

**PHYSICAL THERAPY BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 11
PHYSICAL THERAPY**

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CHAPTER 11 PHYSICAL THERAPY

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Chapter Administrative Rules

Title 24, chapter 177, ARM Board of Physical Therapy Examiners.

Chapter Law Review Articles

Employer Doesn't Have to Pay for Unlicensed Physical Therapy Treatment, Litchman, 23 Pa. L. Weekly 5 (2000).

Doctors Can Be Liable After Sending Patients to Therapy; High Court Declines Case, Grezlak, 21 Pa. L. Weekly 8 (1998).

Part 1 General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of physical therapy examiners provided for in 2-15-1748.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.
- (4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.
- (5) "Physical therapist assistant" or "assistant" means a person who:
 - (a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;
 - (b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and
 - (c) is supervised by a licensed physical therapist as described in 37-11-105.
- (6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.
- (7) "Physical therapy" means the evaluation, treatment, and instruction of human beings, in person or through telemedicine, to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.
- (8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.
- (9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.
- (10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) "Telemedicine" has the meaning provided in 33-22-138.

(12) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 237, L. 1991; amd. Sec. 1, Ch. 253, L. 1995; amd. Sec. 120, Ch. 483, L. 2001; amd. Sec. 1, Ch. 257, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 257 in definition of physical therapy near beginning inserted "in person or through telemedicine"; inserted definition of telemedicine; and made minor changes in style. Amendment effective October 1, 2017.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 253 in definition of physical therapist assistant, in (a) after "accredited", inserted "physical therapist assistant", in (b), after "therapy", inserted "but who may not make evaluations or design treatment plans" and at end deleted "whose activities require an understanding of physical therapy", and inserted (c) concerning supervision by licensed physical therapist; inserted definition of physical therapist assistant student; in definition of physical therapy aide, at end, substituted "or a licensed physical therapist assistant as described in 37-11-105" for "who must be available for periodic checks during any procedure or treatment involving a patient"; in definition of physical therapy student, at end, substituted "and who is supervised by a licensed physical therapist as described in 37-11-105" for "under the direction, guidance, and observation of a licensed physical therapist"; and made minor changes in style.

1991 Amendment: In definition of physical therapy, near middle, inserted "prescribed topical medications"; inserted definition of topical medications; and made minor change in style.

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

- (1) be adopted after consultation with the board of medical examiners and the board of pharmacy;
- (2) be in the form of written protocols that include:
 - (a) a description of the topical medication;
 - (b) a description of its actions, indications, and contraindications; and
 - (c) the proper procedure and technique for the application and administration of the medication;

and

(3) apply only to topical medications for which a prescription is required under state or federal law."

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (8); changed internal references to the department and the board.

Administrative Rules

ARM 24.177.405 Licensure exemptions, supervision, and delegation.

Attorney General's Opinions

Occupational Therapist Not Authorized to Use Iontophoresis: Iontophoresis is a process that uses electricity to administer topical medication. The statutes governing the practice of physical therapy define topical medication and iontophoresis and authorize its use by physical therapists, but the statutes governing the practice of occupational therapy do not contain those definitions or authorize the use of topical medications, including medications administered through iontophoresis, by occupational therapists. If the Legislature had intended to authorize occupational therapists to use iontophoresis, it would have made an authorization corollary to the statutes governing physical therapists, but it did not. Therefore, occupational therapists are not authorized by Montana law to perform iontophoresis. 49 A.G. Op. 1 (2001).

Examination and Diagnosis of Physical Handicaps by Physical Therapists: A physical therapist (prior to 1981 amendment of 37-11-104) may not act as a consultant in evaluating and diagnosing physical handicaps of any person unless acting at the request and direction of a licensed physician. 38 A.G. Op. 9 (1979).

37-11-102. Exemptions. This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession, including osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 4, Ch. 237, L. 1991.

Compiler's Comments

1991 Amendment: At end substituted "to the extent they do massage" for "masseurs, or Swedish masseurs"; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

- (1) be adopted after consultation with the board of medical examiners and the board of pharmacy;
- (2) be in the form of written protocols that include:
 - (a) a description of the topical medication;
 - (b) a description of its actions, indications, and contraindications; and
 - (c) the proper procedure and technique for the application and administration of the medication;

and

(3) apply only to topical medications for which a prescription is required under state or federal law."

Administrative Rules

ARM 24.177.405 Licensure exemptions, supervision, and delegation.

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.

Compiler's Comments

1997 Amendment: Chapter 481 in (1)(c) and (2)(c), after "written", inserted "or computerized".

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation and treatment procedures listed in subsections (1) and (2) may be performed by a licensed physical therapist without referral.

History: En. Sec. 4, Ch. 491, L. 1979; amd. Sec. 1, Ch. 240, L. 1981; amd. Sec. 3, Ch. 55, L. 1987.

Compiler's Comments

1987 Amendment: In second clause of (1), after "the development", deleted "but not the implementation"; and in (3) inserted "and treatment" after "evaluation", inserted reference to subsection (2), and at end deleted "from physicians, osteopaths, dentists, or podiatrists, but treatment may be rendered only to patients referred by physicians, osteopaths, dentists, or podiatrists".

1981 Amendment: Substituted "Physical therapy evaluation includes" for "Physical therapy is practiced under referral from physicians, osteopaths, dentists, and podiatrists and includes" at the

beginning of (1); substituted "development, but not the implementation, of a plan" for "establishment and modification" in the middle of (1); added subsection (3) allowing licensed physical therapist to perform evaluation and treatment procedures without referral; and made minor changes in punctuation.

Attorney General's Opinions

Occupational Therapist Not Authorized to Use Iontophoresis: Iontophoresis is a process that uses electricity to administer topical medication. The statutes governing the practice of physical therapy define topical medication and iontophoresis and authorize its use by physical therapists, but the statutes governing the practice of occupational therapy do not contain those definitions or authorize the use of topical medications, including medications administered through iontophoresis, by occupational therapists. If the Legislature had intended to authorize occupational therapists to use iontophoresis, it would have made an authorization corollary to the statutes governing physical therapists, but it did not. Therefore, occupational therapists are not authorized by Montana law to perform iontophoresis. 49 A.G. Op. 1 (2001).

37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy student, or physical therapist assistant student. (1) A physical therapist assistant shall practice under the supervision of a licensed physical therapist who is responsible for and participates in a patient's care. This supervision requires the licensed physical therapist to make an onsite visit or a visit by means of telemedicine to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever occurs first.

(2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or the equivalent. This supervision does not require the presence of the assistant.

(3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent or two assistants and two aides or the equivalent.

(4) A physical therapy student or physical therapist assistant student shall practice with the onsite supervision of a licensed physical therapist.

History: En. Sec. 6, Ch. 491, L. 1979; amd. Sec. 2, Ch. 253, L. 1995; amd. Sec. 1, Ch. 193, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 193 in (1) in second sentence near middle inserted "or a visit by means of telemedicine". Amendment effective October 1, 2019.

1995 Amendment: Chapter 253 in (1), in first sentence before "supervision", deleted "direct" and inserted second sentence concerning onsite visits to client; inserted (2) limiting supervision to two full-time assistants; inserted (3) concerning onsite supervision and limiting number of aides supervised; inserted (4) concerning onsite supervision for students; and made minor changes in style.

Administrative Rules

ARM 24.177.405 Licensure exemptions, supervision, and delegation.

37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed physical therapist may apply or administer topical medications by:

- (a) direct application;
- (b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or
- (c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

- (a) bactericidal agents;
- (b) debriding agents;
- (c) anesthetic agents;
- (d) anti-inflammatory agents;
- (e) antispasmodic agents; and

(f) adrenocorticosteroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications. Topical medications dispensed under this section must comply with United States food and drug administration packaging and labeling guidelines.

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.

History: En. Sec. 2, Ch. 237, L. 1991; amd. Sec. 36, Ch. 126, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 126 in (3) at end of first sentence after "medications" deleted "and must be purchased from a pharmacy certified under 37-7-321" and in second sentence after "comply with" inserted "United States food and drug administration" and at end after "guidelines" deleted "developed by the board of pharmacists under Title 37, chapter 7". Amendment effective July 1, 2005.

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

- (1) be adopted after consultation with the board of medical examiners and the board of pharmacy;
- (2) be in the form of written protocols that include:
 - (a) a description of the topical medication;
 - (b) a description of its actions, indications, and contraindications; and
 - (c) the proper procedure and technique for the application and administration of the medication;

and

(3) apply only to topical medications for which a prescription is required under state or federal law."

Attorney General's Opinions

Occupational Therapist Not Authorized to Use Iontophoresis: Iontophoresis is a process that uses electricity to administer topical medication. The statutes governing the practice of physical therapy define topical medication and iontophoresis and authorize its use by physical therapists, but the statutes governing the practice of occupational therapy do not contain those definitions or authorize the use of topical medications, including medications administered through iontophoresis, by occupational therapists. If the Legislature had intended to authorize occupational therapists to use iontophoresis, it would have made an authorization corollary to the statutes governing physical therapists, but it did not. Therefore, occupational therapists are not authorized by Montana law to perform iontophoresis. 49 A.G. Op. 1 (2001).

37-11-107. Board adoption of protocols. The board, in consultation with the board of medical examiners and the board of pharmacy, shall by rule adopt written protocols for each class of topical medication listed in 37-11-106(2) for which a prescription is required under state or federal law. Protocols must include a description of each topical medication and its actions, indications, and contraindications, as well as the proper procedure and technique for the application or administration of the medication.

History: En. Sec. 3, Ch. 237, L. 1991.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

- (1) be adopted after consultation with the board of medical examiners and the board of pharmacy;
- (2) be in the form of written protocols that include:
 - (a) a description of the topical medication;
 - (b) a description of its actions, indications, and contraindications; and
 - (c) the proper procedure and technique for the application and administration of the medication;

and

(3) apply only to topical medications for which a prescription is required under state or federal law."

Part 2

Duties of Board and Department

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Prohibition on distribution or sale of mailing lists, 2-6-1017.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1749.
Subpoenas, Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Part Administrative Rules

Title 24, chapter 177, subchapter 1, ARM Organizational rule.
Title 24, chapter 177, subchapter 2, ARM Procedural rules.

37-11-201. General powers — rulemaking. The board may:

- (1) adopt rules to implement this chapter;
- (2) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and
- (3) take any other disciplinary action necessary to protect the public.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979; amd. Sec. 1, Ch. 115, L. 1991; amd. Sec. 3, Ch. 253, L. 1995; amd. Sec. 16, Ch. 481, L. 1997; amd. Sec. 17, Ch. 271, L. 2003; amd. Sec. 49, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1)(b) that read: "(b) grant, suspend, and revoke licenses"; deleted former (2) through (5) that read: "(2) The board shall:

- (a) examine applicants for licenses at reasonable places and times determined by the board;
- (b) review the qualifications of applicants who are approved for examination for licensure;
- (c) conduct written or computerized examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate; and

(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants, subject to the provisions of 37-1-138.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (2)(d) at end inserted "subject to the provisions of 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 481 in (2)(a), after "licenses", deleted "three times a year"; and in (2)(c), after "written", inserted "or computerized".

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30."

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 253 inserted (2)(d) concerning rules for continuing education; in (3), in second sentence in three places, inserted references to assistants; and made minor changes in style.

1995 Statement of Intent: The statement of intent attached to Ch. 253, L. 1995, provided: "A statement of intent is required for this bill because it grants the board of physical therapy examiners rulemaking authority to establish continuing education requirements for a physical therapist and a physical therapy assistant to obtain a license renewal. In adopting rules, the board should conform to continuing education standards for similar professions."

1991 Amendment: In (2)(a) increased from two to three the number of times a year the examination must be offered; and made minor change in style. Amendment effective March 20, 1991.

1979 Statement of Intent: The statement of intent adopted with HB 571 (Ch. 491, L. 1979) provided: "House Bill 571 creates a Board of Physical Therapists. The board would be allowed rulemaking authority.

It is the intent of the legislature that any rules adopted by the board be limited to:

1. establishing minimum state requirements and educational standards for those persons practicing physical therapy in Montana;
2. assuring physicians practicing in any branch of medicine, hospitals, and employing agencies that the persons practicing physical therapy are qualified; and
3. protecting persons needing physical therapy from fraudulent physical therapists by establishing licensing requirements which ensure that only competent physical therapists practice in Montana."

Administrative Rules

Title 24, chapter 177, ARM Board of Physical Therapy Examiners.

37-11-202. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department must be deposited in the state special revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

History: En. Sec. 10, Ch. 491, L. 1979; amd. Sec. 16, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 253, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 253 deleted (3) that read: "(3) The board of medical examiners shall transfer funds in the state special revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the state special revenue account designated as the "physical therapist account"; and made minor changes in style.

1983 Amendment: Substituted references to state special revenue account for references to earmarked revenue account.

1981 Amendment: In (1) after "shall" substituted language providing that Board members receive compensation and travel expenses as provided in 37-1-133 for "be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3 Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-301. License required for physical therapist and assistant — unauthorized representation as licensed therapist. (1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.

(2) A person who is not licensed under this chapter as a physical therapist, whose license has been suspended or revoked, or whose license has lapsed and has not been revived and who uses the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that the person is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, purports to be a physical therapist is guilty of a misdemeanor.

(3) A person who is not licensed as a physical therapist assistant in accordance with this chapter may not assist a physical therapist in the practice of physical therapy.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979; amd. Sec. 5, Ch. 253, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 253 inserted (1) requiring licensure as condition of practice; inserted (3) requiring licensure for assisting physical therapist; and made minor changes in style.

Saving Clause: Section 19, Ch. 491, L. 1979, provided: "A license to practice physical therapy issued prior to the effective date of this act remains in effect for the period of its validity but upon expiration may be renewed only in accordance with this act."

Case Notes

Failure to Provide Notice of Child Abuse Substantiation Hearing Not Affecting Employment as Physical Therapy Assistant — No Prejudice to Substantial Rights: When Dowell applied to work at a day-care center, the Department of Public Health and Human Services (DPHHS) denied the request, without a substantiation hearing, based on Dowell's previous child abuse and neglect proceedings. The District Court affirmed. On appeal, Dowell contended that the DPHHS's failure to provide her with timely notice prejudiced her constitutional right to subsequent employment as a physical therapy assistant. Under 2-4-704, judicial review of an agency decision must be confined to the record that was brought before the agency. Implications on licensure as a physical therapist are determined by the Board of Physical Therapists, not the DPHHS, and Dowell provided no evidence that the substantiation determination by the DPHHS impacted employment as a physical therapist, so Dowell's substantial rights were not affected. The District Court was affirmed. *Dowell v. Dept. of Public Health and Human Services*, 2006 MT 55, 331 M 305, 132 P3d 520 (2006).

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-11-303. Qualifications of applicants for license. (1) To be eligible for a license as a physical therapist, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited school of physical therapy approved by the board; and

(c) pass to the satisfaction of the board a written or computerized examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist.

(2) To be eligible for a physical therapist assistant license, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited physical therapist assistant curriculum approved by the board; and

(c) have passed a written or computerized examination prescribed by the board.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979; amd. Sec. 1, Ch. 456, L. 1981; amd. Sec. 6, Ch. 253, L. 1995; amd. Sec. 49, Ch. 429, L. 1995; amd. Sec. 17, Ch. 481, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 481 in (1)(c) and (2)(c), after "written", inserted "or computerized".

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54,

with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30."

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 253 inserted (2) establishing qualifications for physical therapist assistant; and made minor changes in style.

Chapter 429 at beginning of (1)(c) deleted "either"; deleted (3)(b) that read: "(b) be entitled to a license without examination under 37-11-307"; and made minor changes in style.

The Code Commissioner has reflected the reoutlining contained in Ch. 253.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1981 Amendment: In (3)(a) substituted language referring to written and oral examination requirements for "pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist".

Administrative Rules

ARM 24.177.501 Examinations.

Attorney General's Opinions

Examination and Diagnosis of Physical Handicaps by Physical Therapists: A physical therapist may not act as a consultant in evaluating and diagnosing physical handicaps of any person unless acting at the request and direction of a licensed physician. 38 A.G. Op. 9 (1979). (See 1981 amendment to 37-11-104.)

37-11-304. Application for examination. A person who desires to be licensed as a physical therapist or a physical therapist assistant shall apply to the department on a form furnished by the department. The person shall provide evidence, satisfactory to the board, of having the qualifications preliminary to the examination required by 37-11-303.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 115, L. 1991; amd. Sec. 7, Ch. 253, L. 1995; amd. Sec. 50, Ch. 429, L. 1995; amd. Sec. 50, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in first sentence after first "department" deleted "in writing" and in second sentence after "evidence" deleted "under oath"; deleted former (1)(b) and (2) that read: "(b) pay to the department at the time of filing the application a fee established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Anyone failing to pass the required examination on the first attempt is entitled to take a second examination and, if the second examination is failed, to take a third examination. A person who fails the third examination is required to successfully complete additional education as required by the board before retaking the examination"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendments — Composite Section: Chapter 253 in (1), after "therapist", inserted "or a physical therapist assistant"; in (2) inserted second sentence concerning additional education if third examination is failed; and made minor changes in style.

Chapter 429 at beginning of (1) deleted "Unless entitled to a license under 37-11-307"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (2), after "required examination", inserted "on his first attempt" and after "second examination" substituted "and, if he fails the second examination, to sit for a third examination" for "within 6 months"; and made minor changes in style. Amendment effective March 20, 1991.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 24.177.401 Fees.

37-11-305. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506; amd. Sec. 8, Ch. 253, L. 1995.

37-11-306. Issuance of license — certificate as evidence. The department shall issue a license to each applicant who proves to the satisfaction of the board the applicant's fitness for a physical therapist or physical therapist assistant license under this chapter. The department shall also issue to each licensed person a license certificate, which is prima facie evidence of that person's right to practice and advertise as a licensed physical therapist or a physical therapist assistant, subject to the conditions and limitations of this chapter.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507; amd. Sec. 9, Ch. 253, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 253 in first sentence, near beginning after "shall", substituted "issue a license to" for "license as a physical therapist" and near end, before "license", inserted "physical therapist or physical therapist assistant"; in second sentence, near middle, substituted "right to practice and advertise" for "right of the person to whom it is issued to represent himself" and after "therapist" inserted "or a physical therapist assistant"; and made minor changes in style.

37-11-307. Applicants licensed in other states. (1) The board is subject to the physical therapy compact described in 37-11-316 and shall extend compact privileges as described by 37-11-316.

(2) The board may, in its discretion, authorize the department to issue a physical therapist or physical therapist assistant license, without examination, on the payment of the required fee established by the board, to an applicant who is a physical therapist or physical therapist assistant licensed under the laws of another state or territory that is not part of the compact if the applicant has met the same requirements as applicants licensed by examination under this chapter. An applicant licensed in another state or territory that is not part of the compact, if licensed by examination other than the examination recognized under this chapter, may be considered for licensure by the board if the requirements for a physical therapy license or a physical therapist assistant license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979; amd. Sec. 25, Ch. 345, L. 1981; amd. Sec. 1, Ch. 454, L. 1983; amd. Sec. 10, Ch. 253, L. 1995; amd. Sec. 3, Ch. 36, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 36 inserted (1) regarding the board being subject to the physical therapy compact; in (2) in first sentence near end after "another state or territory" inserted "that is not part of the compact" and in second sentence near beginning after "another state or territory" inserted "that is

not part of the compact, if licensed"; and made minor changes in style. Amendment effective October 1, 2017.

1995 Amendment: Chapter 253 in two places in first sentence and in second sentence inserted reference to physical therapist assistant; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1983 Amendment: In first sentence, substituted "if the applicant has met the same requirements as applicants licensed by examination under this chapter" for "if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state"; inserted second sentence allowing under certain conditions licensure of applicant licensed elsewhere by an examination other than that recognized by this state; and at end of section inserted "and may require continued study or refresher courses".

1981 Amendment: Deleted ", not to exceed \$100," after "on the payment of the required fee" near the beginning of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.177.507 Licensure of out-of-state applicants.

37-11-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979; amd. Sec. 26, Ch. 345, L. 1981; amd. Sec. 11, Ch. 253, L. 1995; amd. Sec. 51, Ch. 429, L. 1995; amd. Sec. 18, Ch. 492, L. 1997; amd. Sec. 18, Ch. 271, L. 2003.

37-11-309. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979; amd. Sec. 27, Ch. 345, L. 1981; amd. Sec. 2, Ch. 456, L. 1981; amd. Sec. 12, Ch. 253, L. 1995.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by a board-approved agency which reviews credentials. Upon receipt of this evaluation the board shall determine whether the number of academic credits awarded meets equivalent educational standards for a physical therapist degree or certificate established by an American physical therapist association accredited school of physical therapy. If the applicant's professional education credit hours are approved by the board, the applicant is eligible for a temporary license prior to examination.

History: En. Sec. 16, Ch. 491, L. 1979; amd. Sec. 2, Ch. 454, L. 1983.

Compiler's Comments

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text that read: "The foreign-trained physical therapist applicant's transcripts will be evaluated by the board. The board will compare the applicant's transcript to the standards set by the American physical therapy association. If the applicant's professional education credit hours are approved by the board and the school the applicant attended was approved by the American physical therapy association at the time the applicant attended, the applicant is eligible for a temporary license prior to examination."

Administrative Rules

ARM 24.177.510 Foreign-trained applicants.

37-11-311. Display of license. Each licensee shall display the licensee's original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where the licensee practices physical therapy. A reproduction displayed in lieu of the original or official duplicate is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979; amd. Sec. 1373, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-11-312. Criminal record background check. (1) As provided in 37-1-307, the board shall require each applicant for licensure as a physical therapist or physical therapist assistant to submit a full set of the applicant's fingerprints to the board to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.

(2) The board may require licensees renewing their licenses to submit a full set of their fingerprints to the board for the purpose of obtaining a criminal record background check by the Montana department of justice and the federal bureau of investigation.

History: En. Sec. 2, Ch. 36, L. 2017; amd. Sec. 2, Ch. 287, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 287 in (1) substituted current text for former text that read: "As provided in 37-1-307, the board is authorized to require each applicant for licensure to submit a full set of the applicant's fingerprints to the board for the purpose of obtaining a state and federal criminal history background check"; deleted former (2) that read: "(2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and federal criminal history background check"; in (2) substituted "obtaining a criminal record background check by the Montana department of justice and the federal bureau of investigation" for "obtaining a state and federal criminal history background check."

(4) The Montana department of justice may share the fingerprint data gathered under this section with the federal bureau of investigation"; and made minor changes in style. Amendment effective May 3, 2019.

Effective Date: This section is effective October 1, 2017.

37-11-313 through 37-11-315 reserved.

37-11-316. Physical therapy licensure compact enactment — provisions. The Physical Therapy Licensure Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1 - PURPOSE

The purpose of this compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state in which the patient or client is located at the time of the patient or client encounter with a physical therapist or physical therapist assistant. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

The compact is designed to achieve the following objectives:

(1) increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

(2) enhance the states' ability to protect the public's health and safety;

(3) encourage the cooperation of member states in regulating multistate physical therapy practice;

(4) support spouses of relocating military members;

(5) enhance the exchange of licensure, investigative, and disciplinary information between member states; and

(6) allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2 - DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions apply:

(1) "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty pursuant to 10 U.S.C. 1209 and 1211 or on full-time National Guard duty pursuant to 32 U.S.C 520(f).

(2) "Adverse action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

(3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes but is not limited to substance abuse issues.

(4) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state in which the patient or client is located at the time of the patient or client encounter with the physical therapist or physical therapist assistant.

(5) "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work.

(6) "Data system" means a repository of information about licensees, including examination, licensure, investigative information, compact privilege, and adverse action.

(7) "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

(8) "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them, by the commission.

(9) "Home state" means the member state that is the licensee's primary state of residence.

(10) "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

(11) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

(12) "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

(13) "Member state" means a state that has enacted the compact.

(14) "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

(15) "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

(16) "Physical therapist assistant" means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

(17) "Physical therapy", "physical therapy practice", and "the practice of physical therapy" means the care and services provided by or under the direction and supervision of a licensed physical therapist.

(18) "Physical therapy compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(19) "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(20) "Remote state" means a member state other than the home state in which a licensee is exercising or seeking to exercise the compact privilege.

(21) "Rule" means a regulation, principle, or directive promulgated by the commission that has the force of law.

(22) "State" means any state, commonwealth, district, or territory of the United States that regulates the practice of physical therapy.

SECTION 3 - STATE PARTICIPATION IN THE COMPACT

(1) To participate in the compact, a state shall:

(a) participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;

(b) have a mechanism in place for receiving and investigating complaints about licensees;

(c) notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(d) fully implement a criminal background check requirement, within a time frame established by rule, by:

(i) receiving the results of the federal bureau of investigation record search on criminal background checks; and

- (ii) using the results in making licensure decisions in accordance with subsection (2);
- (e) comply with the rules of the commission;
- (f) use a recognized national examination as a requirement for licensure as provided by rules of the commission; and
- (g) have continuing competence requirements as a condition for license renewal.

(2) Upon adoption of this statute, the member state has the authority to obtain biometric-based information from each physical therapy licensure applicant and to submit this information to the federal bureau of investigation for a criminal background check in accordance with 28 U.S.C. 534 and 42 U.S.C. 14616.

(3) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(4) A member state may charge a fee for granting a compact privilege.

SECTION 4 - COMPACT PRIVILEGE

(1) To exercise the compact privilege under the terms and provisions of the compact, the licensee:

- (a) must be licensed under Title 37, chapter 11, in the home state;
- (b) may not have an encumbrance on any state license;
- (c) must be eligible for a compact privilege in any member state in accordance with subsections (4), (7), and (8) of this section;
- (d) may not have had any adverse action against any license or compact privilege within the previous 2 years;
- (e) shall notify the commission that the licensee is seeking the compact privilege within a remote state;
- (f) shall pay any applicable fees, including any state fee, for the compact privilege;
- (g) shall meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and
- (h) shall report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

(2) The compact privilege is valid until the expiration date of the home license. The licensee shall comply with the requirements in subsection (1) to maintain the compact privilege in the remote state.

(3) A licensee providing physical therapy in a remote state under the compact privilege must function within the laws and regulations of the remote state.

(4) A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specified period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(5) If a home state license is encumbered, the licensee loses the compact privilege in any remote state until the following occur:

- (a) the home state license is no longer encumbered; and
- (b) 2 years have elapsed from the date of the adverse action.

(6) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements in subsection (1) of this section to obtain a compact privilege in any remote state.

(7) If a licensee's compact privilege in any remote state is removed, the individual loses the compact privilege in any remote state until the following occur:

- (a) the specific period has ended for which the compact privilege was removed;
- (b) all fines have been paid; and
- (c) 2 years have elapsed from the date of the adverse action.

(8) Once the requirements of subsection (7) have been met, the licensee must meet the requirements in subsection (1) to obtain a compact privilege in a remote state.

SECTION 5 - ACTIVE DUTY MILITARY PERSONNEL OR SPOUSE OF MILITARY

A licensee who is active duty military or who is the spouse of an individual who is active duty military may designate one of the following as the home state:

- (1) home of record;
- (2) permanent change of station (PCS); or

(3) state of current residence if that state is different than the PCS state or home of record.

SECTION 6 - ADVERSE ACTIONS

(1) A home state has exclusive power to impose adverse action against a license issued by the home state.

(2) A home state may take adverse action based on the investigative information of a remote state, as long as the home state follows its own procedures for imposing adverse action.

(3) Nothing in this compact may override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that participation in an alternative program is to remain nonpublic if required by the member state's laws. Member states shall require licensees who enter any alternative program in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from the other member state.

(4) Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

(5) A remote state has the authority to:

(a) take adverse actions as set forth in Section 4(4) against a licensee's compact privilege in the state;

(b) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before that court. The issuing authority shall pay any witness fees, travel, expenses, mileage, and other fees required by the service statutes of the state where the witness or evidence is located.

(c) recover from the licensee, if otherwise permitted by state law, the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

(6) (a) In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative information, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

SECTION 7 - ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

(1) The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission.

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(2) (a) Each member state has and is limited to one delegate selected by that member state's licensing board.

(b) The delegate must be a current member of the licensing board who is a physical therapist, a physical therapist assistant, a public member, or the board administrator.

(c) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state board shall fill any vacancy occurring in the commission.

(e) Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

(f) A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(g) The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.

(3) The commission has the power and duty to:

(a) establish the fiscal year of the commission;

(b) establish bylaws;
(c) maintain its financial records in accordance with the bylaws;
(d) meet and take actions that are consistent with the provisions of this compact and the bylaws;
(e) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all member states.

(f) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law is not affected;

(g) purchase and maintain insurance and bonds;

(h) borrow, accept, or contract for services of personnel, including but not limited to employees of a member state;

(i) hire employees, elect or appoint officers, fix compensation, define duties, grant the employees or officers the appropriate authority to carry out the purposes of the compact and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(j) accept any and all donations and grants of money, equipment, supplies, materials, and services and to receive, use, and dispose of the items and services listed under this subsection (3)(j) while at all times avoiding any appearance of impropriety or conflict of interest;

(k) lease on its own behalf, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use any property, real, personal, or mixed while at all times avoiding any appearance of impropriety;

(l) sell, convey, mortgage, pledge, lease to others, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) establish a budget and make expenditures;

(n) borrow money;

(o) appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and other interested persons who may be designated in this compact and the bylaws;

(p) provide and receive information from and cooperate with law enforcement agencies;

(q) establish and elect an executive board; and

(r) perform other functions necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physical therapy licensure and practice.

(4) The executive board has the power to act on behalf of the commission according to the terms of this compact.

(a) The executive board is composed of nine members, of which:

(i) seven voting members are to be elected by the commission from the current membership of the commission;

(ii) one ex-officio, nonvoting member must be from the recognized national physical therapy professional association; and

(iii) one ex-officio, nonvoting member must be from the recognized membership organization of the physical therapy licensing boards.

(b) The ex-officio members are to be selected by their respective organizations.

(c) The commission may remove any member of the executive board as provided in bylaws.

(d) The executive board shall meet at least annually.

(e) The executive board has the following duties and responsibilities:

(i) recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states, including annual dues, and any commission compact fees charged to licensees for the compact privilege;

(ii) ensure compact administration services are appropriately provided, contractual or otherwise;

(iii) prepare and recommend the budget;

(iv) maintain financial records on behalf of the commission;

(v) monitor compact compliance of member states and provide compliance reports to the commission;

(vi) establish additional committees as necessary; and

(vii) perform other duties as provided in rules or bylaws.

(5) (a) All meetings of the commission must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Section 9.

(b) The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss:

(i) noncompliance of a member state with its obligations under the compact;

(ii) the employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) current, threatened, or reasonably anticipated litigation;

(iv) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(v) accusing any person of a crime or formally censuring any person;

(vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) disclosure of information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) disclosure of investigative records compiled for law enforcement purposes;

(ix) disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(x) matters specifically exempted from disclosure by federal or member state statute.

(c) If a meeting, or portion of a meeting, is closed pursuant to subsection (5)(b), the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(d) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for those actions, including a description of the views expressed. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(6) The commission:

(a) shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities;

(b) may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services;

(c) may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of operations and activities of the commission and its staff. The assessment or fees must be in a total amount sufficient to cover the commission's annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(d) may not incur obligations of any kind prior to securing the funds adequate to meet the obligations, and the commission may not pledge the credit of any of the member states, except by and with the authority of the member state;

(e) shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

(7) (a) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subsection (7)(a) is to be construed as prohibiting that person from retaining his or her own counsel;

and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(b) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 8 - DATA SYSTEM

(1) The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

(a) identifying information;

(b) licensure data;

(c) adverse actions against a license or compact privilege;

(d) nonconfidential information related to alternative program participation;

(e) any denial of application for licensure, and the reason for the denial; and

(f) other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(3) Investigative information pertaining to a licensee in any member state is only available to other party states.

(4) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state is available to any other member state.

(5) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(6) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

SECTION 9 - RULEMAKING

(1) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted under this section. Rules and amendments become binding as of the date specified in each rule or amendment.

(2) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule, then that rule has no further force and effect in any member state.

(3) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(4) Prior to promulgation and adoption of a final rule by the commission, and at least 30 days in advance of the meeting at which the rule is to be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) on the website of the commission or other publicly accessible platform; and

(b) on the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(5) The notice of proposed rulemaking must include:

(a) the proposed time, date, and location of the meeting in which the rule is to be considered and voted upon;

(b) the text of the proposed rule or amendment and the reason for the proposed rule;

(c) a request for comments on the proposed rule from any interested person; and

(d) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(6) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.

(7) The commission shall grant an opportunity for a public hearing before the commission adopts a rule or amendment if a hearing is requested by:

- (a) at least 25 persons;
- (b) a state or federal governmental subdivision or agency; or
- (c) an association having at least 25 members.

(8) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held by electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

(b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings must be recorded and copies of the recording are to be made available on request.

(d) This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(9) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(10) If no written notice of intent to attend the public hearing by an interested party is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(11) The commission shall, by majority vote of all members, take final action on the proposed rule and determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(12) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible but not later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- (a) meet an imminent threat to public health, safety, or welfare;
- (b) prevent a loss of commission or member state funds;
- (c) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
- (d) protect public health and safety.

(13) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for the purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision takes effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

SECTION 10 - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

(1) (a) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(c) The commission is entitled to receive service of process in any proceeding described in subsection (1)(b) of this section and has standing to intervene in that proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, the compact, or promulgated rules.

(2) (a) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:

(i) written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

(ii) remedial training and specific technical assistance regarding the default.

(b) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(c) Termination of membership in the compact is to be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(d) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(e) The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(f) The defaulting state may appeal the action of the commission by petitioning the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.

(3) (a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

(b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) (a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) By majority vote, the commission may initiate legal action in the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.

(c) The remedies in this section are not to be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

SECTION 11 - DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact is effective in this state on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from this compact by enacting a statute repealing the compact.

(a) A member state's withdrawal does not take effect until 6 months after enactment of the repealing statute.

(b) Withdrawal does not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements in this compact prior to the effective date of withdrawal.

(4) This compact may not be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(5) This compact may be amended by the member states. An amendment to this compact does not become effective and binding upon any member state until the amendment is enacted into the laws of all member states.

SECTION 12 - CONSTRUCTION AND SEVERABILITY

This compact is to be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of this compact to any government, agency, person, or circumstance is not affected by the holding of invalidity. If this compact is held contrary to the constitution of any party state, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

History: En. Sec. 1, Ch. 36, L. 2017.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

37-11-317 through 37-11-319 reserved.

37-11-320. Duty to report violations — immunity from liability. (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a physical therapist or physical therapist assistant shall report to the board any information that appears to show that another physical therapist or physical therapist assistant is:

(a) mentally or physically unable to engage safely in the practice of physical therapy or practice as an assistant; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-11-321.

(2) There is no liability on the part of and no cause of action may arise against a physical therapist or a physical therapist assistant who in good faith provides information to the board as required by subsection (1).

History: En. Sec. 2, Ch. 55, L. 1987; amd. Sec. 13, Ch. 253, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 253 in four places inserted reference to physical therapist assistant; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

Cross-References

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2;

(5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy or practice as an assistant;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been committed pursuant to 53-21-127 by a court of competent jurisdiction and has not been released from commitment and declared not to require further commitment;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or assistant or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation of the person's training and education.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979; amd. Sec. 14, Ch. 253, L. 1995; amd. Sec. 9, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 in (7), at beginning after "has been", substituted "committed pursuant to 53-21-127" for "declared to be seriously mentally ill", near middle, after "released from", substituted "commitment" for "treatment", and at end substituted "require further commitment" for "be seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 253 in (5), (9), and (10) inserted reference to assistant; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 or more than \$500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.