CHAPTER 45

Physical Therapists

ARTICLE 1

General Provisions

Editor's Note

2018 Act No. 226, Section 2, provides as follows:

"SECTION 2. The existing provisions of Chapter 45, Title 40 are designated 'General Provisions'."

**SECTION 40‑45‑5.** Application of chapter; conflicts of law.

Unless otherwise provided in this chapter, Article 1, Chapter 1 applies to the regulation of physical therapists and physical therapist assistants; however, if there is a conflict between this chapter and Article 1, Chapter 1, Title 40, the provisions of this chapter control.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑10.** Board of Physical Therapy Examiners; creation and purpose; membership.

(A) There is created the State Board of Physical Therapy Examiners to license physical therapists and physical therapist assistants under the administration of the Department of Labor, Licensing and Regulation. The purpose of this board is to protect the public through regulation of professionals who identify, assess, and provide treatment for individuals with physical disabilities through the administration and enforcement of this chapter and any regulations promulgated under the chapter.

(B) The board consists of eleven members appointed by the Governor, seven of whom must be licensed physical therapists, with one from each congressional district, two of whom must be physical therapist assistants, and two from the general public. The South Carolina Physical Therapy Association, Inc. shall submit recommendations to the Governor of at least two names for each physical therapist and physical therapist assistant member. The Governor also shall consider nominations from any other individual, group, or association. The physical therapist and the physical therapist assistant member each must have had at least three years' experience before being appointed and while serving on the board be actively practicing in this State. Members shall serve terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

HISTORY: 1998 Act No. 360, Section 1; 2012 Act No. 222, Section 7, eff June 7, 2012.

Editor's Note

Prior Laws:1962 Code Section 56‑1337; 1952 (47) 1967; 1971 (57) 405; 1982 Act No. 413, Section 4; 1993 Act No. 85, Section 2; 1976 Code Section 40‑45‑30.

2012 Act No. 222, Section 15, provides as follows:

"SECTION 15. Notwithstanding any other provision of law to the contrary, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member on it as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires."

Effect of Amendment

The 2012 amendment added the subsection identifiers; and substituted "eleven" for "nine", "seven" for "six", and "two" for "one" in subsection (B).

**SECTION 40‑45‑20.** Definitions.

As used in this chapter:

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

(2) "On‑site supervision" means supervision provided by a physical therapist or physical therapist assistant who must be:

(a) continuously on site and present in the department or facility where the supervisee is performing services;

(b) immediately available to assist the supervisee in the services being performed;

(c) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to the supervisee.

(3) "Person" means an individual.

(4) "Physical therapist" means a person who has met all the conditions of this chapter and is licensed in this State to practice physical therapy.

(5) "Physical therapist assistant" means a person who is licensed by the board to assist a physical therapist in the practice of physical therapy and whose activities are supervised and directed by a physical therapist whose license is in good standing.

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

(7) "Physical therapy aide" means a nonlicensed person who helps the physical therapist or physical therapist assistant but whose duties do not require an understanding of physical therapy nor formal training in anatomical, biological, or physical sciences.

(8) "Student" or "physical therapy student" means an individual enrolled in a board‑approved physical therapist or physical therapist assistant program while engaged in completing the clinical education requirement for graduation.

(9) "The practice of physical therapy" means the evaluation and treatment of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction, and pain from injury, disease, and any other bodily or mental condition and includes the administration, interpretation, documentation, and evaluation of physical therapy tests and measurements of bodily functions and structures; the establishment, administration, evaluation, and modification of a physical therapy treatment plan which includes the use of physical, chemical, or mechanical agents, activities, instruction, and devices for prevention and therapeutic purposes; and the provision of consultation and educational and other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction, and pain. The use of roentgen rays and radium for diagnostic or therapeutic purposes and the use of electricity for surgical purposes, including cauterization and colonic irrigations, are not authorized under the term "physical therapy" as used in this chapter, and nothing in this chapter shall be construed to authorize a physical therapist to prescribe medications or order laboratory or other medical tests.

HISTORY: 1998 Act No. 360, Section 1.

Editor's Note

Prior Laws:1962 Code Section 56‑1336; 1952 (47) 1967; 1971 (57) 405; 1982 Act No. 413, Sections 2, 3.

**SECTION 40‑45‑30.** Required licenses; practice while license suspended or revoked; practice without license; penalties.

A person shall not engage in the practice of physical therapy without a license issued in accordance with this chapter. A person who practices as a physical therapist or as a physical therapist assistant without being licensed under this chapter or whose license has been suspended or revoked or who uses in connection with his name the words or letters "PT", "Licensed Physical Therapist", "Physical Therapist", "Physio Therapist", "Licensed Physical Therapist Assistant", "PTA", or any other letters, words, or insignia indicating or implying that he is a physical therapist or a physical therapist assistant or who in any other way, orally or in writing or in print or by sign directly or by implication, represents himself as a physical therapist or physical therapist assistant without being licensed by the board is subject to the penalties provided for in this chapter.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑50.** Administrative and fiscal responsibilities of board to be provided by Department of Labor, Licensing and Regulation; establishment of fees.

(A) The Department of Labor, Licensing and Regulation shall provide all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board in accordance with Section 40‑1‑50.

(B) The board shall establish fees in regulation.

(C) The board may direct applicants to pay an examination fee directly to a third party who has contracted to administer the examination.

(D) Fees are nonrefundable and may be prorated in order to comply with a biennial schedule.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑60.** Adoption of rules and regulations; seal.

(A) The board may adopt rules governing its proceedings and may promulgate regulations necessary to carry out the provisions of this chapter including, but not limited to, promulgation of regulations for the practice of physical therapy, determining the qualifications and requirements for licensure, establishing a code of ethics binding on persons licensed under or subject to this chapter, and establishing disciplinary procedures.

(B) The board may have and use an official seal bearing the words "State Board of Physical Therapy Examiners in South Carolina".

HISTORY: 1998 Act No. 360, Section 1.

Editor's Note

Prior Laws:1962 Code Sections 56‑1339, 56‑1340; 1952 (47) 1967; 1982 Act No. 413, Section 7; 1976 Code Section 40‑45‑50.

**SECTION 40‑45‑70.** Additional powers and duties of board.

In addition to the powers and duties provided in this chapter, the board has those powers and duties set forth in Section 40‑1‑70.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑80.** Investigation of complaints and violations; advisors.

The Department of Labor, Licensing and Regulation shall investigate complaints and violations of this chapter as provided in Section 40‑1‑80. Nonboard members may serve as advisors to provide professional expertise to inspectors or investigators.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑90.** Evidence authorized to be collected for investigative purposes.

For the purpose of an investigation or proceeding under this chapter, the board or a person designated by the board may subpoena witnesses, take evidence, and require the production of any documents or records which the board considers relevant to the inquiry.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑100.** Restraining orders and other equitable relief.

In addition to other remedies provided in this chapter or Article 1, Chapter 1, the board in accordance with Section 40‑1‑100 also may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑110.** Refusal to grant licenses; suspensions, revocations, or other restrictions; grounds; mental and physical exams allowed; evidentiary use of records; opportunity to demonstrate ability to practice.

(A) In addition to other grounds provided for in Section 40‑1‑110, the board, after notice and hearing, may restrict or refuse to grant a license to an applicant and may refuse to renew the license of a licensed person, and may suspend, revoke, or otherwise restrict the license of a licensed person who:

(1) requests, receives, participates, or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, wages, an unearned commission, discount, or gratuity with a person who referred a patient, or with a relative or business associate of the referring person;

(2) has treated or undertaken to treat human ailments otherwise than by physical therapy or has practiced physical therapy and failed to refer to a licensed medical doctor or dentist any patient whose medical condition should have been determined at the time of evaluation or treatment to be beyond the scope of practice of a physical therapist;

(3) knowingly aided, assisted, procured, or advised a person to practice physical therapy contrary to this chapter or to regulations promulgated by the board pursuant to this chapter or knowingly performed an act which aids, assists, procures, or advises an unlicensed person to practice physical therapy;

(4) in the absence of a referral from a licensed medical doctor or dentist, provides physical therapy services beyond thirty days after the initial evaluation and/or treatment date without the referral of the patient to a licensed medical doctor or dentist;

(5) changes, or in any way modifies, any specific patient care instructions or protocols established by an appropriate health care provider without prior consultation with and approval by the appropriate health care provider.

(B) An act or omission by a licensee causing the denial, revocation, suspension, or restriction of a license to practice physical therapy in another state is sufficient for the issuance of a formal complaint and the commencement of disciplinary proceedings as provided in this section. Proof of an act or omission may be shown by a copy of the transcript of record of the disciplinary proceedings in another state or a copy of the final order, consent order, or similar order stating the basis for the action taken. This subsection applies only when the disciplinary action taken in another state is based on grounds that would constitute grounds for disciplinary action under subsection (A) and Section 40‑1‑110.

Upon the filing of an initial complaint alleging that a licensee has been disciplined in another state, the licensee must submit to the board copies of all transcripts, documents, and orders used, relied upon, or issued by the licensing authority in the other state. Failure to submit these items within ninety days of the board's request for them results in the suspension of the individual's license to practice physical therapy in this State until the items have been provided to the board.

A licensee may present mitigating testimony to the board regarding disciplinary action taken in another state or evidence that the acts or omissions committed in another state do not constitute grounds for disciplinary action under subsection (A) and Section 40‑1‑110.

(C) A complaint may be made in writing to the board or may be made by the board on its own initiative.

(D) In enforcing this chapter, the board, upon reasonable grounds, may require a licensee or applicant to submit to a mental or physical examination performed by a physician designated by the board and including, but not limited to, urinalysis and blood work to determine the presence of drugs. The results of an examination are admissible in a hearing before the board, notwithstanding a claim or privilege under a contrary rule of law or statute. A person who accepts the privilege of practicing physical therapy in this State is deemed to have consented to submit to a mental or physical examination and to have waived all objections to the admissibility of the results in a hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances beyond the person's control, the board shall enter an order automatically suspending or denying the license pending compliance and further order of the board. A licensee or applicant who is prohibited from practicing physical therapy under this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the board the ability to resume or begin the practice of physical therapy with reasonable skill and safety to patients.

(E) In enforcing this chapter, the board upon reasonable grounds may obtain records relating to the mental or physical condition of a licensee or applicant including, but not limited to, psychiatric records; and these records are admissible in a hearing before the board, notwithstanding any other provision of law. A person who accepts the privilege of practicing physical therapy in this State or who files an application to practice physical therapy in this State is deemed to have consented to the board obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the board upon the grounds that the same constitute a privileged communication. If a licensee or applicant refuses to sign a written consent for the board to obtain these records when properly requested by the board, unless the failure was due to circumstances beyond the person's control, the board shall enter an order automatically suspending or denying the license pending compliance and further order of the board. A licensee or applicant who is prohibited from practicing physical therapy under this subsection must be afforded reasonable opportunity to demonstrate to the board the ability to resume or begin the practice of physical therapy with reasonable skill and safety to patients.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑115.** Jurisdiction of the board.

The board has jurisdiction over the actions of licensees and former licensees as provided in Section 40‑1‑115.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑120.** Board authority to take disciplinary actions and impose civil penalties.

In addition to the sanctions the board may impose against a person pursuant to Section 40‑45‑110, the board may take disciplinary action against a person as provided in Section 40‑1‑120 and also may impose a civil penalty of not more than two thousand dollars for each violation of this chapter or of a regulation promulgated under this chapter, the total penalty not to exceed ten thousand dollars.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑130.** Grounds for denial or restrictions of license may be same as for disciplinary action.

As provided in Section 40‑1‑130, the board may restrict or deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

HISTORY: 1962 Code Section 56‑1347; 1952 (47) 1967; 1971 (57) 405; 1982 Act No. 413, Section 13; 1996 Act No. 224, Section 1; 1998 Act No. 360, Section 1.

**SECTION 40‑45‑140.** Denial of license based on prior criminal record.

A license may be denied based on a person's prior criminal record only as provided in Section 40‑1‑140.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑150.** Voluntary surrender of license by licensee being investigated.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40‑1‑150.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑160.** Appeal.

A person aggrieved by a final action of the board may seek review of the decision in accordance with Section 40‑1‑160.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑170.** Costs of investigation and prosecution; authority to require payment by violator.

A person found in violation of this chapter or a regulation promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑180.** Collection and enforcement provisions for costs and fines.

All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑190.** Confidentiality of proceedings and communications.

Investigations and proceedings conducted under this chapter are confidential, and all communications are privileged as provided in Section 40‑1‑190.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑200.** Violations of chapter; submission of false information to the board; penalty.

A person who engages in the practice of or offers to engage in the practice of physical therapy in the State in violation of this chapter or who knowingly submits false information to the board for the purpose of obtaining a license or who violates any other provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than ninety days, or both. Each violation is a separate offense.

HISTORY: 1998 Act No. 360, Section 1.

Editor's Note

Prior Laws:1962 Code Section 56‑1349.4; 1952 (47) 1967; 1971 (57) 405; 1982 Act No. 413, Section 17; 1976 Code Section 40‑45‑210.

**SECTION 40‑45‑210.** Injunctive relief.

The department, on behalf of the board and in accordance with Section 40‑1‑120, may petition an administrative law judge, in the name of the State, for injunctive relief against a person violating this chapter.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑220.** Qualifications of applicants for licensure; burden to demonstrate eligibility.

(A) To be eligible for licensure as a physical therapist an applicant must:

(1)(a) be a graduate of a physical therapy educational program approved by the board;

(b) pass an examination administered or approved by the board; and

(c) speak the English language as a native language or demonstrate an effective proficiency of the English language in the manner prescribed by and to the satisfaction of the board; or

(2)(a) provide satisfactory evidence that his or her education is equivalent to the requirements of physical therapists educated in United States educational programs as determined by the board. If the board determines that an applicant's education is not equivalent, it may require completion of additional course work before proceeding with the application process;

(b) speak the English language as a native language or demonstrate an effective proficiency of the English language in the manner prescribed by and to the satisfaction of the board;

(c) pass an examination administered or approved by the board;

(d) submit evidence satisfactory to the board on a form approved by the board of not less than one thousand clinical practice hours under the on‑site supervision of a licensed physical therapist in this State or in a state with licensure requirements equal to or more stringent than this State.

(B) To be eligible for licensure as a physical therapist assistant an applicant must:

(1) be a graduate of a physical therapist assistant program approved by the board;

(2) pass an examination administered or approved by the board; and

(3) speak the English language as a native language or demonstrate an effective proficiency of the English language in the manner prescribed by and to the satisfaction of the board.

(C) The burden is upon the applicant to demonstrate to the satisfaction of the board and in the manner prescribed by the board that the applicant has the qualifications and is eligible for licensure.

HISTORY: 1998 Act No. 360, Section 1.

Editor's Note

Prior Laws:1962 Code Section 56‑1344; 1952 (47) 1967; 1971 (57) 405; 1978 Act No. 442, Section 1; 1982 Act No. 413, Section 10; 1976 Code Section 40‑45‑100.

**SECTION 40‑45‑230.** Notarized application form; fee; mastery of English language; submission of transcripts; accommodations for disabled applicants; time period for completion of process; examination requirements.

(A) An applicant must submit with an application for licensure:

(1) a completed notarized application form;

(2) the applicable fee in the form of a check or money order;

(3) legal documentation indicating a name change, if applicable;

(4) proof that the applicant can speak, write, and be tested in the English language if English is not the native language of country of origin.

(B) An applicant must arrange to have the official transcript sent directly to the board from the applicant's physical therapy school. An applicant who is a new graduate of an approved school applying for licensure by examination may submit verification directly from the applicant's physical therapy school with the registrar's seal stating that graduation requirements have been met if the official transcript is not yet available. A final transcript indicating the degree and date the degree was conferred must be on file before a permanent license may be issued.

(C) An applicant who is a graduate of a school that is not approved who is applying for licensure either by examination or endorsement must submit all items under subsection (A), must arrange to have an official transcript sent directly to the board, and also must submit an evaluation of educational credentials report.

(D) An applicant with a documented disability may request special accommodations to take the examination.

(E) An application for licensure must be completed within one year or the application and credentials must be brought up to date and resubmitted with payment of the applicable fee.

(F) An application must be received by the board in a completed form, and an applicant must be determined by the board to be eligible to take the examination before the applicant can register for the examination. An eligible applicant must receive notification regarding registration procedures.

(G) If an applicant fails the examination, whether or not taken in South Carolina, the applicant may take the examination up to six times, each time upon payment of the examination fee and completion of an official application. If the applicant fails the examination for a fifth time, the applicant must take courses the board may require and furnish evidence of completing these courses before taking the examination for the sixth time.

(H) No person may be licensed under this chapter if the person has failed the examination six or more times, whether or not the exam was taken in South Carolina.

(I) The grade required for passing the examination must be established by the board.

HISTORY: 1998 Act No. 360, Section 1; 2019 Act No. 64 (H.3703), Section 1, eff May 16, 2019.

Editor's Note

Prior Laws:1962 Code Section 56‑1345; 1952 (47) 1967; 1964 (53) 2388; 1971 (57) 405; 1981 Act No. 35, Section 1; 1982 Act No. 413, Section 11; 1976 Code Section 40‑45‑110.

Effect of Amendment

2019 Act No. 64, Section 1, in (G), in the first sentence, substituted "up to six times, each time upon" for "a second time on", and rewrote the second sentence; and in (H), substituted "six or more times" for "three or more times".

**SECTION 40‑45‑240.** Licensure without examination.

(A) The board may license as a physical therapist or as a physical therapist assistant, without examination, on the payment of the applicable fee, an applicant who is a physical therapist or physical therapist assistant licensed under the laws of another state or territory, if the requirements for licensure in that state or territory were at the date of licensure equivalent to the requirements in effect at the time of application in this State.

(B) An applicant licensed in another state applying for licensure by endorsement must:

(1) submit a completed notarized application form;

(2) submit the applicable fee in the form of a check or money order;

(3) legal documentation indicating a name change, if applicable;

(4) have the official transcript sent directly to the board from the applicant's physical therapy school;

(5) submit an evaluation of educational credentials if a graduate of a nonapproved school;

(6) have the examination scores reported directly to the board from the Interstate Reporting Service or other recognized examination service;

(7) submit an official verification of a current license;

(8) submit proof that the applicant can speak, write, and be tested in the English language if English is not the native language of country of origin;

(9) submit evidence on a form approved by the board of one thousand clinical practice hours under the on‑site supervision of a licensed physical therapist if the applicant is a graduate of a nonapproved school.

HISTORY: 1998 Act No. 360, Section 1.

Editor's Note

Prior Laws:1962 Code Section 56‑1346; 1952 (47) 1967; 1964 (53) 2388; 1971 (57) 405; 1982 Act No. 413, Section 12; 1976 Code Section 40‑45‑120.

**SECTION 40‑45‑250.** Time period licenses are valid; renewals, fees, and penalties; continuing education requirements; inactive status.

(A) A license is valid for up to two years and must be renewed biennially. However, a physical therapist or a physical therapist assistant who first becomes licensed in the last quarter of the calendar year must be issued a license for the next licensing period.

(B) Before January first in every other year, a licensed physical therapist and physical therapist assistant shall renew the license and pay the renewal fee, whether or not a notice is received. If a license is not renewed or postmarked before January first, the board may charge a late renewal penalty as provided for in regulation beginning January first, for up to thirty days, for every day that the license is not renewed or postmarked.

(C) If a licensee fails to renew or postmark a renewal before January thirty‑first the license automatically lapses. A person who fails to renew a license and practices as a physical therapist or physical therapist assistant after December thirty‑first is practicing without a license and is subject to the penalties provided in this chapter.

(D) As a condition of license renewal, a licensee must satisfactorily complete 3.0 continuing education units each biennium as provided for in regulation and must submit proof of completion on a form approved by the board.

(E) Notwithstanding subsection (H)(1), if a person's license lapses because the person did not satisfy the continuing education requirements of subsection (D), the person must comply with subsection (D) before the board may renew the license.

(F) A licensee who does not wish to renew an active license may select inactive status on the renewal form and return the form to the board.

(G) A licensee shall notify the board of any change in name or mailing address within thirty days. If a name change on a license is requested, the licensee must submit legal documentation indicating the name change.

(H) A physical therapist or physical therapist assistant whose license has lapsed or has been inactive for:

(1) fewer than three years may reactivate the license by applying to the board, submitting proof of completing 1.5 continuing education units for each year the license has lapsed or has been inactive, and paying the reactivation fee;

(2) three or more years is required to complete supervised clinical practice hours, additional education, and completion of an examination as provided in regulation;

(3) fewer than three years and who has active status outside of this State may reinstate the license by submitting proof of completing 1.5 continuing education units for each year the license has lapsed, or has been inactive, official verification of a current license, and paying the reactivation fee;

(4) three or more years and who has active status outside of this State may reinstate the license by submitting evidence satisfactory to the board of not less than one thousand hours of out‑of‑state employment within the last year, official verification of a current license, and paying the reactivation fee.

HISTORY: 1998 Act No. 360, Section 1.

Editor's Note

Prior Laws:1962 Code Section 56‑1349.1; 1952 (47) 1967; 1964 (53) 2388; 1971 (57) 405; 1981 Act No. 35, Section 2; 1982 Act No. 413, Section 16; 1976 Code Section 40‑45‑180.

**SECTION 40‑45‑260.** Certificate of licensure; provisional licenses; restrictions; limit on attempts to pass licensure examination.

(A) The board shall license as a physical therapist or a physical therapist assistant an applicant who proves to the satisfaction of the board fitness for licensure under the provisions of this chapter. The board shall issue to a licensee a certificate of licensure, which is prima facie evidence of the right of the person to represent himself or herself as a licensed physical therapist or as a licensed physical therapist assistant.

(B) The board may issue a provisional license to:

(1) an applicant for licensure as a physical therapist who has met all of the requirements for licensure under Section 40‑45‑230 except completing the clinical practice hours requirement pursuant to Section 40‑45‑220(A)(2)(d);

(2) a person whose physical therapist or physical therapist assistant license has been inactive or lapsed for three years or more and who has applied to reactivate the license;

(3) an applicant for licensure as a physical therapist or physical therapist assistant whose practice needs to be restricted, as determined by the board;

(4) an applicant for licensure as a physical therapist or physical therapist assistant who has met all of the requirements for licensure under Section 40‑45‑230 except for completing the official transcript requirement pursuant to Section 40‑45‑230(B).

A provisional license is valid for up to one year from the date of issue and may not be renewed. A physical therapist holding a provisional license issued pursuant to item (1), (2), or (3) must work under the on‑site supervision of a physical therapist licensed in this State, and a physical therapist assistant holding a provisional license issued pursuant to items (1), (2), or (3) must work under the on‑site supervision of a physical therapist or physical therapist assistant licensed in this State. A physical therapist and physical therapist assistant holding a provisional license issued pursuant to item (4) must work under the supervision of a physical therapist licensed in this State. A provisional licensee shall submit to the board a completed supervisory agreement form for each place of employment.

(C) The board may require an applicant who is not actively engaged in practice as a physical therapist or as a physical therapist assistant to comply with one or more of the following:

(1) complete a certain number of continuing education units;

(2) have supervised practice as specified by the board;

(3) pass a written examination approved by the board.

(D) The board must not issue a physical therapist or physical therapist assistant license to an applicant who has failed to achieve a passing score six or more times on a board‑approved licensure examination.

HISTORY: 1998 Act No. 360, Section 1; 2019 Act No. 64 (H.3703), Section 2, eff May 16, 2019.

Editor's Note

Prior Laws:1962 Code Section 56‑1348; 1952 (47) 1967; 1971 (57) 405; 1982 Act No. 413, Section 14; 1976 Code Section 40‑45‑140.

Effect of Amendment

2019 Act No. 64, Section 2, in (D), substituted "six or more times" for "three or more times".

**SECTION 40‑45‑270.** Persons exempt from licensure requirement.

The following are not required to be licensed:

(1) a "PT student" who is a student enrolled in a board‑approved physical therapist program while engaged in completing the clinical education requirement for graduation under the on‑site supervision of a physical therapist who is licensed to practice in this State;

(2) a "PTA" student who is a student enrolled in a board‑approved physical therapist assistant program while engaged in completing the clinical education requirement for graduation under the on‑site supervision of a physical therapist or physical therapist assistant who is licensed to practice in this State;

(3) a physical therapist or physical therapist assistant licensed in another state who is teaching or participating in special physical therapy education projects, demonstrations, or courses in this State;

(4) a physical therapist or physical therapist assistant solely employed by the United States Armed Services, United States Public Health Service, Veterans Administration, or another federal agency and practicing within the scope of employment.

HISTORY: 1998 Act No. 360, Section 1.

Editor's Note

Prior Laws:1962 Code Section 56‑1348.1; 1964 (53) 2388; 1971 (57) 405; 1982 Act No. 413, Section 15; 1984 Act No. 392; 1976 Code Section 40‑45‑150.

**SECTION 40‑45‑280.** Physical therapy records; responsibility for records; contents; discharge notes.

(A) A physical therapist is responsible for the physical therapy record of a patient.

(B) Only a licensed physical therapist or physical therapist assistant, provisional licensed physical therapist or physical therapist assistant, or student physical therapist or physical therapist assistant shall document in a physical therapy record.

(C) A physical therapy record consists of:

(1) the initial evaluation which is a written report signed and dated by the physical therapist performing the evaluation. An initial evaluation by a provisional licensed physical therapist must be reviewed, cosigned, and dated by the on‑site supervising physical therapist;

(2) a plan of care developed by a licensed physical therapist, including:

(a) treatment to be rendered;

(b) frequency and duration of treatment;

(c) measurable goals.

(3) clinical notes that must be signed and dated by the person rendering treatment. All clinical notes written by a physical therapist student or physical therapist assistant student are to be reviewed, cosigned, and dated by the physical therapist or physical therapist assistant who is supervising the appropriate level student. Clinical notes written by a provisional physical therapist or a physical therapist assistant licensee must be reviewed, cosigned, and dated by the on‑site supervising physical therapist every eighth treatment day or every sixty calendar days, whichever comes first;

(4) a discharge note which is a statement of the patient's status at the last treatment session as written, signed, and dated by the physical therapist or physical therapist assistant rendering service. All discharge notes written by a physical therapist student, physical therapist assistant student, and provisional licensed physical therapist or physical therapist assistant are to be reviewed, cosigned, and dated by the supervising physical therapist.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑290.** Physical therapy aides; permissible duties; restrictions.

(A) A physical therapy aide may provide departmental support to the on‑site physical therapist and physical therapist assistant in the following areas subject to guidelines established in regulations:

(1) transporting patients;

(2) preparing, cleaning, and maintaining the treatment area and equipment;

(3) preparing patients for treatment;

(4) attending to the personal needs of patients during treatment sessions;

(5) clerical and housekeeping activities.

(B) A physical therapy aide may not perform:

(1) an activity which requires licensure under this chapter;

(2) an activity which requires the exercise of the professional judgment of a physical therapist;

(3) the interpretation of referrals, screenings, assessments, evaluations, or reassessments;

(4) the development or modification of treatment plans or discharge plans.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑300.** Delegation and supervision of physical therapy tasks; responsibility for care; supervisor to be approved by board.

(A) A physical therapist is professionally and legally responsible for patient care given by a physical therapist assistant, physical therapy aide, physical therapist student, or physical therapist assistant student under the physical therapist's supervision. A physical therapist may delegate to and supervise selected acts, tasks, or procedures which fall within the practice of physical therapy but do not exceed the education or training of a physical therapist assistant, physical therapy aide, physical therapist student, or physical therapist assistant student.

(B) A physical therapist assistant shall function under the supervision of a licensed physical therapist. A person licensed under this chapter as a physical therapist assistant shall perform duties only after the initial evaluation of the patient is conducted by a licensed physical therapist. A patient plan of care may not be altered without the prior written, dated, and signed approval of a licensed physical therapist. A patient must be reevaluated and the plan of care must be reapproved by a physical therapist licensed in this State every eighth treatment day or every sixty calendar days, whichever comes first. The board may establish in regulation the number of physical therapist assistants a physical therapist may concurrently supervise except in hospitals licensed by the Department of Health and Environmental Control which may determine their own staffing ratios.

(C) A physical therapist student shall function under the on‑site supervision of a licensed physical therapist.

(D) A physical therapist assistant student and a physical therapy aide shall function under the on‑site supervision of a licensed physical therapist or licensed physical therapist assistant. The physical therapist is ultimately responsible for the licensed physical therapist assistant, the student physical therapist assistant, and the physical therapy aide.

(E) A supervisor must be a licensed physical therapist or physical therapist assistant who has been approved by the board to supervise provisional licensees, students, and aides based on the supervisor's training and work experience, which must be relevant to the work of those under the supervision and must be sufficiently extensive to enable the supervisor to direct and evaluate the work of a supervisee.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑310.** Construction of chapter; authority not granted to practice other forms, branches, or methods of healing.

Nothing in this chapter may be construed as authorizing a licensed physical therapist or any other person to practice medicine, surgery, osteopathy, homeopathy, chiropractic, naturopathy, magnetic healing, or any other form, branch, or method of healing as authorized by the laws of this State. Nothing in this chapter shall be construed to restrict, inhibit, or limit the practice of chiropractic as now practiced in this State and as taught by accredited schools or colleges of chiropractic. Nothing in this chapter shall be construed to restrict, inhibit, or limit the practice of licensed nurse practitioners, licensed physicians assistants, certified athletic trainers, licensed massage therapists, exercise physiologists, or personal trainers. Moreover, nothing in this chapter shall be construed to restrict, inhibit, or limit in any way the practice of dentistry pursuant to Chapter 15 of Title 40 or the practice of medicine pursuant to Chapter 47 of Title 40.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑320.** Construction of chapter; rights to payment of certain health plan benefits; effect on contractual agreements requiring doctor's prescription for therapy services; effect on workers' compensation.

(A) Nothing in this chapter may be construed to create a right in a physical therapist or physical therapist assistant to:

(1) have paid to a physical therapist or physical therapist assistant a benefit under:

(a) a self‑funded plan providing benefits to residents of this State;

(b) accident and health insurance provided to residents of this State;

(c) a plan of operation established by a health maintenance organization licensed in this State; or

(2) have a claim against a third party payer, however situated.

(B) Nothing contained in this chapter may be construed to limit, enlarge, or otherwise affect any contractual agreement now in effect or entered into after the effective date of this act which provides that a person obtaining physical therapy services must have a prescription from a doctor of medicine licensed under Chapter 47 or from a person licensed to practice dentistry under Chapter 25 in order to be entitled to receive reimbursement for these therapy services.

(C) Nothing contained in this chapter may be construed to affect the provisions of Title 42 of the South Carolina Code of Laws relating to workers' compensation.

HISTORY: 1998 Act No. 360, Section 1.

**SECTION 40‑45‑330.** Severability.

If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 1998 Act No. 360, Section 1.

ARTICLE 3

Physical Therapy Licensure Compact

**SECTION 40‑45‑510.** Purpose of compact.

(A) 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 where the patient/client is located at the time of the patient/client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

(B) This 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 multi‑state 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.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑520.** Definitions.

As used in this article:

(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 orders pursuant to 10 U.S.C. Section 1209 and 1211.

(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 where the patient/client is located at the time of the patient/client encounter.

(5) "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/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, 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/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" mean 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, where 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 of America that regulates the practice of physical therapy.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑530.** State participation in the compact.

(A) To participate in the compact, a state must:

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

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

(3) 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;

(4) for initial licensure require the applicant to undergo a state criminal record check, supported by fingerprints, by the State Law Enforcement Division (SLED); and a national criminal record check, supported by fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal record checks must be reported to the board for review in accordance with Section 40‑1‑140. The fees for conducting the criminal record checks shall be borne by the applicant. SLED is authorized to store the prints for notification purposes;

(5) comply with the rules of the commission;

(6) utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

(7) have continuing competence requirements as a condition for license renewal.

(B) Upon adoption of this article, the member state shall have the authority to obtain biometric‑based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. Section 534 and 42 U.S.C. Section 14616.

(C) 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.

(D) Member states may charge a fee for granting a compact privilege.

(E) A member state cannot participate in issuing compact privileges until such member state has completed the requirements to implement the state criminal record check, supported by fingerprints, by the State Law Enforcement Division (SLED); and a national criminal record check, supported by fingerprints, by the Federal Bureau of Investigation (FBI) and promulgated all regulations necessary to carry out the requirements of the compact, including, but not limited to, establishing fees for granting a compact privilege.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑540.** Compact privilege.

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

(1) hold a license in the home state;

(2) have no encumbrance on any state license;

(3) be eligible for a compact privilege in any member state in accordance with subsections (D), (G), and (H);

(4) have not had any adverse action against any license or compact privilege within the previous two years;

(5) notify the commission that the licensee is seeking the compact privilege within a remote state;

(6) pay any applicable fees, including any state fee, for the compact privilege;

(7) meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and

(8) report to the commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.

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

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

(D) 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 specific period of time, impose fines, and 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.

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

(1) the home state license is no longer encumbered; and

(2) two years have elapsed from the date of the adverse action.

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

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

(1) the specific period of time for which the compact privilege was removed has ended;

(2) all fines have been paid; and

(3) two years have elapsed from the date of the adverse action.

(H) Once the requirements of subsection (G) have been met, the licensee must meet the requirements in subsection (A) to obtain a compact privilege in a remote state.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑550.** Active duty military personnel or their spouses.

A licensee who is active duty military or 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 it is different than the PCS state or home of record.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑560.** Adverse actions.

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

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

(C) Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs 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 such other member state.

(D) 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.

(E) A remote state shall have the authority to:

(1) take adverse actions as set forth in subsection (D) against a licensee's compact privilege in the state;

(2) 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, and/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 it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

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

(F)(1) 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.

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

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑570.** Establishment of the Physical Therapy Compact Commission.

(A) The compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission.

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

(2) 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.

(3) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(B) Membership, voting, and meetings:

(1) each member state shall have and be limited to one delegate selected by that member state's licensing board;

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

(3) any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed;

(4) the member state board shall fill any vacancy occurring in the commission;

(5) each delegate must be 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;

(6) a delegate shall vote in person or by other means as provided in the bylaws, which may provide for delegates' participation in meetings by telephone or other means of communication;

(7) the commission shall meet at least once during each calendar year, and additional meetings must be held as set forth in the bylaws.

(C) The commission shall have the following powers and duties:

(1) establish the fiscal year of the commission;

(2) establish bylaws;

(3) maintain its financial records in accordance with the bylaws;

(4) meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(5) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact;

(6) 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 must not be affected;

(7) purchase and maintain insurance and bonds;

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

(9) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals 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;

(10) accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(11) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

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

(13) establish a budget and make expenditures;

(14) borrow money;

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

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

(17) establish and elect an executive board; and

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

(D) The executive board shall have the power to act on behalf of the commission according to the terms of this compact.

(1) The executive board must be composed of nine members:

(a) seven voting members who are elected by the commission from the current membership of the commission;

(b) one ex officio, nonvoting member from the recognized national physical therapy professional association; and

(c) one ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

(2) The ex officio members will be selected by their respective organizations.

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

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

(5) The executive board shall have the following duties and responsibilities:

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

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

(c) prepare and recommend the budget;

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

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

(f) establish additional committees as necessary; and

(g) other duties as provided in rules or bylaws.

(E) Meetings of the commission:

(1) All meetings 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 40‑45‑590.

(2) 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:

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

(b) 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;

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

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

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

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

(g) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

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

(i) 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

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

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

(4) 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 therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(F) Financing of the commission:

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its 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.

(4) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must be 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.

(G) Qualified immunity, defense, and indemnification:

(1) The members, officers, executive director, employees and representatives of the commission must be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, 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 item must be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful or wanton misconduct of that person.

(2) 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 herein may be construed to prohibit 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 wilful or wanton misconduct.

(3) 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 such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or wilful or wanton misconduct of that person.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑580.** Data system.

(A) 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.

(B) 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:

(1) identifying information;

(2) licensure data;

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

(4) nonconfidential information related to alternative program participation;

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

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

(C) Investigative information pertaining to a licensee in any member state will only be available to other party states.

(D) 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 will be available to any other member state.

(E) 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.

(F) 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.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑590.** Rulemaking.

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

(B) 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 four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

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

(D) Prior to promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking on the website of:

(1) the commission or other publicly accessible platform; and

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

(E) The notice of proposed rulemaking shall include:

(1) the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

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

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

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

(F) 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.

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

(1) at least twenty‑five persons;

(2) a state or federal governmental subdivision or agency; or

(3) an association having at least twenty‑five members.

(H) 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 via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) 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 five business days before the scheduled date of the hearing.

(2) 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.

(3) All hearings must be recorded. A copy of the recording will be made available on request.

(4) Nothing in this section must 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.

(I) 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.

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

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

(L) 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 must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:

(1) meet an imminent threat to public health, safety, or welfare;

(2) prevent a loss of commission or member state funds;

(3) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) protect public health and safety.

(M) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for 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 must be subject to challenge by any person for a period of thirty 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 will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑600.** Oversight, dispute resolution, and enforcement.

(A) Oversight:

(1) 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.

(2) 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.

(3) The commission must be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

(B) Default, technical assistance, and termination:

(1) 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:

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

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

(2) 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.

(3) Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must 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.

(4) 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.

(5) 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.

(6) The defaulting state may appeal the action of the commission by petitioning the United States 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 such litigation, including reasonable attorney's fees.

(C) Dispute resolution:

(1) 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.

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

(D) Enforcement:

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

(2) By majority vote, the commission may initiate legal action in the United States 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. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein must not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑610.** Date of implementation of the interstate commission for physical therapy practice and associated rules, withdrawal, and amendment.

(A) The compact shall come into effect 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, must be 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.

(B) Any state that joins the compact subsequent to the commission's initial adoption of the rules must be 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 shall have the full force and effect of law on the day the compact becomes law in that state.

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

(1) A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

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

(D) Nothing contained in this compact may 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.

(E) This compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

HISTORY: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.

**SECTION 40‑45‑620.** Construction and severability.

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact must be 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 thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact must be held contrary to the constitution of any party state, the compact shall remain 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: 2018 Act No. 226 (H.4799), Section 1, eff May 18, 2018.