



What powers are normally given to physical therapy licensing boards by the legislature?

By J. Kent Culley, Legal Counsel

This discussion deals with the subject of the powers of state physical therapy boards as delegated by the legislative body which created the board. Associated with this inquiry, the article will also examine a misconception that the Commission on Accreditation in Physical Therapy Education (CAPTE) has responsibility for determining some of the regulatory standards required for state licensure, rather than the licensing board.

First, we should review the administrative regulatory scheme which virtually all states ascribe to regarding the licensing process for health professions. Examples of typical structures are Massachusetts' Office of Consumer Affairs, Licensure Division, controlling the regulatory process through umbrella boards, Pennsylvania's Department of State with a distinct Professional and Occupational Bureau, or New York's Board of Regents providing plenary jurisdiction over the various licensing agencies.

While such agencies oversee the licensing process, nevertheless, it is the licensing boards that operate the licensure process. The licensing boards are granted the regulatory powers over a particular practice requiring a license, such as physical therapy. What are some of the typical elements of this regulatory power? The list is not meant to be all inclusive but rather a detailed overview.

Part of these delegated powers begin with the administrative needs of the board such as the makeup and number of the board membership normally comprising professional and public

members, the number of meetings annually, the internal structure of the board, the requirements for board members' continued participation, the term of board members, a removal mechanism for cause and most important, the source of being named as a board member, usually by the state's governor's appointment powers which should be memorialized in the enabling statute for the board.

The board, optimally, should also be empowered to operate on a self-sustained financial basis from its fee structure, although some jurisdictions still allocate expenses to run such agencies through the overall state budget process. Experience has shown, in this regard, that a self-sustained board has been more effective in such areas as disciplinary activities rather than waiting to see how much a state budget allows for the necessary operation of a licensing agency.

Specific powers of the licensing board should and normally do provide the standards for evaluating and processing the licensure application process, provide for a licensing examination, the issuance of licenses and in appropriate cases and operating under specific powers to investigate, conduct due process hearings, to suspend or revoke licenses. The board must also have powers dealing with establishing standards for the licensing examinations including basic educational standards (usually enumerated by rule), that must be met relating to the necessity of graduation from an approved and accredited physical therapy educational program. Also, the board's powers extend to dealing with reciprocity issues for licensure by an out-of-state applicant and standards for foreign-educated physical therapists.

Probably the most important and effective tool that a licensing board has is its rule-making power derived from the legislature. The rule-making process gives the board the power to provide initial interpretations of the statute or law and in a sense, gives the law "teeth." The exercise of rule-making powers must, under well-established administrative law principles universal to almost all states, provide interpretations or clarifications of the law designated as promulgated rules and regulations consistent with the statutory law. That is, the board may not establish rules inconsistent with the statutory law.

Boards in recent years have also served the public interest by processing complaints, educating both the professions and the public on the workings of these boards and reporting rulings, opinions and interpretations.

To the extent that there is confusion regarding the state board's role versus outside agencies such as CAPTE on setting licensure requirement standards, the following should be instructional. [The](#)

[Model Practice Act for Physical Therapy, 4th Edition \(MPA\)](#), reflective of most jurisdictions' state board powers and duties, is used as a guide here.

Article 3, *Examination and Licensure*, sets out the typical powers of the licensing board and its right and prerogative to determine requirements for licensure. Such power is derived from the legislative grant as noted in Article 2.02 of the MPA, *Powers and Duties of the Board*, again fairly consistent with most state laws relating to board powers. See Section 2.02, Paragraphs 1, 2 and 3. Paragraphs 1 and 2 particularly, summarize the state board's overall power to "evaluate the qualification of applicants for licensure" and Paragraph 2, "provide for the examination of physical therapists and physical therapist assistants."

This mandate is carried over in Article III, Section 3.01A: "The board shall provide for examinations...." Similarly, in Section 3.02A, licensure requirements lie with the board and not a non-governmental agency, such as CAPTE. The applicant in 3.02A.2 must "submit proof of graduation from a professional physical therapy program accredited by a national accrediting agency, ***approved by the board***" (Emphasis added). Section 3.02A.3 states, "pass the examination ***approved by the board***." The confusion on this issue may emanate from the fact that CAPTE ***accredits educational programs*** (emphasis added) for physical therapy educational programs, but clearly does not establish the licensure requirements for a physical therapist. As noted above, the establishment of licensure requirements and standards rest with the state based on powers delegated by a state legislature. The scope of duties of a non-state-related entity, like CAPTE, and the power of a state licensing board or agency appear mutually exclusive in this regard.

Finally, it is very important for the jurisdictions, perhaps working with the professional associations, to ensure that the state licensing agency has the requisite powers and duties in their statutes, regulations and rules to properly administer and regulate the licensure of physical therapy. The guidance proffered in the MPA to accomplish proper regulation and administration is an excellent compilation of these elements and is constantly being updated.

J. Kent Culley, Esq., of the Pittsburgh firm of Tucker Arensberg, PC, has been retained as FSBPT Counsel for legislative and regulatory affairs since July 1994. With more than two decades of experience in this special area, he has consulted with more than half of the states, either for the licensure board or the APTA state chapters. This unique background has provided him with experience in a wide array of licensure issues.