



*This article is based on a presentation by Leslie Adrian, PT, DPT, MPA, Director of Professional Standards, Federation of State Boards of Physical Therapy, at the 2017 FSBPT Annual Meeting.*

## **Regulations, Rulings, Resources and Revisions: News You Can Use!**

Change is the only constant, it's been said, and the Federation of State Boards of Physical Therapy (FSBPT) is not immune to that law. Among other changes in the past year, FSBPT has released the sixth edition of the Model Practice Act (MPA) and updated the Licensure Reference Guide. Across the country, as well, efforts to incorporate dry needling into physical therapy scopes of practice have moved forward.

The changes to the MPA add three additional duties of the boards, adds background checks for all PT/PTA applicants, adds a section to allow for evaluation of a U.S. military trained PTA, and reconciles the MPA with other FSBPT resource document recommendations.

### **MPA: New Board Duties**

The first additional board duty is the authority to participate in a national Exam, Licensure, and Disciplinary Database as defined in rule. The generic reference to "a database" was intentional; not specifically naming the FSBPT's Exam, Licensure and Disciplinary Database (ELDD). However, the commentary makes it clear that until there is a better alternative, boards should use the FSBPT database. FSBPT believes reporting to the ELDD is strongly related to FSBPT's and each board's mission of public protection.

The second new board duty is the authority to obtain biometric-based information from every physical therapist or physical therapist assistant applicant for licensure or certification and submit this information to the Federal Bureau of Investigation for a criminal background check. Background checks are required for membership in the Physical Therapy Licensure Compact.

The third new duty is collecting data for the Minimum Data Set (MDS). The new MPA language states that boards "[h]ave the authority to determine and collect, at the time of new licensure [or certification] and licensure [or certification] renewal, a core set of data elements deemed necessary for the purpose of workforce planning. The data elements shall be used to create and maintain a healthcare workforce database. The board may enter into agreements with a private or public entity to establish and maintain the database, perform data analysis, and/or prepare reports concerning the physical therapy workforce. The board shall promulgate rules to perform duties pursuant to this [act]."

This language was included because many boards have said they could not collect workplace data because it's outside their realm or they're not allowed to under their practice acts. This wording gives boards the authority to determine a useable data set, collect the data, and use the data however it is needed to maintain a healthcare workforce database.

It also allows a board to enter into agreements with a private or public entity to establish and maintain the database. That answers the concerns of boards without the ability to create and maintain a database. It allows boards to find another party, including a third-party vendor, to do so.

This particular language can stand alone; it doesn't have to be in a state's practice act to make sense.

### **MPA: All Practitioners Subject to Criminal Background Checks**

Putting language on criminal background checks in the MPA came through the work of the Physical Therapy Compact Advisory Commission and then the drafting team, which recognized the need for background checks in compacts. The use of background checks are consistent with public protection. The FSBPT Ethics & Legislation Committee recognized the need for it in the MPA too. The first new duty added gave the boards the authority to collect the information and send it to the FBI to get the information. The change in the licensure requirements section requires applicants to submit to a criminal records check as a condition of licensure. It closes the circle. The MPA now requires background checks for PTs, PTAs, and foreign-educated therapists.

### **MPA: Creates a Pathway for Military-Trained PTAs**

U.S. military-trained physical therapists must have attended and graduated from a CAPTE accredited education program and passed the National Physical Therapy Examination (NPTE). One must have an active physical therapist license from a United States jurisdiction to function as a PT in the military. Active duty military members serving as PTs must meet the same requirements as their civilian counterparts.

The PTAs are a different story. There is no requirement for licensure to function as a PTA in the military. The individuals are not required to have a CAPTE-accredited education or be shown to be substantially equivalent. Military PTAs complete military education requirements provided by the individual service to obtain a Military Occupational Specialty (MOS) as a PTA. Another note, PTA is not a term used in the military, more commonly used is PT Specialist, PT Technician, or Physical Medicine Apprentice. Many boards found their statute didn't have an avenue to credential these folks; they aren't CAPTE-accredited and they're not educated outside of the United States. At the same time, boards were getting pressure to allow military PTAs to get licensed in some way, shape, or form. That leaves a black hole for how to credential a military-trained PTA.

The new MPA language allows boards to determine whether or not the military education was substantially equivalent and the requirements for a military-trained PTA to become licensed. It's similar to what boards need to do for foreign-educated PTs or PTAs. It allows the military PTA applicant to provide satisfactory evidence that the applicant's education is substantially equivalent to the education of PTAs educated in a CAPTE-accredited entry-level program as determined by the Board.

The requirements for licensure in the MPA now state that to be substantially equivalent when the applicant undergoes a United States Armed Services Program of Training, they need to have completed a Physical Therapist Assistant Training Program that prepares the applicant to work as a PTA, undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule, and completed any additional education as required by the board.

The Coursework Tool PTA Tools 1 and 2 are available to boards to allow them to determine if military applicants have a substantially equivalent education. The new language provides a path by allowing boards to look at their military education, find where there are deficiencies, then give them that plan to become substantially equivalent and take the exam to get licensed.

Boards may find that a very small number of military PTAs have completed a CAPTE-accredited educational program. In the past, the College of the Air Force has had a CAPTE-accredited PTA program. Some military-trained PTAs may have graduated from a CAPTE-accredited program and are good to go. However, the accreditation of the College of the Air Force is in flux. The College looked at their pass rates and voluntarily dropped back, saying they needed to look at their program to see how people can be more successful on the exam.

### **Reconciling the MPA with Other FSBPT Resource Documents**

In the old version of the commentary on telehealth, it stated the FSBPT absolutely requires the evaluative components of practice to occur when at least one PT is in the physical presence of the patient. At the time that was written, the technology did not allow for a good way to do an evaluation that wasn't in person. Fast-forward a few years and the Ethics & Legislation Committee took an in-depth look at telehealth and completed a resource paper on the topic. It concluded there is no reason the evaluation has to be in person. Now the commentary in the MPA states a "PT can establish a PT-client relationship in the absence of actual physical contact, and the PT can perform an evaluation as long as it's within a clinical standard that allows them to do so."

There is legal precedence for the language too. When the Texas medical licensure board established regulations on telehealth, they required the first evaluation visit to be in person. A telehealth company called Teladoc sued the board and won. The courts basically said the requirement for an initial in-person visit was anti-competitive.

In light of the ruling, the Texas PT Board, which had put the brakes on the issue while waiting for the Teladoc case to be settled, will be looking at telehealth once again starting in January 2018.

FSBPT has a paper on telehealth, which can be found on the public website under Regulatory Resources. It's written in very broad terms, but provides boards with guidance on what to address in their rules.

Another section was added to the MPA with regards to examination. Specifically, this language allows a jurisdiction to comply with, and implement, FSBPT's eligibility requirements.

## **Licensure Reference Guide Updated and Upgraded**

The previous version of the Licensure Reference Guide was compiled from surveys sent to each of the physical therapy boards. The survey included questions on direct access and limitations, initial and renewal requirements for licensure, temporary licensure, and board structure. Some boards would fill it out completely, some partially, and some would not respond. FSBPT did not verify the data received from the jurisdiction; however, from the data, FSBPT created and published static PDFs. The process of creating these charts was time-consuming and difficult to update.

The new guide will have fewer tables and charts, but the information will be of better quality and more meaningful. FSBPT will collect and maintain the data. FSBPT has examined the practice acts and rules on board websites to answer the questions previously asked in the surveys. Visitors can hover over the charts and receive a reference to the statute or regulation. There is no hyperlink, however, because websites change too often. But the reference can be highlighted and copied for a Google search.

The licensure reference guide updates make for a much better user experience. The tables are now dynamic and sortable; charts can be sorted by column or by alphabetical order by state. And, it takes minutes to update. As changes are made in practice acts and regulations that impact these charts, the information will be uploaded quarterly and reflected in the charts.

FSBPT initially collects data on legislative and regulatory changes from tracking services. However, the volume, especially of the regulations, is difficult to keep up with. Boards remain the best source of information on these changes. Some boards have automatic systems that can give interested parties updates. It would be helpful to FSBPT if boards alert FSBPT that they have an automatic update system to which FSBPT can subscribe.

## **Movement on Dry Needling**

As it seems to be the case every year, dry needling was a good news/bad news story. A bill was introduced in Maine that would allow PTs to use dry needling in accordance with rules adopted by the PT Board of Examiners. It required the board to adopt rules governing the use of dry needling by physical therapists. Unfortunately, the bill died in April 2017.

Maryland, however, was a success. It was a seven-year process, but the new regulations went into effect on June 19, 2017. It clarifies the minimum education and training for PTs to practice the procedure. In order to give PTs an opportunity to comply with the regulations, the effective date is delayed to June 19, 2018.

PTs will need at least 40 hours of instruction of specific dry needling course content areas. They also need 40 hours of practical hands-on instruction under the supervision of a licensed healthcare practitioner competent in dry needling procedures. There also must be an assessment of competence. Then, the individual PT must register with the state. The didactic portion can be completed in-person or electronically real-time. The practical training must be in-person.

The Maryland PT board worked closely with the acupuncture board and the acupuncture association to get to a place where they agreed.

Oregon received a Department of Justice opinion on dry needling. The short answer is, "No.

Dry needling is not within the scope of practice of a PT in Oregon." The opinion was requested by the PT licensing board. The Board opinion was that dry needling was in the scope of practice for PTs to perform the procedure, but the chiropractors in Oregon recently had an Attorney General opinion that stated it was not in the chiropractor scope of practice. Due to this, the PT Board alerted their licensees that they should proceed with caution if they choose to do dry needling.

However, the Oregon ruling was carefully crafted: "Although it is a close question, we conclude that dry needling is not within the Physical Therapy scope of practice in Oregon. This opinion is limited solely to the question whether dry needling is a Physical Therapy intervention under the Oregon State revised statute. And does not address or express any opinion about any other provision or intervention."

The Oregon PT board believes it was written that way because the issue focuses on needles and using sharp instruments and people were concerned that if that opinion said PTs couldn't do dry needling, it was also going to feed into wound care, debridement, and other areas.

Unlike in Maryland, the Oregon board was unable to secure any cooperation from the medical board, the acupuncture association, or the acupuncture board, which is part of the medical board.

Washington tried to add dry needling to the scope in its practice act. They were advised by the legislature that doing so required a Sunrise Review. In March of 2016, the Chair of the Senate Healthcare Committee requested the Washington Department of Health to conduct a Sunrise Review of the proposal. If successful, it would have created an endorsement on the PT license to perform dry needling and would require one year of full-time physical therapy practice and 54 hours of education and training.

The department did not support the applicant's proposal as submitted to add dry needling to the scope of practice of PTs in Washington. The department did not feel the board met the Sunrise criteria for increasing the PT scope of practice. There was no demonstration that 54 hours of training was the proper number of training hours, and there was no supervised clinical experience requirement.

The Board however, had demonstrated that with adequate training, which includes a clinical component, dry needling may fit within the PT's scope of practice in treating neuromuscular pain and movement impairments. Furthermore, the evidence provided in the review demonstrates a low rate of serious adverse effects from PTs performing dry needling in any other state, the U.S. military, and Canada.

Those are just some of the changes in PT practice over the past year. Jimmy Dean has been quoted as saying, "I can't change the direction of the wind, but I can adjust my sails to always reach my destination." FSBPT will continue to adjust its sails as boards and therapists continue their journey to serve and protect the public.



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