jurisdiction or to deny the applicant a license or certificate.

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18. Report information of alleged unlawful conduct by licensees [or certificate holders], unlicensed individuals, other healthcare providers, and entities to the appropriate county, jurisdiction, or federal authority.

Commentary
Reporting requirements are imposed by law through other agencies related to law enforcement, public protection or the courts. Jurisdictional boards should have clear authority to comply with such reporting requirements.

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19. Publish, at least annually, final adverse action taken against a licensee [or certificate holder].

Commentary
The public has the right to know about disciplinary actions taken against any regulated healthcare provider. The purpose of discipline is to remove the risk of harm to the public, correct deficiencies in conduct, and address violations of the law. Discipline is first corrective in nature but shall become punitive if violations are repeated or are serious enough to constitute a threat of harm or actual harm to the public. Whether it is potential or actual harm and whether the discipline is corrective or punitive, the public has the right to access public records pertaining to final disciplinary actions against those regulated by the practice act.

Paragraphs 16 and 18 specify making "final disciplinary action" known to others. Boards shall also be required to release general information about pending complaints; for example, "the licensee has two pending complaints being processed or under investigation." The particular open meeting laws of a jurisdiction will also affect what information a board must release. The board shall also need to address, in rules and in consultation with legal counsel, the extent to which complaint information appears in the minutes of their proceedings.

There are various confidentiality laws that shall guide such decisions. Information being released or published could also be in other forms, and the model statute language speaks of at least two. First, boards must publish at least annually a notice of final disciplinary action against any licensed physical therapist or certified physical therapist assistant. This could occur through the board's own newsletter, through a professional association newsletter, or through local print media. Second, boards should develop a method to easily accommodate consumer requests for status on any given licensee or certificate holder. A board website shall suffice.

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20. Publish, at least annually, board rulings, opinions, and interpretations of statutes or rules in order to guide persons regulated pursuant to this [act].

Commentary
Boards are frequently asked by licensees or other members of the public to provide advisory opinions clarifying definitions or practice issues. This clause gives boards authority to issue such advisory opinions and to publish them periodically as a guide to those regulated under the practice act.

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21. Participate in or conduct performance audits.

Commentary
Many jurisdictions conduct regular performance audits of their boards or jurisdiction agencies using an agency such as an Office of the Auditor General. Such audits should suggest improvements in board performance. The audit results shall also be important if policy makers question the need for the existence of a board. Substantiation of actions taken for public protection demonstrates continued public benefit from the board. This, or an additional clause, shall also require an annual reporting process to the governor.

2.03 Disposition of Funds

(No model language is offered under this section heading. See *Commentary* for further information.)

Commentary
No model language is offered under this section, but the heading is noted in the Model Practice Act because this is the proper location to include this language within a practice act.

This section would not include fees or the setting of various fees, but it would cover such topics, for example, as specifying 1) which jurisdiction fund monies are deposited into, general or cash fund 2) how

funds are used to cover board expenses, including compensation for appointees' expenses and 3) whether there is a division of fees between a jurisdiction's general fund and that used specifically by the physical therapy board. There shall also be references or a deferring to other jurisdiction statutes that guide or direct jurisdiction agency funding issues.

Article 3: Examination and Licensure

3.01 Examination

A. The board shall provide for examinations within the jurisdiction.

B. The physical therapist examination is a national examination that tests entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention and consultation.

C. The physical therapist assistant examination is a national examination that tests for requisite knowledge and skills in the technical application of physical therapy services.

D. Licensure applicants must agree to abide by security and copyright provisions related to the national licensure examination. If the board determines that an applicant has violated any of these provisions or engaged in or attempted to engage in any other conduct that subverts or undermines the integrity of the examination process or validity of examination results, the board may disqualify the applicant from taking or retaking the examination permanently or for a specified period of time.

E. Any violation of security and copyright provisions related to the national licensure examination, subversion or attempts to subvert the national examination shall be reported by the board to the Federation of State Boards of Physical Therapy.

F. If the board determines that an applicant has engaged or has attempted to engage in conduct that subverts or undermines the integrity of the examination process, including a violation of security and copyright provisions related to the national licensure examination, the board may disqualify the applicant from taking or retaking the examination for a specified period of time.

Commentary

The entry-level examinations for licensure and certification are provided at testing centers in each state.

The examination for a physical therapist is "competency specific" and covers the entire scope of practice, including theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention and consultation that are consistent with the exam blueprint. This list of competencies is included in the definition of the "Practice of physical therapy." (See *Definitions*, Article 1.02.)

Examinations used for the measurement of entry-level competence are in most cases protected by copyright laws. The National Physical Therapy Examinations are protected by copyright. Individuals who share questions from any board-approved examination by memorizing, giving away, attempting to give away, receiving recalled questions or trafficking in the same, shall be subject to legal action and/or potentially severe discipline including being prohibited from testing for licensure or losing an existing license. This is also addressed under *Grounds for Denial of License [and Certificate]; Disciplinary Action*, Section 4.04.3 and 7.

3.02 Qualifications for Licensure [and Certification]

A. An applicant for a license as a physical therapist shall:

1. Complete the application process including payment of fees.

2. Submit proof of graduation from a professional physical therapy education program accredited by a national accreditation agency approved by the board.

3. Pass an examination approved by the board.
4. Meet the requirements established by board rule if applicable.

Commentary
The detailed procedure and requirements for license application should be outlined in rules rather than statutes. For example, the board shall decide what questions to include in the application form about criminal records, substance abuse or any other conduct that shall constitute grounds for denial of a license. (See *Grounds for Denial of a License [and Certificate]; Disciplinary Action,* Article 4.04.) Rather than a vague statement about moral character, such questions will provide more specific information to a board about fitness to practice in addition to the qualifications for practice determined through graduation and passing an entry-level exam.

An important qualification for licensure is graduation from an accredited educational program. It is not recommended that the actual accrediting agency be named in the statutes. The agency currently accrediting physical therapy education is the Commission on Accreditation in Physical Therapy Education (CAPTE). This agency can be identified either by rule or by board policy. The model language specifies that it is the accrediting agency, rather than each educational program, that needs the approval of the board.

The U.S. Supreme Court (*Dent v. West*, 1889) upheld the constitutional right of jurisdiction licensing boards to set educational requirements for entry into practice. Accreditation, at least for U.S. professional programs, is the means of assuring standardized professional education, thereby giving licensing boards a degree of comfort in licensing a new graduate from any accredited educational program outside their jurisdiction, or granting licensure by endorsement to an applicant previously licensed in another jurisdiction who graduated from an accredited educational program.

The examination approved by the board currently in all jurisdictions is the National Physical Therapy Examination of the Federation of State Boards of Physical Therapy. Board requirements shall also include passing a jurisprudence or law exam.

B. An applicant for a license as a physical therapist who has been educated outside of the United States shall:
1. Complete the application process including payment of fees.
2. Provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapists educated in an accredited entry-level program as determined by the board. Graduation outside the United States from a professional education program accredited by the same accrediting agency that the board approves for programs within the United States constitutes evidence of substantial equivalency. In all other instances, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:
a. Graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy;
b. Provided written proof that the applicant's school of physical therapy is recognized by its own ministry of education;
c. Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule; and
d. Completed any additional education as required by the board.
3. Pass a board-approved English proficiency examinations if the applicant's native language is not English.
4. Pass an examination approved by the board.
5. Complete supervised clinical practice as defined by rules with a restricted license.
6. Meet the requirements established by board rule if applicable.

Commentary

The term “substantially equivalent,” as defined here in model statute, should be delineated specifically in rules. Rule language should contain, at minimum, the requirement that any credentials evaluation 1) utilize the appropriate edition of the *FSBPT CourseworkTool for Foreign Educated Physical Therapists* in order to determine educational equivalency at the date of graduation; 2) require that a physical therapist trained in credential reviewing participates in the evaluation; and 3) require that quality assurance standards be met by the credentials review agency.

The *Illegal Immigration Reform and Immigrant Responsibilities Act of 1996* requires prescreening of applicants educated outside of the United States for physical therapist licensure before granting work visas or a change in immigrant status. Screening includes credentials review, English proficiency examinations and determination of prior license or authority to practice in the country where the professional education was completed. Physical therapy licensing boards and their staff spend considerable time processing applications for licensure by applicants educated outside of the United States. It is important that consistency occurs in the licensing standards from jurisdiction to jurisdiction and that the entire application process is sufficiently detailed both in statute and in rules. The inclusion of supervised clinical practice for the foreign educated physical therapist would provide the opportunity for integration and progression into the United States healthcare delivery system. With variations in healthcare delivery and culture, a supervised clinical experience would provide direct learning and ease of transition of the foreign educated physical therapist.

C. An applicant for a [certificate/license] as a physical therapist assistant shall:

1. Complete the application process including payment of fees.

2. Submit proof of graduation from a physical therapist assistant education program accredited by a national accreditation agency approved by the board.

3. Pass an examination approved by the board.

4. Meet the requirements established by board rule if applicable.

Commentary

As with the application process for a physical therapist, the application process for licensure or certification as a physical therapist assistant should be specified in rules.

Jurisdictions will need to determine whether or not to accept education as a physical therapist as a prerequisite to sit for the physical therapist assistant exam. At this time, there is minimal evidence to allow or deny an individual educated as a physical therapist the opportunity to become licensed as a physical therapist assistant. It may be argued that the knowledge and skills taught within the physical therapist assistant program represent a subset of the knowledge and skills that are taught within a physical therapist education program. There is no evidence to support the concern that graduates of a physical therapist program who become licensed as physical therapist assistants will knowingly or unknowingly use skills such as differential diagnosis, assessment of prognosis, and design plan of care; activities that they were taught in their physical therapist education program, but are not within the scope of work of a physical therapist assistant.

Jurisdictions should specify in rules if any additional requirements have to be met prior to licensure of a graduate of a physical therapist program as a physical therapist assistant such as supervised clinical practice as a physical therapist assistant, working under a restricted license, education regarding the role of the physical therapist assistant, etc.

D. An applicant for a [certificate/license] as a physical therapist assistant who has been educated outside of the United States shall:

1. Complete the application process including payment of fees.

2. Provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapist assistants educated in an accredited entry-level program as determined by the board. Graduation outside the United States from an education program accredited by the same accrediting agency that the board approves

for programs within the United States constitutes evidence of substantial equivalency. In all other instances, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:

a. Graduated from a physical therapist assistant educational program that prepares the applicant to work as a physical therapist assistant;

b. Provided written proof that the applicant's physical therapist assistant school or physical therapist school is recognized by its own ministry of education;

c. Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule; and

d. Completed any additional education as required by the board.

3. Pass a board-approved English proficiency examinations if the applicant's native language is not English.

4. Pass an examination approved by the board.

5. Complete supervised clinical practice as defined by rules with a restricted license.

6. Meet the requirements established by board rule if applicable.

Commentary

Although the physical therapist assistant does not have the same level of standing as a professional healthcare provider with the U.S. Citizenship and Immigration Services, it has become necessary to regulate physical therapist assistants educated outside of the United States. The Centers for Medicare and Medicaid Services published a regulation in 2008 (number CMS-138) regarding Medicare reimbursement. This CMS regulation requires a foreign-educated physical therapist assistant to show certification of education which is substantially equivalent to an entry-level physical therapist assistant's education in the United States.

Additionally, physical therapist assistant education programs have been developed outside the United States and a tool exists to determine substantially equivalent education. The term "substantially equivalent," as defined here in model statute, should be delineated specifically in rules. Rule language should contain, at minimum, the requirement that any credentials evaluation 1) utilize the appropriate edition of the *Coursework Tool for Foreign Educated Physical Therapist Assistants (PTA Tool 2007)* in order to determine educational equivalency at the date of graduation; 2) require that a physical therapist trained in credential reviewing participates in the evaluation; and 3) require that quality assurance standards be met by the credentials review agency.

Jurisdictions should require at minimum a credentials review, English proficiency examinations and determination of prior license or authority to practice in the country where the professional education was completed. Physical therapy licensing boards and their staff spend considerable time processing applications for licensure by applicants educated outside of the United States. It is important that consistency occurs in the licensing standards from jurisdiction to jurisdiction and that the entire application process is sufficiently detailed both in statute and in rules.

The inclusion of supervised clinical practice for the foreign trained physical therapist assistant would provide the opportunity for integration and progression into the United States healthcare delivery system. With variations in healthcare delivery and culture, a supervised clinical experience would provide direct learning and ease of transition of the foreign trained physical therapy assistant.

3.03 Licensure [and Certification] by Endorsement

The board shall issue a license to a physical therapist or a license [certificate] to a physical therapist assistant who has a current unrestricted license [certificate] from another jurisdiction of the United States if that person meets all qualifications prescribed in [*Qualifications for Licensure and Certification*, Article 3.02] at the time of the applicant's initial licensure.

Commentary

Jurisdictions will confidently grant licensure by endorsement to physical therapists currently licensed in other jurisdictions when greater regulatory consistency is achieved from jurisdiction to jurisdiction. A phrase common in many practice acts in their endorsement or reciprocity sections is: "...having licensing requirements substantially similar to those prescribed in this [act] at the time the license was originally granted." That language is closer to reciprocity than to endorsement. The qualifications for licensure of foreign-educated physical therapists in 3.02.B, combined with this qualification for endorsement, will ultimately help achieve uniformity and actual endorsement in this aspect of regulation.

Any other jurisdictional "requirements" for endorsement should be specified in the rules associated with an application for endorsement. These shall include submission of verification of a current license in the jurisdiction of previous residency, affidavit of previous practice within a specified period of time, absence of pending or current disciplinary action or restricted license, continuing competence history if mandatory for licensing requirements, or the requirement to take a jurisprudence examination.

3.04 Exemptions from Licensure [or Certification]

A. This [act] does not restrict a person licensed under any other law of this jurisdiction from engaging in the profession or practice for which that person is licensed if that person does not represent, imply or claim that he/she is a physical therapist, physical therapist assistant, or a provider of physical therapy as defined in Article 1, 1.02B.

Commentary
The importance of this model language is in not granting blanket exemption status to other healthcare professionals through language such as "Other licensed healthcare providers are exempt from the provisions of this [act]." Other professionals have occasionally attempted to exploit this language by interpreting it to mean that they are completely exempt from all provisions of the physical therapy practice act, including title protection. This is something never intended in licensure laws.

This model language, combined with other language in the Model Practice Act under *Definitions*, Article 1.02, *Examination and Licensure*, Article 3, and *Use of Titles and Terms; Restrictions; Classification of Violation*, Article 4.02 provides clarification of physical therapy services and ensures public protection by providing a deterrent against misrepresentation and the illegal practice of physical therapy.

The Model Practice Act does not include and recommends against exempting other practitioners such as massage therapists, athletic trainers, chiropractors, etc., who shall be providing services with similar components to physical therapy.

B. The following persons are exempt from the licensure requirements of this [act] when engaged in the following activities:

1. **A person in an entry-level professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist education while under onsite supervision of a physical therapist.**
2. **A physical therapist who is practicing in the United States Armed Services, United States Public Health Service or Veterans Administration pursuant to federal regulations for jurisdiction licensure of healthcare providers. If such person, while federally employed as a physical therapist shall engage in the practice of physical therapy outside the course and scope of such federal employment, he/she shall then be required to obtain a license in accordance with this [act].**
3. **A physical therapist who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if that person is teaching, demonstrating or providing physical therapy services in connection with teaching or participating in an educational seminar of no more than 60 days in a calendar year.**
4. **A physical therapist who is licensed in another jurisdiction of the United States if that person is providing consultation by telehealth, as defined in [*Definitions,* Article 1.02], to a physical therapist licensed under this [act].**

5. **A physical therapist who is licensed in a jurisdiction of the United States or credentialed in another country, if that person by contract or employment is providing physical therapy to patients/clients affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in the jurisdiction for no more than 60 days in a calendar year.**
6. **A physical therapist who is licensed in a jurisdiction of the United States and who enters this jurisdiction to provide physical therapy during a declared local, jurisdictional or national disaster or emergency. This exemption applies for no longer than 60 days following the declaration of the emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.**
7. **A physical therapist licensed in a jurisdiction of the United States who is forced to leave his/her residence or place of employment due to a declared local, jurisdictional or national disaster or emergency and due to such displacement seeks to practice physical therapy. This exemption applies for no more than 60 days following the declaration of the emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.**

C. A physical therapist assistant who is licensed [certified] in a jurisdiction of the United States and is assisting a physical therapist engaged specifically in activities related to [subparagraphs (B) 2, 3, 5, 6 and 7 of this section] is exempt from the requirement of [licensure/certification] under this [act].

Commentary

The purpose of exemption from licensure is to allow a person who is practing or working in physical therapy for a specific period of time in the state, due to compelling reasons, to provide physical therapy services without the requirement of state licensure. The exemptions included in the Model Practice Act apply to physical therapist students and physical therapist assistant students in entry level programs satisfying clinical education requirements and physical therapists or physical therapist assistants who are licensed in other jurisdictions. The categories of persons who are exempt from state licensure should be limited.

Physical therapy students in clinical internships are exempt because they are in a physical therapy education program and they are under the direct, onsite supervision of a licensed physical therapist. While in clinical training they need the authority to practice the full scope of physical therapy. Physical therapist assistant students in clinical internships are exempt because they are in a physical therapist assistant education program and they are under the direct, onsite supervision of a licensed physical therapist. While in clinical training they need the authority to work within the full scope of a physical therapist assistant.

Physical therapists in federal employment, such as in the Veterans Administration, U.S. Public Health Service, or the military services, have historically been exempt from licensure while practicing specifically in those governmental environments. The statute language above reflects changing federal regulations that now require federally employed healthcare professionals to be licensed in at least one jurisdiction, although not necessarily the jurisdiction where they are practicing. However, if the person chooses to practice outside of the confines of their federal employment while in a jurisdiction other than that of their licensure (i.e. employment outside of their normal business hours), they would be required to obtain licensure in the jurisdiction of practice.

Paragraph B.3 provides exemption for physical therapists participating either as instructors or as students in post-graduate education. Frequently these individuals are participating in offerings outside the jurisdiction where they are licensed, and occasionally patient contact and treatment may be part of their educational experience.

This exemption is for no more than 60 days in a calendar year. A longer period of time would constitute a fellowship or an advanced clinical residency and should require licensure in that jurisdiction. Physical therapists participating in a fellowship or residency shall hold a current license in good standing in any

jurisdiction. If that fellowship or residency occurs in another jurisdiction and extends beyond 60days, the therapist is expected to obtain licensure in the jurisdiction of the fellowship or residency.

Paragraph B.4 provides exemption for telehealth or consultation by telehealth. This paragraph is also related to *Definitions*, Article 1.02 that defines "Consultation by Telehealth." Exemption from licensure is provided specifically for consultation with another health professional who is licensed in another jurisdiction where the patient is located. This exemption extends only to consultation and does not extend to any other aspect of patient management, including treatment intervention.

Paragraph B.5 provides exemption for licensed physical therapists traveling with a sports team or performing arts company who enters the jurisdiction for a limited time to provide physical therapy to the members of the team or company. Practice under this exemption is authorized only for those individual licensees who are affiliated with the visiting organization since no public contact is anticipated.

Paragraphs B.6 and B.7 address large-scale natural disasters that induce licensed physical therapists to enter a jurisdiction temporarily to provide their services as part of disaster assistance, or where licensed physical therapists are temporarily displaced as a result of a natural disaster and wish to practice in another jurisdiction temporarily or until licensure is achieved by endorsement.

Paragraph C provides an exemption for a physical therapist assistant, licensed or certified in another jurisdiction, to assist a physical therapist in the situations described in *Exemptions from Licensure [or Certification]*, Article 3.04 (Paragraphs B.2, B.3, B.5, B.6 and B.7). This exemption is necessary because the physical therapist assistant shall be participating in patient treatment interventions in these specific situations that are typically restricted to persons licensed or certified by the jurisdiction. Subject to this exemption, a physical therapist assistant would still be under the supervision of a licensed physical therapist.

3.05 License [or Certificate] Renewal

A. A physical therapist applying for renewal of the license shall:

1. Complete a renewal application including payment of fees.

2. Demonstrate evidence of continuing competence as defined by rule.

B. A physical therapist assistant applying for renewal of the license [certificate] shall:

1. Complete a renewal application including payment of fees.

2. Demonstrate evidence of continuing competence as defined by rule.

Commentary

Although at this time, there is no specific model language for statute or regulation suggested for jurisdictions when shifting to a continuing competence model, there are some elements that are recommended. First, the language must state "continuing competence" activities rather than continuing education. Second, a minimum number of continuing competence units for re-licensure should be established. Third, an approval process of "continuing competence" activities should be established. Fourth, a determination must be made of the minimum standard continuing competence activities must meet in order to gain approval. Fifth, the jurisdiction must retain the ability to designate an outside body to do the approval of "continuing competence" activities. Finally, the jurisdiction should in some way require evidence of accomplishment by the participant of the required minimum standard.

Additionally, there are suggested principles to consider when implementing a continuing competence model which will need to be communicated:

- Continuing competence should be self-directed by the PT or PTA.
- Evaluation/assessment of current competence is critical for the PT or PTA. The results of an evaluation or assessment should be used by the PT or PTA to then select appropriate development activities.

- PTs and PTAs should have a wide variety of activities available to demonstrate their competence; there is not one "right" way to demonstrate competence.

3.06 Changes of Name, Address or Telephone Number

Each licensee [and certificate holder] is responsible for reporting a name change and changes in business and home address, email address and telephone numbers to the board within 30 days.

Commentary
Jurisdictions should specify in rules the terms of license and certification renewal and the exact renewal date. It should be stated clearly in rules that all licensees and certificate holders are responsible for keeping the board advised of their current home and practice addresses and telephone numbers. Failure to receive a renewal notification should not constitute an excuse for failure to renew on time. It should be further specified that failure to meet the renewal timeframe constitutes practicing without a license or certificate and will be treated as such under authority of *Unlawful Practice; Classification; Civil Penalties; Injunctive Relief,* Article 4.09. Timely renewal is the responsibility of the licensee or certificate holder even where an employer shall be funding the expense of renewal.

3.07 Reinstatement of License [or Certificate]

A. The board may reinstate a lapsed license [or certificate] upon completion of a reinstatement application including payment of fees, as defined by rule.

B. If a physical therapist's license has lapsed for a specified time period, as defined by rules, that person shall fulfill all requirements of [3.07 A] and demonstrate to the board's satisfaction competence to practice physical therapy by one or more of the following as determined by the board:
1. **Complete supervised clinical practice as defined by rules with a restricted license.**
2. **Demonstrate or complete continued competence requirements, as defined by rule, required during lapsed licensure period.**
3. **Pass examination(s) approved by the board.**
4. **Provide proof of licensed practice in another jurisdiction.**

C. If a physical therapist assistant's [certificate/license] has lapsed for a specified time period, as defined by rule, that person shall fulfill all requirements of [3.07 A] and demonstrate to the board's satisfaction competence to work as a physical therapist assistant by one or more of the following as determined by the board:
1. **Complete supervised clinical practice as defined by rules with a restricted license**.
2. **Demonstrate or complete continued competence requirements, as defined by rule, required during lapsed licensure period.**
3. **Pass examination(s) approved by the board.**
4. **Provide proof of licensed [certified] work as a physical therapist assistant in another jurisdiction.**

D. The board may reinstate a suspended or revoked physical therapist's license upon completion of the requirements in [3.07 A] and evidence of satisfactory completion of all requirements for reinstatement that were stipulated in a consent order at the time of discipline. The board may further require evidence of competence to practice physical therapy through the following activities:
1. **Complete supervised clinical practice, as defined by rule, with a restricted license.**
2. **Demonstrate or complete continued competence requirements, defined by rule, required during the suspended or revoked licensure period.**
3. **Successfully complete examinations and/or assessment tools approved by the board.**

E. The board may reinstate a suspended or revoked physical therapist assistant's [certificate/license] upon completion of the requirements in [3.07 A] and evidence of

satisfactory completion of all requirements for reinstatement that were stipulated in a consent order at the time of discipline. The board may further require evidence of the physical therapist assistant's competence to work in the profession of physical therapy through the following activities.

1. **Complete supervised clinical practice with a restricted license [certificate]under a qualified and approved supervisor.**
2. **Demonstrate or complete continued competence requirements, defined by rule, required during revoked licensure [certification] period.**
3. **Successfully complete examinations or assessment tools approved by the board.**

Commentary

When a license has been allowed to lapse for a lengthy period of time it shall be an indication of a break in continuity of practice and professional development, and potentially, a loss of ongoing competence. It is recommended that a four-year time period be used to determine when the further requirement of reapplication for licensure should be instituted. The board should have the discretion to assess continuing competence to practice physical therapy in the case of a lapse in practice of four or more years. Competence assessment shall include the options of 1) a supervised internship, 2) remedial or refresher coursework, and 3) retesting, or 4) any combination of these options. Further provisions for applicant interview by the board should be specified.

In cases where a licensee relocates and practices in another jurisdiction and subsequently returns and wishes to practice in the original jurisdiction of licensure, the requirement for successfully demonstrating competence, as stated in Paragraph B above, shall be satisfied by verification of licensure and practice in the other jurisdiction. Reinstatement is used rather than endorsement and granting a new license in order to retain a previous exam history, license number and, if applicable, disciplinary history.

During a period of remedial action prior to reinstatement of license without restrictions, the physical therapist's practice shall be with a restricted license as directed by the board. This type of remediation, outside of a disciplinary action, is an example of the appropriate use of a restricted license.

A lapse of a certificate disqualifies a physical therapist assistant from working as a physical therapist assistant until appropriate renewal and reinstatement requirements are met and fees are paid. As the physical therapist assistant resumes employment, the supervising physical therapist should direct appropriate remedial measures for a physical therapist assistant who lacks current experience or has inadequate skills.

Paragraphs D and E address important considerations if a revoked license or certificate shall someday be eligible for reinstatement. At the time of a revocation, the consent decree should stipulate the conditions, if any, under which the board would consider an application for reinstatement. The specific requirements shall be helpful to a later board when an application is considered. In this situation, a board would likely convene a hearing to review the application and evaluate the fitness of the applicant to, once again hold a license or certificate. All other requirements related to demonstration of continuing competence applicable to any other reinstatement situation would also apply in such a case. Reinstatement is also preferable in this situation to a new application license so that prior history is maintained through a single license number.

A restricted license does not notate merely a disciplinary action. Restricted licenses shall result from re-entry, etc.

[3.08 Fees]

This is optional statutory language for jurisdictions requiring maximum fee ceilings within their statutes.

The board shall establish and collect fees not to exceed:

1. **_____ dollars for an application for an original license [or certificate]. This fee is nonrefundable.**

2._____ dollars for a certificate of renewal of a license [or certificate].
3._____ dollars for an application for reinstatement of a license [or certificate].
4._____dollars for each duplicate license [or certificate].

Commentary
This is optional language to use if fee ceilings or ranges are required in statute rather than being addressed in rules. Using this model, a ceiling for fees would be established in statute, and the actual fees would be established in rules. The language here sets the same dollar amount for licenses and certificates in the different categories. The fees for licensees and certificate holders could easily be established at different amounts in rules for each of the categories.

Article 4: Regulation of Physical Therapy
4.01 Ethics in the Physical Therapy Profession

A. A physical therapist shall adhere to the recognized standards of ethics of the physical therapy profession as established by rule.

Commentary
A profession's code of ethics encourages a higher standard of conduct; whereas jurisdiction laws establish minimum levels of acceptable conduct. Professional associations are recognized as the promulgators of a profession's code of ethics. This language establishes that ethical conduct in the jurisdiction is legally mandated as the minimum standard of lawful practice. Inclusion of this language empowers a board to be more than the "gatekeepers" or "hand-slappers", some feel is the historical and only duty of licensing boards. A similar clause is included in the model language under the *Grounds for Denial of a License [and Certificate], Disciplinary Action*, Article 4.04.

The model language is "generic" in that it does not specifically reference the American Physical Therapy Association's (APTA's) *Code of Ethics,* with its accompanying *Guide for Professional Conduct* (See *Appendix B*). This generic approach is preferred by many jurisdictions' legal counsel, in order to avoid mention in statue of professional associations and links to documents not under jurisdiction approval authority. The link can be specifically and appropriately made in rules by reference to a specific version of the APTA *Code of Ethics* and *Guide for Professional Conduct.*

B. A physical therapist assistant shall adhere to the recognized standards of ethical conduct of the physical therapy profession as established by rule.

Commentary
A profession's code of ethics encourages a higher standard of conduct; whereas jurisdiction laws establish minimum levels of acceptable conduct. Professional associations are recognized as the promulgators of a profession's code of ethics. This language establishes that ethical conduct in the jurisdiction is legally mandated as the minimum standard of lawful practice. Inclusion of this language empowers a board to be more than the "gatekeepers" or "hand-slappers;" some feel is the historical and only duty of licensing boards. A similar clause is included in the model language under the *Grounds for Denial of a License [and Certificate], Disciplinary Action*, Article 4.04.

The model language is "generic" in that it does not specifically reference the American Physical Therapy Association's (APTA's) *Standards of Ethical Conduct for the physical therapist assistant* (See *Appendix C*). This generic approach is preferred by many jurisdictions' legal counsel, in order to avoid mention in statue of professional associations and links to documents not under jurisdiction approval authority. The link can be specifically and appropriately made in rules by reference to a specific version of the APTA *Standards of Ethical Conduct for the Physical Therapist Assistant* and *Guide for Conduct of the Physical Therapist Assistant*.

4.02 Use of Titles and Terms; Restrictions; Classification of Violation

A. A physical therapist shall use the letters "PT" or the term "physical therapist" immediately following his or her name to designate licensure under this [act].

Commentary

Abbreviations or terms denoting educational degrees, certifications, or honorary status designations may follow, as applicable.

B. A person or business entity, its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business, the words "physical therapy," "physical therapist," "physiotherapy,"" physiotherapist," "registered physical therapist," "doctor of physical therapy," the letters "PT,""DPT,""LPT,""RPT," or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this [act]. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this act. A person or business entity that offers, provides or bills any other person for services shall not characterize those services as "physical therapy" or "physiotherapy" unless the individual performing those services is a person licensed as a physical therapist under this [act].

C. Physical therapists who have graduated from a DPT program may use the title "Doctor of Physical Therapy." A physical therapist holding a DPT or other doctoral degree shall not use the title "Doctor" without also clearly informing the public of his or her profession as a physical therapist.Use of the title shall be in accordance with jurisdictional law.

D. A physical therapist assistant shall use the letters "PTA" immediately following his or her name to designate [certification/ licensure] under this [act].

E. A person shall not use the title "physical therapist assistant," the letters "PTA," or any other words, abbreviations or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is [certified/ licensed] as a physical therapist assistant pursuant to this [act].

F. A person or business entity that violates paragraphs (B) or (E) of this section is guilty of a [cite specific legal sanction].The board shall have authority to impose a civil penalty, in an amount not to exceed [specify number of dollars] per violation, against any person or business entity that violates paragraphs (B) or (E). In addition, the board shall seek an injunction against conduct in violation of paragraphs (B) or (E) in any court of competent jurisdiction. For purposes of this [act], the board, in seeking an injunction, need only show that the defendant violated paragraphs (B) and (E) of this section to establish irreparable injury or a likelihood of a continuation of the violation.

Commentary

"PT" is the professional and regulatory designation required by practice acts and used by physical therapists in the United States. It should immediately follow the licensee's name. The model statute language prohibits substituting but does not restrict adding other letter designations indicating an academic degree (e.g., MS, PhD), professional degree (e.g., DPT), certification (e.g., ATC), or honorary status (e.g., FAPTA). All these additional designations should follow the standard "PT" designation. For example, a board-certified orthopedic specialist with a doctoral degree in physical therapy would be appropriately designated as Jane Doe, PT, DPT, OCS.

The jurisdiction legislature grants scope of practice privileges and imposes certain restrictions on the use of titles and terms for public protection. The use of the title “physical therapist” connotes education and training in a unique body of knowledge and skills exclusive to physical therapists.

Title protection encompasses names and titles, as well as the letters and abbreviations that are associated with licensure. Paragraph B above addresses all such titles, designations and abbreviations applicable to physical therapy licensure, including archaic terms and some that shall be future terms.

Archaic designations such as RPT or LPT, while they should be protected, should not be used. Rules shall be considered that prohibit the use of these archaic designations
protecting the term “physiotherapy,” which is a historically significant as well as current international title of the profession, prevents the misleading use of this term by other individuals or professionals. A claim that physical therapy or physiotherapy is a generic term is misleading, and any terms implying that physical therapy is being provided should be protected. This term protection is not against the use of various physical agents, modalities or procedures by others but rather is against the inappropriate labeling of those modalities and procedures as physical therapy. Any violation of this term protection paragraph would be addressed in paragraph A of Article 4.09.

Those therapists holding a DPT or any doctoral degree such as a PhD or EdD, are entitled to use "Dr" as a prefix to their name in honor of the professional degree they have earned. However, DPT or PhD are academic degrees, not a clinical designator. It is important that the public perceive the critical difference between the word "physician" and the use of the title "Dr." Therefore, in order to minimize confusion, physical therapists should identify themselves and their profession when first meeting a patient. A physical therapist may not use the title of “Dr.”in a manner which would mislead a patient into assuming that he or she is anything other than a physical therapist.

Paragraphs D and E provide title protection for physical therapist assistants. In this instance, title protection is granted without a corresponding granting of a scope of practice. (See *Definitions*, Article 1.02.E; *Examination and Licensure*, Article 3.01-3.04; *Patient Care Management*, Article 4.03.)

4.03 Patient Care Management

A. A physical therapist is fully responsible for managing all aspects of the physical therapy care of each patient. A physical therapist shall provide:

1. **The initial evaluation, determination of diagnosis, prognosis, and plan of treatment intervention and documentation of each encounter of each patient;**
2. **Periodic reevaluation and documentation of each patient;**
3. **The documented discharge of the patient, including the patient’s response to treatment intervention at the time of discharge.**

Commentary

Physical therapists are professionally and legally responsible for the treatment interventions they personally render as well as those components of intervention rendered by personnel under the physical therapist’s supervision. This responsibility is not diminished when persons assisting the physical therapist are licensed, certified or otherwise regulated. The practice of physical therapy includes examination, evaluation and testing for purposes of determining a diagnosis, a prognosis, a plan of treatment intervention, and an assessment of the ongoing effects of treatment. These responsibilities are evaluative in nature and can only be performed by a physical therapist.

The initial evaluation is essential to determine if physical therapy services are medically necessary, gather baseline data, establish a treatment plan, and develop goals based on the data. An evaluation is needed before implementing any physical therapy treatment. Evaluation begins with the administration of appropriate and relevant assessments using standardized assessments and tools. The evaluation shall include, but is not limited to:

a) A history of current condition and treatment previously provided
b) A relevant systems review

c) Prior functional level
d) Specific standardized and non-standardized tests, assessments, and tools
e) Analytic interpretation and synthesis of all data, including a summary of the baseline findings in written or electronic report(s)
f) Objective, measurable, and functional descriptions of a patient/client's deficits using comparable and consistent methods
g) Summary of clinical reasoning and consideration of contextual factors with recommendations
h) Plan of care with specific treatment techniques and/or activities to be used in treatment sessions that should be updated as the patient/client's condition changes
i) Communication to the patient and /or others, as indicated, the prospective plan of treatment and outlined goals
j) Frequency and duration of treatment plan
k) Functional, measurable, and time-framed long-term and short-term goals based on appropriate and relevant evaluation data
l) Rehabilitation prognosis

A reevaluation is indicated when there are new clinical findings, a rapid change in patient status, or failure to respond to physical therapy interventions. These include ongoing reassessments that are part of each skilled treatment session, progress reports, and discharge summaries and shall include modifications and renewal to the treatment plan of care.

Reevaluation is a more comprehensive assessment that includes some or all the components of the initial evaluation, such as:

a) Data collection with *objective* measurements taken based on appropriate and relevant assessment tests and tools using comparable and consistent methods
b) Making a judgment as to whether skilled care is still warranted
c) Organizing the composite of current problem areas and deciding a priority/focus of treatment
d) Identifying the appropriate intervention(s) for new or ongoing goal achievement
e) Modification of intervention(s)
f) Revision in plan of care if needed
g) Correlation to meaningful change in function, and
h) Deciphering effectiveness of intervention(s).

The physical therapist shall ensure that patients are provided appropriate treatment that is delivered in a reasonably safe manner, that, where known standards of practice exist, such treatment adheres to applicable standards, and that recognized standards of ethics, as established by rule or otherwise, are followed. In the event the evaluation or re-evaluation reveals a condition or suspected condition which is beyond the PT scope of practice, the therapist shall communicate these findings to the patient's primary care provider or make a referral to an appropriate provider of care.

Paragraphs A.1 through A.3 of the model statute require physical therapists to document the services they personally provide.

B. A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides under his or her direction and supervision.

Commentary

The use of personnel assisting the physical therapist is a patient care management decision made by each physical therapist. The physical therapist must determine whether personnel assisting the physical therapist are qualified to perform the designated activity, and their qualifications should be verified and documented. For the physical therapist assistant, this should at least include documentation of educational training and regulatory credentialing. For physical therapy aides, this should at least include written evidence of on-the-job training by the physical therapist.

C. For each patient on each date of service, a physical therapist shall provide all of the treatment intervention that requires the education, skills and knowledge of a physical therapist and shall determine the use of physical therapist assistants or physical therapy aides to ensure that the delivery of care that is safe, effective, and efficient.

Commentary
This language requires the physical therapist to personally provide those services that require his or her expertise and to determine the appropriate tasks that shall be assigned to assisting personnel for each patient on every date of service. The physical therapist must ensure that the use of supervised personnel is an efficient use of resources and is based on patient safety and treatment efficacy.

There are limits to a physical therapist's capacity to fulfill the responsibilities of direct patient care as well as to fulfill a supervisory role over other personnel. Jurisdictions shall wish to adopt rules that specify a reasonable limit on the number of physical therapist assistants, aides, and students that a physical therapist shall personally supervise.

1. **A physical therapist assistant shall work under a physical therapist's supervision. A physical therapist assistant shall document the care he/she provides.**

Commentary
The language of this section provides authorization for the physical therapist assistant to work in an offsite setting and under the general supervision of a physical therapist. If a jurisdiction opts for a different supervision level it should be specified in this section. For example, a jurisdiction requiring onsite supervision of a physical therapist assistant could insert "onsite" prior to the word "supervision" in the first sentence. Any other supervisory limits or requirements and procedures related to communication and documentation should be specified here or clarified in rules.

2. **A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the supervision of a physical therapist.**

Commentary
Jurisdictions are encouraged to adopt the basic language in Paragraph C.2 that limits the use of aides to working only under the supervision of a physical therapist or allowing use of an aide in an offsite setting only when directly helping a physical therapist assistant or performing tasks which are not patient-related. The phrase "designated routine tasks" in the model definition of a physical therapy aide is distinctly different from "selected components of intervention" as used in the model definition for physical therapist assistants. If a jurisdiction chooses to enact more explicit restrictions on the duties of a physical therapist aide, a more detailed definition of "designated routine tasks" should be included in rules.

There are many situations in extended care, home health or school settings, where physical therapists train others to carry out certain exercises or activities for the benefit of patients/clients. However, unless a physical therapist is onsite and providing supervision as an integral part of a physical therapy plan of care and treatment intervention these activities should not be represented as physical therapy services.

In this provision, as in 1.02.9 , "direction" and "supervision" are functions that belong solely to the licensed physical therapist. The physical therapist assistant shall receive help from a physical therapy aide when performing certain tasks or procedures, but the physical therapist assistant does not assume the responsibility to "direct and supervise" the provision of care. That responsibility remains with the supervising physical therapist and, by law, cannot be relinquished to another.

4.04 Grounds for Denial of a License [and Certificate]; Disciplinary Action

A. The following are grounds for denial of a license [and certificate] or disciplinary action.

Commentary

The following language itemizes the various causes or grounds for which a physical therapist, and in many cases a physical therapist assistant, shall be denied a license or certificate or disciplined under the provisions of the law. Others who practice physical therapy unlawfully come under the powers granted a licensing board in *Unlawful Practice; Classification; Civil Penalties; Injunctive Relief*, Article 4.09. In many practice acts, this list is referred to as "unprofessional conduct." The term "grounds for denial of a license and disciplinary action" is more descriptive and is the recommended title for this section. This section needs to be comprehensive enough to cover all areas of potential violation.

1. Violating any provision of this [act], board rules or a written order of the board.

Commentary
This clause provides the broadest foundation for disciplinary action. It encompasses statutes, rules and written disciplinary orders.

2. Obtaining or attempting to obtain a license [or certificate] by fraud or misrepresentation.

Commentary
Individuals who do not meet licensure qualifications and requirements may resort to falsifying or omitting information when applying for licensure or certification. Examples would be when an applicant by endorsement withholds information of disciplinary action in another jurisdiction, or when an applicant for renewal falsely claims to have completed continuing competence requirements.

3. Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process including, but not limited to, a violation of security and copyright provisions related to the national licensure exam, **utilizing in any manner recalled or memorized examination questions from or with any person or entity, failing to comply with all test center security procedures, communicating or attempting to communicate with other examinees during the test, or copying or sharing examination questions or portions of questions.**

Commentary
Exam cheating and other forms of attempted cheating on the licensure examination are addressed in this model statute language. The Federation of State Boards of Physical Therapy is authorized under exam contract and under the express written approval of each examinee to take action against those who attempt to cheat on the examination. This paragraph empowers a jurisdictional board to take the necessary action prior to or after the licensing process if an applicant violates the integrity of the examination process.

4. Practicing or offering to practice beyond the scope of the practice of physical therapy.

Commentary
The determination of what constitutes practice "beyond the scope" of physical therapy is predominantly the responsibility of licensing board members. Scope of practice changes as contemporary practice evolves and boards need the latitude to determine the appropriateness of physical therapy procedures as they relate to both established and evolving scope of practice. The definition of "the practice of physical therapy" should also serve as a primary resource for determining violations of scope of practice.

5. Acting in a manner inconsistent with generally accepted standards of physical therapy practice, regardless of whether actual injury to the patient is established.

Commentary
There are a number of other authoritative sources for the board to consult in addition to statute and rules when determining "generally accepted standards of physical therapy practice." These might include published standards of physical therapy practice, case law or other source documents. Injury does not need to be established when professional conduct is substandard or potentially injurious to a patient.

6. Failing to adhere to the recognized standards of ethics of the physical therapy profession as established by rule.

Commentary
This clause empowers a licensing board to discipline licensees or certificate holders for unethical conduct as promulgated by rules. (See *Ethicss in the Physical Therapy Profession*, Article 4.01 and *Commentary.*) There is clear legal precedence for jurisdiction regulatory boards utilizing the established ethical standards of the profession in disciplinary matters.

7. Failing to complete continuing competence requirements as established by rule.

Commentary
Authority to enact continuing competence requirements is contained under several paragraphs of the Model Practice Act (see *Legislative Intent,* Article 1.01, *Powers and Duties of the Board,* Article 2.02.8, *License [or Certificate] Renewal,* Article 3.05.A). This paragraph provides board authority to take disciplinary action if a physical therapist fails to meet the continuing competence standards established by law, including fulfilling any remedial requirements.

8. Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that contain at minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record and a discharge plan.

Commentary
The importance of maintaining a thorough and timely written record of physical therapy services provided to every patient/client and patient response to treatment should be self-evident. It is the written record that ultimately supports the effectiveness and appropriateness of the physical therapist's patient/client evaluation, plan of care and treatment intervention. This paragraph establishes a legally minimum standard for physical therapist patient documentation and allows the board to take disciplinary action against therapists who maintain faulty or incomplete patient records.

9. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this [act] and board rules.

Commentary
A physical therapist remains responsible for the entire scope of patient management including the supervision of physical therapist assistants and physical therapy aides. The practice act and rules govern supervisory requirements. See *Definitions*, Article 1.02; *Patient Care Management*, Article 4.03; and *Guidelines for Rules*.

10. Failing to report to the board, where there is direct knowledge, any unprofessional, incompetent or illegal acts that appear to be in violation of this [act] or any rules established by the board.

Commentary
Regulatory boards, by means of the disciplinary process, bear the responsibility for the public's expectation of qualified services from duly scrutinized practitioners. This responsibility is passed on to the licensed professionals by the requirement that they must bring to the Board's attention direct knowledge of incompetent, unprofessional or illegal practices. The reporting of these acts serves to protect the public from harm as a result. The paragraph authorizes disciplinary action against a licensee who fails to report 'direct knowledge' to the physical therapy board. A licensee or certificate-holder is not obligated to report hearsay when he or she has no direct knowledge of a possible violation.

11. Engaging in sexual misconduct. For the purpose of this paragraph sexual misconduct includes:

a. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists.
b. Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.
c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

Commentary
To violate the provisions of this law, physical therapists or physical therapist assistants do not need to actually engage in sexual relations since even the solicitation of such a relationship is a violation. The violation is not excused even in the case of a consensual sexual relationship with a patient. Sexual misconduct also includes activities specified in Paragraph11.B above that defines sexual harassment and includes inappropriate touching and violations of established boundaries. Paragraph 11.C expands sexual misconduct to inappropriate examination or treatment that exposes a patient unnecessarily or for improper motives. The patient provider relationship is therapeutic and not social or emotional. It inherently establishes boundaries and a power differential between the healthcare provider and the patient. Any conduct that exploits the vulnerability of the patient should clearly be a violation of law.

12. Having had a license [or certificate] revoked or suspended, other disciplinary action taken, or an application for licensure [or certification] refused, revoked or suspended by the proper authorities of another jurisdiction, territory or country.

Commentary
This paragraph gives the board the authority to review any disciplinary action taken against a licensee or certificate holder by another jurisdiction when granting a license or certificate or in any subsequent disciplinary case. The board should consider the relationship between the risk to the public resulting in the disciplinary action taken by another jurisdiction, as well as the appropriate level of discipline for the circumstances that formed the basis of the action.

NOTE: In the specific instance where an investigative process or disciplinary action was initiated but not completed, and the licensee or certificate holder then applies in another jurisdiction, this should be addressed by the rules that specify the requirements of application or endorsement. Rules or application questions should address whether the applicant has any pending complaints or investigations from other jurisdictions. Failure to disclose and then subsequent discovery would be grounds for disciplinary action under Paragraph 4.04.2 of this section that describes attempting to obtain a license by fraud or misrepresentation.

13. Having been convicted of or pled guilty to a felony in the courts of this jurisdiction or any other jurisdiction, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilt, an Alfred plea, or a plea of *nolo contendere*.

Commentary
Although this paragraph gives the board broad authority to review any felony conviction of a licensee/certificate holder, the board should consider the relationship between the felony to the practice of the physical therapist or work of a physical therapist assistant and the risk to the public's welfare and safety when determining whether and what level of disciplinary action is appropriate.

14. Aiding and abetting the unlicensed practice of physical therapy.

Commentary
The most frequent use of this paragraph occurs when someone not licensed or certified is providing services represented as physical therapy without the legal and appropriate supervision of a physical therapist. An example might be a situation where a physical therapist performs only the initial evaluation of a patient and subsequent care is provided by other individuals without the involvement and supervision

of the therapist but which is represented and billed as physical therapy. The therapist in this case could be held accountable for abetting this illegal practice by unlicensed personnel.

15. Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. This does not prohibit the members of any regularly and properly organized business entity recognized by law comprising physical therapists from dividing fees received for professional services among themselves as they determine necessary.

Commentary
This model language is fairly common statute language dealing with kickbacks, rebates and unearned fees. It does not directly address employment relationships with referral sources. Some jurisdictions have legislatively prohibited referral for profit relationships associated with employment of physical therapists by physicians by inserting the word "wages" into the language of this paragraph. While it is unlawful to pay or receive any remuneration to or from a referral source, it is lawful under this clause for physical therapist within a physical therapist-owned practice to divide profits among themselves.

16. Promoting any unnecessary device, treatment intervention or service resulting in the financial gain of the practitioner or of a third party.

17. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.

Commentary
Professional practitioners have a fiduciary responsibility to place patient welfare above all other concerns when providing health or medical services. Physical therapist services and product recommendations should be entirely based on patient need and benefit and uninfluenced by financial benefits the physical therapist might receive. This paragraph establishes that this ethical standard of fiduciary responsibility is also the legal standard of practice in the jurisdiction. These two sections prohibit the provision of unnecessary devices, unnecessary treatment intervention, or overutilization of services. Paragraph 17 focuses on motives of financial gain, whereas Paragraph 18 focuses on treatment effectiveness and appropriateness.

18. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.

Commentary
This paragraph establishes the legal obligation of the professional practitioner to maintain independent judgment and ensure patient benefit regardless of the limitations or opportunities presented by the prevailing healthcare environment or particular employment directives. Under a fee-for-service payment system an increase of intervention shall result in greater financial gain to the provider or employer. In a managed care system the denial or limitation of intervention shall result in greater financial gain to a provider or employer. These types of conflicts are inherent in either system of payment. This paragraph allows the board to take disciplinary action should patients be exploited by overutilization or underutilization of physical therapy services.

19. Charging fraudulent fees for services performed or not performed.

Commentary
This language empowers a licensing board to address circumstances involving the charging of fraudulent fees and billing practices. A board shall still need to wrestle with the issue of when or if a clearly unreasonable fee shall reach the proportion of being considered fraudulent.

20. Making misleading, deceptive, untrue or fraudulent representations in violation of this [act] or in the practice of the profession.

Commentary
Professional accountability encompasses integrity and truthfulness in the practice and promotion of physical therapy services. This language empowers a board to deny licensure or certification or to take disciplinary action against individuals who intentionally violate the public trust. Possible violations shall include private or public representations of one's ability to diagnose or provide treatment for conditions outside the scope of physical therapy practice, or false or misleading advertisement or promotion regarding one's services. The language is broad enough to apply to business operations, employment-related issues, billing practices or any other activity related to the operation of physical therapy services that shall be misleading, deceptive, untrue or fraudulent to the public. This clause is not intended in any way to restrict or limit legally appropriate advertisement or promotion.

21. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals or alcohol, or by other causes.

Commentary
This paragraph grants the board authority to initiate and carry out disciplinary action when an individual's abilities shall be impaired by substance use. The safety and welfare of patients is of highest priority and is the focus of this statute language. The treatment of the impaired professional recognizes the need to pursue active rehabilitation in cases of substance abuse, as discussed in *Substance Abuse Recovery Program*, Article 4.11.

22. Practicing physical therapy with a mental or physical condition that impairs the ability of the licensee to practice with skill and safety.

Commentary
This paragraph grants a board the authority to impose restrictions on a licensee relating to a determination that the individual's ability to practice physical therapy with skill and safety is impaired by mental or physical conditions, whether temporary or permanent. Examples might be a physical therapist who is recovering from a closed-head injury, or an individual who suffers from a neurological condition that impairs his or her physical performance to practice physical therapy, or a licensee who is dealing with an episode of severe depression. The board could determine whether and for how long the licensee's practice should be restricted to ensure protection of the public. The Americans with Disabilities Act shall pose additional legal restraints when a board relies on this provision.

23. Practicing after having been adjudged mentally incompetent by a court of competent jurisdiction.

Commentary
Mental incompetence is a judgment made outside the scope of a physical therapy licensing board's responsibility. Concern for patient safety and concern that a patient receives appropriate care shall merit board action restricting or denying licensure in a situation where a court of law has made the determination of mental incompetence (see *Investigative Powers; Emergency Action; Hearing Officers*, Article 4.05, which authorizes and empowers the board to require a licensee to be examined for mental or physical ability to practice).

24. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.

Commentary

The board must have access to all relevant information to adequately protect the public and enforce this act. Any attempt to interfere with or cover up the facts of an investigation or disciplinary proceeding would be a violation of this statute, and potentially subject a licensee or certificate holder to further disciplinary action.

25. Failing to maintain patient confidentiality without documented authorization of the patient or unless otherwise required by law. All records used or resulting from a consultation by telehealth, as defined in [*Definitions*, Article 1.02], are part of a patient's records and are subject to applicable confidentiality requirements.

Commentary
Patient/provider confidentiality is an inherent responsibility of professional practice. Initial patient registration information generally contains provisions for the proper and legal release of medical information upon written approval by the patient. This paragraph establishes that violation of this patient/provider trust will also be a violation of law. There shall be other federal or jurisdiction disclosure laws related to confidentiality that shall modify the provisions of this paragraph. There is additional language in the Model Practice Act that addresses provider/patient confidentiality under *Rights of Consumers*, Article 4.12.G.

4.05 Investigative Powers; Emergency Action; Hearing Officers

Commentary
Most jurisdictions have entire sections of administrative law known as an Administrative Procedures Act that directs the disciplinary process. Procedural aspects of discipline need to be delineated in rules if they are not addressed in a jurisdiction's Administrative Procedures Act. This section of the model statute addresses the board's authority to investigate complaints and discipline licensees and certificate holders, including:

- Initiation and handling of complaints
- Investigation
- Informal disposition of complaints
- Summons and complaint issued by the board
- Pre-hearing discovery
- Subpoena and injunctive authority
- Informal interviews or hearings
- Formal hearings
- Settlement, consent orders, disciplinary actions

A. To enforce this [act], the board is authorized to:

1. Receive complaints filed against licensees [or certificate holders] and conduct a timely investigation.

Commentary
Public access to the complaint process should be clearly established by the law. There should be a standard complaint form, allowing for complaints to be received verbally or in writing. The complainant must provide their name and address for follow-up contact. However, it should be specified that confidentiality will be maintained if the complainant so requests and within the limits of law. Jurisdiction confidentiality laws shall be a factor in drafting conforming rules. (See *Guidelines for Rules.*)

2. Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there shall be a violation of this [act].

Commentary

Board members may become aware of possible infractions of the laws and rules through inquiries to board members or staff from physical therapists, the public or other sources about the legal appropriateness of a physical therapist's practices. As well, information may come to the board through the complaint investigation process that identifies other practitioners in possible illegal actions. Boards need the latitude to investigate these concerns without being required to wait for a formal complaint to be submitted. This standard allows more latitude than "probable cause" or "reasonable cause."

3. Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.

Commentary
A subpoena shall be used to access, review and obtain records in addition to compel the testimony of any witnesses in an investigation or disciplinary proceeding. The use of subpoenas in unannounced site investigations is occasionally a necessary part of investigating complaints. The issuance of subpoenas shall be dependent upon individual jurisdiction laws. Specific model language regarding the confidentiality of patient records is further recommended. (See *Rights of Consumers*, Article 4.12.H.)

4. Take emergency action ordering the summary suspension of a license [or certificate] or the restriction of a physical therapist's practice or a physical therapist assistant's employment, pending proceedings by the board.

Commentary
This language grants a board the authority to respond quickly to a complaint having serious implications for public protection. Jurisdiction boards have sometimes been required to wait weeks or months before a hearing could be conducted, putting the public at risk. In the absence of an Administrative Procedures Act, conforming rules shall be necessary to specify parameters for the use of this authority, for example, how soon a hearing must be held and what type of conduct or imminent danger warrants use of this authority.

5. Appoint hearing officers authorized to conduct hearings. Hearing officers shall prepare and submit to the board findings of fact, conclusions of law and a recommendation for Board action that shall be reviewed and voted on by the board.

Commentary
When the disciplinary process reaches the formal level, the preferred procedure is to use an independent hearing officer to conduct the hearing. Administrative Procedures Acts shall specify that hearing officers shall be administrative law judges. If that is the case, the reference to "administrative law judges" shall be more appropriate than "hearing officers." Hearing procedures should be specified in rules or referenced in a uniform Administrative Procedures Act.

6. Require a physical therapist to be examined in order to determine his or her mental or physical ability to practice physical therapy.

Commentary
There shall be times when a licensee or applicant's mental, physical or professional competence could impair their ability to practice physical therapy with skill and safety. This paragraph empowers a board to direct appropriate evaluations for such competence if the circumstances warrant. The Americans with Disabilities Act shall pose additional restraints. Paragraph 4.04.23 under *Grounds for Denial of a License [and Certificate] Disciplinary Action* authorizes the board to take action that shall limit or prevent practice determined by the board to be unsafe to the public.

7. Require a physical therapist assistant to be examined in order to determine his or her mental or physical ability to work in the profession of physical therapy.

Commentary

There shall be times when a licensee or applicant's mental, physical or professional competence could impair their ability to work in the profession of physical therapy with skill and safety. This paragraph empowers a board to direct appropriate evaluations for such competence if the circumstances warrant. The Americans with Disabilities Act shall pose additional restraints. Paragraph 4.04.23 under *Grounds for Denial of a License [and Certificate]; Disciplinary Action* authorizes the board to take action that shall limit or prevent practice determined by the board to be unsafe to the public.

B. If the board finds that the information received in a complaint or an investigation does not merit disciplinary action against a licensee [or certificate holder] it shall take one of the following actions:

1. Dismiss the complaint.

Commentary
A complaint is dismissed if there is no violation of the law or rules.

2. Issue an advisory letter to the licensee [or certificate holder]. An advisory letter is non-disciplinary and notifies a licensee [or certificate holder] that, while there is not evidence to merit disciplinary action, the board believes that the licensee [or certificate holder] should become educated about the requirements of this [act] and board rules.

Commentary
The Model Practice Act consistently advocates a broader role for licensing boards than merely punishing practitioners who violate the law. This paragraph grants a board the authority to address issues of conduct it believes shall be problematic but that do not rise to the level of a violation of law. This paragraph is pre-emptive in its approach by authorizing a board to give guidance in the spirit of public protection about a physical therapist's practices which shall avert future violation of law or potential risk to the public.

An advisory letter is instructive and not disciplinary or punitive. The advisory letter is not considered a disciplinary action and thus does not require reporting to HIPDB. Each jurisdiction will need to determine the limits of disclosure pursuant to their open records act. Other questions that might be addressed in rules include whether an advisory letter is retained in a licensee's file, for how long, and whether it can be used in any way in future disciplinary proceedings.

4.06 Hearings

[No model statute language is offered under this section heading. See *Commentary* for additional information.]

Commentary
At the very minimum, there should be a statute paragraph referring to the jurisdiction's Administrative Procedures Act. For jurisdictions that might have or feel that they have an inadequate Administrative Procedures Act, this statute section is appropriately placed at this point in the physical therapy practice act. Topics under this section may include:

- Authority to request hearings
- Authority to take disciplinary action after hearings
- Authority and procedure for notice of a formal hearing
- The right of anyone appearing before the board to be represented by counsel
- Authority to administer the oath to witnesses
- The right of a board to waive the technical rules of evidence in hearings
- The right to file a motion for rehearing or review of a board decision within a specified time period
- The right to appeal a disciplinary action

4.07 Disciplinary Actions; Penalties

Upon proof that any grounds prescribed in [*Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04], have been violated, the board shall take the following disciplinary actions singly or in combination.

Commentary
Discipline serves two essential purposes: to protect the health, safety and welfare of the public, and to provide corrective action for those individuals who have been disciplined. The board needs the discretion to take appropriate disciplinary action against a licensee or certificate holder who has violated any law or rule and to determine appropriate action on a case-by-case basis based on at least the following considerations:
(a) The seriousness of the infraction,
(b) The detriment to the health, safety and welfare of the public,
(c) Past and pending disciplinary actions relating to the licensee or certificate holder,
(d) The potential for remediation.

Based on these considerations, the options for action that a board may take include:

1. Issue a censure.

Commentary
A censure is the mildest form of discipline and shall be used where violations of the law or rules do not merit more serious disciplinary action. A censure shall include corrective actions, advice or admonitions from the board. A censure remains a part of the licensee or certificate holder's file and is considered disciplinary action reportable to a national disciplinary data base.

2. Restrict a license [or certificate]. The board shall require a licensee [or certificate holder] to report regularly to the board on matters related to the grounds for the restricted license [or certificate].

Commentary
Use of a restricted license or certificate can also be in combination with other disciplinary actions. Boards must have authority to place restrictions on a license or certificate relating to scope or place of practice, supervision of practice, types of patients serviced and the duration of the restrictions. Probation is not one of the options for discipline in this model act since probation is simply one form of a restricted license.

A restricted license, as presented in this model, is generally not intended to be used for purposes other than a disciplinary situation. For example, it should not be used to replace the lack of authority to issue a temporary license or interim permit. There are three exceptions for use of a restricted license other than for disciplinary actions: 1) with a voluntary substance abuse program, 2) with a professional re-entry after a lapse of a license for two or more renewal periods, and 3) supervised clinical practice for a foreign-educated applicants.

3. Suspend a license [or certificate] for a period prescribed by the board.

Commentary
Suspension is a disciplinary action that prohibits a physical therapist's ability to practice or a physical therapist assistant's ability to work for a specified, temporary period of time. *Investigative Powers; Emergency Action; Hearing Officers*, Article 4.05, Paragraph A.4, grants the board the authority to take emergency action temporarily suspending a license or certificate during the investigative process when potential danger to the public requires immediate action. The conditions and process for when and how this action shall be imposed should be further clarified in rules. Reinstatement requirements should always be included in rules or in a final agency order.

4. Revoke a license [or certificate].

Commentary
The most severe penalty enacted by the board is the revocation of a license to practice physical therapy or a certificate allowing work as a physical therapist assistant. Licenses and certificates that are revoked *should never be automatically reinstated* and application for reinstatement should be necessary. The revocation order shall specify the conditions, if applicable, under which reinstatement will be considered. Rules should address the process whereby an individual shall have a revoked license or certificate restored. (See *Reapplication for Licensure after Revocation* in *Guidelines for Rules* under Article 4.07.)

5. Refuse to issue or renew a license [or certificate].

Commentary
There shall be circumstances, such as a fraudulent application, discipline imposed by another state, or current investigation, when a board shall refuse to issue or renew a license or certificate. This model language grants a board the authority to withhold licensure or certification based on serious illegal or unprofessional conduct that threatens the public safety or welfare. (See *Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04.)

6. Impose a civil penalty of at least _____ but not more than _____. (Include minimum and maximum dollar amounts of civil penalties.)

Commentary
Most jurisdictions have provisions for imposing fines or civil penalties associated with disciplinary decisions. Jurisdictions vary considerably on the use of these monetary penalties. Some jurisdictions use fines for punitive measures while others use fines to recover the cost of an investigation or disciplinary proceeding. It is recommended that the range of fines or penalties be specified either in statute or rules. The Model Practice Act, in *Fees*, Article 3.08, does not address fines or penalties, so these should be clarified under this section or in the rules.

7. Accept a voluntary surrendering of a license [or certificate] based on an order of consent from the board.

Commentary
This provision grants specific authority to accept a voluntary surrender of a license or certificate under circumstances when a licensee or certificate holder wishes to surrender the license or certificate in lieu of continuing a disciplinary proceeding. Acceptance of surrender of a license or certificate should be accompanied by findings and conclusions relating to violations of law and reported as disciplinary action. Such acceptance, in the consent order, shall jurisdiction that the voluntary surrender has the same effect as a revocation. This allows the public record to reflect the basis on which the license or certificate was surrendered. The board may decline to accept a voluntary surrender and proceed with an investigation and hearing based upon the particulars of the disciplinary situation.

4.08 Procedural Due Process

Actions of the board shall be taken subject to the right of notice, opportunity to be heard and the right of appeal in accordance with [specify the jurisdiction] law relating to administrative law and procedure.

Commentary
This provision ensures the licensee or certificate holder due process of law. Most jurisdictions have separate statutory provisions related to this right that should be referred to under this paragraph.

4.09 Unlawful Practice; Classification; Civil Penalties; Injunctive Relief

A. It is unlawful for any person or business entity, its employees, agents or representatives not licensed as a physical therapist under this [act] to engage in the practice of physical therapy. Any person who violates this paragraph [(A) or *Use of Titles and Terms; Restrictions; Classification of Violation,* Article 4.02], is guilty of [cite specific criminal sanction, e.g., class 1 misdemeanor] and subject to any other remedies specified in this [act].

Commentary
This section authorizes board action against persons who are not regulated providers of physical therapy but who falsely claim to provide, or attempt to provide, physical therapy services in violation of the practice act. The possible ways a person may make such a false claim are specified in *Use of Titles and Terms; Restrictions; Classification of Violation*, Article 4.02. Therefore, it is essential that 4.02 be cited in this paragraph and also included in a practice act in combination with this paragraph. The specific civil sanctions may vary from jurisdiction to jurisdiction but jurisdictions generally consider a first-time violation of this statute a misdemeanor. The jurisdiction attorney general's office, a county or a city attorney would be responsible for prosecuting unlawful practice, but these agencies may be reluctant to devote resources to pursue a violation unless injury to the public is evident. The threat of prosecution shall, in and of itself, impose an impediment to persons who would otherwise violate the provisions of this statute.

B. The board shall investigate any person or business entity to the extent necessary to determine whether the person or business entity is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person or business entity is practicing physical therapy unlawfully, the board shall inform the person or the business entity of the alleged violation. The board may refer the matter for prosecution regardless of whether the person or business entity ceases the unlawful practice of physical therapy.

Commentary
Under *Investigative Powers; Emergency Action; Hearing Officers*, Article 4.05, the board is authorized to investigate, issue subpoenas and compel witnesses in any case involving someone regulated under the practice act. This section extends the board's authority of investigation to persons not regulated under the practice act. Where an investigation reveals this type of a violation, the board is empowered to inform the violator and request that he or she immediately cease and desist the unlawful behavior. The threat of the board referring the case for legal action if the violator does not stop the unlawful conduct shall be the main deterrent of this clause.

C. The board shall apply to any court of competent jurisdiction for an order enjoining any person or business entity from committing any violation of this [act]. Injunction proceedings under this paragraph shall be in addition to, and not in lieu of, all penalties and other remedies prescribed in this [act].

Commentary
In addition to the threat of action that an investigation and subsequent cease and desist letter shall pose, the board should be empowered to pursue a cessation of illegal action through the appropriate jurisdiction authority when necessary. This is the sole intent of an injunction. Subsequent violations of the injunction are considered contempt and handled by the court thereafter. Most often an injunction is obtained through the jurisdiction attorney general's office. An injunction does not preclude additional actions, penalties or remedies that may be imposed according to law.

D. If a person or business entity knowingly violates this [act] or board rules, fraudulently uses or permits the use of a license [or certificate] number, or knowingly aids or requires another person to violate this [act] or board rules, the board shall impose upon such person a civil penalty of not more than [dollar amount of penalty] for the first violation and not more than [dollar amount of penalty] for each subsequent violation.

Commentary
This paragraph applies to those outside the regulation of the physical therapy act, but could also include those regulated by the act: physical therapists and physical therapist assistants who participate in

violations of the law. This is often the case where a physical therapist shall assist, condone or supposedly lend the authority of his or her license illegally to someone not regulated by the practice act. In such a case, in addition to the disciplinary provisions cited in *Unlawful Practice; Classification; Civil Penalties; Injunctive Relief*, Article 4.09, someone regulated under the act shall also be exposed to the monetary penalties stated above. This paragraph could be applied to a non-physical therapist employer or supervisor who shall exert influence on a licensee, requesting or requiring conduct in violation of the practice act.

[Optional Statute]

E. The board shall transmit all monies it collects from civil penalties pursuant to this [act] to the [specify the disposition of these funds if different from other funds].

Commentary
A jurisdiction shall make the determination that money received from civil penalties goes into the physical therapy fund or the operating funds of the board or whether the money goes into the general fund of the jurisdiction. Depositing civil penalties into the general fund is the customary procedure that provides a barrier against the temptation of using civil penalties to increase the funds of the board.

4.10. Reporting Violations; Immunity

A. A person, including but not limited to a licensee [or certificate holder], corporation, insurance company, healthcare organization or healthcare facility and jurisdiction or local governmental agencies, shall report to the board any conviction or determination by an agency or court that a licensee [or certificate holder] has committed an act that constitutes a violation of [*Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04].

Commentary
This paragraph provides board authority to directly solicit and require reporting by any individual or organization taking any action against a licensee, certificate holder or applicant related to *Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04. This reporting requirement requires a formal conviction, determination or finding against the regulated individual so as to eliminate the possibility of imposing penalties for unconfirmed violations. This language also requires a licensee to report his or her own legal entanglements that resulted in conviction, determination or finding consistent with the violations contained in *Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04. When jurisdictions adopt these reporting standards they should communicate the reportable grounds to all agencies who shall have taken action against regulated individuals to enhance their understanding and cooperation with the reporting mandates of this section.

B. A person is immune from civil liability, whether direct or derivative, for reporting such facts as set forth in A above to the board in good faith and participating in the board's investigation and subsequent disciplinary process, if applicable.

Commentary
This paragraph is a necessary companion to Paragraph A, above, to protect an individual who reports information or findings to the board as long as the reporting is in good faith. A person reporting a false or bad faith claim of "suspected" conduct would not be granted immunity from civil liability.

C. The board shall not disclose the identity of a person who provides information unless such information is essential to proceedings conducted pursuant to [*Investigative Powers; Emergency Action; Hearing Officers* and *Hearings*, Articles 4.05 and 4.06], or unless required by a court of law.

Commentary

This paragraph gives the board authority to protect the identity of someone providing information that shall be used in a board decision. There are various disclosure laws that shall govern what a board shall and shall not disclose. Those laws generally focus on the right of an accused to face his or her accuser if an action comes to the point of formal discipline. Board legal counsel will be able to advise boards in these matters.

4.11. Substance Abuse Recovery Program

A. The board shall permit a licensee [or certificate holder] to actively participate in a board-approved substance abuse recovery program if:

1. **The board has evidence that the licensee [or certificate holder] is impaired.**
2. **The licensee [or certificate holder] enters into a written agreement with the board for a restricted license [or certificate] and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on his or her practice or employment imposed by the board to protect the public. Failure to enter into such an agreement shall activate an immediate investigation and disciplinary proceeding by the board.**
3. **As part of the agreement established between the licensee [or certificate holder] and the board, the licensee [or certificate holder] signs a waiver allowing the substance abuse program to release information to the board if the licensee [or certificate holder] does not comply with the requirements of this section or is unable to practice or work with reasonable skill or safety.**

Commentary

This model language is placed here as opposed to *Grounds for Denial of a License[and Certificate]; Disciplinary Action,* Article 4.04 because entry and participation in a substance abuse recovery program shall be initiated in a way other than through the formal disciplinary process. A person regulated by this statute could (and should) report a substance abuse problem to the board. This self-reporting could be handled through voluntary participation in a recovery program monitored by the board in lieu of discipline. Successful recovery from substance abuse provides a benefit to society in general, to the profession's position of public trust and to the impaired practitioner. After a sufficient period of supervision and recovery, a physical therapist or physical therapist assistant who is otherwise free from actionable activities under the disciplinary provisions of a practice act shall be able to return to or maintain a productive career.

This section does not preclude disciplinary action against an impaired physical therapist or physical therapist assistant who declines to participate in voluntary recovery or who violates the conditions of an approved recovery program (see Paragraph 22 under *Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04). This section provides two options: the licensee or certificate holder shall either participate in the substance abuse program or face disciplinary proceedings. The public will be further protected by Paragraph 2 that requires the licensee or certificate holder to adhere to any limitations imposed by the board as a condition of participation in a recovery program.

This model language does not provide for confidential participation in a substance abuse recovery program. Entering into a written agreement requiring participation in such a program constitutes an official action by the board and would be part of the public record. Jurisdictions wishing to adopt a confidential program should seek local legal counsel.

4.12. Rights of Consumers

A. The public shall have access to the following information:

1. **A list of licensees [and certificate holders] that includes place of employment, address and telephone number of record, license [or certificate] number, date of license [or certificate] expiration and status of license [or certificate].**
2. **A list of final adverse actions taken by the board.**
3. **The address, website, email and phone number of the board.**

Commentary
This entire section contains clauses that have historically been scattered throughout various sections of practice acts. All of them have a common interest in consumer advocacy. A practice act, by its very nature, is focused on public protection, so this is a more natural grouping of similar topics giving greater focus to the board's role in advocating for the physical therapy patient.

B. Each licensee [and certificate holder] shall display a copy of his or her license [or certificate] in a location accessible to public view or produce a copy immediately upon request.

Commentary
Patients need to know the names and qualifications of the persons providing their care. Posting licenses and certificates ensures that the public can identify the name and qualifications of the provider as well as their valid license or certificate status. In home health or community settings where the posting of a license shall not be feasible, this language allows the provider to produce a licensure upon request. Other identification such as nametags with titles is discretionary according to the facility or agency standards or requirements, but when worn these identifiers should also include appropriate title and letter designations.

C. Each licensee [and certificate holder] shall provide the public with information on how to file a complaint with the board against a licensee [or certificate holder].

Commentary
This section places the responsibility for consumer education about the complaint process upon the individual physical therapist and physical therapist assistant. The board is likewise directed to educate the public about the complaint process under *Powers and Duties of the Board*, Article 2.02, paragraph 13. Compliance could occur via posting of a notice containing the board address and telephone number with a brief statement of the right of consumers to file complaints.

D. Any person may submit a complaint regarding any licensee, [certificate holder] or any other person potentially in violation of this [act]. Confidentiality shall be maintained subject to law.

Commentary
Most jurisdictions allow a confidential complaint, but not an anonymous complaint. This means that the name of the complainant will be held confidential as long as possible or as the law requires. With any complaint due process shall eventually require disclosure of the complainant in order for a licensee/certificate holder to fully defend their actions. The purpose of this paragraph is to remove barriers to the public's filing of complaints against those regulated by practice acts or others who shall be in violation of a practice act.

E. The home address, email address and home telephone numbers of physical therapists and physical therapist assistants are not public records and shall be kept confidential by the board unless they are the only addresses and telephone numbers of record.

Commentary
Some information required by a board and used in regulation of licensees is not necessarily public information. This paragraph clarifies which information is confidential and for board use only.

F. A patient has freedom of choice in selection of services and products.

Commentary
The rights of consumers of healthcare services include the *right to know* and the *right to choose*. In order for consumers to be able to "choose" effectively, there is an obligation on the part of providers to furnish accurate and sufficient information so that consumers can make informed choices. This model language emphasizes the responsibility that all physical therapists have to inform their patients about freedom of choice in all aspects of services being provided.

The patient should know that they may raise questions about procedures or even refuse treatment. These principles should apply at the time products or equipment is recommended. They shall also apply when a physical therapist recommends or refers a patient to a physician and should offer the patient at least two or three options, answering questions fairly about each physician they are recommending to the patient.

G. Information relating to the physical therapist-patient relationship is confidential and shall not be communicated to a third party who is not involved in that patient's care without the written authorization of the patient. The physical therapist-patient privilege does not extend to cases in which the physical therapist has a duty to report information as required by law.

Commentary
This model language is similar to language used by other healthcare disciplines. Written authorization allows information to be communicated to a referring physician, insurance company and perhaps other family members. But the written authorization should be specific as to what information can be released. The last two sentences clarify that this privilege does not extend to withholding information that is required by law to be reported to the board concerning an investigation. Patient record confidentiality is further addressed in Paragraph H that follows. Boards have a further obligation regarding confidentiality of patient records when obtained by subpoena.

H. The board shall keep all information relating to the receipt and investigation of complaints filed against licensees [or certificate holders] confidential until the information is disclosed in the course of the investigation or any subsequent proceeding or until disclosure is required by law. Patient records, including clinical records, files, any other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or his family might be identified, or information received and records or reports kept by the board as a result of an investigation made pursuant to this [act] shall not be available to the public and shall be kept confidential by the board.

Commentary
Disclosure of information related to a complaint investigation prior to official action or ruling of the board could disrupt the disciplinary process and have a detrimental and possibly irreversible influence on both the complainant and the individual being investigated. Once final disciplinary action is taken, further information becomes public knowledge and can be disclosed. The board has further reporting requirements under *Board of Physical Therapy*, Article 2.01, and *Powers and Duties of the Board*, Article 2.02, that relate to reporting to a national database and the publication of final disciplinary actions.

Patient/client records should be afforded a high level of protection. If patient records are obtained in an investigation and retained in an investigative file they remain confidential and are not accessible as public records.

Guidelines for Rules

Introduction

The *Model Practice Act for Physical Therapy* does not include recommended model language for administrative rules. When jurisdictions make regulatory changes to their practice acts using language from this model act, conforming rules will be required to complete the regulatory design. Individual jurisdictions are traditionally responsible for writing rules to accompany the statutory language adopted by the legislature.

One of the driving philosophies behind creating this Model Practice Act was to keep the statutory language as concise as possible and free of procedural activity or description. Rules are the place where procedural descriptions and processes are addressed. There will need to be some structure, policy and operational definitions to help make the administrative rules a functional and complementary part of a practice act. Some jurisdictions have relatively large statutory sections and small rule sections to their practice acts. Others are just the opposite. The Model Practice Act, in keeping with statutory recommendations, is concise and anticipates the "smaller statutes/larger rules" structure.

To provide assistance to jurisdictions as they work to revise practice acts, *Guidelines for Rules* examines each of the four Articles of the model practice act language and lists several conforming rules that should be developed. This is by no means an exhaustive list of potential rules. It follows the same order as the Articles, so it should be easy to coordinate the two. Regardless of the organizational structure of the rules adopted by each jurisdiction, there should be a system to facilitate correlation of the rules with the corresponding statutes.

The use of "board policies" is a way to organize procedural activities that are strictly internal and operational and have no effect on those regulated by the practice act or by any other external group or individual. An example might be a board policy on office supply and equipment purchases and the authorization for such acquisitions. This should not be confused with written board "positions" or "opinions" that serve to interpret or give guidance on how the board interprets the statutes or rules. Boards should not use policies as a means to avoid the admittedly more difficult task of changing a statute or adopting rules. If a topic or issue of concern directly affects those licensed or regulated under a practice act, and if it is not a matter of internal board or office procedure, it should be addressed through rules if not in the statutes.

ARTICLE 1: GENERAL PROVISIONS

1.01 Legislative Intent

Jurisdictions should to add a statement of purpose or philosophy about administrative rules and cite the specific statute that grants authority to promulgate such rules. The authorizing statute in the model act is in *Powers and Duties of the Board,* Article 2.02. Here is an example of an opening paragraph loosely adapted from Hawaii's rules section of their practice act:

"*The [name of jurisdiction] Board of Physical Therapy shall adopt rules pursuant to [citing the specific authority granted by statute in Article 2.02 Board* of Physical Therapy *to effectuate this [act] and its licensing laws, and to carry out its purpose of protecting the health, safety and welfare of consumers of services provided by or under the direction of a physical therapist licensed under this act. The enumeration of specific matters that shall properly be made the subject of rules shall not be construed to limit the board's broad general power to make all rules necessary to fully effectuate the purpose of this chapter."*

1.02 Definitions

Physiotherapy/Physiotherapist Definition

There may be a need to have further operational definitions of terms not addressed in the *Definitions* section of the statutes. Statutory construction varies from jurisdiction to, jurisdiction and frequently the definition of terms used in statute must be contained in the definition section, whereas definition of terms

used in administrative rules are contained in the rules definition section. The following definition of the terms “physiotherapy” and “physiotherapist” could be contained in either statute or rules:

“Physiotherapy” and “physiotherapist” are the international terms for physical therapy and physical therapist respectively. These terms are not used by physical therapists in the United States, but they are protected titles and terminology under [cite the specific Use of Titles *statute for protected terms] and, therefore, are not to be used in any manner by any other person or organization that could mislead consumers of healthcare and induce the false belief that physical therapy or physiotherapy is being provided by any person not licensed under this [act].*

Practice of physical therapy
Jurisdictions should consider adopting rules addressing the scope of certain procedures authorized under the practice act. For example, rules might define the scope of wound debridement to include sharp, enzymatic, selective, and pharmacological wound debridement. Other procedures that might be addressed in rules are whether physical therapists can use certain machines and perform procedures such as electroneuromyography, needle EMG, dry needling, etc. that are not specifically addressed in the statutory language. This provides licensees with guidance to their proper scope while providing jurisdictions with the flexibility to evaluate and determine whether certain procedures/machines are properly within the scope of physical therapy.

ARTICLE 2: BOARD OF PHYSICAL THERAPY

2.01 Board of Physical Therapy

Board Appointments
Rules should be developed outlining the process of appointment to the board. The nomination process varies from jurisdiction to jurisdiction. In some jurisdictions, the statute or rules specify that appointments to the board must be made from a list supplied to the governor from the APTA state chapter. In other jurisdictions the board may use its own nomination process where a mail ballot determines the top five recommendations to pass on to the governor. A suggestion is to include in rules the following:

“The governor shall appoint any qualified person to the Board of Physical Therapy meeting the requirements outlined in [citing statute area] and in [citing rules outlining additional qualifications] herein. A list of qualified candidates shall be provided to the governor by the [state] Chapter of the American Physical Therapy Association, by the Board of Physical Therapy Examiners, or by any other interested group or individal. Any qualified person shall also submit his or her own name to the governor for consideration.”

As discussed earlier, rules shall also include recommendations to the governor to consider geographic distribution, gender, ethnicity and practice settings in the appointment process. (See rationale under *Board of Physical Therapy* Article 2.01*.)* The use of the phrase “as prescribed by law,” usually addresses other statutory requirements for appointment by the governor, such as senate confirmation of all appointments. Adopting a rule requesting that the governor consider geographic distribution, gender, ethnicity and practice settings in the selection process will have more of an influence on the organizations or individuals recommending individuals for appointment than on the governor when making the appointment.

Terms of Board Appointment
Rules should be developed delineating specific dates, or years of appointment, and the dates of staggered or overlapped terms of office. This facilitates smoother transitions so that only one or two members of a board are appointed in any year to avoid disruptions caused by multiple appointments in a single year.

Removal of Board Members
The entire process for removal of a board member for misconduct should be outlined in rules. This should include the specific grounds for removal, the options for correction of a problem prior to removal, and the procedures used to request removal of a board member by the governor.

Expense Reimbursement
Rules should include guidelines for reimbursement of board members' expenses, per diem, travel, etc., and reference any other applicable regulations or operational procedures addressing reimbursement.

2.02 Powers and Duties of the Board

Rule Development
The process for administrative rule development should be detailed. This includes proper notice, public hearings and final approval mechanisms of changes to, or adoption of, any existing or proposed rule based upon each jurisdiction's specific Administrative Procedures Act or authorizing statute.

Official Board Records
The maintenance of official records, confidentiality of certain records and of other discussion, and distribution of board minutes are necessary inclusions in rules, as is automatic distribution of minutes and to whom they should be sent.

Assessing Continuing Competence
Specific mechanisms for assessing continuing competence shall be included in this section or in *License [or Certificate] Renewal*, Article 3.05.

Election of Board Officers
The process for the election of board officers should be detailed in rules. This includes eligibility, the dates of elections and any other restrictions, e.g., concurrent terms in the same office.

Orientation
The process for orientation of new board members should be developed and outlined in rules. Proper orientation and training for board members should be a high priority of every licensing board.

Reporting to appropriate authorities
In order to protect the public, the Board should report findings of unlawful conduct that shall be in violation of other state or federal laws. In this section the board should outline the types of violations (e.g. criminal conduct) that will be referred and to which agencies. The Board should determine at what point in the disciplinary process the information should be referred to other agencies.

ARTICLE 3: EXAMINATION AND LICENSURE

3.01 Examination

Rules specifying the examination process, the procedure for applicants or licensees who subvert or undermine the examination process (including due process), the reporting of scores, etc., should be developed. The following language should be placed in rules to describe the kinds of behaviors that the Board considers to be subverting or undermining the integrity of the examination or examination process:

"Examples of conduct that subverts or undermines the examination or examination process shall include, without limitation, utilizing in any manner of communication, including copying, duplication, written notes or any electronic medium, recalled or memorized examination questions from or with any person or entity, failing to comply with all test center security procedures, attempting to communicate with other examinees during the test, or copying and sharing examination questions or portions of questions. Any such violation shall be recorded in the official records of the board. Board action shall include the following: 1. Disqualify the applicant, permanently or for a specified period of time, from eligibility for the examination. 2. Disqualify the applicant who has failed the examination from eligibility to retake the examination. 3. Disqualify the applicant, permanently or for a specific period of time, from eligibility for licensure. 4. Revoke, suspend or impose probationary conditions on any license [or certificate] issued to such applicant."

Failing the Examination

Rules may specify the number of times the applicant can re-take the national examination. If limitations are specified, any requirements for reapplication, submitting additional fees, or other requirements for retaking the examination. If an applicant, educated outside of the United States is approved for a supervised interim clinical education period, there exists an assumption of competence. It should be specified in rules that if the applicant subsequently fails the national examination that assumption of competence is deemed void and no approval for continued clinical practice should be extended, even under supervision until competence is demonstrated by successful passing of the national examination.

3.02 Qualifications for Licensure [and Certification]

Qualifications for licensures describe the basic preparation necessary to "qualify" for practice or work in physical therapy, i.e. graduation from an appropriate school, passage of an entry examination, completion of the application process. These qualifications are the same from jurisdiction to jurisdiction. In addition to these basic qualifications, many jurisdictions establish additional requirements that applicants must fulfill prior to licensure or certification, i.e. passage of a jurisprudence exam, submission of letters of recommendation, passage of English proficiency examinations. Requirements for licensure differ from jurisdiction to jurisdiction and need to be detailed in rule.

Application Procedures

All procedures for making application for original licensure or certification, for licensure of physical therapists educated outside of the United States, for endorsement, for renewal, for re-licensure after a lapse, etc., should be included in detail within rules. This includes reference to various application forms (application forms themselves should not be included in rules), various application fees, and any other supporting documentation required under the application procedures. Some jurisdictions require that the specific questions asked of applicants for original licensure/certification or renewal must be delineated in rules.

Disciplinary Database

A rule should be developed requiring the board to check the Federation of State Boards of Physical Therapy's database for any previous disciplinary actions taken against any applicant.A score transfer report from the Federation would be an acceptable check of an applicant's license.This should occur with anyone applying for licensure by endorsement, or for certification, where the applicant was previously regulated in another state. This should also include a requirement that the applicant report all previous jurisdictions of licensure or certification, not just the one of previous residence.

Definition of " Applicant Educated Outside of the United States"

It is appropriate to define what an "Applicant educated outside of the United States" means. For example: *an "Applicant educated outside of the United States" means a physical therapist or physical therapist assistant who graduated from any physical therapist or physical therapist assistant education program outside the 50 states, Puerto Rico, District of Columbia, or U.S. territories Guam, American Somoa, U.S Virgin Islands, .*

Applications from candidates educated outside of the United States

All procedures for physical therapist or physical therapist assistant applicants educated outside of the United States should be specified in rules, either in conjunction with the application process for any physical therapist or physical therapist assistant seeking licensure or as a separate area of rules. The following rule suggestions regarding licensure application of physical therapists or physical therapist assistants educated outside of the United States were previously outlined under the discussion in *Examination and Licensure*, Article 3, and are repeated here due to the specific rulemaking suggestions.

Credential Review Agencies

A list of board-approved educational credential review agencies should be included in rules, and with a description of the process by which an agency becomes board-approved A list of the kinds of information that must be submitted to the credential review agency should be noted. The jurisdiction's requirement to use the applicable *FSBPT Coursework Tool for Foreign Educated Physical Therapists* and/or *FSBPT Coursework Tool for Foreign Educated Physical Therapist Assistants* could also be specified in rules.

English Proficiency Examinations
Rules should specify the exact English proficiency examinations and scores required for licensure.

Waiving Requirements for Applicants Educated Outside of the United States
Under *Qualifications for Licensure [and Certification]*, Article 3.02, when an applicant educated outside of the United States graduates from a CAPTE-accredited program then several of the requirements under this section may be waived by the board. Rules should be formulated that address whether or not there are instances when these requirements should be waived.

Rule language should contain, at minimum, the requirement that any credentials evaluation 1) utilize the appropriate edition of the FSBPT *Coursework Tool for Foreign Educated Physical Therapists* or *Physical Therapist Assistants* in order to determine educational equivalency at the date of graduation; 2) require that a physical therapist trained in credential reviewing participates in the evaluation; and 3) require that quality assurance standards be met by the credentials review agency.

All procedures for making application for original licensure or certification, for licensure of physical therapists or physical therapist assistants educated outside of the United States, for endorsement, for renewal, for re-licensure after a lapse, etc., should be included in detail within rules. This includes reference to various application forms (application forms themselves should not be included in rules), various application fees, and any other supporting documentation required under the application procedures. Some jurisdictions require that the specific questions asked of applicants for original licensure/certification or renewal must be delineated in rules.

3.03 Licensure [and Certification] by Endorsement
Rules should clearly state the process for obtaining endorsement. Any requirements beyond the completed application process, proof of graduation and score transfers should be clarified, such as verification of licensure in good standing.

These requirements might include submission of verification of a current license in the state of previous residency, affidavit of previous practice within three years, absence of pending or current disciplinary action or restricted license, continuing education history if mandatory for licensing requirements, specific continuing education required such as in HIV or MRSA continuing education, or the requirement to take a jurisprudence examination.

3.04 Exemptions from Licensure [or Certification]

Declared State or National Emergencies
Jurisdictions should consider including in rules the discretion to modify requirements for licensure renewal and endorsement under declared county, state, and/or national emergency situations. For example, in situations such as natural disasters, armed forces reserve call-ups or overseas military duty, the board should be granted flexibility in the area of license or certificate issuance or renewal. Jurisdictions might want to seek an executive order to authorize licensure renewal extensions in order to prevent unlawful practice with a lapsed license for licensees impacted by state, national, or local disasters.

Professional Education Registering
A rule could be included for “registering” physical therapists or physical therapist assistants who provide or participate in continuing education courses in a state and who are not licensed in that state. When clinical education courses involve actual patient contact, or when participants practice procedures upon each other, it shall be desirable to enact a registration process to ensure that the exemption granted to instructors and participants in these continuing education offerings is specifically restricted to short-term courses never extending past 60 days. Physical therapists or physical therapist assistants traveling with bona fide sports teams or performing arts organizations would also need an exemption with a time limit, such as the 60 days noted previously. If this time limit were exceeded, licensure would be required. The board shall choose to only require registration for those courses exceeding, for example, 30 days.

3.05 License [or Certificate] Renewal

Rules should address licensure and certificate renewal in a timely manner and should specify the information required for renewal. It is appropriate here to include the requirement and responsibility of those regulated to provide the board with current business or other mailing addresses. Rules should state that failure to have a current address on file with the board is not sufficient reason for the licensee's or certificate holder's failure to renew in a timely manner.

Continuing Competence

Criteria that the board uses for determining continuing competence requirements associated with licensure or certification renewal should be clearly outlined in rules. Refer to discussion under *Powers and Duties of the Board,* Article 2.02.

3.06 Changes of Name, Address or Telephone Number

It should be stated clearly in rules that all licensees and certificate holders are responsible for keeping the board advised of their current home and practice addresses telephone numbers, and electronic contact information, if available. Failure to receive a renewal notification should not constitute an excuse for failure to renew on time. It should be further specified that failure to meet the renewal timeframe constitutes practicing without a license or certificate and will be treated as such under authority of *Unlawful Practice; Classification; Civil Penalties; Injunctive Relief,* Article 4.09.

3.07 Reinstatement of License [or Certificate]

Rules should address the process for reinstatement of lapsed licenses or certificates.

Professional Reentry

An appropriate use of a restricted license would be for persons reentering the profession after an absence from practice or work in the profession. Rules shall be needed to address the specific requirements for reentering the profession in such circumstances.

Restricted License or Certificate

The model statute language specifies the existence of restricted licenses and certificates. Rules should be developed providing further clarification to the processes and procedures for such restrictions, e.g., criteria stating under what circumstances and for whom restricted licenses or certificates can be imposed; the procedures for imposing restrictions, for determining the extent of the restrictions, and for lifting the restrictions. For example, it is important to include a statement in rules to the effect that, in addition to disciplinary actions, a restricted license can also be used with physical therapists or physical therapist assistants in professional reentry programs or physical therapists or physical therapist assistants in voluntary substance abuse programs. Where a restricted license is imposed as part of discipline, reinstatement of an unrestricted license should not be automatic but should always be associated with an appearance or re-hearing of the licensee or certificate holder before the board. Any supervision requirements for someone under restriction should be addressed in rules.

3.08 Fees

A section of rules should list all fees and types of fees that are imposed by the board upon persons regulated by this [act]. Penalties for late or lapsed licenses or certificates are also "fees" and should be included in the same area as other fees. Rules should state that there will be additional testing fees associated with computerized testing (fees paid directly to a testing center for use of its facility, equipment, etc.) that are not part of the board fees, but are acknowledged and authorized.

ARTICLE 4: REGULATION OF PHYSICAL THERAPY

4.01 Ethics in the Physical Therapy Profession

Recognized Standards of Ethics

Ethics in the Physical Therapy Profession, Article 4.01 is the requirement to adhere to the recognized standards of ethics of the physical therapy profession. An operational definition of the standards of ethics of the profession is strongly suggested. It could be included either in this area of rules or later under rules

associated with *Grounds for Denial of a License [and Certificate]; Disciplinary Action,* Article 4.04. One example would be as follows:

"The recognized standards of ethics" of the physical therapy profession shall be the American Physical Therapy Association (APTA) Code of Ethics *and the accompanying* Guide for Professional Conduct*.*

"The recognized standards of ethical conduct" for the physical therapist assistant shall be the American Physical Therapy Association (APTA) Standards of Ethical Conduct for the Physical Therapist Assistant and the accompanying Guide for Professional Conduct for the Physical Therapist Assistant.

Jurisdictions should review their Administrative Procedures Act on how to properly incorporate documents by reference or consider itemizing ethical standards in rules.

4.02 Use of Titles and Terms; Restrictions; Classification of Violation

"RPT," "LPT," and "LPTA" Prohibited

The only rule suggested under *Use of Titles and Terms; Restrictions; Classification of Violation*, Article 4.02, is a rule prohibiting the use of the letters "RPT" and "LPT" by licensed physical therapists. Even though these are "protected terms" under the restricted use of titles, they are archaic terms and don't reflect the level of professionalism of contemporary physical therapy practitioners. An example of rule language would be:

"RPT" and "LPT" are archaic letter designations for the physical therapist. While they remain protected designations under Use of Titles and Terms; Restrictions; Classification of Violation, Article 4.02, *they are not to be used by physical therapists or any other persons. The proper letter designation of a licensed physical therapist is "PT." Improper use of this designation shall result in disciplinary action.*

"LPTA" is an archaic letter designation for the physical therapist assistants. While they remain protected designations under Use of Titles and Terms; Restrictions; Classification of Violation, Article 4.02, *they are not to be used by physical therapist assistants or any other persons. The proper letter designation of a licensed physical therapist assistant is "PTA." Improper use of this designation shall result in disciplinary action.*

4.03 Patient Care Management

This section of rules should contain any conditions or specifications relating to patient care management within the specific jurisdiction, including qualifications and/or conditions of supervisions of other personnel including communication and documentation requirements.

4.05 Investigative Powers; Emergency Action; Hearing Officers

Receiving Complaints

Rules should specify how complaints against licensees or certificate holders can be submitted. A complaint form could be used, whether completed by the complainant or by board staff if telephone or electronic complaints are permitted. Overly burdensome requirements place further obstacles and extends the response time in dealing with consumer complaints. Rules should include what information must be included in a complaint (e.g., name of physical therapist, date of service, allegation, etc.). The rule should also include timeframes for board processing of complaints to provide assurance to complainants that all complaints are taken seriously and processed accordingly.

4.07 Disciplinary Actions; Penalties

Administrative Procedures Act

In addition to the practice act and other laws, all jurisdictions have an Administrative Procedures Act (APA), or similar law, that governs the processes by which government agencies take action against individuals regulated by the jurisdiction. Jurisdictions should consult their APA prior to developing rules.

Censure

Rules should be developed that address the scope, duration and procedures for the issuance of a censure.

Restricted License [or Certificate]
Rules should be developed giving further clarification to the processes and procedures for such restrictions, e.g., criteria stating under what circumstances and for whom restricted licenses or certificates could be imposed; the procedures for imposing restrictions, for determining the extent of the restrictions, and for lifting the restrictions.

A restricted license can also be used with for re-entry or in voluntary substance abuse programs. Where a restricted license is imposed as part of formal discipline, reinstatement of an unrestricted license should not be automatic, but should always be associated with an appearance or rehearing of the licensee or certificate holder before the board. The supervision required of a licensee under such restriction should be addressed in rules.

Reapplication for License [or Certificate] after Revocation
Rules should include the process for reapplication for license or certificate after revocation. A license is usually revoked with no mention of timeframe for potential reapplication. It is appropriate to consider establishing an amount of time, such as one year, which must pass before a person can reapply for licensure and what requirements will apply.

Voluntary Surrender of a License [or Certificate]
Rules should require that acceptance of surrender of a license or certificate should be accompanied by admissions or findings of fact and conclusions of law relating to violations of law and reported as disciplinary action. Rules should reflect that a voluntary surrender has the full force and effect of a revocation for reporting purposes.

4.11 Substance Abuse Recovery Program
Voluntary Substance Abuse Program
Rules should outline the process for a licensee who is allowed by the board to participate in a voluntary substance abuse program. Criteria for board authorization of substance abuse programs should be established as well as reporting requirements for licensees who participate in a substance abuse program.

Appendix A: Model Statute Language Changes

The following are the changes in the model statute language made from the Fourth to the Fifth Edition of the Model Practice Act. The following formatting allows for review of all substantive changes made; most formatting changes or simple edits are not included here. ~~Strike-through~~ is deleted language from the Fourth Edition. Underline is new language in the Fifth Edition. The *Model Statutes with Commentary* section provides explanations for these changes.

Article 1: General Provisions

1.01 Legislative Intent

This [act] is enacted for the purpose of protecting the public health, safety and welfare, and provides for ~~state~~ jurisdiction administrative control, supervision, licensure and regulation of the practice of physical therapy. It is the legislature's intent that only individuals who meet and maintain prescribed standards of competence and conduct shall engage in the practice of physical therapy as authorized by this [act]. This [act] shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

1.02 Definitions

~~For purposes of this~~ As specifically used in this [act], the following terms have the meanings set forth below, unless the context requires otherwise.

1. "Board" means the [specify the ~~state~~ jurisdiction] board of physical therapy.

2. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this [act]. The term "physiotherapy" shall be synonymous with "physical therapy" pursuant to this [act].

3. "Physical therapist" means a person who is licensed pursuant to this [act] to practice physical therapy. The term "physiotherapist" shall be synonymous with "physical therapist" pursuant to this [act].

4. "Practice of physical therapy" means:

a. Examining, evaluating and testing patient/client with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement-related conditions in order to determine a diagnosis, prognosis and plan of treatment intervention, and to assess the ongoing effects of intervention.

b. Alleviating impairments, functional limitations and disabilities by designing, implementing and modifying treatment interventions that shall include, but are not limited to: therapeutic exercise, functional training in self-care and in home, community or work integration or reintegration, manual therapy including soft tissue and joint mobilization/manipulation, therapeutic massage, prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment, airway clearance techniques, integumentary protection and repair techniques, debridement and wound care, physical agents or modalities, mechanical and electrotherapeutic modalities, and patient-related instruction.

c. Reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and wellness in populations of all ages.

d. Engaging in administration, consultation, education and research.

5. "Physical therapist assistant" means a person who is [certified/licensed] pursuant to this [act] and who assists the physical therapist in selected components of the physical therapy treatment intervention.

6. "Physical therapy aide" means a person trained by or under the direction of a physical therapist who

performs designated and supervised routine tasks related to physical therapy services.

7. "Restricted license" for a physical therapist means a license on which the board ~~places~~ has placed any restrictions and/or conditions as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee shall provide services.

8. "Restricted [certificate/license]" for a physical therapist assistant means a [certificate/license] on which the board has placed any restrictions and/or condition as to scope of work, place of work, duration of certified or licensed status, or type or condition of the patient/client to whom the certificate holder or licensee shall provide services.

9. "Onsite supervision" means ~~the supervising~~ supervision by a physical therapist who is continuously onsite and present in the department or facility where services are provided. The supervising therapist is immediately available to the person being supervised, and maintains continued involvement in ~~appropriate~~ necessary aspects ~~of each treatment session in which a physical therapist assistant or physical therapy aide is involved in components of~~ patient care.

10. "Testing" means standard methods and techniques used to gather data about the patient, including electrodiagnostic and electrophysiologic tests and measures.

11. "Consultation by telehealth ~~means of telecommunication~~" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or professional healthcare provider via electronic communications ~~telecommunications~~ or computer technology from a distant location. ~~It includes the review or transfer of patient records or related information by means of audio, video or data communications.~~

12. "Jurisdiction of the United States" means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any American territory.

13. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the [certification/licensure] of a physical therapist assistant.

14. "Competence" is the application of knowledge, skills, and behaviors required to function effectively, safely, ethically and legally within the context of the patient/client's role and environment.

15. "Continuing competence" is the lifelong process of maintaining and documenting competence through ongoing self-assessment, development, and implementation of a personal learning plan, and subsequent reassessment.

16. "Telehealth" is the use of electronic communications to provide and deliver a host of health-related information and healthcare services, including, but not limited to physical therapy related information and services, over large and small distances. Telehealth encompasses a variety of healthcare and health promotion activities, including, but not limited to, education, advice, reminders, interventions, and monitoring of interventions.

17. "Electronic Communications" means the science and technology of communication (the process of exchanging information) over any distance by electronic transmission of impulses including activities that involve using electronic communications to store, organize, send, retrieve, and/or convey information.

Article 2: Board of Physical Therapy
2.01 Board of Physical Therapy

A. The board of physical therapy shall consist of [seven~~five~~] members appointed by the governor.

[Four~~Three~~] members shall be physical therapists who are residents of this ~~state~~ jurisdiction, possess unrestricted licenses to practice physical therapy in this ~~state~~ jurisdiction and have been practicing in this ~~state~~ jurisdiction for no less than five years before their appointments. [One] member shall be a physical therapist assistant who is a resident of this ~~state~~ jurisdiction, and possesses an unrestricted [certificate /license]. The governor shall also appoint [two] public members who shall be residents of this ~~state~~ jurisdiction and who are not affiliated with, nor have a financial interest in, any healthcare profession and who have an interest in consumer rights.

B. Board members serve staggered four-year terms. Board members shall serve no more than two successive four-year terms or for more than ten consecutive years. By approval of the majority of the board, the service of a member shall be extended at the completion of a four-year term until a new member is appointed or the current member is reappointed.

C. If requested by the board, the governor shall remove any member of the board for misconduct, incompetence or neglect of duty.

D. Board members are eligible for reimbursement of expenses pursuant to [cite applicable statute relating to reimbursement] to cover necessary expenses for attending each board meeting or for representing the board in an official board-approved activity.

E. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the member's action is warranted by law, is immune from civil liability.

2.02 Powers and Duties of the Board

The board shall:

1. Evaluate the qualifications of applicants for licensure [and certification].
2. Provide for the examination of physical therapists and physical therapist assistants.
3. Issue licenses [or certificates] to persons who meet the qualifications of this [act].
4. Regulate the practice of physical therapy by interpreting and enforcing this [act].
5. Issue advisory opinions upon request regarding this [act].
6. Adopt and revise rules consistent with this [act]. Such rules, when lawfully adopted, shall have the effect of law.
7. Meet at least once each quarter in compliance with the open meeting requirements of [cite applicable statute]. A majority of board members shall constitute a quorum for the transaction of business. The board shall keep an official record of its meetings.
8. Establish mechanisms for assessing the continuing competence of physical therapists to practice physical therapy.
9. Establish mechanisms for assessing the continuing competence of physical therapist assistants to work in the profession of physical therapy.
10. Establish and collect fees for sustaining the necessary operation and expenses of the board.
11. Elect officers from its members necessary for the operations and obligations of the board. Terms of office shall be one year.
12. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this [act], and board rules, policies and procedures.

13. Maintain a current list of all persons regulated under this [act]. This information includes the person's name, current business and residential address, email address, telephone numbers, and license [or certificate] number.

14. Provide information to the public regarding the complaint process.

15. Employ necessary personnel to carry out the administrative work of the board. Board personnel are eligible to receive compensation pursuant to [cite specific statute].

16. Enter into contracts for services necessary for enforcement of this [act].

17. Report final disciplinary action taken against a licensee [or certificate holder] to a national disciplinary database recognized by the board or as required by law.

18. Report information of alleged unlawful conduct by licensees [or certificate holders], unlicensed individuals, other healthcare providers and entities to the appropriate county, ~~state~~ jurisdiction or federal authority.

19. Publish, at least annually, final ~~disciplinary~~ adverse action taken against a licensee [or certificate holder].

20. Publish, at least annually, board rulngs, opinions, and interpretations of statutes or rules in order to guide persons regulated pursuant to this [act].

21. Participate in or conduct performance audits.

2.03 Disposition of Funds
(No model language is offered under this section heading. See *Commentary* for further information.)

Article 3: Examination and Licensure
3.01 Examination
A. The board shall provide for examinations within the state.

B. The physical therapist examination ~~shall be~~ is a national examination that tests entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention and consultation.

C. The physical therapist assistant examination ~~shall test~~ is a national examination that tests for requisite knowledge and skills in the technical application of physical therapy services.

D. Licensure applicants must agree to abide by security and copyright provisions related to the national licensure examination. If the board determines that an applicant has violated any of these provisions or engaged in or attempted to engage in any other conduct that subverts or undermines the integrity of the examination process or validity of examination results, the board may disqualify the applicant from taking or retaking the examination permanently or for a specified period of time.

E. Any violation of security and copyright provisions related to a national licensure examination, subversion or attempts to subvert a national examination shall be reported by the board to the Federation of State Boards of Physical Therapy.

~~D~~ F. If the board determines if an applicant has engaged or has attempted to engage in conduct that subverts or undermines the integrity of the examination process, including a violation of security and copyright provisions related to the national licensure examination, the board may disqualify the applicant from taking or retaking the examination for a specified period of time.

3.02 Qualifications for Licensure [and Certification]

A. An applicant for a license as a physical therapist shall:

1. Complete the application process including payment of fees.

2. Submit proof of graduation from a professional physical therapy education program accredited by a national accreditation agency approved by the board.

3. Pass ~~the~~ an examination approved by the board.

4. Meet the requirements established by board rule if applicable.

B. An applicant for a license as a physical therapist who has been educated outside of the United States shall:

1. Complete the application process including payment of fees.

2. Provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapists educated in an accredited entry-level program as determined by the board. Graduation outside the United States from a professional education program accredited by the same accrediting agency that the board approves for programs within the United States constitutes evidence of substantial equivalency. In all other instances, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:

   a. Graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy;

   b. Provided written proof that the applicant's school of physical therapy is recognized by its own ministry of education;

   c. Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule; and

   d. Completed any additional education as required by the board.

3. Pass ~~the~~ a board-approved English proficiency examinations if the applicant's native language is not English.

4. Pass ~~the~~ an examination approved by the board.

5. Complete supervised clinical practice as defined by rules with a restricted license.

6. Meet the requirements established by board rule if applicable.

C. An applicant for [certification/licensure] as a physical therapist assistant shall:

1. Complete the application process including payment of fees.

2. Submit proof of graduation from a physical therapist assistant education program accredited by a national accreditation agency approved by the board.

3. Pass ~~the~~ an examination approved by the board.

4. Complete supervised clinical practice as defined by rules with a restricted license.

5. Meet the requirements established by board rule if applicable.

D. An applicant for a [certification/ licensure] as a physical therapist assistant who has been educated outside of the United States shall:

1. Complete the application process including payment of fees.
2. Provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapist assistants educated in an accredited entry-level program as determined by the board. Graduation outside the United States from an education program accredited by the same accrediting agency that the board approves for programs within the United States constitutes evidence of substantial equivalency. In all other instances, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:
   a. Graduated from a physical therapist assistant program that prepares the applicant to work as a physical therapist assistant;
   b. Provided written proof that the applicant's physical therapist assistant school is recognized by its own ministry of education;
   c. Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule; and
   d. Completed any additional education as required by the board.

3. Pass a board-approved English proficiency examinations if the applicant's native language is not English.

4. Pass an examination approved by the board.

5. Complete supervised clinical practice as defined by rules with a restricted license

6. Meet the requirements established by board rule if applicable.

3.03 Licensure [and Certification] by Endorsement

The board shall issue a license[certificate] to a physical therapist or physical therapist assistant who has a current unrestricted license [certificate] from another jurisdiction of the United States if that person met all qualifications prescribed in [*Qualifications for Licensure and Certification*, Article 3.02] at the time of the applicant's initial licensure.

3.04 Exemptions from Licensure [or Certification]

A. This [act] does not restrict a person licensed under any other law of this ~~state~~ jurisdiction from engaging in the profession or practice for which that person is licensed if that person does not represent, imply or claim that he/she is a physical therapist, physical therapist assistant, or a provider of physical therapy as defined in Article 1, 1.02B

B. The following persons are exempt from the licensure requirements of this [act] when engaged in the following activities:

1. A person in an entry-level professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist education while under onsite supervision of a physical therapist.

2. A physical therapist who is practicing in the United States Armed Services, United States Public Health Service or Veterans Administration pursuant to federal regulations for ~~state~~ jurisdiction licensure of healthcare providers. If such person, while federally employed as a physical therapist, shall engage in the practice of physical therapy outside the course and scope of such federal employment, he/she shall then be required to obtain a license in accordance with this [act].

3. A physical therapist who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if that person is teaching, demonstrating or providing physical therapy services in connection with teaching or participating in an educational seminar of

no more than 60 days in a calendar year.

4. A physical therapist who is licensed in another jurisdiction of the United States if that person is providing consultation by telehealth ~~means of telecommunciation~~, as defined in [*Definitions*, Article 1.02], to a physical therapist licensed under this [act].

5. A physical therapist who is licensed in a jurisdiction of the United States or credentialed in another country, if that person by contract or employment is providing physical therapy to patients/clients affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in the state for no more than sixty days in a calendar year.

6. A physical therapist who is licensed in a jurisdiction of the United States and who enters this state to provide physical therapy during a declared local, ~~state~~ jurisdictional or national disaster or emergency. This exemption applies for no longer than 60 days following the declaration of the emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.

7. A physical therapist licensed in a jurisdiction of the United States who is forced to leave his/her residence or place of employment due to a declared local, ~~state~~ jurisdictional or national disaster or emergency and due to such displacement seeks to practice physical therapy. This exemption applies for no more than 60 days following the declaration of the emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.

C. A physical therapist assistant who is [certified/licensed] in a jurisdiction of the United States and is assisting a physical therapist engaged specifically in activities related to [subparagraphs (B) 2, 3, 5, 6 and 7 of this section] is exempt from the requirement of [certification/licensure] under this [act].

3.05 License [or Certificate] Renewal

A. A physical therapist applying for renewal of the license shall:
1. Complete a renewal application including payment of fees.
2. ~~Submit~~ Demonstrate evidence of continuing competence as defined by rule..

B. A physical therapist assistant applying for renewal of the license [certificate] shall: ~~complete a renewal application including payment of fees.~~
1. Complete a renewal application including payment of fees.
2. Demonstrate evidence of continuing competence as defined by rule.

3.06 Changes of Name, Address or Telephone Number

Each licensee [and certificate holder] is responsible for reporting a name change and changes in business and home address, email address and telephone numbers to the board within 30 days.

3.07 Reinstatement of License [or Certificate]

A. The board may reinstate a lapsed license [or certificate] upon completion of a reinstatement application including payment of fees, as defined by rule.

B. If a physical therapist's license has lapsed for a specified time period, ~~for two or more renewal periods~~, as defined by rules, that person may fulfill all requirements of [3.07 A] and demonstrate to the board's satisfaction competence to practice physical therapy by one or more of the following as determined by the board:
1. ~~Practice for a specified time under a restricted license~~; Complete supervised clinical practice as defined by rule with a restricted license.
2. ~~Complete prescribed remedial courses;~~ Demonstrate or complete continued competence requirements, as defined by rule, required during lapsed licensure period.
3. Pass examination(s) approved by the board.
4. Provide proof of licensed practice in another jurisdiction.

C. If a physical therapist assistant's [certificate/license] has lapsed for a specified time period, as defined by rule, that person shall fulfill all requirements of [3.07 A] and demonstrate to the board's satisfaction competence to work as a physical therapist assistant by one or more of the following as determined by the board:

1. Complete supervised clinical practice as defined by rules with a restricted license.
2. Demonstrate or complete continued competence requirements, as defined by rule, required during lapsed licensure period.
3. Pass examination(s) approved by the board.
4. Provide proof of [certified/licensed] work as a physical therapist assistant in another jurisdiction.

~~C.~~D The board may reinstate a suspended or revoked physical therapist's license ~~[or certificate]~~ upon completion of the requirements in [3.07 A] and evidence of satisfactory completion of all requirements for reinstatement that were stipulated in a consent order at the time of ~~revocation~~ discipline. The board may further require evidence of ~~a physical therapists'~~ competence to practice physical therapy through ~~one or more of~~ the following activities: ~~specified in [3.07.B]~~.

1.Complete supervised clinical practice, as defined by rule, with a restricted license.
2.Demonstrate or complete continued competence requirements, defined by rule, required during the suspended or revoked licensure period.
3. Successfully complete examinations and/or assessment tools approved by the board.

E. The board may reinstate a suspended or revoked physical therapist assistant's [certificate/license] upon completion of the requirements in [3.07 A] and evidence of satisfactory completion of all requirements for reinstatement that were stipulated in a consent order at the time of discipline. The board may further require evidence of the physical therapist assistant's competence to work in the profession of physical therapy through the following activities.

1.Complete supervised clinical practice with a restricted license under a qualified and approved supervisor.
2.Demonstrate or complete continued competence requirements, defined by rule, required during revoked licensure period.
3. Successfully complete examinations and/or assessment tools approved by the board.

[3.08 Fees]

This is optional statute language for states requiring maximum fee ceilings within their statutes.
The board shall establish and collect fees not to exceed:

1._____ dollars for an application for an original license [or certificate]. This fee is nonrefundable.
2._____ dollars for a certificate of renewal of a license [or certificate].
3._____ dollars for an application for reinstatement of a license [or certificate].
4._____ dollars for each duplicate license [or certificate].

Article 4: Regulation of Physical Therapy

4.01 Ethics~~al~~ in the Physical Therapy Profession ~~Practice~~

A. A physical therapist shall adhere to the recognized standards of ethics of the physical therapy profession as established by rule.

B. A physical therapist assistant shall adhere to the recognized standards of ethical conduct of the physical therapy profession as established by rule.

4.02 Use of Titles and Terms; Restrictions; Classification of Violation

A. A physical therapist shall use the letters "PT" or the term "physical therapist" immediately following his or her name to designate licensure under this [act].

B. A person or business entity, its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business, the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "registered physical therapist," "doctor of physical therapy," the letters "PT," "DPT," "LPT," "RPT," or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this [act]. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this act. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as "physical therapy" or "physiotherapy" unless the individual performing those services is a person licensed as a physical therapist under this [act].

C. Physical therapists who have graduated from a DPT program may use the title of "Doctor of Physical Therapy." A physical therapist holding a DPT or other doctoral degree shall not use the title "Doctor" without also clearly informing the public of his or her profession as a physical therapist. Use of the title shall be in accordance with jurisdictional law.

~~C~~. D. A physical therapist assistant shall use the letters "PTA" immediately following his or her name to designate [certification/licensure] under this [act].

~~D.~~ E. A person shall not use the title "physical therapist assistant," the letters "PTA," or any other words, abbreviations or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is [certified/licensed] as a physical therapist assistant pursuant to this [act].

~~E.~~ F. A person or business entity that violates paragraphs (B) or (E) of this section is guilty of a [cite specific legal sanction]. The board shall have authority to impose a civil penalty, in an amount not to exceed [specify number of dollars] per violation, against any person or business entity that violates paragraphs (B) or (E). In addition, the board shall seek an injunction against conduct in violation of paragraphs (B) or (E) in any court of competent jurisdiction. For purposes of this [act], the board, in seeking an injunction, need only show that the defendant violated paragraphs (B) and (E) of this section to establish irreparable injury or a likelihood of a continuation of the violation.

4.03 Patient Care Management

A. A physical therapist is fully responsible for managing all aspects of the physical therapy care of each encounter with each patient. A physical therapist shall provide:

1. The initial evaluation, determination of diagnosis, prognosis, and plan of treatment intervention and documentation of each patient;
2. Periodic reevaluation and documentation of each patient;
3. The documented discharge of the patient, including the patient's response to treatment intervention at the time of discharge.

B. A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides under his or her direction and supervision.

C. For each patient on each date of service, a physical therapist shall provide all of the treatment intervention that requires the ~~expertise~~ education, skills and knowledge of a physical therapist and shall determine the use of physical therapist assistants or physical therapy aides to ensure that the delivery of care that is safe, effective and efficient.

1. A physical therapist assistant shall work under a physical therapist's supervision. A physical therapist assistant may document the care he/she provides.
2. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the ~~onsite~~ supervision of a physical therapist~~. who is continuously onsite and present in the facility. This supervision shall extend to offsite supervision of the aide~~

~~only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient related tasks.~~

D. ~~A physical therapist's responsibility for patient care management shall include accurate documentation and billing of the services provided.~~ The physical therapist shall communicate the overall plan of care with the patient or the patient's legally authorized representative.

E**.** A physical therapist's responsibility ~~for patient care management~~ shall include accurate documentation and billing of the services provided.

F. A physical therapist assistant's responsibility shall include accurate documentation and billing of the services provided.

4.04 Grounds for Denial of a License [and Certificate]; Disciplinary Action

A. The following are grounds for denial of a license [and certificate] or disciplinary action:

1. Violating any provision of this [act], board rules or a written order of the board.
2. Obtaining or attempting to obtain a license [or certificate] by fraud or misrepresentation.
3. Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process including, but not limited to, a violation of security and copyright provisions related to the national licensure exam, utilizing in any manner recalled or memorized examination questions from or with any person or entity, failing to comply with all test center security procedures, communicating or attempting to communicate with other examinees during the test, or copying or sharing examination questions or portions of questions.
4. Practicing or offering to practice beyond the scope of the practice of physical therapy.
5. Acting in a manner inconsistent with generally accepted standards of physical therapy practice, regardless of whether actual injury to the patient is established.
6. Failing to adhere to the recognized standards of ethics of the physical therapy profession as established by rule.
7. Failing to complete continuing competence requirements as established by rule.
8. Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that contain at minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record and a discharge plan.
9. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this [act] and board rules.
10. Failing to report to the board, where there is direct knowledge, any unprofessional, incompetent or illegal acts that appear to be in violation of this [act] or any rules established by the board.
11. Engaging in sexual misconduct. For the purpose of this paragraph sexual misconduct includes:
    a. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists.
    b. Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.
    c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
12. Having had a license [or certificate] revoked or suspended, other disciplinary action taken, or an application for licensure [or certification] refused, revoked or suspended by the proper authorities of another ~~state~~ jurisdiction, territory or country.
13. Having been convicted of or pled guilty to a felony in the courts of this ~~state~~jurisdiction or any other ~~state~~ jurisdiction, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilt, an Alfred plea, or a plea of *nolo contendere*.
14. Aiding and abetting the unlicensed practice of physical therapy.
15. Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the

furnishing of physical therapy services. This does not prohibit the members of any regularly and properly organized business entity recognized by law and comprising physical therapists from dividing fees received for professional services among themselves as they determine necessary.

16. Promoting any unnecessary device, treatment intervention or service resulting in the financial gain of the practitioner or of a third party.
17. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
18. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.
19. Charging fraudulent fees for services performed or not performed.
20. Making misleading, deceptive, untrue or fraudulent representations in violation of this [act] or in the practice of the profession.
21 Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals or alcohol, or by other causes.
22. Practicing physical therapy with a mental or physical condition that impairs the ability of the licensee to practice with skill and safety.
23. Practicing after having been adjudged mentally incompetent by a court of competent jurisdiction.
24. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.
25. Failing to maintain patient confidentiality without documented authorization of the patient or unless otherwise required by law. All records used or resulting from a consultation by telehealth ~~means of telecommunications~~, as defined in [*Definitions,* Article 1.02], are part of a patient's records and are subject to applicable confidentiality requirements.

4.05 Investigative Powers; Emergency Action; Hearing Officers

A. To enforce this [act], the board is authorized to:

1. Receive complaints filed against licensees [or certificate holders] and conduct a timely investigation.
2. Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there shall be a violation of this [act].
3. Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.
4. Take emergency action ordering the summary suspension of a license [or certificate] or the restriction of a physical therapist's practice or a physical therapist assistant's employment pending proceedings by the board.
5. Appoint hearing officers authorized to conduct hearings. Hearing officers shall prepare and submit to the board findings of fact, conclusions of law and a recommendation for Board action that shall be reviewed and voted on by the board.
6. Require a physical therapist to be examined in order to determine his or her mental or physical ability to practice physical therapy.
7. Require a physical therapist assistant to be examined in order to determine his or her mental or physical ability to work in the profession of physical therapy.

B. If the board finds that the information received in a complaint or an investigation does not merit disciplinary action against a licensee [or certificate holder] it may take one of the following actions:

1. Dismiss the complaint.
2. Issue an advisory letter to the licensee [or certificate holder]. An advisory letter is non-disciplinary and notifies a licensee [or certificate holder] that, while there is no evidence to merit disciplinary action, the board believes that the licensee [or certificate holder] should become educated about the requirements of this [act] and board rules.

4.06 Hearings

(No model statute language is offered under this section heading. See *Commentary* for additional

information.)

4.07 Disciplinary Actions; Penalties

Upon proof that any grounds prescribed in section [*Grounds for Denial of License [and Certificate]; Disciplinary Action*, Article 4.04], have been violated, the board shall take the following disciplinary actions singly or in combination.

1. Issue a censure.
2. Restrict a license [or certificate]. The board shall require a licensee [or certificate holder] to report regularly to the board on matters related to the grounds for the restricted license [or certificate].
3. Suspend a license [or certificate] for a period prescribed by the board.
4. Revoke a license [or certificate].
5. Refuse to issue or renew a license [or certificate].
6. Impose a civil penalty of at least _____ but not more than _____. (Include minimum and maximum dollar amounts of civil penalties.)
7. Accept a voluntary surrendering of a license [or certificate] based on an order of consent from the board.

4.08 Procedural Due Process

Actions of the board shall be taken subject to the right of notice, opportunity to be heard and the right of appeal in accordance with [specify the ~~state~~ jurisdiction] law relating to administrative law and procedure.

4.09 Unlawful Practice; Classification; Civil Penalties; Injunctive Relief

A. It is unlawful for any person or business entity, its employees, agents or representatives not licensed as a physical therapist under this [act] to engage in the practice of physical therapy. Any person who violates this paragraph [(A) or *Use of Titles and Terms, Restrictions; Classification of Violation*, Article 4.02], is guilty of [cite specific criminal sanction, e.g., class 1 misdemeanor] and subject to any other remedies specified in this [act].

B. The board shall investigate any person or business entity to the extent necessary to determine whether the person or business entity is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person or business entity ~~shall be~~ is practicing physical therapy unlawfully, the board shall inform the person or the business entity of the alleged violation. The board shall refer the matter for prosecution regardless of whether the person or business entity ceases the unlawful practice of physical therapy.

C. The board shall apply to any court of competent jurisdiction for an order enjoining any person or business entity from committing any violation of this [act]. Injunction proceedings under this paragraph shall be in addition to, and not in lieu of, all penalties and other remedies prescribed in this [act].

D. If a person or business entity knowingly violates this [act] or board rules, fraudulently uses or permits the use of a license [or certificate] number, or knowingly aids or requires another person to violate this [act] or board rules, the board shall impose upon such person a civil penalty of not more than [dollar amount of penalty] for the first violation and not more than [dollar amount of penalty] for each subsequent violation.

[Optional Statute]

E. The board shall transmit all monies it collects from civil penalties pursuant to this [act] to the [specify the disposition of these funds if different from other funds].

4.10 Reporting Violations; Immunity

A. A person, including but not limited to a licensee [or certificate holder], corporation, insurance company, healthcare organization or healthcare facility and state or local governmental agencies, shall report to the board any conviction or determination by an agency or court that a licensee [or certificate holder] has committed an act that constitutes a violation of [*Grounds for Denial of a License [and Certificate]; Disciplinary Action*, Article 4.04].

B. A person is immune from civil liability, whether direct or derivative, for reporting such facts as set forth in A above to the board in good faith and participating in the board's investigation and subsequent disciplinary process, if applicable.

C. The board shall not disclose the identity of a person who provides information unless such information is essential to proceedings conducted pursuant to [*Investigative Powers; Emergency Action; Hearing Officers* and *Hearings*, Articles 4.05 and 4.06], or unless required by a court of law.

4.11 Substance Abuse Recovery Program

A. The board shall permit a licensee [or certificate holder] to actively participate in a board-approved substance abuse recovery program if:
   1. The board has evidence that the licensee [or certificate holder] is impaired.
   2. The licensee [or certificate holder] enters into a written agreement with the board for a restricted license [or certificate] and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on his or her practice or employment imposed by the board to protect the public. Failure to enter into such an agreement shall activate an immediate investigation and disciplinary proceeding by the board.
   3. As part of the agreement established between the licensee [or certificate holder] and the board, the licensee [or certificate holder] signs a waiver allowing the substance abuse program to release information to the board if the licensee [or certificate holder] does not comply with the requirements of this section or is unable to practice or work with reasonable skill or safety.

4.12 Rights of Consumers

A. The public shall have access to the following information:
   1. A list of licensees [and certificate holders] that includes place of employment, address and telephone number of record, license [or certificate] number, date of license [or certificate] expiration and status of license [or certificate].
   2. A list of final ~~disciplinary~~ adverse actions taken by the board.
   3. The address, website, email and phone number of the board.

B. Each licensee [and certificate holder] shall display a copy of his or her license [or certificate] in a location accessible to public view or produce a copy immediately upon request.

C. Each licensee [and certificate holder] shall provide the public with information on how to file a complaint with the board against a licensee [or certificate holder].

D. Any person may submit a complaint regarding any licensee, [certificate holder] or any other person potentially in violation of this [act]. Confidentiality shall be maintained subject to law.

E. The home address, email address and home telephone numbers of physical therapists and physical therapist assistants are not public records and shall be kept confidential by the board unless they are the only addresses and telephone numbers of record.

F. A patient has freedom of choice in selection of services and products.

G. Information relating to the physical therapist-patient relationship is confidential and shall not be communicated to a third party who is not involved in that patient's care without the written authorization of the patient. The physical therapist-patient privilege does not extend to cases in which the physical therapist has a duty to report information as required by law.

H. The board shall keep all information relating to the receipt and investigation of complaints filed against licensees [or certificate holders] confidential until the information is disclosed in the course of the investigation or any subsequent proceeding or until disclosure is required by law. Patient records, including clinical records, files, any other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or his family might be identified, or information received and records or reports kept by the board as a result of an investigation made pursuant to this [act] shall not be available to the public and shall be kept confidential by the board.

Appendix B: Code of Ethics and Guide for Professional Conduct

Code of Ethics for the Physical Therapist
HOD S06-09-07-12 [Amended HOD S06-00-12-23; HOD 06-91-05-05;HOD 06-87-11-17; HOD 06-81-06-18; HOD 06-78-06-08; HOD 06-78-06-07; HOD 06-77-18-30; HOD 06-77-17-27; Initial HOD 06-73-13-24] [Standard]

Preamble
The Code of Ethics for the Physical Therapist (Code of Ethics) delineates the ethical obligations of all physical therapists as determined by the House of Delegates of the American Physical Therapy Association (APTA). The purposes of this Code of Ethics are to:

1. Define the ethical principles that form the foundation of physical therapist practice in patient/client management, consultation, education, research, and administration.
2. Provide standards of behavior and performance that form the basis of professional accountability to the public.
3. Provide guidance for physical therapists facing ethical challenges, regardless of their professional roles and responsibilities.
4. Educate physical therapists, students, other health care professionals, regulators, and the public regarding the core values, ethical principles, and standards that guide the professional conduct of the physical therapist.
5. Establish the standards by which the American Physical Therapy Association can determine if a physical therapist has engaged in unethical conduct.

No code of ethics is exhaustive nor can it address every situation. Physical therapists are encouraged to seek additional advice or consultation in instances where the guidance of the Code of Ethics may not be definitive.

This Code of Ethics is built upon the five roles of the physical therapist (management of patients/clients, consultation, education, research, and administration), the core values of the profession, and the multiple realms of ethical action (individual, organizational, and societal). Physical therapist practice is guided by a set of seven core values: accountability, altruism, compassion/caring, excellence, integrity, professional duty, and social responsibility. Throughout the document the primary core values that support specific principles are indicated in parentheses. Unless a specific role is indicated in the principle, the duties and obligations being delineated pertain to the five roles of the physical therapist. Fundamental to the Code of Ethics is the special obligation of physical therapists to empower, educate, and enable those with impairments, activity limitations, participation restrictions, and disabilities to facilitate greater independence, health, wellness, and enhanced quality of life.

Principles

Principle #1: Physical therapists shall respect the inherent dignity and rights of all individuals.(Core Values: Compassion, Integrity)

1A. Physical therapists shall act in a respectful manner toward each person regardless of age, gender, race, nationality, religion,
ethnicity, social or economic status, sexual orientation, health condition, or disability.
1B. Physical therapists shall recognize their personal biases and shall not discriminate against others in physical therapist practice, consultation, education, research, and administration.

Principle #2: Physical therapists shall be trustworthy and compassionate in addressing the rights and needs of patients/clients. (Core Values: Altruism, Compassion, Professional Duty)

2A. Physical therapists shall adhere to the core values of the profession and shall act in the best interests of patients/clients over the interests of the physical therapist.
2B. Physical therapists shall provide physical therapy services with compassionate and caring behaviors that incorporate the individual and cultural differences of patients/clients.
2C. Physical therapists shall provide the information necessary to allow patients or their surrogates to make informed decisions about physical therapy care or participation in clinical research.
2D. Physical therapists shall collaborate with patients/clients to empower them in decisions about their health care.
2E. Physical therapists shall protect confidential patient/client information and may disclose confidential information to appropriate authorities only when allowed or as required by law.

Principle #3: Physical therapists shall be accountable for making sound professional judgments. (Core Values: Excellence, Integrity)

3A. Physical therapists shall demonstrate independent and objective professional judgment in the patient's/client's best interest in all practice settings.
3B. Physical therapists shall demonstrate professional judgment informed by professional standards, evidence (including current literature and established best practice), practitioner experience, and patient/client values.
3C. Physical therapists shall make judgments within their scope of practice and level of expertise and shall communicate with, collaborate with, or refer to peers or other health care professionals when necessary.
3D. Physical therapists shall not engage in conflicts of interest that interfere with professional judgment.
3E. Physical therapists shall provide appropriate direction of and communication with physical therapist assistants and support personnel.

Principle #4: Physical therapists shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, research participants, other health care providers, employers, payers, and the public.(Core Value: Integrity)

4A. Physical therapists shall provide truthful, accurate, and relevant information and shall not make misleading representations.
4B. Physical therapists shall not exploit persons over whom they have supervisory, evaluative or other authority (eg, patients/clients, students, supervisees, research participants, or employees).
4C. Physical therapists shall discourage misconduct by health care professionals and report illegal or unethical acts to the relevant authority, when appropriate.
4D. Physical therapists shall report suspected cases of abuse involving children or vulnerable adults to the appropriate authority, subject to law.
4E. Physical therapists shall not engage in any sexual relationship with any of their patients/clients, supervisees, or students.
4F. Physical therapists shall not harass anyone verbally, physically, emotionally, or sexually.

Principle #5: Physical therapists shall fulfill their legal and professional obligations. (Core Values: Professional Duty, Accountability)

5A. Physical therapists shall comply with applicable local, state, and federal laws and regulations.
5B. Physical therapists shall have primary responsibility for supervision of physical therapist assistants and support personnel.
5C. Physical therapists involved in research shall abide by accepted standards governing protection of research participants.
5D. Physical therapists shall encourage colleagues with physical, psychological, or substance-related impairments that may adversely impact their professional responsibilities to seek assistance or counsel.
5E. Physical therapists who have knowledge that a colleague is unable to perform their professional responsibilities with reasonable skill and safety shall report this information to the appropriate authority.

5F. Physical therapists shall provide notice and information about alternatives for obtaining care in the event the physical therapist terminates the provider relationship while the patient/client continues to need physical therapy services.

Principle #6: Physical therapists shall enhance their expertise through the lifelong acquisition and refinement of knowledge, skills, abilities, and professional behaviors. (Core Value: Excellence)

6A. Physical therapists shall achieve and maintain professional competence.
6B. Physical therapists shall take responsibility for their professional development based on critical self-assessment and reflection on changes in physical therapist practice, education, health care delivery, and technology.
6C. Physical therapists shall evaluate the strength of evidence and applicability of content presented during professional development activities before integrating the content or techniques into practice.
6D. Physical therapists shall cultivate practice environments that support professional development, lifelong learning, and excellence.

Principle #7: Physical therapists shall promote organizational behaviors and business practices that benefit patients/clients and society. (Core Values: Integrity, Accountability)

7A. Physical therapists shall promote practice environments that support autonomous and accountable professional judgments.
7B. Physical therapists shall seek remuneration as is deserved and reasonable for physical therapist services.
7C. Physical therapists shall not accept gifts or other considerations that influence or give an appearance of influencing their professional judgment.
7D. Physical therapists shall fully disclose any financial interest they have in products or services that they recommend to patients/clients.
7E. Physical therapists shall be aware of charges and shall ensure that documentation and coding for physical therapy services accurately reflect the nature and extent of the services provided.
7F. Physical therapists shall refrain from employment arrangements, or other arrangements, that prevent physical therapists from fulfilling professional obligations to patients/clients.

Principle #8: Physical therapists shall participate in efforts to meet the health needs of people locally, nationally, or globally.(Core Value: Social Responsibility)

8A. Physical therapists shall provide pro bono physical therapy services or support organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured.
8B. Physical therapists shall advocate to reduce health disparities and health care inequities, improve access to health care services, and address the health, wellness, and preventive health care needs of people.
8C. Physical therapists shall be responsible stewards of health care resources and shall avoid overutilization or underutilization of physical therapy services.
8D. Physical therapists shall educate members of the public about the benefits of physical therapy and the unique role of the physical therapist.

Guide for Professional Conduct

Purpose
This Guide for Professional Conduct (Guide) is intended to serve physical therapists in interpreting the Code of Ethics for the Physical Therapist (Code) of the American Physical Therapy Association (APTA) in matters of professional conduct. The APTA House of Delegates in June of 2009 adopted a revised Code, which became effective on July 1, 2010.

The Guide provides a framework by which physical therapists may determine the propriety of their conduct. It is also intended to guide the professional development of physical therapist students. The Code and the Guide apply to all physical therapists. These guidelines are subject to change as the dynamics of the profession change and as new patterns of health care delivery are developed and accepted by the professional community and the public.

Interpreting Ethical Principles
The interpretations expressed in this Guide reflect the opinions, decisions, and advice of the Ethics and Judicial Committee (EJC). The interpretations are set forth according to topic. These interpretations are intended to assist a physical therapist in applying general ethical principles to specific situations. They address some but not all topics addressed in the Principles and should not be considered inclusive of all situations that could evolve.

This Guide is subject to change, and the Ethics and Judicial Committee will monitor and timely revise the Guide to address additional topics and Principles when necessary and as needed.

Preamble to the Code

The Preamble states as follows:
The Code of Ethics for the Physical Therapist (Code of Ethics) delineates the ethical obligations of all physical therapists as determined by the House of Delegates of the American Physical Therapy Association (APTA). The purposes of this Code of Ethics are to:
1. Define the ethical principles that form the foundation of physical therapist practice in patient/client management, consultation, education, research, and administration.
2. Provide standards of behavior and performance that form the basis of professional accountability to the public.
3. Provide guidance for physical therapists facing ethical challenges, regardless of their professional roles and responsibilities.
4. Educate physical therapists, students, other health care professionals, regulators, and the public regarding the core values, ethical principles, and standards that guide the professional conduct of the physical therapist.
5. Establish the standards by which the American Physical Therapy Association can determine if a physical therapist has engaged in unethical conduct.

No code of ethics is exhaustive nor can it address every situation. Physical therapists are encouraged to seek additional advice or consultation in instances where the guidance of the Code of Ethics may not be definitive.

This Code of Ethics is built upon the five roles of the physical therapist (management of patients/clients, consultation, education, research, and administration), the core values of the profession, and the multiple realms of ethical action (individual, organizational, and societal). Physical therapist practice is guided by a set of seven core values: accountability, altruism, compassion/caring, excellence, integrity, professional duty, and social responsibility. Throughout the document the primary core, values that support specific principles are indicated in parentheses. Unless a specific role is indicated in the principle, the duties and obligations being delineated pertain to the five roles of the physical therapist. Fundamental to the Code of Ethics is the special obligation of physical therapists to empower, educate, and enable those with impairments, activity limitations, participation restrictions, and disabilities to facilitate greater

independence, health, wellness, and enhanced quality of life.

Interpretation: Upon the Code of Ethics for the Physical Therapist being amended effective July 1, 2010, all the lettered principles in the Code contain the word “shall” and are mandatory ethical obligations. The language contained in the Code is intended to better explain and further clarify existing ethical obligations. These ethical obligations predate the revised Code. Although various words have changed, many of the obligations are the same. Consequently, the addition of the word “shall” serves to reinforce and clarify existing ethical obligations. A significant reason that the Code was revised was to provide physical therapists with a document that was clear enough such that they can read it standing alone without the need to seek extensive additional interpretation.

The Preamble states that “[n]o Code of Ethics is exhaustive nor can it address every situation.” The Preamble also states that physical therapists “are encouraged to seek additional advice or consultation in instances in which the guidance of the Code may not be definitive.” Potential sources for advice and counsel include third parties and the myriad resources available on the APTA Web site. Inherent in a physical therapist’s ethical decision-making process is the examination of his or her unique set of facts relative to the Code.

Topics

Respect
Principle 1A states as follows:
1A. Physical therapists shall act in a respectful manner toward each person regardless of age, gender, race, nationality, religion, ethnicity, social or economic status, sexual orientation, health condition, or disability.

Interpretation: Principle 1A addresses the display of respect toward others. Unfortunately, there is no universal consensus about what respect looks like in every situation. For example, direct eye contact is viewed as respectful and courteous in some cultures and inappropriate in others. It is up to the individual to assess the appropriateness of behavior in various situations.

Altruism
Principle 2A states as follows:
2A. Physical therapists shall adhere to the core values of the profession and shall act in the best interests of patients/clients over the interests of the physical therapist.

Interpretation: Principle 2A reminds physical therapists to adhere to the profession’s core values and act in the best interest of patients/clients over the interests of the physical therapist. Often this is done without thought, but sometimes, especially at the end of the day when the physical therapist is fatigued and ready to go home, it is a conscious decision. For example, the physical therapist may need to make a decision between leaving on time and staying at work longer to see a patient who was 15 minutes late for an appointment.

Patient Autonomy
Principle 2C states as follows:
2C. Physical therapists shall provide the information necessary to allow patients or their surrogates to make informed decisions about physical therapy care or participation in clinical research.

Interpretation: The underlying purpose of Principle 2C is to require a physical therapist to respect patient autonomy. In order to do so, a physical therapist shall communicate to the patient/client the findings of his/her examination, evaluation, diagnosis, and prognosis. A physical therapist shall use sound professional judgment in informing the patient/client of any substantial risks of the recommended examination and intervention and shall collaborate with the patient/client to establish the goals of treatment and the plan of care. Ultimately, a physical therapist shall respect the patient’s/client’s right to make decisions regarding the recommended plan of care, including consent, modification, or refusal.

Professional Judgment
Principles 3, 3A, and 3B state as follows:
3: Physical therapists shall be accountable for making sound professional judgments. (Core Values: Excellence, Integrity)
3A. Physical therapists shall demonstrate independent and objective professional judgment in the patient's/client's best interest in all practice settings.
3B. Physical therapists shall demonstrate professional judgment informed by professional standards, evidence (including current literature and established best practice), practitioner experience, and patient/client values.

Interpretation: Principles 3, 3A, and 3B state that it is the physical therapist's obligation to exercise sound professional judgment, based upon his/her knowledge, skill, training, and experience. Principle 3B further describes the physical therapist's judgment as being informed by three elements of evidence-based practice.

With regard to the patient/client management role, once a physical therapist accepts an individual for physical therapy services he/she shall be responsible for: the examination, evaluation, and diagnosis of that individual; the prognosis and intervention; re-examination and modification of the plan of care; and the maintenance of adequate records, including progress reports. A physical therapist shall establish the plan of care and shall provide and/or supervise and direct the appropriate interventions. Regardless of practice setting, a physical therapist has primary responsibility for the physical therapy care of a patient and shall make independent judgments regarding that care consistent with accepted professional standards.

If the diagnostic process reveals findings that are outside the scope of the physical therapist's knowledge, experience, or expertise or that indicate the need for care outside the scope of physical therapy, the physical therapist shall so inform the patient/client and shall refer the patient/client to an appropriate practitioner.

A physical therapist shall determine when a patient/client will no longer benefit from physical therapy services. When a physical therapist's judgment is that a patient will receive negligible benefit from physical therapy services, the physical therapist shall not provide or continue to provide such services if the primary reason for doing so is to further the financial self-interest of the physical therapist or his/her employer. A physical therapist shall avoid overutilization of physical therapy services. See Principle 8C.

Supervision
Principle 3E states as follows:
3E. Physical therapists shall provide appropriate direction of and communication with physical therapist assistants and support personnel.

Interpretation: Principle 3E describes an additional circumstance in which sound professional judgment is required; namely, through the appropriate direction of and communication with physical therapist assistants and support personnel. Further information on supervision via applicable local, state, and federal laws and regulations (including state practice acts and administrative codes) is available. Information on supervision via APTA policies and resources is also available on the APTA Web site. See Principles 5A and 5B.

Integrity in Relationships
Principle 4 states as follows:
4: Physical therapists shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, research participants, other health care providers, employers, payers, and the public. (Core Value: Integrity)

Interpretation: Principle 4 addresses the need for integrity in relationships. This is not limited to relationships with patients/clients, but includes everyone physical therapists come into contact with professionally. For example, demonstrating integrity could encompass working collaboratively with the

health care team and taking responsibility for one's role as a member of that team.

Reporting
Principle 4C states as follows:
4C. Physical therapists shall discourage misconduct by healthcare professionals and report illegal or unethical acts to the relevant authority, when appropriate.

Interpretation: When considering the application of "when appropriate" under Principle 4C, keep in mind that not all allegedly illegal or unethical acts should be reported immediately to an agency/authority. The determination of when to do so depends upon each situation's unique set of facts, applicable laws, regulations, and policies. Depending upon those facts, it might be appropriate to communicate with the individuals involved. Consider whether the action has been corrected, and in that case, not reporting may be the most appropriate action. Note, however, that when an agency/authority does examine a potential ethical issue, fact finding will be its first step. The determination of ethicality requires an understanding of all of the relevant facts, but may still be subject to interpretation.

The EJC Opinion titled: Topic: Preserving Confidences; Physical Therapist's Reporting Obligation With Respect to Unethical, Incompetent, or Illegal Acts provides further information on the complexities of reporting.

Exploitation
Principle 4E states as follows:
4E. Physical therapists shall not engage in any sexual relationship with any of their patient/clients, supervisees or students.

Interpretation: The statement is fairly clear – sexual relationships with their patients/clients, supervisees or students are prohibited. This component of Principle 4 is consistent with Principle 4B, which states: Physical therapists shall not exploit persons over whom they have supervisory, evaluative or other authority (e.g. patients/clients, students, supervisees, research participants, or employees). Next, consider this excerpt from the EJC Opinion titled Topic: Sexual Relationships With Patients/Former Patients: A physical therapist stands in a relationship of trust to each patient and has an ethical obligation to act in the patient's best interest and to avoid any exploitation or abuse of the patient. Thus, if a physical therapist has natural feelings of attraction toward a patient, he/she must sublimate those feelings in order to avoid sexual exploitation of the patient. One's ethical decision making process should focus on whether the patient/client, supervisee or student is being exploited. In this context, questions have been asked about whether one can have a sexual relationship once the patient/client relationship ends. To this question, the EJC has opined as follows: The Committee does not believe it feasible to establish any bright-line rule for when, if ever, initiation of a romantic/sexual relationship with a former patient would be ethically permissible. The Committee imagines that in some cases a romantic/sexual relationship would not offend ... if initiated with a former patient soon after the termination of treatment, while in others such a relationship might never be appropriate.

Colleague Impairment
Principle 5D and 5E state as follows:
5D. Physical therapists shall encourage colleagues with physical, psychological, or substance-related impairments that may adversely impact their professional responsibilities to seek assistance or counsel.
5E. Physical therapists who have knowledge that a colleague is unable to perform their professional responsibilities with reasonable skill and safety shall report the information to the appropriate authority.

Interpretation: The central tenet of Principles 5D and 5E is that inaction is not an option for a physical therapist when faced with the circumstances described. Principle 5D states that a physical therapist shall encourage colleagues to seek assistance or counsel while Principle 5E addresses reporting information to the appropriate authority. 5D and 5E both require a factual determination on your part. This may be challenging in the sense that you might not know or it might be difficult for you to determine whether someone in fact has a physical, psychological, or substance-related impairment. In addition, it might be difficult to determine whether such impairment may be adversely affecting his or her professional

responsibilities.

Moreover, once you do make these determinations, the obligation under 5D centers not on reporting, but on encouraging the colleague to seek assistance. However, the obligation under 5E does focus on reporting. But note that 5E discusses reporting when a colleague is unable to perform, whereas 5D discusses encouraging colleagues to seek assistance when the impairment may adversely affect his or her professional responsibilities. So, 5D discusses something that may be affecting performance, whereas 5E addresses a situation in which someone is clearly unable to perform. The 2 situations are distinct. In addition, it is important to note that 5E does not mandate to whom you report; it gives you discretion to determine the appropriate authority. The EJC Opinion titled: Topic: Preserving Confidences; Physical Therapist's Reporting Obligation With Respect to Unethical, Incompetent, or Illegal Acts provides further information on the complexities of reporting.

Professional Competence
Principle 6A states as follows:
6A. Physical therapists shall achieve and maintain professional competence.

Interpretation: 6A requires a physical therapist to maintain professional competence within one's scope of practice throughout one's career. Maintaining competence is an ongoing process of self-assessment, identification of strengths and weaknesses, acquisition of knowledge and skills based on that assessment, and reflection on and reassessment of performance, knowledge and skills. Numerous factors including practice setting, types of patients/clients, personal interests and the addition of new evidence to practice will influence the depth and breadth of professional competence in a given area of practice. Additional resources on Continuing Competence are available on the APTA Web site.

Professional Growth
Principle 6D states as follows:
6D. Physical therapists shall cultivate practice environments that support professional development, life-long learning, and excellence.

Interpretation: 6D elaborates on the physical therapist's obligations to foster an environment conducive to professional growth, even when not supported by the organization. The essential idea is that this is the physical therapist's responsibility, whether or not the employer provides support.

Charges and Coding
Principle 7E states as follows:
7E. Physical therapists shall be aware of charges and shall ensure that documentation and coding for physical therapy services accurately reflect the nature and extent of the services provided.9

Interpretation: Principle 7E provides that the physical therapist must make sure that the process of documentation and coding accurately captures the charges for services performed. In this context, where charges cannot be determined because of payment methodology, physical therapists may review the House of Delegates policy titled Professional Fees for Physical Therapy Services. Additional resources on documentation and coding include the House of Delegates policy titled Documentation Authority for Physical Therapy Services and the Documentation and Coding and Billing information on the APTA Web site.

Pro Bono Services
Principle 8A states as follows:
8A. Physical therapists shall provide pro bono physical therapy services or support organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured.

Interpretation: The key word in Principle 8A is "or". If a physical therapist is unable to provide pro bono services he or she can fulfill ethical obligations by supporting organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured. In addition, physical

therapists may review the House of Delegates guidelines titled Guidelines: Pro Bono Physical Therapy Services. Additional resources on pro bono physical therapy services are available on the APTA Web site.

8A also addresses supporting organizations to meet health needs. In terms of supporting organizations, the principle does not specify the type of support that is required. Physical therapists may express support through volunteerism, financial contributions, advocacy, education, or simply promoting their work in conversations with colleagues.

Issued by the Ethics and Judicial Committee
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Contact: ejc@apta.org

Appendix C: Standards of Ethical Conduct for the Physical Therapist Assistant & Guide for Conduct

Standards of Ethical Conduct for the Physical Therapist Assistant
HOD S06-09-20-18 [Amended HOD S06-00-13-24; HOD 06-91-06-07; Initial HOD 06-82-04-08] [Standard]

Preamble
The Standards of Ethical Conduct for the Physical Therapist Assistant (Standards of Ethical Conduct) delineate the ethical obligations of all physical therapist assistants as determined by the House of Delegates of the American Physical Therapy Association (APTA). The Standards of Ethical Conduct provide a foundation for conduct to which all physical therapist assistants shall adhere. Fundamental to the Standards of Ethical Conduct is the special obligation of physical therapist assistants to enable patients/clients to achieve greater independence,health and wellness, and enhanced quality of life.

No document that delineates ethical standards can address every situation. Physical therapist assistants are encouraged to seek additional advice or consultation in instances where the guidance of the Standards of Ethical Conduct may not be definitive.

Standards

Standard #1: Physical therapist assistants shall respect the inherent dignity, and rights, of all individuals.

1A. Physical therapist assistants shall act in a respectful manner toward each person regardless of age, gender, race, nationality, religion, ethnicity, social or economic status, sexual orientation, health condition, or disability.
1B. Physical therapist assistants shall recognize their personal biases and shall not discriminate against others in the provision of physical therapy services.

Standard #2: Physical therapist assistants shall be trustworthy and compassionate in addressing the rights and needs of patients/clients.

2A. Physical therapist assistants shall act in the best interests of patients/clients over the interests of the physical therapist assistant.
2B. Physical therapist assistants shall provide physical therapy interventions with compassionate and caring behaviors that incorporate the individual and cultural differences of patients/clients.
2C. Physical therapist assistants shall provide patients/clients with information regarding the interventions they provide.
2D. Physical therapist assistants shall protect confidential patient/client information and, in collaboration with the physical therapist, may disclose confidential information to appropriate authorities only when allowed or as required by law.

Standard #3: Physical therapist assistants shall make sound decisions in collaboration with the physical therapist and within the boundaries established by laws and regulations.

3A. Physical therapist assistants shall make objective decisions in the patient's/client's best interest in all practice settings.
3B. Physical therapist assistants shall be guided by information about best practice regarding physical therapy interventions.
3C. Physical therapist assistants shall make decisions based upon their level of competence and consistent with patient/client values.
3D. Physical therapist assistants shall not engage in conflicts of interest that interfere with making sound decisions.
3E. Physical therapist assistants shall provide physical therapy services under the direction and

supervision of a physical therapist and shall communicate with the physical therapist when patient/client status requires modifications to the established plan of care.

Standard #4: Physical therapist assistants shall demonstrate integrity in their relationships with patients/ clients, families, colleagues, students, other health care providers, employers, payers, and the public.

4A. Physical therapist assistants shall provide truthful, accurate, and relevant information and shall not make misleading representations.
4B. Physical therapist assistants shall not exploit persons over whom they have supervisory, evaluative or other authority (eg, patients/clients, students, supervisees, research participants,or employees).
4C. Physical therapist assistants shall discourage misconduct by health care professionals and report illegal or unethical acts to the relevant authority, when appropriate.
4D. Physical therapist assistants shall report suspected cases of abuse involving children or vulnerable adults to the supervisingphysical therapist and the appropriate authority, subject to law.
4E. Physical therapist assistants shall not engage in any sexual relationship with any of their patients/clients, supervisees,or students.
4F. Physical therapist assistants shall not harass anyone verbally, physically, emotionally, or sexually.

Standard #5: Physical therapist assistants shall fulfill their legal and ethical obligations.

5A. Physical therapist assistants shall comply with applicable local, state, and federal laws and regulations.
5B. Physical therapist assistants shall support the supervisory roleof the physical therapist to ensure quality care and promote patient/client safety.
5C. Physical therapist assistants involved in research shall abide by accepted standards governing protection of research participants.
5D. Physical therapist assistants shall encourage colleagues with physical, psychological, or substance related impairments that may adversely impact their professional responsibilities to seek assistance or counsel.
5E. Physical therapist assistants who have knowledge that a colleague is unable to perform their professional responsibilities with reasonable skill and safety shall report this information to the appropriate authority.

Standard #6: Physical therapist assistants shall enhance their competence through the lifelong acquisition and refinement of knowledge, skills, and abilities.

6A. Physical therapist assistants shall achieve and maintain clinicalcompetence.
6B. Physical therapist assistants shall engage in lifelong learning consistent with changes in their roles and responsibilities and advances in the practice of physical therapy.
6C. Physical therapist assistants shall support practice environments that support career development and lifelong learning.

Standard #7: Physical therapist assistants shall support organizational behaviors and business practices that benefit patients/clients and society.

7A. Physical therapist assistants shall promote work environments that support ethical and accountable decision-making.
7B. Physical therapist assistants shall not accept gifts or other considerations that influence or give an appearance of influencing their decisions.
7C. Physical therapist assistants shall fully disclose any financial interest they have in products or services that they recommend to patients/clients.
7D. Physical therapist assistants shall ensure that documentation for their interventions accurately reflects the nature and extent of the services provided.
7E. Physical therapist assistants shall refrain from employment arrangements, or other arrangements, that prevent physical therapist assistants from fulfilling ethical obligations to patients/clients

Standard #8: Physical therapist assistants shall participate in efforts to meet the health needs of people locally, nationally, or globally.

8A. Physical therapist assistants shall support organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured.
8B. Physical therapist assistants shall advocate for people with impairments, activity limitations, participation restrictions, and disabilities in order to promote their participation in community and society.
8C. Physical therapist assistants shall be responsible stewards of health care resources by collaborating with physical therapists in order to avoid overutilization or underutilization of physical therapy services.
8D. Physical therapist assistants shall educate members of the public about the benefits of physical therapy.

APTA Guide for Conduct of the Physical Therapist Assistant

Purpose
This Guide for Conduct of the Physical Therapist Assistant (Guide) is intended to serve physical therapist assistants in interpreting the Standards of Ethical Conduct for the Physical Therapist Assistant (Standards) of the American Physical Therapy Association (APTA). The APTA House of Delegates in June of 2009 adopted the revised Standards, which became effective on July 1, 2010.

The Guide provides a framework by which physical therapist assistants may determine the propriety of their conduct. It is also intended to guide the development of physical therapist assistant students. The Standards and the Guide apply to all physical therapist assistants. These guidelines are subject to change as the dynamics of the profession change and as new patterns of health care delivery are developed and accepted by the professional community and the public.

Interpreting Ethical Standards
The interpretations expressed in this Guide reflect the opinions, decisions, and advice of the Ethics and Judicial Committee (EJC). The interpretations are set forth according to topic. These interpretations are intended to assist a physical therapist assistant in applying general ethical standards to specific situations. They address some but not all topics addressed in the Standards and should not be considered inclusive of all situations that could evolve.

This Guide is subject to change, and the Ethics and Judicial Committee will monitor and timely revise the Guide to address additional topics and Standards when necessary and as needed.

Preamble to the Standards
The Preamble states as follows:
The Standards of Ethical Conduct for the Physical Therapist Assistant (Standards of Ethical Conduct) delineate the ethical obligations of all physical therapist assistants as determined by the House of Delegates of the American Physical Therapy Association (APTA). The Standards of Ethical Conduct provide a foundation for conduct to which all physical therapist assistants shall adhere. Fundamental to the Standards of Ethical Conduct is the special obligation of physical therapist assistants to enable patients/clients to achieve greater independence, health and wellness, and enhanced quality of life.
No document that delineates ethical standards can address every situation. Physical therapist assistants are encouraged to seek additional advice or consultation in instances where the guidance of the Standards of Ethical Conduct may not be definitive.

Interpretation: Upon the Standards of Ethical Conduct for the Physical Therapist Assistant being amended effective July 1, 2010, all the lettered standards contain the word “shall” and are mandatory ethical obligations. The language contained in the Standards is intended to better explain and further clarify existing ethical obligations. These ethical obligations predate the revised Standards. Although various words have changed, many of the obligations are the same. Consequently, the addition of the word “shall” serves to reinforce and clarify existing ethical obligations. A significant reason that the

Standards were revised was to provide physical therapist assistants with a document that was clear enough such that they can read it standing alone without the need to seek extensive additional interpretation.

The Preamble states that "[n]o document that delineates ethical standards can address every situation." The Preamble also states that physical therapist assistants "are encouraged to seek additional advice or consultation in instances where the guidance of the Standards of Ethical Conduct may not be definitive." Potential sources for advice or counsel include third parties and the myriad resources available on the APTA Web site. Inherent in a physical therapist assistant's ethical decision-making process is the examination of his or her unique set of facts relative to the Standards.

Standards
Respect
Standard 1A states as follows:
1A. Physical therapist assistants shall act in a respectful manner toward each person regardless of age, gender, race, nationality, religion, ethnicity, social or economic status, sexual orientation, health condition, or disability.

Interpretation: Standard 1A addresses the display of respect toward others. Unfortunately, there is no universal consensus about what respect looks like in every situation. For example, direct eye contact is viewed as respectful and courteous in some cultures and inappropriate in others. It is up to the individual to assess the appropriateness of behavior in various situations.3

Altruism
Standard 2A states as follows:
2A. Physical therapist assistants shall act in the best interests of patients/clients over the interests of the physical therapist assistant.

Interpretation: Standard 2A addresses acting in the best interest of patients/clients over the interests of the physical therapist assistant. Often this is done without thought, but sometimes, especially at the end of the day when the clinician is fatigued and ready to go home, it is a conscious decision. For example, the physical therapist assistant may need to make a decision between leaving on time and staying at work longer to see a patient who was 15 minutes late for an appointment.

Sound Decisions
Standard 3C states as follows:
3C. Physical therapist assistants shall make decisions based upon their level of competence and consistent with patient/client values.

Interpretation: To fulfill 3C, the physical therapist assistant must be knowledgeable about his or her legal scope of work as well as level of competence. As a physical therapist assistant gains experience and additional knowledge, there may be areas of physical therapy interventions in which he or she displays advanced skills. At the same time, other previously gained knowledge and skill may be lost due to lack of use. To make sound decisions, the physical therapist assistant must be able to self-reflect on his or her current level of competence.

Supervision
Standard 3E states as follows:
3E. Physical therapist assistants shall provide physical therapy services under the direction and supervision of a physical therapist and shall communicate with the physical therapist when patient/client status requires modifications to the established plan of care.

Interpretation: Standard 3E goes beyond simply stating that the physical therapist assistant operates under the supervision of the physical therapist. Although a physical therapist retains responsibility for the patient/client throughout the episode of care, this standard requires the physical therapist assistant to take action by communicating with the supervising physical therapist when changes in the patient/client

status indicate that modifications to the plan of care may be needed. Further information on supervision via APTA policies and resources is available on the APTA Web site.

Integrity in Relationships
Standard 4 states as follows:
4: Physical therapist assistants shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, other health care providers, employers, payers, and the public.

Interpretation: Standard 4 addresses the need for integrity in relationships. This is not limited to relationships with patients/clients, but includes everyone physical therapist assistants come into contact with in the normal provision of physical therapy services. For example, demonstrating integrity could encompass working collaboratively with the health care team and taking responsibility for one's role as a member of that team.

Reporting
Standard 4C states as follows:
4C. Physical therapist assistants shall discourage misconduct by health care professionals and report illegal or unethical acts to the relevant authority, when appropriate.

Interpretation: When considering the application of "when appropriate" under Standard 4C, keep in mind that not all allegedly illegal or unethical acts should be reported immediately to an agency/authority. The determination of when to do so depends upon each situation's unique set of facts, applicable laws, regulations, and policies.

Depending upon those facts, it might be appropriate to communicate with the individuals involved. Consider whether the action has been corrected, and in that case, not reporting may be the most appropriate action. Note, however, that when an agency/authority does examine a potential ethical issue, fact finding will be its first step. The determination of ethicality requires an understanding of all of the relevant facts, but may still be subject to interpretation. The EJC Opinion titled: Topic: Preserving Confidences; Physical Therapist's Reporting Obligation With Respect to Unethical, Incompetent, or Illegal Acts provides further information on the complexities of reporting.

Exploitation
Standard 4E states as follows:
4E. Physical therapist assistants shall not engage in any sexual relationship with any of their patients/clients, supervisees, or students.

Interpretation: The statement is fairly clear – sexual relationships with their patients/clients, supervisees or students are prohibited. This component of Standard 4 is consistent with Standard 4B, which states:

4B. Physical therapist assistants shall not exploit persons over whom they have supervisory, evaluative or other authority (eg, patients/clients, students, supervisees, research participants, or employees).

Next, consider this excerpt from the EJC Opinion titled Topic: Sexual Relationships With Patients/Former Patients (modified for physical therapist assistants):

A physical therapist [assistant] stands in a relationship of trust to each patient and has an ethical obligation to act in the patient's best interest and to avoid any exploitation or abuse of the patient. Thus, if a physical therapist [assistant] has natural feelings of attraction toward a patient, he/she must sublimate those feelings in order to avoid sexual exploitation of the patient.

One's ethical decision making process should focus on whether the patient/client, supervisee or student is being exploited. In this context, questions have been asked about whether one can have a sexual relationship once the patient/client relationship ends. To this question, the EJC has opined as follows: The Committee does not believe it feasible to establish any bright-line rule for when, if ever, initiation of a romantic/sexual relationship with a former patient would be ethically permissible. The Committee

imagines that in some cases a romantic/sexual relationship would not offend ... if initiated with a former patient soon after the termination of treatment, while in others such a relationship might never be appropriate.

Colleague Impairment
Standard 5D and 5E state as follows:
5D. Physical therapist assistants shall encourage colleagues with physical, psychological, or substance-related impairments that may adversely impact their professional responsibilities to seek assistance or counsel.

5E. Physical therapist assistants who have knowledge that a colleague is unable to perform their professional responsibilities with reasonable skill and safety shall report this information to the appropriate authority.

Interpretation: The central tenet of Standard 5D and 5E is that inaction is not an option for a physical therapist assistant when faced with the circumstances described. Standard 5D states that a physical therapist assistant shall encourage colleagues to seek assistance or counsel while Standard 5E addresses reporting information to the appropriate authority.

5D and 5E both require a factual determination on the physical therapist assistant's part. This may be challenging in the sense that you might not know or it might be difficult for you to determine whether someone in fact has a physical, psychological, or substance-related impairment. In addition, it might be difficult to determine whether such impairment may be adversely affecting someone's work responsibilities.

Moreover, once you do make these determinations, the obligation under 5D centers not on reporting, but on encouraging the colleague to seek assistance. However, the obligation under 5E does focus on reporting. But note that 5E discusses reporting when a colleague is unable to perform, whereas 5D discusses encouraging colleagues to seek assistance when the impairment may adversely affect his or her professional responsibilities. So, 5D discusses something that may be affecting performance, whereas 5E addresses a situation in which someone is clearly unable to perform. The 2 situations are distinct. In addition, it is important to note that 5E does not mandate to whom you report; it gives you discretion to determine the appropriate authority. The EJC Opinion titled Topic: Preserving Confidences; Physical Therapist's Reporting Obligation With Respect to Unethical, Incompetent, or Illegal Acts provides further information on the complexities of reporting.

Clinical Competence
Standard 6A states as follows:
6A. Physical therapist assistants shall achieve and maintain clinical competence.

Interpretation: 6A should cause physical therapist assistants to reflect on their current level of clinical competence, to identify and address gaps in clinical competence, and to commit to the maintenance of clinical competence throughout their career. The supervising physical therapist can be a valuable partner in identifying areas of knowledge and skill that the physical therapist assistant needs for clinical competence and to meet the needs of the individual physical therapist, which may vary according to areas of interest and expertise. Further, the physical therapist assistant may request that the physical therapist serve as a mentor to assist him or her in acquiring the needed knowledge and skills. Additional resources on Continuing Competence are available on the APTA Web site.

Lifelong Learning
Standard 6C states as follows:
6C. Physical therapist assistants shall support practice environments that support career development and lifelong learning.

Interpretation: 6C points out the physical therapist assistant's obligation to support an environment conducive to career development and learning. The essential idea here is that the physical therapist

assistant encourage and contribute to the career development and lifelong learning of himself or herself and others, whether or not the employer provides support.

Organizational and Business Practices
Standard 7 states as follows:
7. Physical therapist assistants shall support organizational behaviors and business practices that benefit patients/clients and society.

Interpretation: Standard 7 reflects a shift in the Standards. One criticism of the former version was that it addressed primarily face-to-face clinical practice settings. Accordingly, Standard 7 addresses ethical obligations in organizational and business practices on a patient/client and societal level.

Documenting Interventions
Standard 7D states as follows:
7D. Physical therapist assistants shall ensure that documentation for their interventions accurately reflects the nature and extent of the services provided.
Interpretation: 7D addresses the need for physical therapist assistants to make sure that they thoroughly and accurately document the interventions they provide to patients/clients and document related data collected from the patient/client. The focus of this Standard is on ensuring documentation of the services rendered, including the nature and extent of such services.

Support - Health Needs
Standard 8A states as follows:
8A. Physical therapist assistants shall support organizations that meet the health needs of people who are economically disadvantaged, uninsured, and underinsured.

Interpretation: 8A addresses the issue of support for those least likely to be able to afford physical therapy services. The Standard does not specify the type of support that is required. Physical therapist assistants may express support through volunteerism, financial contributions, advocacy, education, or simply promoting their work in conversations with colleagues. When providing such services, including pro bono services, physical therapist assistants must comply with applicable laws, and as such work under the direction and supervision of a physical therapist. Additional resources on pro bono physical therapy services are available on the APTA Web site.

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