

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

Child Abuse Reporting Requirements

The State Board of Physical Therapy (Board) amends §§ 40.12, 40.16, 40.19, 40.67, 40.162, 40.191, 40.192 and 40.201—40.207, and adds §§ 40.208 and 40.209 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3(a) of the Physical Therapy Practice Act (63 P.S. § 1303(a)) sets forth the Board's general rule-making authority. Under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees and certificate holders of the Board.

Purpose and Explanation

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related Boards to require training in child abuse recognition and reporting for licensees and certificate holders who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license or certificate, or applying for renewal of a license or certificate, on or after January 1, 2015. The Board implemented the training requirements as mandated at the beginning of 2015 and subsequently proposed this rulemaking to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the CPSL, as amended.

The proposed rulemaking was published at 50 Pa.B. 7181 (December 19, 2020) for 30 days of public comment, but no public comments were received. The Independent Regulatory Review Commission (IRRC) submitted comments on February 17, 2021. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. The following represents a summary of IRRC's comments and the Board's response, along with a description of the amendments made to this final-form rulemaking.

Summary of IRRC's Comments; the Board's Response; and Description of Amendments to the Final-Form Rulemaking

First, IRRC commented that § 40.16(b)(1)—(3) (relating to licensure by endorsement) are duplicative in that subsection (b)(1) and (2) appear elsewhere in the Board's regulations and subsection (b)(3) is duplicative of subsection (a)(3), which is cross-referenced in the opening

statement of subsection (b). The Board agrees with this observation and has stricken these duplicative provisions.

Next, IRRC noted that § 40.208(a), which requires individuals applying for an initial license or certificate to complete at least 3 hours of mandatory training in child abuse recognition and reporting, does not address the documentation and reporting of completion of the mandatory training as required by the CPSL under 23 Pa.C.S. § 6383(b)(3)(i). IRRC asked the Board to revise this subsection to include the implementation procedures for applicants. Initially, the Board notes that the procedure is essentially the same as for licensure/certificate renewal. The applicant for an initial license or certificate certifies on the application that the applicant has completed the required 3 hours of mandatory training in child abuse recognition and reporting. The approved course provider submits the attendance/participation report to the Bureau of Professional and Occupational Affairs (Bureau) electronically and it is appended to the applicant's application file. This relieves the applicant of additional paperwork requirements and assures the Board that the applicant took an approved course. The PALS system will not issue the license/certificate without the electronic report from the approved course provider unless the applicant has been granted an exemption by the Board.

In response to this comment, the Board has updated both subsections (a) and (b) to include the requirement that the applicant/licensee certify on the application that the required training/continuing education has been completed. In addition, the Board has added to subsection (a) notice that the course must be approved by both the Department of Human Services (DHS) and the Bureau, and that the Board will not issue a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c). The Board also finds it necessary to amend §§ 40.12(a)(5), 40.16(a)(3) and 40.162(a)(5) (relating to application for licensure; licensure by endorsement; and application for certification) to clarify that applicants are required to complete "approved" training in child abuse recognition and reporting in accordance with § 40.208(a).

Finally, IRRC points out an error in § 40.202(c)(1) (relating to suspected child abuse—mandated reporting requirements) in that the reference to "subparagraph" should be corrected to "paragraph." This correction has been made to this final-form rulemaking.

In addition to the amendments made in response to IRRC's comments, the Board corrected an error in § 40.208(c)(2)(i) by deleting the word "section."

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees and certificate holders are already required to complete mandatory continuing education, and these 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure or certification would incur an additional requirement, and as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved training providers of the mandatory training in child abuse recognition and reporting are required to

report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees or certificate holders. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a), on December 9, 2020, the Board submitted a copy of the notice of proposed rulemaking, published at 50 Pa.B. 7181, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC. No public comments were received. The Board also received no comments from the HPLC or the SCP/PLC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 16, 2021, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 17, 2021, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Michelle Roberts, Board Administrator, State Board of Physical Therapy, P.O. Box 2649, Harrisburg, PA 17105-2649, st-physical@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, but no comments were received.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 50 Pa.B. 7181.

(4) This final-form rulemaking is necessary and appropriate for the administration of the CPSL.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board at 49 Pa. Code Chapter 40 are amended by amending §§ 40.12, 40.16, 40.19, 40.67, 40.162, 40.191, 40.192 and 40.201—40.207, and adding §§ 40.208 and 40.209 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit the final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit the final-form regulation to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify the final-form regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

CYNTHIA POTTER, PT, DPT,
Chairperson

(Editor's Note: For IRRC's approval order, see 51 Pa.B. 3680 (July 3, 2021).)

Fiscal Note: Fiscal Note 16A-6518 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS LICENSURE

§ 40.12. Application for licensure.

(a) Evidence, satisfactory to the Board, shall be submitted indicating that the applicant:

(1) Is at least 20 years of age, unless otherwise waived upon application to and review by the Board.

(2) Is of good moral character.

(3) Is not addicted to the habitual use of alcohol, narcotics or other habit forming drugs.

(4) Has met the professional requirements in § 40.11 (relating to educational requirements for licensure by examination).

(5) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 40.208(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) The applicant shall apply on forms supplied by the Board, answer all questions fully and provide all documentation required under subsection (a).

(c) The applicant shall pay the fee in § 40.5 (relating to fees) for application for physical therapist licensure by examination/endorsement.

§ 40.16. Licensure by endorsement.

(a) An applicant for licensure by endorsement who is educated in another state or territory of the United States is required to submit the professional credentials in § 40.11 (relating to license by examination; requirements for examination), and comply with the following:

(1) The applicant shall submit a written application on forms provided by the Board, together with evidence satisfactory to the Board that the applicant is licensed or otherwise registered as a physical therapist in another state or territory of the United States, or in the District of Columbia, if the requirements for licensure or registration in the state, territory or district were, at the date of licensure or registration, substantially equal to the requirements for licensure or registration in this Commonwealth under the act.

(2) The applicant shall submit the fee prescribed in § 40.5 (relating to fees) for licensure by endorsement.

(3) The applicant shall have completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 40.208(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) In addition to the requirements in subsection (a), an applicant for licensure by endorsement who received education in a country outside of the United States is required to meet the educational requirements as set forth in § 40.17(5) and (6) (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience).

§ 40.19. Renewal of physical therapist license.

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(c) A licensee applying for biennial renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist license.

(2) Disclose any license to practice as a physical therapist in another state, territory, possession or country.

(3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed to practice in that other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the licensee has complied with the continuing education requirements mandated by section 7.2 of the act (63 P.S. § 1307.2) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.67 (relating to continuing education for licensed physical therapist), including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement). The Board will not renew a license if the licensee has not completed the continuing education required under § 40.67 during the biennial period immediately preceding the period for which renewal is sought.

(6) Verify that, if practicing as a physical therapist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 9(b)(4) of the act (63 P.S. § 1309(b)(4)) and § 40.69 (relating to professional liability insurance).

CONTINUING EDUCATION

§ 40.67. Continuing education for licensed physical therapist.

(a) *Contact hour requirements.* A licensed physical therapist shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a licensee shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education, including at least 2 contact hours in law or ethics applicable to the practice of physical therapy, and at least 2 contact hours in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement).

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Subchapter C. PHYSICAL THERAPIST ASSISTANTS

CERTIFICATION

§ 40.162. Application for certification.

(a) The applicant shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following criteria. The applicant:

(1) Is at least 18 years of age, unless otherwise determined by the Board that the applicant has proved the capability to accept and handle the responsibilities appurtenant to certification.

(2) Is of good moral character.

(3) Is not addicted to the habitual use of alcohol, narcotics or other habit-forming drugs.

(4) Has met the professional requirements for certification under § 40.163 (relating to requirements for certification).

(5) Has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 40.208(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) An applicant for certification issued by the Board shall apprise the Board of the following:

(1) A license, certificate, registration or other authorization to practice a profession issued, denied or limited by another state, territory or possession of the United States, a branch of the Federal government or another country.

(2) Disciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, a branch of the Federal government or another country.

(3) A finding or verdict of guilt, an admission of guilt or a plea of nolo contendere to a felony offense or an offense involving moral turpitude.

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MAINTENANCE OF CERTIFICATION

§ 40.191. Renewal of certification.

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(c) To retain the right to provide services as a physical therapist assistant, the certified physical therapist assistant's certification shall be renewed by the certified physical therapist assistant in the manner prescribed by the Board, and the required fee shall be paid by the certified physical therapist assistant prior to the expiration of the next biennium. A certified physical therapist assistant applying for biennial certificate renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist assistant certificate.

(2) Disclose any license, certificate, registration or other authorization to provide services as a physical therapist assistant in another state, territory, possession or country.

(3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed, registered or certified to practice in that other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo

contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the certified physical therapist assistant has complied with the continuing education requirements mandated by section 9.1(j) of the act (63 P.S. § 1309.1(j)) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.192 (relating to continuing education for certified physical therapist assistant), including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement). The Board will not renew a physical therapist assistant certification if the certified physical therapist assistant has not completed the continuing education required under § 40.192 during the biennial period immediately preceding the period for which renewal is sought.

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CONTINUING EDUCATION

§ 40.192. Continuing education for certified physical therapist assistant.

(a) *Contact hour requirements.* A certified physical therapist assistant shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a certified physical therapist assistant shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education, including at least 4 contact hours in identifying and responding to emergency health conditions, at least 2 contact hours in law or ethics applicable to the practice of physical therapy and at least 2 contact hours in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement).

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Subchapter D. CHILD ABUSE REPORTING REQUIREMENTS

§ 40.201. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Physical Therapy Practice Act (63 P.S. §§ 1301—1312).

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—Intentionally, knowingly or recklessly doing any of the following:

- (i) Causing bodily injury to a child through any recent act or failure to act.
- (ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this subchapter, the term includes all physical therapists and physical therapist assistants.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—A person who has committed child abuse as defined in this section.

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption of the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 18 years of age or older and responsible for the child's welfare.

(E) A person 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

(i) A youth camp or program.

(ii) A recreational camp or program.

(iii) A sports or athletic program.

(iv) A community or social outreach program.

(v) An enrichment or educational program.

(vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 40.202. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), all physical therapists and physical therapist assistants are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a physical therapist or physical therapist assistant is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, the physical therapist or physical therapist assistant shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this paragraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* A written or electronic report of suspected child abuse shall include the following information, if known:

(1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of each subject of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or any sibling of the child.

(5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(6) Family composition.

(7) The source of the report.

(8) The name, telephone number and e-mail address of the person making the report.

(9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(10) Other information required by Federal law or regulation.

(11) Other information which the Department of Human Services may require by regulation.

§ 40.203. Photographs, medical tests and X-rays of child subject to report.

A physical therapist or physical therapist assistant may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 40.202(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 40.204. Suspected death as a result of child abuse—mandated reporting requirement.

A physical therapist or physical therapist assistant who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 40.205. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a physical therapist or physical therapist assistant who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the physical therapist's or physical therapist assistant's actions. For the purpose of any civil or criminal proceeding, the good faith of the physical therapist or physical therapist assistant shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a physical therapist's or physical therapist assistant's actions under §§ 40.202—40.204 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of

child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 40.206. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 40.202—40.204 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the confidentiality provisions in § 40.52(c) (relating to unprofessional conduct; physical therapists) and any other client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 40.207. Noncompliance.

(a) *Disciplinary action.* A physical therapist or physical therapist assistant who willfully fails to comply with the reporting requirements in §§ 40.202—40.204 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1311).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a physical therapist or physical therapist assistant who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

- (i) The mandated reporter willfully fails to report.
- (ii) The child abuse constitutes a felony of the first degree or higher.
- (iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual’s employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 40.208. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license or certificate

shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 40.209 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees and certificate holders seeking renewal of a license or certificate issued by the Board shall complete, as a condition of biennial renewal of the license or certificate, at least 2 hours of approved continuing education in child abuse recognition and reporting, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 40.209. The licensee or certificate holder shall certify on the biennial renewal application that the licensee or certificate holder has either completed the required continuing education or has been granted an exemption under subsection (c). The Board will not renew a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee or certificate holder in an approved course or the licensee or certificate holder has obtained an exemption under subsection (c).

(c) An applicant, licensee or certificate holder may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant, licensee or certificate holder meets one of the following:

(1) The applicant, licensee or certificate holder submits documentation demonstrating that:

(i) The applicant, licensee or certificate holder has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant, licensee or certificate holder submits documentation demonstrating that:

(i) The applicant, licensee or certificate holder has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant, licensee or certificate holder submits documentation demonstrating that the applicant, licensee or certificate holder should not be subject to the training

or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

§ 40.209. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions shall include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript or recording of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which shall include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

[Pa.B. Doc. No. 21-1234. Filed for public inspection August 6, 2021, 9:00 a.m.]