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Title 10 MARYLAND DEPARTMENT OF HEALTH

Subtitle 38 BOARD OF PHYSICAL THERAPY EXAMINERS

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10.38.01 – General Regulations

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Approved agency" means an independent credentialing agency, approved by the Board, which evaluates the credentials of foreign-trained applicants.

(2) "Approved curriculum for physical therapist assistants" means a curriculum that is approved by the American Physical Therapy Association.

(3) "Approved physical therapy curriculum" means a curriculum for physical therapists that is approved by the American Medical Association or the American Physical Therapy Association.

(4) "Biennial renewal" means renewal every other year with even-numbered licenses being renewed in even-numbered years and odd-numbered licenses being renewed in odd-numbered years.

(5) "Board" means the Board of Physical Therapy Examiners of Maryland established by Health Occupations Article, §13-201, Annotated Code of Maryland.

(6) "Direct supervision" means supervision provided by a licensed physical therapist who is physically present within the treatment area and immediately available to give aid, direction, and instruction when physical therapy or limited physical therapy procedures or activities are performed.

(7) "Hearing committee" means a committee of three or more Board members that has been delegated the authority to conduct hearings in accordance with Health Occupations Article, §13-317, Annotated Code of Maryland.

(8) "Interview" means a meeting with the Board or with one or more of its representatives. (9) Licensed Physical Therapist.

(a) "Licensed physical therapist" means an individual licensed by the Board to practice physical therapy in Maryland; and

(b) "Licensed physical therapist" includes an individual holding a compact privilege to practice physical therapy in Maryland.

(10) Licensed Physical Therapist Assistant.

(a) "Licensed physical therapist assistant" means an individual licensed by the Board to practice limited physical therapy in Maryland; and

(b) "Licensed physical therapist assistant" includes an individual holding a compact privilege to practice limited physical therapy in Maryland.

(11) "Licensing examinations" means the written examinations approved by the Board consisting of the:

(a) National licensing examination; and

(b) Maryland Physical Therapy jurisprudence examination.

(12) "Ongoing supervision" means that the physical therapist maintains continuing verbal and written contact with the physical therapist assistant to provide supervision and instruction adequate to ensure the safety and welfare of the patient.

(13) "Oral competency" means that the applicant who did not graduate from a recognized English-speaking educational institution has obtained a passing score, as determined by the Board, on the Test of English as a Foreign Language administered by the Educational Testing Service.

(14) "Passing score" means the result of two examinations:

(a) The criterion-referenced score set by the Federation of State Boards of Physical Therapy; and

(b) 90 percent of the total on the Maryland Physical Therapy jurisprudence examination.

(15) "Physical therapy aide" or "aide" means a person who performs certain physical therapy duties under the direct supervision of a licensed physical therapist. This individual may be known, also, as a physical therapist technician, a rehabilitation technician, an athletic trainer, or be described by some other similar title.

(16) "Reporting service" means the Interstate Reporting Service, an agency approved by the Board for the purpose of recording, storing, and transmitting license examination scores.

(17) "State" means:

(a) A state, possession, or territory of the United States;

(b) The District of Columbia; or

(c) The Commonwealth of Puerto Rico.

(18) "Student" means an individual who is supervised directly by a licensed physical therapist in a Board-approved physical therapy educational program.

(19) "Temporary license" means a license issued by the Board to an individual who has completed the approved curriculum requirements to practice, while under direct supervision, as a:

(a) Physical therapist; or

(b) Physical therapist assistant.

(20) "Verification" means confirmation of licensure obtained directly from the state in which the applicant is currently licensed, on a form provided by the Board.

(21) "Waiver of national licensing examination" means that the Board may waive the national licensing examination if the applicant previously took the examination in another state and met the requirements for a passing score as set forth in §B(14) of this regulation.

(22) "Written competency" means that the applicant who did not graduate from a recognized English-speaking educational institution has obtained a passing score, as determined by the Board, on the Test of English as a Foreign Language administered by the Educational Testing Service.

.02 Requirements for Licensure.

The following are requirements for an applicant educated in an approved physical therapy or approved physical therapist assistant curriculum in any state:

A. Examination. The following shall be filed with the Board or the Board's agent:

- (1) An application on the form the Board requires;
- (2) The application and national licensing examination fees established in COMAR 10.38.07; and
- (3) Proof of completion of:
 - (a) A physical therapy or physical therapist assistant curriculum; and
 - (b) Any clinical training required under the curriculum.

B. Transfer of Examination Scores. The following shall be filed with the Board or the Board's agent:

- (1) An application on the form the Board requires;
- (2) The application fee established in COMAR 10.38.07;
- (3) Proof of completion of:
 - (a) A physical therapy or physical therapist assistant curriculum; and
 - (b) Any clinical training required under the curriculum;
- (4) A sworn statement that the applicant is not now nor has ever been licensed in another state;
- (5) Evidence, satisfactory to the Board, that the applicant is registered to take, or has taken, the national licensing examination in another state; and
- (6) A copy of a letter or form to the appropriate reporting service requesting that licensing examination scores be sent to the Board.

C. Waiver of Examination. The following shall be filed with the Board or the Board's agent:

- (1) An application on the form the Board requires;
- (2) The application fee established in COMAR 10.38.07;
- (3) Proof of completion of:

- (a) A physical therapy or physical therapist assistant curriculum; and
- (b) Any clinical training required under the curriculum;
- (4) A copy of a current physical therapy license;
- (5) Verification of current license on the form the Board requires; and
- (6) A copy of a letter or form to the appropriate reporting service requesting that licensing examination scores be sent to the Board.

D. Additional Requirements. Applicants for licensure shall:

- (1) Achieve a passing score on the licensing examinations; and
- (2) Submit to a State and national criminal history records check in accordance with Health Occupations Article, §13302.1, Annotated Code of Maryland.

.03 Reexamination.

A. National Licensing Examination.

- (1) An applicant who fails the examination shall repeat the examination.
- (2) Fees.
 - (a) At least 6 weeks before the examination, the applicant shall pay to the Board the reexamination fee as established in COMAR 10.38.07.
 - (b) If the applicant has taken the licensing examination twice in Maryland, the applicant shall pay to the Board an application fee, as established in COMAR 10.38.07, in addition to the reexamination fee.

B. Examination on Maryland Physical Therapy Law. An applicant who fails the examination on the Maryland Physical Therapy Practice Act and associated regulations shall:

- (1) Repeat the examination; and
- (2) Attend an interview unless the Board waives this requirement.

.04 Issuance of Licenses.

A. Temporary License.

- (1) The Board may issue a temporary license to an applicant who, except for passing an examination otherwise required under Health Occupations Article, Title 13, Annotated Code of Maryland, has met the appropriate education and experience requirements for a physical therapy license or a physical therapist assistant license set

forth under Health Occupations Article, §13-302, Annotated Code of Maryland.

(2) The holder of a temporary license shall:

- (a) Practice under direct supervision while the temporary license is in effect;
- (b) Achieve a passing score on the Maryland Physical Therapy jurisprudence exam; and
- (c) Submit to a State and national criminal history records check in accordance with Health Occupations Article, §13-302.1, Annotated Code of Maryland.

(3) A temporary license is valid until:

- (a) 90 days after issuance;
- (b) The Board issues a full license to practice physical therapy or limited physical therapy to the holder of the temporary license; or
- (c) The Board revokes the temporary license.

B. Licensure Procedures.

(1) When the applicant has met all the requirements for licensure, the Board may issue a physical therapist or physical therapist assistant license to the applicant.

(2) Renewal of Physical Therapist or Physical Therapist Assistant License.

- (a) The licensee shall renew the license biennially.
- (b) The licensee shall be responsible for notifying the Board if a renewal notice is not received.
- (c) A renewal license shall be issued to each licensee who meets the requirements of Health Occupations Article, §13-311(c), Annotated Code of Maryland.

(3) Method of Renewal Notification.

- (a) Except as otherwise provided in §B(3)(b) of this regulation, the Board shall mail notices for renewal at least 1 month before the expiration date.
- (b) If requested by a licensee, the Board shall send to the licensee, at least two times within the month before a license expires, a renewal notice by electronic means to the last known electronic mail address of the licensee.
- (c) If a renewal notice sent by electronic mail under §B(3)(b) of this regulation is returned to the Board as undeliverable, the Board shall send to the licensee a renewal notice by first-class mail to the last known address of the licensee.

(4) A duplicate license shall be issued for a lost, stolen, or destroyed license provided the licensee:

- (a) Makes a request in writing;
- (b) Provides a sworn statement or police report attesting to the facts; and

(c) Pays the fee as established in COMAR 10.38.07.

.05 Restrictions.

A. The Board may refuse to grant a license to any applicant who begins practice as a physical therapist or a physical therapist assistant before being licensed to practice in Maryland.

B. Practice after the date of expiration of the license is prohibited.

C. An applicant shall complete the application process within 1 year of the date of the paid application or reapply for licensure.

D. The Board may refuse to grant or renew a license to an applicant who has failed to pay all outstanding fees to the Board.

E. The Board may not issue a license under this subtitle if the results of the criminal history records check required pursuant to Regulation .02D(3) of this chapter has not been received.

10.38.02 – Code of Ethics

.01 Code of Ethics.

A. The physical therapist and physical therapist assistant shall provide care regardless of the patient's:

- (1) Race;
- (2) Religion;
- (3) Color;
- (4) Age;
- (5) National origin;
- (6) Marital status;
- (7) Sexual orientation;
- (8) Gender identity; or
- (9) Disability.

B. The physical therapist and the physical therapist assistant shall respect the dignity of the patient.

- C. The physical therapist and physical therapist assistant shall protect the patient's right to privacy by not divulging confidential information without consent of the patient or guardian unless required by law.
- D. The physical therapist shall provide information about fees upon request by the patient.
- E. The physical therapist may not dispense or supply physical therapy equipment unless it is in the best interest of the patient.
- F. The physical therapist and physical therapist assistant shall report to the Board of Physical Therapy Examiners all information that indicates a person is allegedly performing, or aiding and abetting, the illegal or unsafe practice of physical therapy.
- G. The physical therapist and the physical therapist assistant shall comply with the probationary conditions of a Board order.
- H. A licensee shall notify the Board in writing within 60 days if any license, certificate, permit, or registration granted by another state for the practice of physical therapy or limited physical therapy has been limited, restricted, suspended, revoked, or subjected to other disciplinary action by the licensing or certifying authority.
- I. The physical therapist and physical therapist assistant shall provide and maintain medical records in accordance with Health-General Article, §§4-301—4-402, Annotated Code of Maryland.
- J. The physical therapist or physical therapist assistant may not knowingly or willfully destroy, damage, alter, obliterate, or otherwise obscure a medical record or billing record or other information about a patient in an effort to conceal the information from use as evidence in an administrative, civil, or criminal proceeding.
- K. The physical therapist or physical therapist assistant may not intimidate or influence any person to withhold or change testimony in hearings or proceedings before the Board or those otherwise delegated to the Office of Administrative Hearings.
- L. The physical therapist or physical therapist assistant may not hinder, prevent, or otherwise delay any person from making information available to the Board in furtherance of any investigation of the Board.

.02 Sexual Misconduct.

- A. A physical therapist or physical therapist assistant may not engage in sexual misconduct.
- B. Sexual misconduct includes, but is not limited to:
- (1) Sexual behavior with a client or patient in the context of a professional evaluation, treatment, procedure, or service to the client or patient, regardless of the setting in which the professional service is rendered;
 - (2) Sexual behavior with a client or patient under the pretext of diagnostic or therapeutic intent or benefit;
 - (3) Solicitation of a sexual relationship, whether consensual or nonconsensual, with a patient;
 - (4) Sexual advances requesting sexual favors;

- (5) Therapeutically inappropriate or intentional touching of a sexual nature;
- (6) A verbal comment of a sexual nature;
- (7) Physical contact of a sexual nature with a patient;
- (8) Discussion of unnecessary sexual matters while treating a patient;
- (9) The taking of photographs of patients for a sexual purpose;
- (10) Sexual harassment of staff or students;
- (11) An unnecessary sensual act or comment; or
- (12) Sexual contact with an incompetent or unconscious patient.

.03 Penalties.

Violation of Regulation .01 or .02 of this chapter may result in the Board taking action to reprimand a licensee or place the licensee on probation, or suspend or revoke the licensee's license. The Board may also impose a penalty not exceeding \$5,000.

10.38.03 – Standards of Practice

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Board" means the Board of Physical Therapy Examiners of Maryland created by Health Occupations Article, §13-201, Annotated Code of Maryland.
- (2) "Clinical treatment hour" means an hour in which physical therapy or limited physical therapy services are provided at some point during the hour.
- (3) "Electronically signed" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (4) "Evaluations" means procedures which include, but are not limited to:
 - (a) Testing of strength, sensation, and reflexes;
 - (b) Goniometric measurements and their interpretation;

- (c) Assessments of function, muscle tone, developmental levels, accessory motions, posture, and pain scale.
- (5) "Goals" means the expected outcome as the result of therapy.
- (6) "Group therapy" means treatment procedures provided simultaneously to two or more patients that:
- (a) Require constant attendance, but not one-on-one contact by the physical therapist or physical therapist assistant; and
 - (b) Can be, but need not be, the same treatment procedures.
- (7) "History" means data that is pertinent to the current physical therapy problem.
- (8) "Hour" means a 60-minute increment during a calendar day which is calculated by dividing the day into consecutive 60-minute increments beginning when the day's first physical therapy or limited physical therapy service starts and ending when the last physical therapy or limited physical therapy service terminates, the last consecutive increment of which may be a fraction of an hour.
- (9) "Interpretation" means the analysis of findings for the purpose of establishing and justifying the plan of care.
- (10) "License number" means the Maryland physical therapy license number issued by the Board.
- (11) "Onset" means the date of occurrence of the condition for which physical therapy is being provided.
- (12) "Physical therapy diagnosis" means the condition for which physical therapy is provided if different from the medical diagnosis.
- (13) "Plan of care" means the plan of treatment aimed at achieving the anticipated functional goals.
- (14) "Progress" means the measurable improvement as related to goals.
- (15) "Reevaluation" means a measurement of progress, or lack of it, based on comparisons of tests, measurements, and assessments with previous evaluation or reevaluations.
- (16) "Requirements for documentation" means the requirements as set forth in Regulation .02-1 of this chapter and approved by the Board.
- (17) "Response to treatment" means a brief statement of the patient's condition at conclusion of treatment.
- (18) "Services" means the evaluation or treatment, or both, as appropriate, of a patient.
- (19) "Signature and title" means the name of the physical therapist or physical therapist assistant written by that person or electronically signed by that person in accordance with federal and State law and followed by the title "PT" or "PTA" and license number. A stamp of a signature is not acceptable as a signature for documentation.
- (20) "Student" means an individual who is currently enrolled in a physical therapy or physical therapist assistant educational program approved by the Board.
- (21) "Supervising physical therapist" means a physical therapist who provides ongoing supervision to a physical therapist assistant regarding the care of a patient.

(22) "Supportive personnel" includes aides and other unlicensed personnel.

(23) "Test results" means the measurable and objective findings obtained from the evaluations.

.02 Standards of Practice.

A. Physical Therapists.

(1) The physical therapist who establishes or changes the plan of care shall be ultimately responsible for patient care until another physical therapist:

(a) Provides services to the patient; or

(b) Provides supervision to the treating physical therapist assistant.

(2) The physical therapist shall:

(a) Exercise sound professional judgment in the use of evaluation and treatment procedures;

(b) Provide:

(i) Physical therapy services to not more than an average of three patients per clinical treatment hour per calendar day, excluding group therapy; and

(ii) Each patient with adequate treatment time consistent with accepted standards in delivering physical therapy care;

(c) Provide the patient with accurate information about the physical therapy services provided;

(d) Respect the right of the patient to refuse treatment;

(e) Evaluate the patient and develop a plan of care before the patient is treated;

(f) Work within the physical therapist's competency in physical therapy evaluation and treatment;

(g) Reevaluate the patient as the patient's condition requires, but at least every 30 days, unless the physical therapist, consistent with accepted standards of physical therapy care, documents in the treatment record an appropriate rationale for not reevaluating the patient;

(h) Provide direct supervision of students, aides, and individuals practicing under a temporary license;

(i) Ascertain and periodically reevaluate the ability of students and aides to perform the assigned duties;

(j) Delegate to the physical therapist assistant only treatment that is within the competency and scope of practice of the physical therapist assistant;

(k) Provide direction and instruction for the physical therapist assistant that is adequate to ensure the safety and welfare of the patient; and

(l) Document ongoing communication with the physical therapist assistant regarding changes in a patient's status and treatment plan.

(3) The physical therapist may:

(a) Enter into an agreement or employment relationship provided that such agreement or relationship does not impede the physical therapist's exercise of independent judgment in the treatment of a patient or cause the physical therapist to practice physical therapy contrary to the Maryland Physical Therapy Act; and

(b) Decline to carry out evaluation or treatment of a patient who has been referred to the physical therapist by a health care practitioner if:

(i) In the physical therapist's judgment, the evaluation or treatment is contraindicated or unjustified; and

(ii) The physical therapist documents the decision in the patient's record.

B. Physical Therapist Assistants.

(1) The physical therapist assistant shall:

(a) Follow the direction and plan of care of the physical therapist in the treatment of a patient;

(b) Exercise sound judgment and adequate care in the performance of duties;

(c) Immediately discontinue any treatment procedure that appears to be harmful to the patient and so notify the supervising physical therapist;

(d) Use only methods and procedures within the scope of the practice of limited physical therapy;

(e) Respect the right of the patient to refuse treatment;

(f) Work within the physical therapist assistant's competency in treatment that is within the scope of practice of limited physical therapy;

(g) Document ongoing communication regarding changes in a patient's status and treatment authorized by the physical therapist; and

(h) Provide the following services:

(i) Treat not more than an average of three patients per clinical treatment hour per calendar day, excluding group therapy; and

(ii) Provide each patient with adequate treatment time consistent with accepted standards in physical therapy care.

(2) The physical therapist assistant may:

(a) Enter into an agreement or employment relationship provided that the agreement or relationship does not impede the physical therapist assistant's exercise of appropriate patient treatment or cause the physical therapist assistant to practice limited physical therapy in violation of the Maryland Physical Therapy Act; and

(b) Participate in the clinical education activities of a physical therapist assistant student if direct supervision of the student is provided by the physical therapist.

(3) The physical therapist assistant may not initiate treatment until:

(a) The patient has been evaluated and the plan of care has been developed by a physical therapist; and

(b) A supervising physical therapist has been assigned to the physical therapist assistant.

.02-1 Requirements for Documentation.

A. The physical therapist shall document legibly the patient's chart each time the patient is seen for:

(1) The initial visit, by including the following information:

(a) Date;

(b) Condition, or diagnosis, or both, for which physical therapy is being rendered;

(c) Onset;

(d) History, if not previously recorded;

(e) Evaluation and results of tests (measurable and objective data);

(f) Interpretation;

(g) Goals;

(h) Modalities, or procedures, or both, used during the initial visit and the parameters involved including the areas of the body treated;

(i) Plan of care including suggested modalities, or procedures, or both, number of visits per week, and number of weeks; and

(j) Signature, title (PT), and license number.

(2) Subsequent visits, by including the following information (progress notes):

(a) Date;

(b) Cancellations, no-shows;

(c) Modalities, or procedures, or both, with any changes in the parameters involved and areas of body treated;

(d) Objective status;

(e) Response to current treatment, if any;

(f) Changes in plan of care; and

(g) Signature, title (PT), and license number, although the flow chart may be initialed.

(3) Reevaluation, by including the following information in the report, which may be in combination with the visit note, if treated during the same visit:

(a) Date;

(b) Number of treatments since the initial evaluation or last reevaluation;

(c) Reevaluation, tests, and measurements of areas of body treated;

(d) Changes from previous objective findings;

(e) Interpretation of results;

(f) Goals met or not met and reasons;

(g) Updated goals;

(h) Updated plan of care including recommendations for follow-up; and

(i) Signature, title (PT), and license number;

(4) Discharge, by including the following information in the discharge summary, which may be combined with the final visit note, if seen by the physical therapist on the final visit and written by the physical therapist:

(a) Date;

(b) Reason for discharge;

(c) Objective status;

(d) Recommendations for follow-up; and

(e) Signature, title (PT), and license number.

B. Notwithstanding §A(4) of this regulation, a physical therapist may direct a physical therapist assistant to treat a patient on a final visit.

C. The physical therapist assistant shall document the patient's chart each time the patient is seen by the physical therapist assistant following the physical therapist's initial evaluation or reevaluation by including the following:

(1) Date;

(2) Cancellations and no-shows;

(3) Modalities, procedures, or both, including parameters involved, and areas of body treated;

(4) Objective status;

(5) Response to treatment, if any;

(6) Continuation of plan as established by the physical therapist or change of plan as authorized by the physical therapist; and

(7) Signature, title (PTA), and license number, although the flow chart may be initialed.

D. Subsequent visits, as referred to in §A(2) of this regulation, in the same day by the same physical therapist do not require separate progress notes unless there is a change in the patient's status.

E. Ongoing Communications. Both the physical therapist and the physical therapist assistant shall document ongoing communication between the physical therapist and physical therapist assistant regarding changes in a patient's status and treatment plan.

.03 Penalties.

Violation of these regulations may result in the Board taking action to reprimand a licensee, place a licensee on probation, or suspend or revoke a license. The Board may also impose a penalty not exceeding \$5,000.

10.38.04 – Physical Therapy Aide

.01 Definition.

A. In these regulations, the following term has the meaning indicated.

B. Term Defined. "Physical therapy aide" or "aide" means a person who performs certain physical therapy duties under the direct supervision of a licensed physical therapist. This individual may be known, also, as a physical therapy technician, a rehabilitation technician, an athletic trainer, or be described by some other similar title.

.02 Requirements.

A. Supervision.

(1) The physical therapy aide shall be under the direct supervision of a licensed physical therapist when performing those physical therapy treatments that the aide is permitted to perform.

(2) Exceptions. An aide may:

(a) Perform non-treatment-related activities, such as secretarial, clerical, and housekeeping duties without direct supervision;

(b) Perform patient-related activities that do not involve treatment (such as transporting patients, undressing and

dressings patients, removing and applying assistive and supportive devices) without direct supervision;

(c) Assist a physical therapist assistant when more than one individual is required to ensure the safety and welfare of the patient during ambulation, transfers, or functional activities without direct supervision.

B. In-Service Training. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the aide.

.03 Activities Which May Be Performed by Aides under Direct Supervision.

The following activities may be performed by aides under direct supervision:

- A. Assist in the practice of gait and ambulation;
- B. Assist in the practice of functional activities;
- C. Assist in the practice of transfers;
- D. Assist in the routine follow-up of specific exercises;
- E. Assist in the application of hot or cold packs;
- F. Assist in the procedure of Hubbard tank;
- G. Assist in the procedure of whirlpool;
- H. Assist in the application of contrast bath;
- I. Assist in the application of infrared; and
- J. Assist in the application of paraffin bath.

.04 Prohibited Activities.

- A. Evaluation may not be performed by aides.
- B. Treatments other than those listed in Regulation .03 of this chapter may not be performed by aides.

.05 Penalty.

A physical therapy aide who violates the above regulations shall be considered by the Board to be practicing physical therapy in violation of the Maryland Physical Therapy Practice Act and may be referred to the appropriate State's Attorney's Office with a recommendation by the Board that the physical therapy aide be prosecuted.

10.38.05 – Rules of Procedure for Board Hearings

.01 Scope.

This chapter governs procedures for disciplinary matters and hearings before the State Board of Physical Therapy Examiners.

.02 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Administrative law judge” means the hearing officer assigned to preside over a hearing in a case which the Board has delegated to the Office of Administrative Hearings pursuant to State Government Article, §10-205, Annotated Code of Maryland.

(2) “Administrative Procedure Act” means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, which governs contested cases arising from charges issued by the Board.

(3) “Board” means the State Board of Physical Therapy Examiners.

(4) “Case resolution conference” means a voluntary, informal, and confidential meeting between the parties to a contested case and the Board’s case resolution conference committee to discuss possible settlement of a disciplinary matter pending before the Board.

(5) “Case resolution conference committee” means a committee comprised of one or more members of the Board who make recommendations to the Board regarding settlement of disciplinary matters.

(6) “Cease and desist order” means a public letter issued by the Board ordering:

(a) A licensee to cease doing a specified activity; or

(b) An unlicensed person to cease the unauthorized practice of physical therapy.

(7) “Charges” means a nonpublic record issued by the Board which:

(a) Alleges conduct by a licensee which the Board believes constitutes a violation under the Maryland Physical Therapy Act;

(b) Sets forth sections of the Maryland Physical Therapy Act that the Board believes were violated; and

(c) Provides notice to the licensee of disciplinary proceedings before the Board.

(8) “Complaint” means an allegation:

(a) That a licensee may have violated the Maryland Physical Therapy Act; and

(b) Which may be grounds for an investigation or disciplinary action by the Board.

(9) “Consent order” means a final order issued by the Board that has been negotiated and agreed to by both the licensee and the Board to resolve a formal disciplinary action.

(10) “Contested case” means a proceeding conducted pursuant to the Administrative Procedure Act.

(11) “Final order” means a public record issued by the Board resolving a formal disciplinary action, either by consent or after an adjudication, which:

(a) Denies a license;

(b) Sanctions by reprimand, probation, fine, or suspension or revocation of a license;

(c) Summarily suspends a license;

(d) Dismisses charges;

(e) Surrenders a license;

(f) Resolves the contested case by consent of the parties; or

(g) Takes any other action that the Board is authorized to do by law.

(12) “Formal disciplinary action” means action taken by the Board that:

(a) Is initiated by charges or a notice of initial denial;

(b) Is resolved by a consent order;

(c) Results in a summary suspension; or

(d) Results in a letter of surrender.

(13) “Hearing committee” means a committee of three or more members of the Board which conducts hearings.

(14) “Informal action” means that the Board closes a case, without any formal disciplinary action or without issuing a final order, by sending the licensee a:

(a) Letter of education; or

(b) Letter of admonishment.

(15) Letter of Admonishment.

(a) “Letter of admonishment” means an informal action taken by the Board consisting of a nonpublic letter

closing the case when the Board believes a licensee has engaged in conduct which violated the Maryland Physical Therapy Act.

(b) “Letter of admonishment” may include a letter of agreement in which a licensee agrees to satisfy certain conditions in lieu of the Board issuing charges.

(16) Letter of Education.

(a) “Letter of education” means an informal action taken by the Board consisting of a nonpublic letter in which the Board:

(i) Closes the case when the Board does not believe that the licensee’s conduct rose to the level of a violation of the Maryland Physical Therapy Act; and

(ii) Educates the licensee regarding the laws and standards of the practice of physical therapy.

(b) “Letter of education” may include a letter of agreement in which a licensee agrees to satisfy certain conditions.

(17) “Letter of surrender” means a public record accepted by the Board in which the licensee agrees to surrender the licensee’s license, which may include conditions for the Board’s acceptance of the surrender as a resolution of the case.

(18) “Licensee” means the holder of a license issued by the Board of Physical Therapy Examiners.

(19) “Maryland Physical Therapy Act” means Health Occupations Article, Title 13, Annotated Code of Maryland.

(20) “Notice of initial denial” means a nonpublic record issued by the Board by which an applicant or licensee is notified that the Board intends to deny a license, change a licensure status, or change some other benefit sought by the licensee.

(21) “Party” means:

(a) The respondent or any person named or admitted as a party, or properly seeking and entitled as a right to be a party in a formal disciplinary proceeding; or

(b) The administrative prosecutor from the Office of the Attorney General presenting a case on behalf of the Board.

(22) “Post-deprivation hearing” means a show cause or an evidentiary hearing scheduled by the Board after the Board has issued an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, in which the licensee may challenge the Board’s basis for issuing the order of summary suspension.

(23) “Predeprivation hearing” means a show cause hearing at which the licensee has an opportunity to demonstrate to the Board why it should not:

(a) Issue an order for summary suspension pursuant to State Government Article §10-226(c)(2), Annotated Code of Maryland; or

(b) Take some other action which the Board is authorized to take.

(24) “Presiding officer” means the chair of the Board or, in the chair’s absence, a Board member designated by the chair, who:

(a) Conducts hearings before the Board; and

(b) Issues prehearing orders.

(25) “Probation” means a sanction imposed by the Board in a public final order where the licensee is:

(a) Monitored by the Board for a period of time; and

(b) Required to comply with certain conditions in order to avoid further disciplinary action.

(26) “Public record” means a document that the Board is permitted or required to disclose to the public pursuant to State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

(27) “Recommended decision” means a nonpublic record issued by a hearing committee or by an administrative law judge which sets out proposed findings of fact, proposed conclusions of law, and a proposed sanction, or any combination of these items.

(28) “Recusal” means the disqualification of a member of the Board to participate in a proceeding because of interest, bias, or some other reason which may interfere with the Board member’s participation in the case.

(29) “Respondent” means a licensee subject to the jurisdiction of the Board, who has been: (a) Given formal notice of allegations concerning violations of the Maryland Physical Therapy Act; and (b) Notified as to the possible imposition of sanctions or a summary suspension.

(30) “Revocation” means the removal of a licensee’s license.

(31) “Sanction” means an action by the Board which:

(a) Reprimands;

(b) Places on probation;

(c) Fines;

(d) Suspends or revokes a license; or

(e) Disciplines by way of a consent order.

(32) “Show cause hearing” means a nonevidentiary hearing in which the licensee has the opportunity to demonstrate to the Board why the Board should not issue a proposed order or continue to take an action that the Board is legally authorized to take.

(33) “Summary suspension” means the indefinite suspension of a license pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, issued if the Board believes emergency action is necessary to protect the public health, safety, or welfare.

(34) “Suspension” means the temporary denial of the right to use a license and is usually defined by:

- (a) A specified period of time;
- (b) Specific dates; or
- (c) Specific conditions.

.03 Confidentiality of Proceedings.

A. Except as otherwise provided by law, the proceedings of the Board are confidential and that confidentiality may not be waived by the parties.

B. The Office of Administrative Hearings’ proceedings involving the adjudication of a Board formal disciplinary action and the administrative law judge’s recommended decision are confidential.

C. The respondent may not waive the confidentiality of the:

- (1) Proceedings; or
- (2) Patients whose medical records or care are reflected in the record of the proceedings.

D. To the extent possible, even after the close of a formal disciplinary action, the parties shall refrain from revealing the identity of any patients involved in the matter, including but not limited to, information contained in:

- (1) Legal documents; or
- (2) Oral statements.

.04 Representation by Counsel.

A. A respondent may be represented by counsel at any stage of a formal disciplinary action. B. If a hearing is held, the respondent shall be represented:

- (1) In proper person; or
- (2) By an attorney who has been:

- (a) Admitted to the Maryland Bar; or
- (b) Specially admitted to practice law pursuant to Maryland Rules, Rules Governing Admission to the Bar of Maryland, Rule 16, Annotated Code of Maryland.

C. The Board may request the Office of the Attorney General to participate in a hearing to present the case on behalf of the State.

D. The member of the Office of the Attorney General presenting the case on behalf of the State shall have the same rights as any party with regard to:

- (1) Submission of evidence;
- (2) Examination and cross-examination of witnesses; and
- (3) The filing of objections, exceptions, and motions.

E. The Board may also request a member of the Office of the Attorney General to act as legal advisor to the Board on questions of:

- (1) Procedure;
- (2) Evidence; and
- (3) Law.

.05 Disposition of Complaints.

A. For each complaint, after reviewing any completed investigative information or reports, the Board shall:

- (1) Dismiss the complaint;
- (2) Close the case with informal action;
- (3) Issue a cease and desist order;
- (4) Refer the matter for further investigation;
- (5) Refer the matter to an administrative prosecutor; or
- (6) Vote to:
 - (a) Charge a licensee with a violation of the Maryland Physical Therapy Act;
 - (b) Consider the matter as a basis for a summary suspension;
 - (c) Initially deny a license or reinstatement of a license; or
 - (d) Accept the surrender of a license subject to conditions acceptable to the Board.

B. The Board may refer a complaint or other disciplinary matter to the administrative prosecutor at any time, whether or not it has voted to charge a licensee with violations of the Maryland Physical Therapy Act.

.06 Notice of Charges or Notice of Initial Denial.

A. If the Board issues charges or a notice of initial denial, the document shall be:

- (1) Served on the respondent by certified mail at the address the respondent is required to maintain with the Board; or
- (2) Hand-delivered in person.

B. Charges or notice of initial denial shall:

- (1) Inform the respondent of the statutory basis for the charges or denial of a license;
- (2) Allege sufficient facts that the Board believes constitute either a basis for:
 - (a) Violation of the Maryland Physical Therapy Act; or
 - (b) Denial of a license; and
- (3) Include the notice of hearing.

C. If the Board issues a notice of initial denial to an applicant for a license, the applicant may not withdraw the application without approval from the Board.

.07 Notice of Hearing.

A. Except for a show cause hearing, written notice of all hearings shall be sent by the Executive Director or an officer of the Board to all parties at least 30 days before the hearing.

B. The Board shall serve the notice of hearing by either:

- (1) Certified mail at the address the respondent is required to maintain with the Board; or
- (2) Hand-delivery in person.

C. The notice of hearing shall state, if applicable:

- (1) The date, time, place, and nature of the hearing;
- (2) The right to call witnesses and submit documents or other relevant evidence;
- (3) The right to request subpoenas for witnesses and evidence and the costs associated with such a request;
- (4) The right to representation;
- (5) That a failure to appear for the scheduled hearing may result in an adverse action against the party; and
- (6) That the parties may agree to the evidence and waive their right to appear at the hearing.

D. The notice of hearing may include:

- (1) Deadlines for discovery and motions; or
- (2) Dates for the prehearing conference and case resolution conference.

.08 Prehearing Conference and Case Resolution Conference.

A. The Board may set a prehearing conference or a case resolution conference, or both.

B. The prehearing conference may be used to prepare for the hearing by:

- (1) Delineating the issues;
- (2) Stipulating to facts, laws, and other matters;
- (3) Arranging a schedule for the exchange of documents and witnesses;
- (4) Arranging a schedule for the submission of motions and responses to motions; or
- (5) Addressing any other matters that will promote the orderly and efficient conduct of the hearing.

C. Prehearing Orders.

- (1) If a prehearing conference has been held, a prehearing order may be issued by the presiding officer.
- (2) The prehearing order shall set forth the actions taken or to be taken with regard to any matter addressed at the prehearing conference.
- (3) If a prehearing conference is not held, the presiding officer may issue a prehearing order to regulate the conduct of the proceedings.
- (4) Absent an exception from the presiding officer, the prehearing order shall be binding on the parties.

D. Case Resolution Conference.

- (1) Matters admitted, revealed, negotiated, or otherwise discussed at a case resolution conference are without prejudice and may not be used by the respondent, administrative prosecutor, or the Board in any subsequent proceedings, unless the information is otherwise discoverable or available through another source.
- (2) The Board is not bound by the recommendations of the case resolution conference committee and may:
 - (a) Modify the proposed settlement;
 - (b) Require additional conditions; or
 - (c) Reject the recommendation and require the respondent to proceed to a hearing.

(3) If the respondent disagrees with the recommendation of the case resolution conference committee, the respondent may elect to proceed to a hearing on the matter, regardless of whether or not the Board has ratified the recommendation of the case resolution conference committee.

(4) Participation in a case resolution conference is not a basis for recusal of a Board member, Board counsel, or Board prosecutor from further proceedings.

E. Motions.

(1) General Requirements.

(a) Unless otherwise set forth in a prehearing order or notice of hearing, all motions shall be:

- (i) Accompanied by a memorandum of points and authorities; and
 - (ii) Filed with the Board at least 15 working days before the hearing.
- (b) A copy of the motion shall be served on the opposing party.
- (c) A response shall be filed with the Board at least 10 working days before the hearing and a copy served on the opposing party.

(d) The Board may refuse to consider a motion or response that is not timely filed.

(2) Motion for Summary Decision.

- (a) A party may move for summary decision on any appropriate issue in the case.
- (b) The Board may grant a proposed or final summary decision if the Board finds that:
- (i) There is no genuine issue of material fact; and
 - (ii) A party is entitled to prevail as a matter of law.

.09 Discovery.

A. Discovery on Request. By written request served on the other party and filed with the Board or the Office of Administrative Hearings, as appropriate, a party may require another party to produce, within 15 days, the following:

- (1) A list of witnesses to be called;
- (2) Copies of documents intended to be produced at the hearing; or
- (3) Both §A(1) and (2) of this regulation.

B. Mandatory Discovery.

(1) Each party shall provide to the other party not later than 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier:

(a) The name and curriculum vitae of any expert witness who will testify at the hearing; and

(b) A detailed written report summarizing the expert's testimony, which includes the: (i) Opinion offered;

(ii) Factual basis for the opinion; and

(iii) Reasons underlying the opinion.

(2) If the Board or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the Board or the Office of Administrative Hearings, as appropriate, shall exclude from the hearing the testimony of the expert and any report of the expert.

(3) The Board or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:

(a) At the prehearing conference, if scheduled; or

(b) Immediately before the scheduled hearing.

(4) If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in this section.

C. Parties are not entitled to discovery of items other than as listed in §§A and B of this regulation.

D. Both parties have a continuing duty to supplement their disclosure of witnesses and documents.

E. Absent unforeseen circumstances that would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list:

(1) After the prehearing conference, if scheduled; or

(2) Later than 15 days before the hearing, if no prehearing conference is scheduled.

F. The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

G. Construction.

(1) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.

(2) In the event of a conflict between this regulation and COMAR 28.02.01, this regulation applies.

.10 Evidentiary Hearings.

A. Hearings shall be conducted pursuant to the Administrative Procedure Act.

B. The Board may delegate its authority to conduct hearings to:

- (1) A hearing committee of the Board; or
- (2) The Office of Administrative Hearings.

C. Confidentiality.

- (1) Hearings are not open to the public.
- (2) All records, including the hearing committee's decision and the administrative law judge's recommended decision, are confidential and sealed.

D. Record. The Board shall prepare an official record of hearings which shall include all:

- (1) Pleadings;
- (2) Testimony;
- (3) Exhibits; and
- (4) Other memoranda or material filed in the proceeding.

E. Transcript.

- (1) Unless waived by all parties, a stenographic record of the proceedings shall be made at the expense of the Board.
- (2) The stenographic record may not be transcribed, unless requested by a party or by the Board.
- (3) The cost of any typewritten transcripts of any proceedings, or parts of the transcript, shall be paid by the party requesting the transcript.

F. Presiding Officer.

- (1) The presiding officer shall:
 - (a) Conduct a full, fair, and impartial hearing;
 - (b) Take action to avoid unnecessary delay in the disposition of the proceedings;
 - (c) Maintain order; and
 - (d) Adjourn or recess the hearing from time to time.
- (2) The presiding officer has the power to regulate the course of the hearing and the conduct of the parties,

including the power to:

- (a) Permit the examination of witnesses;
- (b) Rule on offers of proof and admit relevant and material evidence;
- (c) Consider and rule upon motions;
- (d) Grant a continuance or postponement;
- (e) Determine the order in which the parties shall present their cases;
- (f) Limit unduly repetitious testimony;
- (g) Reasonably limit the time for presentation; and
- (h) Issue orders as necessary to:
- (i) Secure procedural simplicity and administrative fairness; and
- (ii) Eliminate unjustifiable expense and delay.

G. Examination of Witnesses and Introduction of Evidence.

- (1) The rules of evidence in State Government Article, §10-213, Annotated Code of Maryland, apply to hearings before the Board.
- (2) A party may:
 - (a) Submit evidence;
 - (b) Examine and cross-examine witnesses; and
 - (c) File objections, exceptions, and motions.
- (3) If a party is represented by counsel, all submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions, and motions shall be done and presented solely by counsel.
- (4) The presiding officer, or a person designated by the presiding officer for that purpose, may examine a witness called by a party.
- (5) The presiding officer may call as a witness a person necessary to ensure a full and complete record. (6) Any Board member may examine any witness.

H. Briefs.

- (1) A party may submit a brief on the issues of fact and law involved in the hearing.
- (2) The presiding officer may designate:
 - (a) The form of the brief;

(b) The number of copies to be submitted; and

(c) The date and time of submission.

(3) The Board may refuse to consider a brief that is not timely filed or fails to conform to requirements imposed by the presiding officer.

I. If a party who is the respondent in the proceedings fails to appear at a hearing after due notice, the Board may:

(1) Reschedule the hearing; or

(2) In the Board's discretion, proceed upon the investigation, report, documents, witnesses, and records before it.

J. Any testimony taken by the Board shall be taken under oath.

K. Decision and Order.

(1) A decision and order rendered by the Board shall:

(a) Be in writing; and

(b) Include the findings of fact and conclusions of law.

(2) A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or the party's attorney of record.

(3) The findings of fact, conclusions of law, and order shall be retained as a permanent record by the Board.

L. Judicial Review.

(1) A party who is aggrieved by a final decision of the Board under Health Occupations Article, §13-316, Annotated Code of Maryland, may seek judicial review of the Board's decision.

(2) The judicial review shall be in accordance with the provisions of State Government Article, §§10-222—10-223, Annotated Code of Maryland.

M. Rehearings.

(1) Within 10 days after service on a party of the decision of the Board, the party may apply to the Board for rehearing.

(2) The application shall state the grounds for rehearing.

(3) The Board shall grant or deny the application within 20 days of its submission to the Board.

(4) Unless otherwise ordered, neither the rehearing nor the application for rehearing shall:

(a) Stay the enforcement of the order; or

(b) Excuse the persons affected by the order for failure to comply with the terms of the order.

(5) At a rehearing, the Board shall only consider facts not presented in the original proceeding, including facts arising after the date of the original proceeding.

(6) By new order, the Board may abrogate, change, or modify its original order.

.11 Recommended Decisions, Exceptions Hearings, and Oral Argument.

A. If a case has been delegated to a hearing committee of the Board or to the Office of Administrative Hearings pursuant to State Government Article, §10-205, Annotated Code of Maryland, the hearing committee or administrative law judge shall prepare a recommended decision for consideration by a quorum of the Board.

B. A quorum of the Board may include members of the hearing committee.

C. The hearing committee shall issue a recommended decision within 90 days of the conclusion of the hearing. This 90-day time frame may be extended by a majority vote of a quorum of the Board.

D. The Board shall notify the parties of the parties' right to:

(1) File written exceptions to the recommended decision issued by the administrative law judge or the hearing committee; and

(2) Present oral argument to the Board.

E. A party may file written exceptions to the recommended decision issued by the administrative law judge or the hearing committee within 30 days of receipt of the recommended decision.

F. The party opposing the exceptions has 15 days to file a written response.

G. The Board may refuse to consider exceptions or responses filed in violation of §§E and F of this regulation.

H. Oral Arguments.

(1) If either party files exceptions, the Board shall schedule an oral argument to be held before a quorum of the Board.

(2) After oral argument, the Board shall prepare an order containing the:

(a) Accepted findings of fact;

(b) Conclusions of law; and

(c) Disposition.

(3) The Board may refuse to hear oral argument if exceptions are not timely filed.

(4) The presiding officer shall:

- (a) Determine all procedural issues that are governed by this regulation;
- (b) Make any rulings reasonably necessary to facilitate the effectiveness and efficiency of oral argument; and
- (c) Impose reasonable time limitations on oral argument and, ordinarily, limit the parties to 30 minutes each.

(5) The party filing the exceptions shall proceed first.

I. If the parties do not file timely exceptions and no oral argument is scheduled, a quorum of the Board shall consider the recommended decision issued by the administrative law judge or hearing committee.

J. The Board shall prepare an order based on the Board's review of the:

- (1) Recommended decision of the administrative law judge or hearing committee;
- (2) Record developed before the administrative law judge or hearing committee; and
- (3) Any exceptions and responses filed by the parties.

.12 Revocation of Hearing Authority from the Office of Administrative Hearings.

A. Consistent with the provisions of State Government Article, §10-205, Annotated Code of Maryland, the Board may revoke authority delegated to the Office of Administrative Hearings by written notice.

B. Criteria for Revocation of Authority in a Specific Case. The Board may revoke all or part of the Office of Administrative Hearings' authority in a specific case if the case:

- (1) Involves novel or unanticipated factual or legal issues;
- (2) Has significant fiscal consequences to the Board;
- (3) Involves policy issues of general applicability; or
- (4) Is likely to have precedential value.

C. Procedures for Revocation of the Office of Administrative Hearings' Authority in a Specific Case.

(1) The Board shall provide written notice of a revocation of the Office of Administrative Hearings' authority:

(a) To:

(i) All parties; and

(ii) The Office of Administrative Hearings; and

(b) That includes:

- (i) A brief statement of the reasons for the revocation;
 - (ii) Whether all or part of the Office of Administrative Hearings' delegated authority has been revoked; and
 - (iii) If only part of the delegation has been revoked, the portions of the contested case for which the delegation has been revoked.
- (2) The Board may revoke the Office of Administrative Hearings' authority to decide a case at any time before the earlier of:
- (a) Issuance of a ruling by the administrative law judge on a substantive issue; or
 - (b) Taking of oral testimony from the first witness.
- (3) A decision issued by the Board shall reflect that the Office of Administrative Hearings' authority was revoked.
- (4) The Board shall include as part of the record a copy of the revocation notice.

.13 Summary Suspensions.

A. The Board shall order the summary suspension of a license if the Board determines that there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare.

B. Based on information gathered in an investigation or otherwise provided to the Board, the Board may vote to issue:

- (1) A notice of an intent to summarily suspend a license; or
- (2) An order of summary suspension.

C. If the Board votes to issue a notice of intent to summarily suspend or an order of summary suspension, the Board shall refer the matter to an administrative prosecutor for prosecution.

D. Service of the notice of intent to summarily suspend a license shall be made by:

- (1) Hand delivery in person to the respondent;
- (2) Certified mail to the address the respondent is required to maintain with the Board; or
- (3) Other reasonable means to effect service.

E. Notice of Intent to Summarily Suspend.

(1) A notice of intent to summarily suspend a license shall include, but is not limited to:

- (a) A proposed order of summary suspension which is unexecuted by the Board and which includes:

- (i) The statutory authority on which the action has been taken;
- (ii) Allegations of fact which the Board believes demonstrate a substantial likelihood that the licensee poses a risk of harm to the public health, safety, or welfare; and
- (iii) Notice to the respondent of the right to request an evidentiary hearing of the summary suspension if the Board executes the proposed order of summary suspension; and

(b) An order or summons to appear before the Board:

- (i) To show cause why the Board should not execute the order of summary suspension; and
- (ii) Which notifies the respondent of the consequences of failing to appear.

(2) Predeprivation Hearing.

(a) If the Board issues a notice of intent to summarily suspend a license, the Board shall offer the respondent the opportunity to appear before the Board to show cause why the respondent's license should not be summarily suspended.

(b) The show cause hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the proposed summary suspension.

(c) The presiding officer:

- (i) Shall determine all procedural issues;
- (ii) May impose reasonable time limits on each party's oral argument; and
- (iii) Shall make any rulings reasonably necessary to facilitate the effective and efficient operation of the show cause hearing.

F. Order of Summary Suspension.

(1) The Board may order the summary suspension of a license without first issuing a notice of intent to summarily suspend or providing a respondent with a predeprivation hearing if the Board determines that the threat to public health, safety, and welfare requires the immediate suspension of the license.

(2) Post-Deprivation Hearing.

(a) The respondent shall be provided with a show cause hearing within a reasonable time after the effective date of the order of summary suspension.

(b) The show cause hearing pursuant to §F(2)(a) of this regulation shall:

- (i) Be conducted before the Board as provided in §E(2) of this regulation; and
- (ii) Provide the respondent with an opportunity to show cause why the Board should lift the summary suspension.

(3) After a show cause hearing, if the Board votes to continue the summary suspension, the respondent may request an evidentiary hearing before the Board.

(4) An evidentiary hearing:

(a) May be consolidated with a hearing on charges issued by the Board which include the facts which form the basis for the summary suspension; and

(b) Shall be conducted pursuant to the Administrative Procedure Act.

G. Disposition.

(1) If the Board issues a notice of intent to summarily suspend a license, the Board may, after the show cause hearing, vote to:

(a) Order a summary suspension;

(b) Deny the summary suspension;

(c) Enter into a consent order; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for the stay of the summary suspension subject to certain conditions.

(2) If the Board orders a summary suspension before a show cause hearing, the Board may, at the conclusion of the show cause hearing, vote to:

(a) Affirm its order of summary suspension;

(b) Rescind the order of summary suspension;

(c) Enter into a consent order; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

(3) An order for summary suspension or any other order of the Board issued after the initiation of summary suspension proceedings is a:

(a) Final order of the Board; and

(b) Public record.

.14 Surrender of a License.

A. The Board may accept the surrender of a license.

B. The Board may require conditions for surrender of a license, including but not limited to:

- (1) The admission of a violation of the Maryland Physical Therapy Act;
- (2) The admission of facts;
- (3) A statement of the circumstances under which the surrender was offered or accepted;
- (4) Restrictions on future licensing;
- (5) Conditions for reinstatement of the license; or
- (6) An agreement that the respondent may not again apply for a license.

C. A letter of surrender is a:

- (1) Final order of the Board; and
- (2) Public record.

.15 Probation and Violation of Probation.

A. If the Board imposes a period of probation as a sanction, the Board may impose conditions of probation which the Board deems appropriate, including:

- (1) Re-education or completion of approved courses;
- (2) Payment of a fine;
- (3) Practicing physical therapy or limited physical therapy under supervision;
- (4) Monitoring by the Board or by an individual or entity approved by the Board with periodic reporting to the Board;
- (5) Periodic review of a licensee's practice;
- (6) Periodic audits of a licensee's billing practice;
- (7) An examination by a physician or other appropriate health care provider;
- (8) Limitation of the licensee's practice;
- (9) Drug screenings;
- (10) Individual or group counseling or therapy;
- (11) Obtaining a passing score on an appropriate examination; or
- (12) Any other condition the Board deems appropriate for the rehabilitation or retraining of a licensee.

B. A term of probation may be defined by a specific period of time or the successful completion of certain conditions or acts by the licensee.

C. A licensee seeking release from probation shall do so only by petitioning the Board to terminate the probation when the:

- (1) Specific period of time has passed; or
- (2) Licensee has successfully completed the conditions or acts required for release.

D. At any time, if the Board has reason to believe that the licensee is not in compliance with the conditions of probation, the Board shall:

- (1) Charge the licensee with a violation of probation;
 - (2) Take any action provided for in the final order in the event of a violation of probation, including suspension of the license;
 - (3) Consider a summary suspension of the license; or
 - (4) Take any other action the Board deems appropriate and which the Board is authorized to take by law. E. If the Board determines that the respondent has violated probation, the Board shall: (1) Take any action provided for in the final order in the event of a violation of probation; (2) Impose additional conditions or probation; or
- (3) Impose any sanction or take any other action that the Board deems appropriate and is authorized to take by law.

.16 Reinstatement.

A. A licensee shall petition the Board for a lifting of the suspension of a license or a reinstatement following revocation or surrender of a license.

B. The Board may reinstate a license only in accordance with:

- (1) The terms and conditions of the order of revocation or suspension;
- (2) A letter of surrender;
- (3) An order of reinstatement issued by the Board; or
- (4) A final judgment in any proceeding for judicial review.

C. When a time period is not specified in the Board's final order, a petition for reinstatement may not be considered by the Board before the expiration of 1 year after the date of the order.

D. The form of a reinstated license shall:

- (1) Be similar in every respect to an original license; and

(2) Bear the new date of issue.

E. A licensee whose license has been revoked or surrendered for 3 years or more before filing a petition for reinstatement is not eligible for reinstatement but instead shall apply for initial licensure.

F. If the Board grants reinstatement of a license, the Board may impose any restrictions or conditions on the license that the Board deems appropriate.

10.38.06 – Foreign-Educated Licensure Requirements

.01 Requirements for Licensure.

A. Application Options.

(1) An applicant educated in a physical therapy core curriculum outside the United States or its territories shall apply for licensure under one of the categories described in §A(2)—(4) of this regulation.

(2) Examination. The applicant shall file with the Board:

(a) An application on the form the Board provides;

(b) The application and examination fees as specified in COMAR 10.38.07;

(c) Evaluation of educational credentials forwarded directly to the Board from an approved agency that provides evidence that the applicant's education is equivalent to that of an accredited core physical therapy program in the United States;

(d) Evidence of oral competency in the English language; and

(e) Evidence of written competency in the English language.

(3) Transfer of Examination Scores. The applicant shall file the following with the Board:

(a) An application on the form the Board provides;

(b) The application fee as specified in COMAR 10.38.07;

(c) Evaluation of educational credentials forwarded directly to the Board from an approved agency that provides evidence that the applicant's education is equivalent to that of an accredited physical therapy program in the United States;

(d) Evidence of oral competency in the English language;

(e) Evidence of written competency in the English language;

- (f) A sworn statement that the applicant is not licensed in another state;
 - (g) Evidence, satisfactory to the Board, that the applicant is registered to take, or has taken, the national licensing examination in another state; and
 - (h) A copy of a letter or form to the appropriate reporting service requesting that licensing examination scores be sent to the Board.
- (4) Waiver of Examination. The applicant shall file the following with the Board:
- (a) An application on the form the Board provides;
 - (b) The application fee as specified in COMAR 10.38.07;
 - (c) Evaluation of educational credentials forwarded directly to the Board from an approved agency that provides evidence that the applicant's education is equivalent to that of an accredited core physical therapy program in the United States;
 - (d) Evidence of oral competency in the English language;
 - (e) Evidence of written competency in the English language;
 - (f) A copy of a current physical therapy license;
 - (g) Verification of current licensure on the form the Board provides; and
 - (h) A copy of a letter or form to the appropriate reporting service requesting that licensing examination scores be sent to the Board.

B. In addition to the requirements of §A of this regulation, an applicant educated in a core physical therapy curriculum outside the United States or its territories shall comply with §C of this regulation.

C. Additional Requirements. Applicants for licensure shall:

- (1) Achieve a passing score on the licensing examinations;
- (2) Attend an interview unless the Board waives this requirement; and
- (3) Submit to a State and national criminal history records check in accordance with Health Occupations Article, §13302.1, Annotated Code of Maryland.

.02 Reexamination.

A. National Licensing Examination.

- (1) An applicant who fails shall repeat the examination.
- (2) Fees.

(a) The applicant shall pay to the Board the reexamination fee as specified in COMAR 10.38.07.

(b) An applicant who fails the licensing examination twice shall pay to the Board an application fee as specified in COMAR 10.38.07 in addition to the reexamination fee.

B. Examination on Maryland Physical Therapy Law. An applicant who fails the examination on the Maryland Physical Therapy Practice Act and associated regulations shall:

(1) Repeat the examination; and

(2) Attend an interview unless the Board waives this requirement.

.03 Issuance of Licenses.

A. Temporary License.

(1) The Board may issue a temporary license to an applicant who, except for passing an examination otherwise required under Health Occupations Article, Title 13, Annotated Code of Maryland, has met the appropriate education and experience requirements for a physical therapy license or a physical therapist assistant license set forth under Health Occupations Article, §13-302, Annotated Code of Maryland.

(2) The holder of a temporary license shall:

(a) Practice under direct supervision while the temporary license is in effect;

(b) Achieve a passing score on the Maryland Physical Therapy jurisprudence exam; and

(c) Submit to a State and national criminal history records check in accordance with Health Occupations Article, §13-302.1, Annotated Code of Maryland.

(3) A temporary license is valid until:

(a) 90 days after issuance;

(b) The Board issues a full license to practice physical therapy or limited physical therapy to the holder of the temporary license; or

(c) The Board revokes the temporary license.

B. Licensure Procedures.

(1) When the applicant has met all the requirements for licensure, the Board may issue a physical therapist license to the applicant.

(2) Renewal of Physical Therapist License.

(a) The licensee shall renew the physical therapist license biennially.

(b) The licensee shall be responsible for notifying the Board if a renewal notice is not received.

(c) The Board may issue a renewal license to the licensee who meets the requirements of Health Occupations Article, §13-311(c), Annotated Code of Maryland.

(3) Method of Renewal Notification.

(a) Except as otherwise provided in §B(3)(b) of this regulation, the Board shall mail notices for renewal at least 1 month before the expiration date.

(b) If requested by a licensee, the Board shall send to the licensee, at least two times within the month before a license expires, a renewal notice by electronic means to the last known electronic mail address of the licensee.

(c) If a renewal notice sent by electronic mail under §B(3)(b) of this regulation is returned to the Board as undeliverable, the Board shall send to the licensee a renewal notice by first-class mail to the last known address of the licensee.

(4) The Board may issue a duplicate license for a lost, stolen, or destroyed license provided the licensee:

(a) Makes a request in writing;

(b) Provides a sworn statement or police report attesting to the facts; and

(c) Pays the fee as established in COMAR 10.38.07.

(5) The Board may not issue a license under this subtitle if the results of the criminal history records check required pursuant to Regulation .01C(3) of this chapter has not been received.

.04 Restrictions.

A. The Board may refuse to grant a license to an applicant who:

(1) Begins practice as a physical therapist before being licensed to practice in Maryland;

(2) Practices after the date of expiration of the license;

(3) Fails the licensing examinations; or

(4) Fails to pay all outstanding fees to the Board.

B. An applicant shall complete the application process within 1 year of the date of the paid application or reapply for licensure.

C. The Board may refuse to renew a license of an applicant who fails to pay all outstanding fees to the Board.

10.38.07 – Fee Schedule

.01 Scope.

These regulations govern all persons licensed or applying for licensure by the Board.

.02 Fees.

A. The following fees are established by the Board:

- (1) Application fee — \$150;
- (2) Biennial renewal fee:
 - (a) Physical therapist — \$325;
 - (b) Physical therapist assistant — \$300;
- (3) Reinstatement fee — \$400;
- (4) Restricted license — \$125;
- (5) Duplicate license — \$75;
- (6) Penalty for returned check — \$40;
- (7) Written verification of licensure — \$25;
- (8) Review of course CE hours for licensee — \$25;
- (9) Approval for CE hours to course provider — \$100;
- (10) Penalty for failure to maintain correct address with the Board — \$100;
- (11) Interstate physical therapy licensure compact fee — \$125; and
- (12) Dry needling one-time registration fee — \$100.

B. The Federation of State Boards of Physical Therapy determines the fees for the National Licensure Examination and the Maryland Jurisprudence Assessment for physical therapists and physical therapist assistants.

C. The Maryland Health Care Commission (MHCC) assesses a fee for health care professionals which the applicant shall pay at the time of license renewal as specified in COMAR 10.25.02.

.03 Refunds.

Fees paid to the Board are nonrefundable.

.04 Change of Fees.

Fees are subject to change by action of the Board of Physical Therapy Examiners. The Board shall notify licensees and applicants of changes.

10.38.08 - Continuing Education Requirements

.01 Scope.

This chapter governs:

- A. A licensee applying for renewal;
- B. An individual applying for reinstatement of licensure; and
- C. Providers of continuing education.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “APTA” means the American Physical Therapy Association and its:

- (a) Academies;
- (b) Sections; and
- (c) State chapters.

(2) CE Hour.

(a) “CE hour” means a period of 60 minutes in which the licensee is engaged in a learning activity.

(b) “CE hour” does not include any portion of continuing education devoted to registration, breaks, social networking, or meals.

(3) “Continuing education (CE)” means learning experiences that:

(a) Include a licensee’s direct participation; and

(b) Are designed to enhance the professional practice of physical therapy and limited physical therapy.

(4) “Provider” means an individual or group who designs and develops CE activities.

.03 Continuing Education Requirements.

A. Continuing education is a requirement for renewal or reinstatement of licenses for physical therapists and physical therapist assistants, which may be obtained by:

(1) Postgraduate studies which include academic and professional studies that enhance competencies or instill new knowledge or skills, or both;

(2) Attendance at or presentation of seminars, conferences, courses, or workshops;

(3) Authoring, co-authoring, or editing of a book, book chapter, peer-reviewed journal article, or abstract;

(4) Home or self-directed study;

(5) Research;

(6) Workplace and community service contributions, and leadership relevant to the development of personal and professional competence; or

(7) Supervision of physical therapists or physical therapist assistant students in a clinical rotation.

B. Continuing education eligible for CE hours shall:

(1) Be relevant to the professional practice of physical therapy;

(2) Be directed to a professional audience; and

(3) Promote continuous professional development.

C. The Board shall have final approval of the relevancy of the continuing education.

D. Continuing education shall have clear and concise written statements of:

(1) Learning outcomes; or

(2) Instructional objectives.

E. Continuing education offered by the following organizations is automatically approved by the Board:

- (1) APTA; and
- (2) The Federation of State Boards of Physical Therapy (FSBPT).

F. Continuing education approved by APTA is automatically accepted by the Board.

.04 Continuing Education Approval.

A. To obtain approval of continuing education, a provider shall submit the following information to the Board 6 weeks before the activity commencement date:

- (1) An application on a Board-approved application form, accompanied by any required fee set forth in COMAR 10.38.07.02;
- (2) A complete hour-by-hour agenda of the CE;
- (3) A clear and concise written statement describing the CE's:
 - (a) Learning outcomes; or
 - (b) Instructional objectives;
- (4) Curriculum vitae for each instructor describing the instructor's competence in the CE subject matter and skill in instructional methodologies; and
- (5) If an instructor is not licensed by the Board or does not hold a Maryland compact privilege and plans to perform physical therapy in conjunction with the CE, an application for a restricted license obtained from the Board.

B. Public Representations.

- (1) If the CE is approved by the Board, the Board shall notify the provider of the approval, including the number of approved CE hours.
- (2) If a provider receives notification under §B(1) of this regulation, the provider may represent that the CE has been approved by the Board.
- (3) Approved CE certificates and advertisements shall contain the following statement: "This continuing education has been approved by the Maryland State Board of Physical Therapy Examiners for _____ CE hours."
- (4) A record of CE attendees shall be retained by the provider for at least 4 years.
- (5) The provider shall submit to the Board for approval any CE changes, such as changes in:
 - (a) Instructor;

- (b) Agenda;
- (c) Content;
- (d) Learning outcomes;
- (e) Instructional objectives; or
- (f) Length.

C. Term of Approval.

- (1) The Board shall approve the CE for a period of 4 years.
- (2) At the expiration of the 4-year approval period, the provider:
 - (a) May resubmit the CE; and
 - (b) Shall meet the approval requirements of §A of this regulation.

D. A licensee may submit a request for review of continuing education from the Board if the:

- (1) Continuing education is not already approved or disapproved by the Board; and
- (2) Licensee submits a request to the Board at least 30 days prior to the commencement of the CE activity containing, but not exclusive to, information set forth in Regulation .08 of this chapter.

E. The Board may request payment of a continuing education review as set forth in COMAR 10.38.07.02.

.05 Renewal Requirements.

A. A licensee shall:

- (1) Earn CE hours between June 1 and May 31 during the 2-year period before renewal; and
- (2) Maintain records of the CE subject matter, certificates of completion, hours, date, and CE hours to present to the Board on request.

B. CE hours completed after May 31 of the year of the renewal may not be accepted.

C. All renewal applications shall be accompanied by a continuing education form to be completed by the licensee.

D. A physical therapist shall earn 30 CE hours for the renewal period.

E. A physical therapist assistant shall earn 20 CE hours for the renewal period.

F. CE hours may not be carried over from one renewal period to the next.

G. Failure to substantiate CE hours if requested by the Board shall result in denial of license renewal or reinstatement of a license.

H. If the licensee has met all the requirements for renewal, the Board may renew a license for the first renewal period following the issuance of the original license without requiring the physical therapist or physical therapist assistant to complete any CE hours if, at the time of renewal, the original license was issued 1 year or less before the renewal period.

.06 Auditing Compliance with Continuing Education Requirements.

A. The Board shall audit the continuing education records of as many licensees as time and resources allow.

B. The Board shall send an audit letter to those to be audited at the close of the renewal period.

C. At the time of audit, the audited licensees shall submit documentation relating to compliance with CE requirements as set forth in this chapter.

D. The Board may request from the licensee evidence of achieving the CE hours.

.07 Reinstatement Requirements.

A. A physical therapist shall earn 30 CE hours in the 2-year period immediately preceding reinstatement.

B. A physical therapist assistant shall earn 20 CE hours in the 2-year period immediately preceding reinstatement.

.08 Continuing Education Professional Development Criteria.

CE activities meeting the criteria for continuing education requirements for the practice of physical therapy may include:

A. Postgraduate academic course work in physical therapy taken at an accredited college or university, which may earn 10 CE hours per course credit;

B. Attendance at Board-approved or APTA-approved continuing education, which may earn 1 CE hour for every approved hour;

C. Presentation of continuing education, which may earn 2 CE hours for every hour of presentation with presentations of the same subject matter receiving CE hours only once in a renewal period;

D. Authoring, co-authoring, or editing of a book, book chapter, or peer-reviewed journal article, which may earn 30 CE hours with proof accompanying the request for approval;

- E. Authoring an abstract, which may earn 10 CE hours;
- F. Completion of an approved self-directed study course, which may earn 1 CE hour per interactive hour;
- G. Completion of an approved home study course, which may earn 1 CE hour per interactive hour;
- H. Completion of continuing education relevant to workplace and community service contributions, and leadership relevant to the development of personal and professional competence, which may earn 1 CE hour only once in a renewal period;
- I. Supervision of physical therapists or physical therapist assistant students in a clinical rotation, which may earn 10 CE hours only once in a renewal period (1 CE hour equals 40 hours of supervision); or
- J. Research, which may earn 10 CE hours.

10.38.09 – Speech-Impaired Applicants

.01 Speech-Impaired Applicants.

- A. An applicant who claims a speech impairment shall fulfill all requirements for application and shall submit to the Board the following:
 - (1) Documentation of the applicant's impairment from an otolaryngologist, who has current certification from the American Board of Otolaryngology; and
 - (2) Documentation of the applicant's impairment from a speech-language pathologist who has current certification from the American Speech-Language Hearing Association.
- B. The Board shall require the speech-impaired applicant to prove ability to communicate adequately with patients and other health care professionals. The proof of ability to communicate shall include:
 - (1) Three letters from supervising physical therapists or instructors in a physical therapy program, attesting to the applicant's ability to communicate in a professionally competent manner; and
 - (2) A meeting before the Board where the applicant shall be required to demonstrate the manner in which communication with patients will occur.
- C. A speech-language pathologist or otolaryngologist may be asked to attend the meeting in an advisory capacity to the Board to aid in assessing the applicant's ability to communicate.

.02 Other Requirements.

- A. A foreign-trained speech-impaired applicant shall notify the Board before taking a Board-approved standardized test of oral competency.
- B. The Board shall attempt to locate a speech-language pathologist fluent in the applicant's native language to assess the impairment.
- C. A foreign-trained applicant who is in need of foreign accent reduction, but has competency in his or her native language, may obtain assistance from a bilingual speech-language pathologist before attempting to pass the test of spoken English.

10.38.10 – Disciplinary Sanctions, Monetary Penalties, and Civil Fines

.01 Scope.

This chapter establishes standards for the imposition of disciplinary sanctions, monetary penalties, and civil fines for violations of the Maryland Physical Therapy Act.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Act” means the Maryland Physical Therapy Act, Health Occupations Article, Title 13, Annotated Code of Maryland.
- (2) "Board" means the State Board of Physical Therapy Examiners.
- (3) “Civil fine” means a fine assessed by the Board against an individual for practicing physical therapy or limited physical therapy without a license.
- (4) "License" means a license issued by the Board to practice physical therapy or limited physical therapy.
- (5) "Licensee" means a physical therapist or physical therapist assistant who is licensed by the Board to practice physical therapy or limited physical therapy.
- (6) "Penalty" means monetary penalty.
- (7) “Sanction” means a disciplinary action reprimanding, restricting, suspending, or revoking a license.

.03 Imposition of a Penalty — General.

Imposition of a Penalty after a Hearing. If the Board finds that there are grounds under Health Occupations Article, §13-316, Annotated Code of Maryland, to reprimand a licensee or suspend or revoke a license, the Board may impose a penalty as set forth in this chapter:

- A. Instead, of, or in addition to, reprimanding the licensee or suspending the license; or
- B. In addition to revoking the license.

.04 Guidelines for Imposition of Disciplinary Sanctions or Monetary Penalties.

A. Subject to the provisions of this chapter, the Board may impose the following sanctions and, if appropriate, penalties for violations of the Act and its regulations according to the minimum and maximum sanctions and penalties set forth in the following categories:

	Violation	Minimum Sanction	Maximum Sanction	Minimum Penalty	Maximum Penalty
1	Continuing education violation	Reprimand	Active suspension for 1 year	\$100	\$1,000
2	Criminally convicted of, or pled guilty to, a felony, crime of moral turpitude, or violation of narcotics law	Probation for 3 years	Denial of license application or revocation	\$500	Maximum amount allowable under the Act
3	Documentation violation	Reprimand	Active suspension for 2 years	\$500	\$2,500
4	Professional incompetence; grossly negligent practice	Reprimand	Revocation	\$500	Maximum amount allowable under the Act
5	Mental or physical impairment	Probation for 2 years	Denial of license application or revocation	N/A	N/A
6	Submitting false billings	Reprimand	Revocation	\$500	Maximum amount allowable under the Act

7	Practicing beyond the scope of license	Reprimand	Active suspension for 2 years	\$500	Maximum amount allowable under the Act
8	Failure to cooperate with a lawful Board investigation	Reprimand	Denial of license application or revocation	\$1,000	Maximum amount allowable under the Act
9	Reciprocal discipline	Reprimand	Denial of license application or revocation	\$500	Maximum amount allowable under the Act
10	Sexual misconduct	Active suspension for 1 year	Revocation	\$3,000	Maximum amount allowable under the Act
11	Unprofessional conduct in the practice of physical therapy; Code of Ethics violation not specifically enumerated in this chapter	Reprimand	Revocation	\$500	Maximum amount allowable under the Act
12	Aiding the unauthorized practice of physical therapy	Reprimand	Active suspension for 1 year	\$1,500	Maximum amount allowable under the Act
13	Improper supervision	Reprimand	Revocation	\$500	Maximum amount allowable under the Act
14	Standard of practice violation not specifically enumerated in this chapter	Reprimand	Revocation	\$500	Maximum amount allowable under the Act
15	Other violation of the Act not specifically enumerated in this chapter	Reprimand	Denial of license application or revocation	\$100	Maximum amount allowable under the Act

16	Fraudulently or deceptively obtaining, attempting to obtain, or using a license	Reprimand	Denial of license application or revocation	\$500	Maximum amount allowable under the Act
17	Treating more than an average of 3 patients per clinical treatment hour per calendar day	Reprimand	Active suspension for 1 year	\$500	Maximum amount allowable under the Act
18	Treating patients without evaluation or reevaluation	Reprimand	Active suspension for 1 year	\$500	Maximum amount allowable under the Act
19	Failure to comply with probationary condition of an order	Active suspension for 1 year	Revocation	\$1,000	Maximum amount allowable under the Act

B. If a licensee is found in violation of more than one category enumerated in this regulation, the category or categories containing the highest maximum sanction and penalty shall control.

C. Notwithstanding the guidelines set forth in this regulation, in order to resolve a pending disciplinary action, the Board and licensee may agree to a surrender of license or a consent order with terms, sanction, and penalty agreed to by the Board and the licensee.

D. A departure from the guidelines set forth in this regulation, on its own, is not grounds for any hearing or appeal of a Board action.

E. The Board may not consider a petition for reinstatement of a license that has been revoked until at least 3 years have passed from the date of revocation.

.05 Mitigating and Aggravating Factors to be Considered in the Assessment of the Sanction and Penalty.

A. Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider, but not be limited to, the mitigating and aggravating factors outlined in §§B and C of this regulation in determining whether the sanction in a particular case should fall outside the range of sanctions established by the guidelines.

B. Mitigating Factors. The Board may consider the following mitigating factors:

(1) The licensee's lack of a prior disciplinary record;

- (2) The licensee self-reported the violation to the Board;
- (3) The licensee's full and voluntary admission of misconduct to the Board and cooperation during Board proceedings;
- (4) The licensee implemented remedial measures to correct or mitigate harm arising from the misconduct;
- (5) The licensee made timely good-faith effort to make restitution or to rectify the consequences of the misconduct;
- (6) Evidence of rehabilitation or rehabilitative potential;
- (7) Absence of premeditation to commit the misconduct;
- (8) Absence of potential harm to the public or adverse impact; and
- (9) The licensee's conduct was an isolated incident and not likely to recur.

C. Aggravating Factors. The Board may consider the following aggravating factors:

- (1) The licensee has a previous criminal or administrative disciplinary history;
- (2) The violation was committed deliberately or with gross negligence or recklessness;
- (3) The violation had the potential for, or caused, serious patient harm;
- (4) The violation was part of a pattern of detrimental conduct;
- (5) The licensee was motivated to perform the violation for financial gain;
- (6) The vulnerability of the patient or patients;
- (7) The licensee attempted to hide error or misconduct from patients or others;
- (8) Previous attempts at rehabilitation of the licensee were unsuccessful; and
- (9) The licensee committed the violation under the guise of treatment.

D. The existence of one or more of these factors does not impose on the Board or an Administrative Law Judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set forth in this chapter.

E. Nothing in this regulation requires the Board or an Administrative Law Judge to make findings of fact with respect to any of these factors.

.06 Civil Fines.

A. Practicing on an Expired License. The Board may assess a civil fine against a physical therapist or physical therapist assistant who practices physical therapy or limited physical therapy on an expired license in the amount of \$100 per day of practice past the expiration date of the license.

B. Practicing Without a License.

(1) The Board may assess a civil fine of no less than \$5,000 and no more than \$50,000 against an individual who practices physical therapy or limited physical therapy without a license.

(2) Factors in determining the amount of a fine include, but are not limited to, the following:

(a) The extent to which the individual derived any financial benefit from the unauthorized practice;

(b) The willfulness of the unauthorized practice;

(c) Actual or potential public harm caused by the unauthorized practice; and

(d) The length of time in which the individual engaged in the unauthorized practice.

.07 Payment of a Penalty.

A. Unless the Board specifies otherwise, a licensee shall pay to the Board a penalty imposed under this chapter as of the date the Board's order is issued.

B. Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, or Health Occupations Article, §13-318, Annotated Code of Maryland, does not automatically stay payment of a penalty imposed by the Board pursuant to this chapter.

C. If a licensee fails to pay, in whole or in part, a penalty imposed by the Board pursuant to this chapter, the Board may not restore, reinstate, or renew a license until the penalty has been paid in full.

D. In its discretion, the Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings to ensure prompt payment.

E. Deposit of Monies.

(1) The Board shall pay all monies collected pursuant to this chapter, except for civil fines collected under Regulation .06 of this chapter, into the State's General Fund.

(2) The Board shall pay all civil fines collected under Regulation .06 of this chapter into the State Board of Physical Therapy Examiners Fund, in accordance with Health Occupations Article, §13-407(b)(2), Annotated Code of Maryland.

10.38.11 – Compelling Purpose

Disclosure

.01 Scope.

This chapter does not apply to the disclosure of information in the Board's files to a health occupations regulatory board of this State or another state that licenses or disciplines persons practicing a health occupation.

.02 Disclosure for Compelling Public Purpose.

A custodian of the Board may find that a compelling public purpose warrants disclosure of information in a certification, licensing, or investigative file, regardless of whether there has been a request for the information, and may disclose information concerning competent evidence of:

- A. Possible criminal activity, if disclosure is to a federal, state, or local law enforcement or prosecutorial official or authority;
- B. A possible violation of law, if disclosure is to a federal, state, or local authority that has jurisdiction over the individual whose conduct may be a violation and the information disclosed is limited to information relevant to the possible violation by that individual; or
- C. Conduct by an individual which the Board reasonably believes may pose a risk to the public health, safety, or welfare, if disclosure is to a law enforcement authority, administrative official, agency that regulates the individual, or to a hospital or other health care facility where the individual has privileges.

.03 Other Disclosures.

This chapter does not prohibit or limit the ability of the Board to disclose general licensing information under General Provisions Article, §4-333, Annotated Code of Maryland, or any information that the Board may otherwise disclose by law.

10.38.12 – Dry Needling

.01 Scope.

This chapter establishes standards for the provision of dry needling as an intervention performed by physical therapists.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the State Board of Physical Therapy Examiners.

(2) "Dry needling" means a physical therapy intervention, also known as intramuscular manual therapy, that:

(a) Involves the insertion of one or more solid needles, a mechanical device, into the muscle and related tissues to affect change in muscle and related tissues;

(b) Requires ongoing evaluation, assessment, and re-evaluation of the impairments;

(c) Is only utilized in parts of the body with neuromuscular or musculoskeletal links to the impairments; and

(d) Is not performed for:

(i) The purposes of acupuncture as defined in Health Occupations Article, §1A-101, Annotated Code of Maryland; or

(ii) Any purpose outside the scope of physical therapy.

.03 Minimum Education and Training Necessary to Perform Dry Needling.

A. In order to perform dry needling, a physical therapist shall have at least 80 total hours of instruction, which includes:

(1) A total of at least 40 hours of instruction in the following dry needling-specific course content areas:

(a) Theory and application of dry needling;

(b) Dry needling technique, including spine and extremities;

(c) Dry needling indications and contraindications;

(d) Infection control, the Occupational Safety and Health Administration's Bloodborne Pathogen Protocol, and safe handling of needles;

(e) Emergency preparedness and response procedures related to complications associated with dry needling; and

(f) Appropriate documentation of dry needling; and

(2) At least 40 hours of practical, hands-on instruction in the application and technique of dry needling, under the supervision of a licensed health care practitioner competent in dry needling procedures who has:

(a) Completed the requisite course work under §A(1) of this regulation; and

(b) Practiced dry needling for at least 5 years.

B. The instruction required under §A(1) of this regulation shall be provided by a continuing education course sponsored by:

- (1) The American Physical Therapy Association;
- (2) The APTA of Maryland;
- (3) The Federation of State Boards of Physical Therapy; or
- (4) The United States Armed Forces.

C. A continuing education course taken before June 19, 2018 shall qualify for instruction if the same course, in substantially similar form, is later sponsored by the American Physical Therapy Association, the APTA of Maryland, or the Federation of State Boards of Physical Therapy.

D. All instruction required under this regulation shall include an assessment of competency.

E. The instruction required under §A(1) of this regulation shall be offered:

- (1) In person at a face-to-face session; or
- (2) In real time through electronic means that allow for simultaneous interaction between the instructor and the participants.

F. A physical therapist may not fulfill any portion of the practical, hands-on instruction required under §A(2) of this regulation with online or distance learning.

G. A physical therapist shall have practiced physical therapy for at least 2 years before performing dry needling in the State.

H. Registration.

(1) A physical therapist shall be registered with the Board as having the appropriate education and training required by this regulation before the physical therapist may practice dry needling.

(2) In order to be registered to practice dry needling, a physical therapist shall:

- (a) Submit a completed application on a form supplied by the Board; and
- (b) Pay a registration fee as established by COMAR 10.38.07.

I. A physical therapist who practices dry needling without the education and training required by this regulation shall be subject to discipline pursuant to COMAR 10.38.10.04A(4).

.04 Standards of Practice in Performing Dry Needling.

A. A physical therapist shall:

- (1) Fully explain dry needling to the patient in advance of treatment; and
- (2) Obtain written informed consent specific to dry needling that shall be included in the patient's medical record.
- B. A physical therapist shall perform dry needling in a manner consistent with standards set forth in the Maryland Occupational Safety and Health Act, Labor and Employment Article, Title 5, Annotated Code of Maryland.
- C. A physical therapist shall document the provision of dry needling services in accordance with the documentation requirements of COMAR 10.38.03.02-1.
- D. A physical therapist who practices dry needling in a manner inconsistent with the standards of practice enumerated in this regulation shall be subject to discipline pursuant to COMAR 10.38.10.04A(14).
- E. Dry needling is not within the scope of practice of limited physical therapy and shall only be performed by a licensed physical therapist.

10.38.13 - Telehealth

.01 Scope.

- A. This chapter governs the practice of physical therapy or limited physical therapy using telehealth as an adjunct to, or replacement for, in-person patient visits.
- B. Nothing in these regulations restricts or limits reimbursement requirements pursuant to Health-General Article and Insurance Article, Annotated Code of Maryland.

.02 Definitions.

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
 - (1) "Asynchronous" means not occurring in real time.
 - (2) "Board" means the Maryland Board of Physical Therapy Examiners.
 - (3) "In-person" means within the physical presence of the patient.
 - (4) "Synchronous" means occurring in real time.
 - (5) "Telehealth" has the meaning stated in Health Occupations Article, §1-1001, Annotated Code of Maryland.
 - (6) "Telehealth practitioner" means:

- (a) A Maryland licensed physical therapist or physical therapist assistant performing telehealth services within their respective scope of practice; or
- (b) A physical therapist or physical therapist assistant with a compact privilege in Maryland performing telehealth services within their respective scope of practice.

.03 Licensure.

Subject to the provisions of Health Occupations Article, §13-301, Annotated Code of Maryland, a telehealth practitioner shall be licensed in Maryland or hold a compact privilege in Maryland when providing telehealth services to a patient located in the State.

.04 Standards of Practice for Telehealth.

A. Before providing telehealth services, a telehealth practitioner shall develop and follow a procedure to:

(1) Verify the identification of the patient receiving telehealth services through use of:

(a) A government-issued photograph identification;

(b) An insurance, Medicaid, or Medicare card; or

(c) Documentation of the patient's:

(i) Date of birth; and

(ii) Home address;

(2) For an initial patient-telehealth practitioner encounter, disclose the telehealth practitioner's:

(a) Name;

(b) Maryland license number and type or compact privilege number, if applicable, and

(c) Contact information;

(3) Obtain oral or written consent from a patient or patient's parent or guardian if State law requires the consent of a parent or guardian, including informing patients of the risks, benefits, and side effects of the recommended treatment plan;

(4) Securely collect and transmit a patient's medical health information, clinical data, clinical images, laboratory results, and self-reported medical health and clinical history, as necessary, and prevent access to data by unauthorized persons through encryption or other means;

(5) Notify patients in the event of a data breach;

(6) Ensure that the telehealth practitioner provides a secure and private communication modality that complies with federal and state privacy laws; and

(7) Establish safety protocols to be used in the case of an emergency, including contact information for emergency services at the patient's location.

B. Except when providing asynchronous telehealth services, a telehealth practitioner shall:

(1) Obtain or confirm an alternative method of contacting the patient in case of a technological failure;

(2) Confirm whether the patient is in Maryland and identify the specific practice setting in which the patient is located; and

(3) Identify all individuals present at each location and confirm they are allowed to hear the patient's health information.

C. A telehealth practitioner shall be held to the same standards of practice and documentation as those applicable for in-person physical therapy practice appointments.

.05 Patient Evaluation.

A. A physical therapist who practices telehealth shall:

(1) Perform a synchronous or asynchronous clinical patient evaluation that is appropriate for the patient and the condition with which the patient presents before providing a treatment plan through telehealth; and

(2) If clinically appropriate for the patient, provide or refer a patient to:

(a) In-person treatment; or

(b) Another type of telehealth service.

B. A telehealth practitioner may not treat a patient based solely on an online questionnaire.

.06 Telehealth Practitioner Discipline.

A. The Board shall use the same standards of evaluating and investigating a complaint about and in disciplining a telehealth practitioner who practices telehealth as it would use for a licensee who does not use telehealth technology in the licensee's practice.

B. The failure of a telehealth practitioner to comply with this chapter shall constitute unprofessional conduct and may be subject to disciplinary action by the Board.