Mississippi State Board of Physical Therapy

Regulations Governing Licensure of Physical Therapists and Physical Therapist Assistants

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Regulations Governing Licensure of Physical Therapists and Physical Therapist Assistants

I. General

1-1. Purpose:

The purpose of these regulations is to safeguard the public's health, safety, and welfare by establishing minimum qualifications and creating exclusive titles corresponding to the level of qualifications for individuals who wish to offer physical therapy services to the public. Further, in order to insure the highest degree of professional conduct by those engaged in offering physical therapy services to the public, it is the purpose of these regulations to provide and impose disciplinary sanctions, be they civil or criminal, against persons who do not meet or adhere to the procedures, qualifications, and standards set out in these regulations.

1-2. Legal Authority:

The Mississippi State Board of Physical Therapy is authorized to establish and enforce these rules and procedures by virtue of the "Mississippi Physical Therapy Practice Law," Sections 73-23-31 et seq. of Mississippi Code of 1972, annotated.

1-3. Definitions:

The following terms shall have the meaning set forth below, unless the context otherwise requires:

1. "Board" shall mean the Mississippi State Board of Physical Therapy.

2. "License" shall mean the document of licensure issued by the Board.

3. "Act" shall mean the "Mississippi Physical Therapy Practice Law" sections 73-23-31 et seq. of Mississippi Code of 1972, annotated.

4. "Examination" shall mean a national examination approved by the Board for the licensure of a Physical Therapist or a Physical Therapist Assistant.

5. "Physical therapy" or "physiotherapy," are terms that are deemed identical and interchangeable, means the art and science of a health specialty concerned with the prevention of disability, and the physical rehabilitation for congenital or acquired physical or mental disabilities, resulting from or secondary to injury or disease.

6. "Practice of physical therapy" shall mean the practice of the health specialty and encompass physical therapy evaluation, treatment, planning, treatment administration, instruction, and consultative services, including but not limited to:

    1. Performing and interpreting tests and measurements as an aid to physical therapy treatment, for the purpose of correcting or alleviating any physical condition and to prevent the development of any physical or mental disability within the scope of physical therapy; and the performance of neuromuscular-skeletal tests and measurements as an aid in diagnosis, evaluation, or determination of the existence of and the extent of any body malfunction and to assess ongoing effects of intervention.

    2. Planning initial and subsequent treatment programs, on the basis of test findings; and

    3. Administering treatment by therapeutic exercise, neuro-developmental procedures, therapeutic massage/manual therapy, mechanical devices and therapeutic agents, which employ the physical, chemical and other properties of air, water, heat, cold, electricity, sound and radiant energy for the purpose of correcting or alleviating any physical condition or preventing the development of any physical or mental disability.

7. "Physical therapist (PT)" means a person licensed in this state to practice physical therapy as defined in these regulations, and whose license is in good standing.

8. "Physical therapist assistant (PTA)" means a person who is licensed in this state and who assists a physical therapist in the provision of physical therapy under the direct, on-site supervision of the physical therapist. The physical therapist assistant may perform physical

therapy procedures and related tasks that have been selected and delegated by the supervising physical therapists, but shall not perform the following physical therapy activities: interpretation of referrals; physical therapy initial evaluation/screening and reevaluation; identification, determination or modification of plans of care (including goals and treatment programs); final discharge assessment/ evaluation or establishment of the discharge plan; or therapeutic techniques beyond the skill and knowledge of the physical therapist assistant.

9. "Referral" means the written or oral designation of physical therapy services by a doctor of medicine, dentistry, osteopathy, podiatry, or chiropractic, or by a nurse practitioner, holding a license in good standing under the laws of the state of Mississippi, another state, a territory of the United States, or the District of Columbia. The instruction may be as detailed or as general as the doctor or nurse practitioner in his or her sound discretion deems necessary in the particular case.

10. "Direct, on-site supervision" means face-to-face oversight by a licensed physical therapist at regular intervals, as prescribed in these regulations adopted by the Board, of the services provided to a patient by a licensed physical therapist assistant.

11. "Direct supervision" means face-to-face oversight at regular intervals of a physical therapist issued a temporary license under section 3-4.1 of these regulations by a licensed physical therapist.

12. "Face-to-face" means within each other's sight or presence at regular intervals.

13. "Regular intervals" means every sixth treatment day or fourteenth calendar day, whichever comes first.

1-4. Publication:

The Board shall publish, annually, a list of the names and addresses of all persons licensed by the Board as physical therapists and physical therapist assistants and a list of all persons whose licenses have been suspended, revoked, denied renewal, put on probationary status, censured, or reprimanded.

II. State Board of Physical Therapy "Board"

2-1. Board Structure and Purpose:

The Board shall consist of seven (7) members as set forth in the Act, i.e., four (4) licensed physical therapists, one (1) licensed physical therapist assistant, one (1) licensed physician, and one (1) consumer at large, for the terms indicated therein. The purpose of the Board is the administration and interpretation of the Act.

2-2. Meetings:

The Board shall meet at least once each quarter and those meetings shall be held in compliance with the Open Meetings Law (Section 25-41-1, et seq.). Additional meetings may be held, at the discretion of the chairman of the Board or at the request of four (4) members of the board, upon ten (10) days written notice to the Board members. A quorum shall consist of four (4) members of the Board, including the chairman, and shall be necessary for the Board to take action by vote.

2-3. Responsibilities:

The Board shall have the following powers and duties:

1. To examine and determine the qualifications and fitness of application for licenses to practice physical therapy and licenses to act as physical therapist assistants in this state, provide for and approve all examinations of applicants for licensure;

2. To issue, renew, deny, suspend, or revoke licenses to practice physical therapy and licenses to act as physical therapist assistants in this state or otherwise discipline licensed physical therapists and physical therapist assistants;

3. To investigate alleged or suspected violations of the provisions of the act or other laws of this state pertaining to physical therapy and any rules and regulations adopted by the board; for this purpose any authorized agents of the board shall have the power and right to enter and make reasonable inspection of any place where physical therapy is practiced, and may inspect and/or copy any records pertaining to clients or the practice of physical therapy under the act;

4. To establish reasonable fees for application for examination, certificates of licensure and renewal and other services provided by the board;

5. To adopt, amend or repeal any rules or regulations necessary to carry out the purposes of the act and the duties and responsibilities of the board, in accordance e with Section 25-43-1 et seq.;

6. To hire appropriate support personnel to carry out the provisions of the Act;

7. Keep a record of all proceedings of the Board, and make said records available to the public; and

8. To promulgate and implement rules and procedures to carry out the purpose of the Act.

9. To maintain a register listing the name of every physical therapist and physical therapist assistant licensed to practice in this state, his/her last known place of business and last known place of residence, and the date and number of his/her license. At least once a year, compile a list of physical therapists and physical therapist assistants licensed to practice in Mississippi and make the list available to any person upon application to the Board and the payment of such charges as may be fixed upon it.

10. Subject to any confidentiality provisions established by law, make all written final orders available for public inspection and copying and index them by name and subject.

11. Subject to any confidentiality provisions established by law, when and if declaratory opinions are required by state law, make all declaratory opinions available for public inspection and copying and index them by name and subject, unless information contained within such opinions is confidential by statute or exempt from public disclosure pursuant to another provision of law.

2-4. Method of Operation:

The Mississippi State Board of Physical Therapy, hereinafter "[Board]" is created pursuant to Miss Code Ann. §§ 73-23-1, et. seq., as amended, in order to examine and determine the qualifications and fitness of applicants for licenses to practice physical therapy and to practice as physical therapist assistant; to issue, renew, deny, suspend, and revoke licenses; to investigate and inspect, pursuant to the law, and regulate licensure of physical therapists and physical therapist assistants; to establish licensure and examination, fees, pursuant to the law; adopt and amend rules and regulations; hire support personnel; but not limited thereto, and in order to conduct licensure and regulation of physical therapists and physical therapist assistants.

The board's office is located at 625 Lakeland East Drive, Suite F., Flowood, MS. 39232. The website is www.msbpt.state.ms.us. The phone number is (601) 939-5124 and the fax number is (601) 939-5246.

[required by 25-43-2.104]

III. Licensure

3-1. Licensure Requirements:

An applicant for a regular license as a physical therapist or physical therapist assistant shall submit to the Board, verified by oath, written evidence in form and content satisfactory to the Board that the applicant:

1. Is of good moral character;

2. Has graduated from a physical therapist or a physical therapist assistant program accredited by an agency recognized by the US Department of Education, Office on Postsecondary Education and has paid an application feel not to exceed double the price of the examination, no part of which shall be refundable.

3. Has passed an examination approved by the Board with the minimum passing score set by the Board and published annually; and

    1. Any applicant for licensure who has failed the examination two times must complete a Mississippi State Board of Physical Therapy approved remedial training plan prior to sitting for the

exam again.

2. The remedial training requirement is applicable regardless whether the examination was taken in Mississippi or other jurisdictions.

3. An applicant who has taken the exam more than five times in any jurisdiction and who is not licensed is not eligible to sit for the examination in Mississippi.

4. Has paid the required fee(s);

5. Has valid social security number; and

6. Effective July 2008 applicants for licensure must pass the board's jurisprudence exam.

3-2. Licensure by Reciprocity:

An applicant for licensure by reciprocity shall submit to the Board, verified by oath, written evidence in form and content satisfactory to the Board that:

1. The applicant has a valid unrestricted license from another jurisdiction of the United States.

2. That the requirements for said license are equivalent to or greater than those required in this state as set forth in sections 3-1 and 3-3 of these regulations; and

3. That said license is in good standing and has not been suspended or revoked.

3-3. Foreign Trained Individuals:

An applicant for licensure who has been trained as a physical therapist in a foreign country, and desires to be licensed pursuant to the laws of the State of Mississippi, shall submit to the Board, verified by oath, in form and content satisfactory to the Board:

1. That the applicant is of good moral character;

2. That the applicant holds a diploma from an educational program for

physical therapists approved by the Board;

3. Documentary evidence that the educational program is substantially equivalent to that required of a non-foreign trained applicant for licensure; for the purpose of this section "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:

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

    2. Provide written proof that the applicant's school of physical therapy education is recognized by its own ministry of education.

    3. Undergone credentials evaluation as directed by the Board that determines the candidate has met uniform criteria for educational requirements as further established by rule.

    4. Completed any additional education as required by the Board.

    5. Passed the Board approved English proficiency examinations if the applicant's native language is not English.

    6. Passed the examination approved by the Board.

4. Not withstanding the provisions in the above section, if the applicant is educated outside the United States and is a graduate of a professional physical therapy educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in Section 3-3, paragraph 3.

5. Until and including December 31, 2006, Demonstrable proficiency in the English language by passing all of the following English language examinations with scores to be determined by the Board:

    1. Minimum scores of:

        1. 4.5 on the Test of Written English (TWE); and

2. 50 on the Test of Spoken English (TSE); and

3. 220 on the computer based Test of English as a Foreign Language (TOEFL) or 560 on the paper based TOEFL; and

2. Effective January 1, 2007, evidence of successful completion of a board approved English proficiency examination:

1. Minimum scores on the TOEFL iBT:

1. 24 on the writing section;

2. 26 on the speaking section;

3. 21 on the reading section; and

4. 18 on the listening comprehension section

The Board reserves the right to require a personal interview with any applicant for final determination of the exemption request.

3-4. Temporary License:

1. A temporary license to practice as a physical therapist or physical therapist assistant may be granted to an applicant for licensure meeting the requirements of section 3-1 or 3-3 who has registered for the exam in this state but has not taken the approved examination or has not received the results of the examination, subject to the conditions of section 3-5.

2. A temporary license to practice as a physical therapist or physical therapist assistant may be granted to a physical therapist or physical therapist assistant licensed in another state who is moving into the state, provided the application for Mississippi licensure is pending and the current license is in good standing. This temporary license will be granted for a period not to exceed sixty (60) days pending receipt of documentation necessary to issue a license by endorsement.

3-5. Conditions of Temporary Licensure Issued under Section 3-4-1:

1. A temporary license shall be granted for a period not to exceed ninety (90) days beyond the date of the next scheduled examination.

2. A temporary licensee shall restrict his practice to the State of Mississippi.

3. 1. A physical therapist temporary licensee shall practice under the direct supervision of a physical therapist licensed in Mississippi. Direct supervision in this case shall mean:

    1. Daily face to face communication between the supervising physical therapist and temporary licensee; and,

    2. On premises observation of patient care in each of the temporary licensee's practice settings, a minimum of two (2) hours per day.

    3. Availability of the supervising therapist via telecommunications when he or she is not on premises.

   2. A physical therapist assistant temporary licensee shall practice under the direct on-site supervision of a physical therapist licensed in Mississippi. Direct, on-site supervision in this case shall mean:

    1. Daily face to face communication between the supervising physical therapist and temporary licensee; and,

    2. On premises observation of patient care in each of the temporary licensee's practice settings, a minimum of two (2) hours per day.

    3. Availability of the supervising therapist via telecommunications when he or she is not on premises.

4. A temporary licensed physical therapist may not supervise any licensed physical therapist or physical therapist assistant.

5. Documentation in form and substance acceptable to the Board that the conditions of section 3-5.3 have been met must be on file with the Board before a temporary license will be issued.

6. The license of a temporary licensee who is required to take the approved examination and fails to take said examination will be deemed revoked as of the date the examination is given.

7. The license of a temporary licensee who does not pass the approved examination will be deemed to be revoked on the date that the results of the examination are released.

8. A temporary license will not be issued to any individual who has had a temporary license revoked pursuant to the provisions of these regulations.

9. Any person who has taken but not passed the required examination in this or another jurisdiction shall not be eligible for a license of any type until an approved examination is passed.

3-6. Inactive Status:

1. Inactive status indicates the voluntary termination of the right or privilege to practice physical therapy in Mississippi. The board may allow a licensee who is not actively engaged in the practice of physical therapy in Mississippi to inactivate the license instead of renewing it at the time of renewal. A licensee may remain on inactive status for no more than six consecutive years. After the six year period of inactive status the licensee must comply with 6-4 in order to reinstate his/her license.

2. Requirements for initiation of inactive status. The following is required to put a license on inactive status:

    1. A signed renewal application form, documenting completion of board approved continuing education (CE) for the current renewal period, as described in Section 7-4 of the Regulations;

    2. The inactive fee, and any late fees which may be due; and

    3. A passing score on the jurisprudence exam effective July 2008.

3. Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every two years. The components required to maintain the inactive status are:

    1. A signed renewal application form, documenting completion of board approved continuing education (CE) for the current renewal period, as described in Section 7-4 of the Regulations;

    2. The inactive renewal fee, and any late fees which may be due; and

    3. A passing score on the jurisprudence exam effective July 2008.

4. Requirements for reinstatement of active status and must otherwise comply with the law, rules and regulations. A licensee on inactive status may request a return to active status at any time. After the licensee has submitted a complete application for reinstatement, the board will send a renewal certificate for the remainder of the current renewal period to the licensee.

    1. The components required to return to active status are:

        1. A signed renewal application form, documenting completion of board approved continuing education (CE) for the current renewal period;

        2. The renewal fee, and any late fees which may be due; and

        3. A passing score on the jurisprudence exam effective July 2008.

    2. The board will allow the licensee to substitute one of the following actions for the continuing education requirements:

        1. Re-take and pass the national licensure exam;

        2. Attend a university review course pre-approved by the board; or

        3. Complete an internship (equal to 150 hours of continuing education) pre-approved by the board.

3-7. Licensees called to Active Military Service:

1. Renewal:

1. A licensee who is a member of the reserves and called to active military service must submit renewal fees within 90 days after active service has ended if their license expired within the months of active service. The regular renewal period will not change. The licensee must submit official documentation of active service and its inclusive dates.

2. Continuing education units (CEUs):

    1. A licensee who is a member of the reserves and called to active military service will have his/her CEUs prorated in proportion to the number of months of documented active service.

    2. A licensee whose license expires during the period of active service will be given a complete waiver of CEUs for the past renewal period, and CEUs for months of documents active service in the current renewal cycle will be prorated.

    3. All licensees must take two hours of board-approved programs in ethics and professional responsibility as part of their total CE requirement, which cannot be prorated.

3-8. Address/Name Change:

1. Change of Address – Each person holding a license who has had a change of address shall file in writing with the board his/her current mailing address, giving both old and new addresses. Such notification should be received in the board's administrative office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, and license number.

2. Change of Name - An individual licensed with the board shall notify the board in writing within thirty (30) days of a name change. The notice shall provide both the old and new name, a notarized photocopy of the official document involved, and must reference the individual's profession and license number.

The cost of resending any correspondence or materials will be born by the licensee.

3-9. Abandonment:

An application shall be deemed abandoned by the Board if, after one (1) year from the date of filing, the requirements for licensing have not been completed and submitted to the Board.

IV. Professional Identification

4-1. Professional Titles and Abbreviations:

The preferred title for use by the licensed physical therapist is the initials PT. The licensed physical therapist assistant may use the title PTA.

A person issued a license to practice pursuant to the Act by the Mississippi State Board of Physical Therapy may use the titles physiotherapist, licensed or registered physical therapist, licensed or registered physical therapist assistant, and the abbreviations PT, DPT,LPT,RPT and PTA or LPTA, depending upon the license issued by the Board.

It shall be unlawful for any person, or business entity, its employees, agents or representatives to in any manner, represent himself/herself or itself as a physical therapist, a physical therapist assistant or someone who provides physical therapy services, or use in connection with his

or its name the words or letters physiotherapist, registered or licensed physical therapist, PT, RPT, licensed physical therapist assistant, LPTA, PTA, or any other letters, words, abbreviations or insignia, indicating or implying that he or it is a physical therapist, a physical therapist assistant, or provides physical therapy services, without a valid existing license as a physical therapist or as a physical therapist assistant, as the case may be, issued to that person. It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services.

4-2. Production and Display of License:

A person licensed to practice physical therapy in Mississippi shall be issued a "Certificate of Licensure" and "License Identification Card." The licensee shall prominently display the "Certificate of Licensure" or copy thereof at their place(s) of employment. The licensee shall carry the "License Identification Card" with them at all times and show said ID card when requested.

4-3. Consumer Information Sign:

There should at all times be prominently displayed in the place of business each licensee a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees can be directed to the board. The consumer information sign shall read: Complaints regarding non-compliance with the Mississippi Physical Therapy Practice Act can be directed to the Mississippi State Board of Physical Therapy, P.O. Box 55707, Phone: (601) 939-5124, Fax: (601) 939-5246, Email: info@msbpt.state.ms.us. The minimum size of the sign shall be 6 inches by 8 inches.

V. Practice

5-1. Referrals

1. Physical Therapist may evaluate or provide wellness fitness without a referral.

2. A physical therapist licensed under the physical therapy law shall not perform physical therapy services without a prescription or referral from a person licensed as a physician, dentist, osteopath, podiatrist, chiropractor or nurse practitioner. However, a physical therapist may

perform physical therapy services without a prescription or referral under the following circumstances:

1. To children with a diagnosed developmental disability pursuant to the patient's plan of care.

2. As part of a home health care agency pursuant to the patient's plan of care.

3. To a patient in a nursing home pursuant to the patient's plan of care.

4. Related to conditioning or to providing education or activities in a wellness setting for the purpose of injury prevention, reduction of stress or promotion of fitness.

5. To an individual for a previously diagnosed condition or conditions for which physical therapy services are appropriate after informing the health care provider rendering the diagnosis. The diagnosis must have been made within the previous one hundred eighty (180) days. The physical therapist shall provide the health care provider who rendered the diagnosis with a plan of care for physical therapy services within the first fifteen (15) days of physical therapy intervention.

VI. Renewal of License

6-1. General Provisions:

1. The Board shall issue licenses which shall be subject to biennial renewal.

2. The licensure period shall be construed as July 1 through June 30 of odd-numbered years for persons whose surnames begin with A through L and the licensure period shall be construed as July 1 through June 30 of even-numbered years for persons whose surnames begin with M through Z. For one time only during 2005, those persons whose surnames begin with M through Z would renew for only one year, and thereafter every two years on even-numbered years.

6-2. Procedure for Renewal of License:

The Board shall mail notices, approximately sixty (60) days prior to the end of the licensure period, to the last home address registered with the Board, to the persons to whom licenses were issued or renewed during the preceding licensure period. The licensee shall:

1. Complete the renewal form;

2. Submit proof of continuing education credit as detailed in Section VII of these regulations;

3. Enclose the renewal fee; and

4. File the above with the Board prior to the end of the licensure period.

5. Renewal applications filed or postmarked after June 30 are subject to a late fee of $150.00.

6-3. Failure to Renew:

A licensee who does not file, with the Board, all requirements for renewal before the end of the licensure period will be deemed to have allowed his license to lapse. Failure to submit all renewal requirements postmarked on or before September 30 shall result in the necessity of the payment of a reinstatement fee in addition to the late fee and renewal fee. Said license may be reinstated by the Board, in its discretion, by the payment of the renewal fee, the late fee, a reinstatement fee and the required continuing education hours provided said application for reinstatement is made within two (2) years after its last expiration date.

A license may not be reinstated after having lapsed for two (2) consecutive years. A new application must be made and the licensure regulations in effect at that time must be met.

6-4. Expired License:

1. Any person whose license has been expired for more than five years may apply for licensure upon the payment of an application & license fee with the following conditions:

   1. Licensee will be subjected to a three (3) month supervisory period;

   2. Licensee may only practice under the direct on-site supervision of a currently Mississippi licensed physical therapist;

   3. Shall restrict his/her practice to the State of Mississippi;

   4. Supervision agreement must be on file and satisfactory to this office prior to the license being issued. The supervision agreement shall be enforce for the entire three (3) month supervisory period. This licensee may only practice in the facilities and under the supervision of the licensed physical therapist listed on the supervision agreement of file in this office. Any changes in practice sites and /or supervisors must be reported to this office on a supervision agreement prior to the change taking place. At the end of the supervisory period the supervising physical therapist shall report to the board completion of satisfactory or unsatisfactory supervision period. If an unsatisfactory supervision period is reported by the supervising physical therapist, the board, in its discretion may require an additional three (3) month supervisory period;

   5. During the supervisory period the supervised physical therapist/physical therapist assistant shall not supervise any currently licensed physical therapist or physical therapist assistant;

   6. Complete prescribed remedial courses as approved by the board.

VII. Continuing Education

7-1. Definition and philosophy:

Each individual licensed as a physical therapist or physical therapist assistant is responsible for optimum service to the consumer and is accountable to the consumer, the employer, and the profession for evidence of maintaining high levels of skill and knowledge. Continuing education is defined as education beyond the basic preparation required for entry into the profession, directly related to the performance and practice of physical therapy.

7-2. Requirements:

1. Regulations set the requirement of 24 contact hours (CH) or 2.4 Continuing Education Units (CEU) to be accrued during the licensing period (July 1- June 30). No carryover of continuing education hours from one licensure period to another shall be allowed. At least 25 percent (6 Contact Hours or .6 CEUs) of the required continuing education must be directly related to the clinical practice of physical therapy. CE hours claimed as clinical may need to be reviewed if considered questionable. Effective July 2008, all licensees must take two hours of board-approved programs in ethics/professional responsibility as part of their total CE requirements.

2. Individuals applying for initial licensure within a licensing period must accrue continuing education hours on a prorated scale. Written notification of required hours will be sent to the applicant at the time of licensure.

3. Persons who fail to accrue the required continuing education hours shall be issued a probationary license for one licensure period only. No ensuing license may be probationary as a result of not meeting continuing education requirements. Failure to accrue the required hours during the CE probationary period will result in the revocation of the license. Hours accrued are first credited for the delinquent hours lacking from the previous licensure period, and then applied to the current (probationary) licensing term.

4. Licensees who have accrued the required CE hours within the licensure period but who have not received proof of course completion from CE providers or who have lost or misplaced proof shall be granted 90 days from expiration of licensure in which to provide the

board with proof of completion of courses. Failure to provide proof within 90 days will result in license being placed on CE probationary status for the entire licensure period.

NOTE: Reinstatement of a license revoked for failure to meet continuing education requirements is subject to the discretion of the Board. If said license is permitted to be reinstated, the renewal fee, the late fee, and the reinstatement fee as stated in Section XII of these regulations will be required.

7-3. Content Criteria:

The content must apply to the field of physical therapy and performance and must be designed to meet one of the following goals:

1. Update knowledge and skills required for competent performance beyond entry level of the physical therapist/physical therapist assistant at the time the individual entered the profession as described in current legislation and regulations.

2. Allow the licensee to enhance his/her knowledge and skills.

3. Provide opportunities for interdisciplinary learning.

4. Extend limits of professional capabilities and opportunities.

5. Facilitate personal contributions to the advancement of the profession.

7-4. Sources of Continuing Education:

Continuing education hours may be accrued from the following sources, when the content of the programs relates to the profession of physical therapy:

1. 1. Attendance at educational programs, where continuing education credit is given and approved by any Physical Therapy licensure jurisdiction in the United States;

   2. Attendance at educational programs where continuing education credit is given and approved by the American

Physical Therapy Association (APTA), the Mississippi Physical Therapy Association (MPTA), or any other state Physical Therapy Association educational programs;

3. Attendance at educational programs where continuing education credit is given and approved by the American Medical Association (AMA) and its components;

4. Attendance at other programs approved for continuing education credit by MPTA, APTA, AMA, or their components; or

5. Attendance at educational programs where continuing education credit is given and approved by accredited universities.

2. Presentations, made before physical therapists, medical practitioners, or other health related professionals and directly related to the profession of physical therapy. To be considered for continuing an education credit, material outline and a synopsis must be submitted to the Board prior to the presentation date. Notice of approval or disapproval will be sent following a review by the Board. For approved presentations, the presenter may accrue one (1) hour of continuing education credit for each hour of the actual presentation, and one (1) hour of preparation time, for a total of (2) two hours. Presenter credit is given one (1) time only, even though the session may be presented multiple times. No more than 25% of total required hours may be accrued through presentations.

3. 1. Academic course work taken for credit from a regionally accredited college or university may be used. The courses must relate to the profession of physical therapy. One academic semester hour shall be equivalent to fifteen (15) clock hours for continuing education credit. No more than 50% of total required hours may be accrued through academic course work. Courses must be on the graduate level for physical therapists. Undergraduate courses are acceptable for physical therapist assistants.

2. Academic course work taken by a physical therapist/physical therapist assistant for credit toward an advanced degree in physical therapy may be counted as meeting the full continuing

education requirements.

4. Home Study Courses approved by an organization in section 7-4.1.2.3

5. Specific **UNACCEPTABLE** activities include:

    1. All in-service programs not approved under Section 7-4.1.2.4 of these regulations.

    2. Orientation to specific work-site programs dealing with organizational structures, processes, or procedures.

    3. Meetings for purposes of policy decision.

    4. Non-educational meetings at annual conferences, chapter or organizational meetings.

    5. Entertainment or recreational meetings or activities.

    6. Committee meetings, holding of office, serving as an organizational delegate.

    7. Visiting exhibits or poster presentations.

    8. CPR education.

    9. Self-directed studies other than those previously outlined.

7-5. Reporting Procedures for Continuing Education:

Proof of program approval by an organization listed in section 7-4.1.2.3.4 must be submitted with the certificate if a recognized approval source is not evident on the CE certificate. It is the responsibility of the licensee to insure that the following criteria are met with respect to continuing education credit:

1. Attendance at seminars, workshops, presentations, etc., approved by an organization listed in section 7-4 1.2 are automatically accepted for credit unless sessions are duplicated. Verification of attendance may be made by submission of a continuing education certificate (must include the source, number of continuing education hours and date of attendance).

2. Credit for presentations: Submit a copy of the Board's approval letter.

3. Academic course work credits must meet the content criteria in Section 7-3, and must be accompanied by a course description from the college or university catalog and a copy of the transcript or final grade report. A minimum course grade of "C" is required for CE credit.

4. Home Study Course: A certificate of completion must be submitted to receive continuing education credit.

7-6. Waiver of Continuing Education Units (CEUs):

CEUs required for renewal of license may be waived or extended by the board if there is a gubernatorial declared emergency.

VIII. Revocation, Suspension, and Denial of License

8-1. Standards of Conduct:

Licensees subject to these regulations shall conduct their activities, services, and practice in accordance with this section. Licensees may be subject to the exercise of the disciplinary sanctions enumerated in Section 8-6 of these regulations if the Board finds that a licensee is guilty of any of the following:

1. Negligence in the practice or performance of professional services or activities.

2. Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities.

3. Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same.

4. Being convicted of any crime, which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud, or dishonesty.

5. Being convicted of any crime, which is a felony under the laws of this

state or the United States.

6. Engaging in or permitting the performance of unacceptable services personally or by others working under the licensee's supervision due to the licensee's deliberate or negligent act or acts or failure to act, regardless of whether actual damage or damages to the public are established.

7. Continued practice although the licensee has become unfit to practice as a physical therapist or physical therapist assistant due to:

    1. Failure to keep abreast of current professional theory or practice; or

    2. Physical or mental disability; the entry of an order or judgment by a court of competent jurisdiction that a licensee is in need of mental treatment or is incompetent shall constitute mental disability; or

    3. Addiction or severe dependency upon alcohol or other drugs which may endanger the public by impairing the licensee's ability to practice.

8. Having disciplinary action taken against the licensee's license in another state.

9. Making differential, detrimental treatment against any person because of race, color, creed, sex, religion or national origin.

10. Engaging in lewd conduct in connection with professional services or activities.

11. Engaging in false or misleading advertising.

12. Contracting, assisting, or permitting unlicensed persons to perform services for which a license is required under these regulations.

13. Violation of any probation requirements placed on a license by the Board.

14. Revealing confidential information except as may be required by law.

15. Failing to inform clients of the fact that the client no longer needs the services or professional assistance of the licensee.

16. Charging excessive or unreasonable fees or engaging in unreasonable collection practices.

17. For treating or attempting to treat ailments or other health conditions of human beings other than by physical therapy as authorized by these regulations.

18. Except as authorized in Section V, for applying or offering to apply physical therapy, exclusive of initial evaluation or screening and exclusive of education or consultation for the prevention of physical and mental disability within the scope of physical therapy, other than upon the referral of a licensed physician, dentist, osteopath, podiatrist, chiropractor, or nurse practitioner, or for acting as a physical therapist assistant other than under the direct, on-site supervision of a licensed physical therapist.

19. Violations of the current codes for physical therapists and physical therapist assistants adopted by the American Physical Therapy Association.

20. Violations of any rules or regulations promulgated pursuant to these regulations.

21. Has engaged in any conduct considered by the Board to be detrimental to the profession of physical therapy.

22. The Board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding. Failure to comply with a board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Section 8-2 of these regulations.

23. The board is authorized by Section 93-11-153 of the Mississippi Code to suspend the license of any licensee being out of compliance with an order for support. The procedure for the suspension of a license for being out of compliance with an order for support, and the procedure for the re-issuance or reinstatement of a license suspended for that

purpose, and the payment of any fees for the re-issuance or reinstatement of a license suspended by that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

8-2. Summary Suspension:

1. The Board may summarily suspend a license without a hearing, simultaneously with the filing of a formal complaint and notice of hearing, if the Board determines that:

    1. The health, safety, or welfare of the general public is in immediate danger; or

    2. The licensee's physical capacity to practice his/her profession is in issue; or

    3. The licensee's mental capacity to practice his/her profession is in issue.

2. If the Board summarily suspends a license, a hearing must begin within twenty (20) days after such suspension begins, unless continued at the request of the licensee.

8-3. Complaints:

All complaints concerning a licensee, a business, or professional practice, shall be reviewed by the Board. Each complaint received shall be logged, recording at a minimum the following information:

1. Name of Licensee, organization, business or practice;

2. The name of the complaining party, if known;

3. Date of complaint;

4. Brief statement of complaint; and

5. Disposition.

8-4. Investigation:

All complaints will be investigated by the Board and/or its designated representative(s) and evaluated by the Board.

8-5. Notice of Charges and Hearing:

1. Following the investigative process, the Board may file formal charges against the licensee. Such formal complaint shall, at a minimum, inform the licensee of the facts which are the basis of the charge and which are specific enough to enable the licensee to defend against the charges.

2. Each licensee, whose conduct is the subject of a formal charge which seeks to impose disciplinary action against the licensee, shall be served notice of the formal charge at least thirty (30) days before the date of hearing. A hearing shall be presided over by the Board or the Board's designee. Service shall be considered to have been given if the notice was personally received by the licensee, or the notice was mailed certified, return receipt requested, to the licensee at the licensee's last known address as listed with the Board. The notice of the formal hearing shall consist at a minimum of the following information:

    1. The time, place and date of hearing;

    2. That the licensee shall appear personally at the hearing and may be represented by counsel;

    3. That the licensee shall have the right to produce witnesses and evidence in the licensee's behalf and shall have the right to cross-examine adverse witnesses and evidence;

    4. That the hearing could result in disciplinary action being taken against the licensee's license;

    5. That rules for the conduct of these hearings exist and it may be in the licensee's best interest to obtain a copy; and

6. That the Board, or its designee, shall preside at the hearing and following the conclusion of the hearing shall make findings of facts, conclusions of law and recommendations, separately stated, to the Board as to what disciplinary action, if any, should be imposed on the licensee.

7. The Board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding. Failure to comply with a board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Section 8-2 of these regulations.

8. The Board or its designee shall hear evidence produced in support of the formal charges and contrary evidence produced by the licensee. At the conclusion of the hearing, the Board shall issue an order, within sixty (60) days.

9. Disposition of any complaints may be made by consent order or stipulation between the Board and the licensee.

10. All proceedings pursuant to this section are matters of public record and shall be preserved pursuant to state law.

11. The board or its designee shall conduct all administrative hearings in contested cases that are before the board.

    1. Transcript of Hearing. Each hearing will be recorded by a court reporter. The cost of the transcription shall be born by the person making the request.

8-6. Sanctions:

The Board may impose any of the following sanctions, singly or in combination, when it finds that a licensee is guilty of any of the above offenses:

1. Revoke the license.

2. Suspend the license, for any period of time.

3. Censure the licensee.

4. Impose a monetary penalty of not more than two hundred Dollars ($200.00) per violation or offense.

5. Place a licensee on probationary status and require the licensee to submit to any of the following:

    1. Report regularly to the Board, or its designee, upon matters which are the basis of probation;

    2. Continue to renew professional education until a satisfactory degree of skill has been attained in those areas which are the basis of probation; or

    3. Such other reasonable requirements or restrictions as are proper.

6. Refuse to renew a license.

7. Revoke probation which has been granted and impose any other disciplinary action in this subsection when the requirements of probation have not been fulfilled or have been violated.

8. The Board may reinstate any licensee to good standing under this chapter if, after hearing, the board is satisfied that the applicant's renewed practice is in the public interest.

8-7. Appeals:

Any person aggrieved by a decision of the Board shall have a right of appeal in the manner provided for in the Act and the Laws of the State of Mississippi.

IX. Exceptions and Exemptions

9-1. Exceptions:

No person shall practice physical therapy or represent himself/herself to be a physical therapist or physical therapist assistant unless he/she is licensed by the Board, except as otherwise provided in this section.

1. Students enrolled in accredited physical therapy educational programs, while engaged in completing a clinical requirement for graduation, which must be performed under direct clinical supervision. Direct clinical supervision shall mean under the direct control of a clinical instructor of the physical therapy program in which the student is enrolled, or his/her designee. The clinical instructor or his/her designee must be a licensed physical therapist in the state of Mississippi, and shall be readily accessible and accountable at all times when physical therapy services are being provided by the student.

2. Physical therapists licensed in other jurisdictions while enrolled in graduate educational programs in this state that include the evaluation and treatment of patients as part of their experience required for credit, so long as the student is not at the same time gainfully employed in this state as a physical therapist;

3. Practitioners of physical therapy employed in the United States Armed Services, United States Public Health Service, Veterans Administration or other federal agency; however, if such individual engages in the practice of physical therapy outside of the scope of official duty, he must be licensed as herein provided;

4. Physical therapists or physical therapist assistants licensed in other jurisdictions who are teaching or participating in physical therapy education projects, demonstrations or courses in this state, or providing physical therapy services to visiting established athletic organizations, performing arts companies or volunteering to provide services to competitors in events such as the Olympics or dance competitions in which their participation in the treatment and/or evaluation of patients is minimal.

5. Schools, YMCAs, athletic clubs and similar organizations furnishing services to their players and members, provided that they do not represent themselves as physical therapists, as physical therapist assistants, or as providing physical therapy services;

6. The performance by any person of simple mechanical or machine assisted acts in the physical care of a patient, not requiring the knowledge and skill of a physical therapist under the order or direction of a licensed doctor of medicine or dentistry or of a physical therapist assistant under the direct, on-site supervision of a licensed physical therapist.

7. Nothing in these regulations is intended to limit, preclude, or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of the State of Mississippi.

8. A physical therapist or physical therapist assistant who is licensed in a jurisdiction of the United States and who enters this state to provide physical therapy during a lawfully declared local, state or national disaster or emergency. This exemption applies for no longer than 60 days or the period prescribed by the board following the declaration of the emergency. In order to be eligible for this exemption the physical therapist or physical therapist assistant shall:

    1. Notify the board in writing of their intent to practice;

    2. Shall provide a copy of their license in good standing;

    3. Shall, if a physical therapist assistant, shall practice only under the supervision of a physical therapist who is duly licensed in the State of Mississippi. Any license who will supervise a person in this category shall provide the board with a schedule indicating when the person will be performing therapy services and with the names of the facilities at which the person will perform the services.

9-2. Good Samaritan Act:

[LEFT BLANK ON PURPOSE]

X. Physical Therapist Assistant

10-1. Definition:

A physical therapist assistant (PTA), as defined in Section I hereinabove, shall be an individual who meets the qualifications and requirements as set forth in Section III of these regulations, and has been issued a license by the Board. The roles and responsibilities of a PTA are:

1. To practice only under the direct, on-site supervision of a physical therapist licensed to practice in Mississippi.

2. To assist with but not perform patient evaluations.

3. To perform treatment procedures as delegated by the physical therapist but not to initiate or alter a treatment plan.

4. To supervise other supportive personnel as charged by the physical therapist.

5. To notify the physical therapist of changes in the patient's status, including all untoward patient responses.

6. To discontinue immediately any treatment procedures which in their judgment appear to be harmful to the patient.

7. To refuse to carry out treatment procedures that they believe to be not in the best interest of the patient.

10-2. Supervision:

Direct, on-site supervision means face-to-face oversight by a licensed physical therapist at regular intervals of services provided by a:

1. Physical therapist assistant issued a regular license or a temporary license per section 3-4 of these regulations as follows:

    1. The supervising physical therapist and the physical therapist assistant must make a joint visit on the first visit by the physical

therapist assistant to implement the treatment plan for a patient. Subsequently, the supervising physical therapist must visit and personally render treatment and reassess each patient who is provided services by the physical therapist assistant no later than every sixth treatment day or fourteenth calendar day, whichever comes first. This visit and any formal communications and conferences between the physical therapist and physical therapist assistant regarding treatment or plan of care changes should be documented in the medical record. When the physical therapist and physical therapist assistant are not continuously within the same physical setting, greater emphasis in directing the physical therapist assistant must be placed upon oral and written reporting. When the supervising physical therapist is not continuously on-site, the physical therapist must be available via telecommunications at all times that the physical therapist assistant is providing treatment.

2. Regardless of the practice setting, the following requirements must be observed when the physical therapist is supervising the physical therapist assistant:

    1. The initial visit for evaluation of the patient and establishment of a plan of care must be made by the supervising physical therapist.

    2. A joint visit must be made by the supervising physical therapist and the physical therapist assistant prior to the physical therapist assistant initiating treatment based on the plan of care. The joint visit may be performed at the initial visit for evaluation by the supervising physical therapist prior to the physical therapist assistant initiating treatment based on the plan of care. The joint visit may be performed at the initial visit for evaluation by the supervising physical therapist.

    3. The supervising physical therapist should assess the final patient treatment at the time of discharge and write a discharge summary.

    4. A supervisory visit should include:

1. A complete functional assessment.

2. Review of activities with appropriate revision or termination of the plan of care.

3. Assessment of utilization of outside resources (whenever applicable).

4. Documentary evidence of such visit.

5. Regardless of the setting, a physical therapist may not supervise more than four (4) physical therapist assistants.

2. Physical therapist assistant issued a temporary license under section 3-4.1.2 of the regulations. Please refer to section 3-5.3.1.

3. The supervision requirements stated in these regulations are minimal. It is the professional responsibility and duty of the licensed physical therapist to provide the physical therapist assistant with more supervision if deemed necessary in the physical therapist's professional judgment.

XI. Criminal Offenses and Punishment

11-1. Offenses:

It is a misdemeanor for any person to:

1. Sell, fraudulently obtain, or furnish any physical therapy license, record, or aid or abet therein.

2. Practice physical therapy under cover of any physical therapy diploma, permit, license, or record illegally or fraudulently obtained or issued.

3. Practice physical therapy or bill for physical therapy services, unless duly licensed to do so by the Mississippi State Board of Physical Therapy.

4. Impersonate in any manner or pretend to be a physical therapist or physical therapist assistant or use the titles protected herein, the

letters protected herein, or any other words, letters, signs, symbols or devices to indicate the person using them is a licensed physical therapist or physical therapist assistant unless duly authorized by license or permit.

5. Practice physical therapy during the time his/her license or permit is suspended, revoked, or expired.

6. Fail to notify the board of the suspension, probation or revocation of any past or currently held licenses, required to practice physical therapy in this or any other jurisdiction.

7. Make false representations or impersonate or act as a proxy for another person or allow or aid any person to impersonate him in connection with any examination or application for licensing or request to be examined or licensed.

8. Otherwise violate any provisions of the Act, or the Regulations promulgated thereto.

11-2. Punishment:

Such misdemeanors shall, upon conviction, be punishable by a fine or by imprisonment or by both fine and imprisonment for each offense, as set forth in the Act.

XII. Fees

12-1. Method of Payment:

In accordance with the Act, the following non-refundable fees, where applicable, are payable to the Mississippi State Board of Physical Therapy check or money order.

12-2. Schedule of Fees:

1. Application Fee..... $125.00

2. Initial License Fee:

    1. Physical Therapist..... $150.00

2. Physical Therapist Assistant..... $125.00

3. Renewal Fee:

1. Physical Therapist..... $150.00

2. Physical Therapist Assistant..... $125.00

4. Late Fee..... $150.00

5. Reinstatement Fee..... $200.00

6. License Certificate Replacement Fee..... $35.00

7. Duplicate License Certificate Fee..... $35.00

8. ID Card Replacement Fee..... $25.00

9. License Verification Fee..... $35.00

10. Examination Registration Fee:

1. Physical Therapist..... $ 50.00

2. Physical Therapist Assistant..... $ 50.00

11. Inactive Status Fee..... $50.00

12. Insufficient Funds Check Fee..... $40.00

13. Mailed Copy of Regulations..... $10.00

14. Failure to Notify Change of Name/Address..... $25.00

12-3. Examination Fee:

Fees for the examination are to be paid to the appropriate examination administrant.

XIII. Public Records Request

All written public records requests pursuant to the statute will be approved or denied in writing within fourteen (14) working days after the request is made.

A document search will be done personally by individual, firm, or their representative requesting reproduction in the presence of the Physical Therapy Board's staff personnel and/or a Board member. Each document will be marked for copying by the searcher. Actual reproduction will be made by the Physical Therapy Board's staff personnel and/or the Board member.

Some documents are exempt as privileged by law and are not available for inspection. Examples are, but not limited to, personnel records, appraisals, attorney communications and work products of attorneys, certain records compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, licensure application and examination records, records maintained by public hospitals, records the release of which would deprive one criminally accused of his constitutional right to a fair trial, test questions and answers in the possession of the Physical Therapy Board and/or its staff personnel which are to be used in future academic examinations, letters of recommendation in the possession of the Board and/or its staff personnel respecting admission to any educational agency or institution or respecting any application for employment, documents relating to contract authorization under 25-9-120, recommendations in the possession of the Board respecting any application for professional license or certificate, records about a person's individual tax payment or status.

All written public records request shall be forwarded immediately by the Board and/or its staff personnel to counsel for the Board for a determination of the availability of the requested information for inspection and copying.

Costs of reproductions and certifications will be payable by the requesting individual, firm or their representative in advance of receipt of any requested documents. The attached schedule of charges and/or fees is being filed with the Secretary of State's Office along with the substance of this rule/regulation.

Charges are as follows:

Xerographic Reproductions:
81/2 x 11" .25/page

81/2 x 14"	.35/page
11 x 17"	.75/page

Microfilm Reproductions:
81/2" x 11" .50/page
Minimum charge of $2.00 per request

Computer Printouts:
11 x 17" Continuous form $1.00/page of reported data

$250.00 for data retrieved from computer file

Charge of $7.50/1000 pages printed with a $7.50 minimum charge

Certification of Documents:
$3.00/First copy or cover letter
$1.00/Each additional page
Minimum charge of $3.00 per request

Additional fees incident to document production may include personnel charges for time expended in the actual searching, reviewing, and/or duplication of documents and, if applicable, the mailing of copies of said public documents.

All denials of document request shall be in writing, shall state reasons for denial.

XIV. ORAL PROCEEDINGS ON PROPOSED RULES

[suggested by 25-43-3.104(2)(d), not mandatory]

1. **Scope**. This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the board pursuant to §25-43-3.104.

2. **When Oral Proceedings will be Scheduled on Proposed Rules**. The board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or

ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

3. **Request Format**. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the board and signed by the requestor(s).

4. **Notification of Oral Proceeding**. The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. **Presiding Officer**. The Commissioner or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

6. **Public Presentations and Participation.**

(1) At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

(2) Persons wishing to make oral presentations at such a proceeding shall notify the board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the board.

(3) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

(4) The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage

joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations

represent the views of other individuals as well as their own views.

(5) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

(6) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding.

(1) Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the board for the proposed rule; (ii)call on those individuals who have contacted the board about speaking on or against the proposed rule; (iii) allow for rebuttal statements following all participants comments; (iv) adjourn the proceeding.

(2) Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(3) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions

become the property of the board and are subject to the board's public records request procedure.

(4) Recording. The board may record oral proceedings by stenographic or electronic means.

XV. DECLARATORY OPINIONS

[required by 25-43-2.103(2)]

1. **Scope.** These rules set forth the Mississippi State Board of Physical Therapy, hereinafter "[Board]," rules governing the form and content of requests for declaratory opinions, and the board's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

2. **Persons Who May Request Declaratory Opinions**. Any person with a substantial interest in the subject matter may request a declaratory opinion from the board by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the board's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the board" means the board has a constitutional or statutory grant of authority in the subject matter at issue.

3. **Subjects Which May Be Addressed In Declaratory Opinions.** The board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the board or (2) a rule promulgated by the board. The board will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the board.

4. **Circumstances In which Declaratory Opinions Will Not Be Issued.** The board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

(1) lack of clarity concerning the question presented;

(2) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;

(3) the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

(4) the facts presented in the request are not sufficient to answer the question presented;

(5) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

(6) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;

(7) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;

(8) the question presented by the request concerns the legal validity of a statute or rule;

(9) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;

(10) no clear answer is determinable;

(11) the question presented by the request involves the application of a criminal statute or a sets of facts which may constitute a crime;

(12) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

(13) the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

(14) A similar request is pending before this board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

(15) Where issuance of a declaratory opinion may adversely affect the interests of the State, the board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

(16) The question involves eligibility for a license, permit, certificate or other approval by the board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

5. **Written Request Required.** Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the board.

6. **Where to Send Requests**. All requests must be mailed, delivered or transmitted via facsimile to the board. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.

7. **Name, Address and Signature of Requestor**. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a

full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

8. **Question Presented**. Each request shall contain the following:

   (1) a clear and concise statement of all facts on which the opinion is requested;

   (2) a citation to the statute or rule at issue;

   (3) the question(s) sought to be answered in the opinion, stated clearly;

   (4) a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;

   (5) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and

   (6) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

9. **Time for [agency]'s Response**. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the board shall, in writing:

   (1) issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;

   (2) decline to issue a declaratory opinion, stating the reasons for its action; or

   (3) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the board, whichever is sooner.

10. **Opinion Not Final for Sixty Days**. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

11. **Notice by [agency] to third parties**. The board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

12. **Public Availability of Requests and Declaratory Opinions.** Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

13. **Effect of a Declaratory Opinion**. The board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the board shall be binding only on the board and the person to whom the opinion is issued. No declaratory opinion will be used as

precedent for any other transaction or occurrence beyond that set forth by the requesting person.