

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Physical Therapy Examiners

RULE CITATION: All Rules Submitted

DEADLINE FOR RECEIPT: Thursday, April 4, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the History Note, please update all citations to reflect the recodification of the law in 2017.

Please note, for any Rule where the only change you make is to the History Note, you do not need to reflect "with changes" in the Introductory Statement.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 21, 2019

1 **21 NCAC 48F .0102 is readopted as published in 33:08 NCR 838 as follows:**

2
3 **21 NCAC 48F .0102 FEES**

4 (a) The following fees are charged by the Board:

- 5 (1) application for physical therapist licensure, one hundred fifty dollars (\$150.00);
- 6 (2) application for physical therapist assistant licensure, one hundred fifty dollars (\$150.00);
- 7 (3) renewal for all persons, one hundred twenty dollars (\$120.00);
- 8 (4) revival of license lapsed less than five years, thirty dollars (\$30.00) plus renewal fee;
- 9 (5) transfer of licensure information fee, including either the examination scores or licensure
- 10 verification or both, thirty dollars (\$30.00);
- 11 (6) retake examination, sixty dollars (\$60.00);
- 12 (7) certificate replacement or duplicate, thirty dollars (\$30.00);
- 13 (8) licensee list or labels or any portion thereof for physical therapists, sixty dollars (\$60.00);
- 14 (9) licensee list or labels or any portion thereof for physical therapist assistants, sixty dollars (\$60.00);
- 15 and
- 16 (10) processing fee for returned checks, maximum allowed by G.S. 25-3-506.

17 (b) The application fee is not refundable.

18 (c) Payment of application fees listed in Subparagraphs (a)(1) and (2) of this Rule may be made by certified check,
19 cash, credit card, or debit card.

20
21 *History Note: Authority G.S. 90-270.26; 90-270.29; 90-270.33;*

22 *Eff. February 1, 1976;*

23 *Readopted Eff. September 30, 1977;*

24 *Amended Eff. August 1, 1998; October 1, 1995; October 1, 1994; November 1, 1991; August 1,*
25 *1991;*

26 *Temporary Amendment Eff. October 1, 1999;*

27 *Amended Eff. August 1, 2017; July 1, 2013; December 1, 2006; August 1, 2002; August 1, 2000.*

28 *Readoption Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Physical Therapy Examiners

RULE CITATION: 21 NCAC 48F .0103

DEADLINE FOR RECEIPT: Thursday, April 4, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, what do you mean by "relevant to" Do you not mean "Any complaint alleging violations..."?

Also on line 4, is this the name of G.S. 90, Article 18E?

On line 6, should "executive director" be capitalized? I notice it varies across the Chapter, but did want to ask.

How will the public know how to contact the executive director?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 21, 2019

1 **21 NCAC 48F .0103 is readopted as published in 33:08 NCR 838 as follows:**

2
3 **21 NCAC 48F .0103 INVESTIGATIONS**

4 Any complaint relevant to alleged violations of the North Carolina Physical Therapy Practice Act must be made in
5 writing, signed by the person submitting the complaint, and include the complainant's address and telephone
6 number. Complaints must be sent to the executive director.

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8 *History Note: Authority G.S. 90-270.26; 90-270.35; 90-270.36;*

9 *Eff. February 1, 1976;*

10 *Readopted Eff. September 30, 1977;*

11 *Amended Eff. December 1, 2006; February 1, 1996; May 1, 1988; October 28, 1979;*

12 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Physical Therapy Examiners

RULE CITATION: 21 NCAC 48G .0504

DEADLINE FOR RECEIPT: Thursday, April 4, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

I realize that this Rule is in another Subchapter, but does it have any interplay with Rule 48F .0103? If so, shouldn't those rules have the same requirement for submitting a complaint?

In (a)(1), I take it the address will be where the professional service was rendered, and the person will know the address?

In (a)(2), consider stating "a statement of conduct that is the basis of the complaint;"

In (b), line 9, is this the name of Article 18E?

In (c)(3), will the former Board member be a licensee? Please be aware of the prohibition in G.S. 93B-8.2.

In (e), line 32, I suggest you state "Public Records Act, G.S. 132. However, copies of the materials..."

If you do not want to do that, please do end the sentence on line 32 after (G.S. 132)" and then start a new sentence.

On lines 33-35, so that I'm clear – you are only referring to materials gathered before a hearing and thus, cannot have been introduced into evidence, as that will become a public record pursuant to G.S. 90-270.92(3)?

What is the purpose of (l)? This seems to be internal management, rather than necessary for a Rule. Do you need to retain it?

Also in(l), Page 2, line 21, do you need "directly or indirectly"?

In the History Note, line 29, why are you citing to G.S. 90-270.26 (now 90-270.92) twice? I think you only need to cite to it one time.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 21, 2019

1 **21 NCAC 48G .0504 is readopted as published in 33:08 NCR 838 as follows:**

2
3 **21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS**

4 (a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing:

- 5 (1) the name and address of person alleged to have violated the Physical Therapy Practice Act;
6 (2) a statement of conduct giving rise to complaint; and
7 (3) the name, address, and telephone number of complainant.

8 (b) Upon receipt of a written complaint alleging misconduct that may subject a licensee to disciplinary action, or
9 upon the receipt of the information that a violation of the Physical Therapy Practice Act may have occurred, the
10 Board shall investigate the matter to determine whether probable cause exists to institute disciplinary proceedings.

11 (c) The Executive Director of the Board and a member appointed by the Chair shall serve as an investigative
12 committee. This investigative committee may be assisted by:

- 13 (1) the Board's attorney;
14 (2) an investigator;
15 (3) a former member of the Board; or
16 (4) a consultant retained by the investigative committee who possesses expertise that will assist the
17 investigative committee in its investigation.

18 (d) The investigative committee shall investigate the complaint or information set forth in Paragraphs (a) and (b) of
19 this Rule. In conducting its investigation, the Board Chair (or Executive Director, if designated by the Chair) may
20 issue subpoenas in the investigative committee's name for the production of documents pursuant to the provisions of
21 Rule .0512 of this Section. The investigative committee shall determine whether there is probable cause to believe
22 that the licensee has violated any statute or Board rule that justifies a disciplinary hearing. If the investigative
23 committee determines probable cause does not exist, the complaint shall be dismissed, and the complainant shall be
24 notified of the investigative committee's action and its reasons. If the investigative committee determines that
25 probable cause exists, the investigative committee shall offer to confer with the licensee in an attempt to settle the
26 matter through informal means. If the investigative committee and the licensee reach an agreement on the
27 disposition of the matter under investigation, the investigative committee shall cause to be drafted a proposed
28 settlement agreement that shall include findings of fact, conclusions of law, and a consent order for presentation to
29 and consideration by the Board. The settlement agreement shall be presented to and approved by the licensee before
30 it is presented to the Board for consideration and approval.

31 (e) Prior to a decision rendered by the Board, any materials generated or obtained by the Board in conducting an
32 investigation shall be considered confidential investigation records not subject to the Public Records Act (G.S. 132);
33 however, copies of such materials may be provided to a licensee subject to disciplinary action, or to the licensee's
34 attorney, so long as identifying information concerning the treatment or delivery of professional services to a patient
35 who has not consented to its public disclosure shall be redacted.

1 (f) If the investigative committee and the licensee are not able to settle the matter under investigation by informal
2 means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board shall
3 give notice of a disciplinary or contested case hearing.

4 (g) If probable cause is found, but it is determined that license suspension or revocation is not warranted, the
5 investigative committee shall recommend that the Board place the licensee on probation, or issue a warning to the
6 licensee. In making this determination, the investigative committee shall consider such factors as harm to the public;
7 nature of the conduct; and prior record of discipline. The investigative committee shall mail a copy of its
8 recommendation to the licensee.

9 (h) Within 20 days after receipt of the recommendation, the licensee may refuse the probation or warning and
10 request a contested case hearing pursuant to this Rule. The refusal and request shall be filed with the Board. The
11 legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing.

12 (i) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal
13 meeting with the Board to discuss the basis of the investigative committee's recommendation and present reasons
14 why the Board should not follow the investigative committee's recommendation. There shall be no sworn testimony
15 presented, nor shall there be a formal record of the proceedings.

16 (j) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall
17 still determine whether to accept the investigative committee's recommendation.

18 (k) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member
19 from participating in the decision making process of a contested case hearing.

20 (l) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may
21 not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party,
22 including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law
23 in the contested case, except on notice and opportunity for all parties to participate. However, the attorney
24 prosecuting the matter for the Board may continue to communicate concerning the contested case with the members
25 of the investigative committee who investigated the matter, with persons not parties to the contested case who may
26 be called as witnesses including the person who filed the complaint, and with the Board members about other
27 matters.

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29 *History Note: Authority G.S. 90-270.26; 90-270.26(10); 150B-38; 150B-39; 150B-40;*

30 *Eff. October 1, 1995;*

31 *Amended Eff. February 1, 2015; July 1, 2013; August 1, 2002; August 1, 1998; February 1, 1996;*

32 *Readopted Eff. May 1, 2019.*