



STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
PHYSICAL THERAPY GOVERNING BOARD

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January 21, 2025

Re: Phy 401.01(b) Active in Practice

To: Deanna Jurius, Nikolas Frye, Esq., Bethany Cottrell, Ashley Czechowicz

From: Elizabeth Eaton, Esq.

Pursuant to 328-A:15-a, the Physical Therapy Governing Board (“Board”) has authority to adopt rules relative to continuing competence requirements for renewal of licensure for a physical therapist. The Board’s renewal requirements historically have included the licensee be active in the profession “at the rate of 200 hours during the 24 months immediately preceding the completed application” as described in Phy 401.01. While this does requirement does not appear in Phy 402.01, as part of the renewal process, the Board and its licensees have operated for many years as if it were a clearly stated requirement.

The Board is requesting the office continue to apply this standard at renewal. The rules for renewal require the licensee fill out and submit a “Physical Therapist and Physical Therapist Assistant Work History Form” which includes the number of hours worked per week.¹ For the majority of PTs and PTAs, this demonstrates they were active in the profession as required. Additionally, Phy 402.10 contemplates conditional renewal of licensure for those who could not demonstrate sufficient activity in the profession.

“The doctrine of administrative gloss is a rule of statutory construction. An ‘administrative gloss’ is placed upon an ambiguous clause when those responsible for its implementation interpret the clause in a consistent manner and apply it to similarly situated applicants over a period of years without legislative interference.”² Here, the rules appear to hold some ambiguity causing the licensing division to inquire whether “active in the profession” is truly a renewal requirement. The Board, statutorily responsible for the implementation of renewal criteria and historically responsible for implementation of the renewal process, has consistently applied this requirement to all applicants for renewal.

Additionally, the Board has a process for a licensee to renew with conditions placed on their license.³ The purpose of the conditional renewal is to provide oversight for a licensee who has not been active in the profession and may need guidance. The conditional renewal requires a period of supervision until such time as the licensee has “established readiness to practice under fully renewed licensure.”⁴

The Board voted at their January 21, 2025 meeting to request rulemaking support from the OPLC to amend the rules, formally establishing renewal criteria to clarify the requirement for “active in the profession.” During this time in which the new rules are being promulgated, licensing should apply the doctrine of administrative gloss regarding this requirement.

¹ N.H. Admin. Rules, Phy 402.04.

² DHB, Inc. v. Town of Pembroke, 152 N.H. 314, 321.

³ Including but not limited to N.H. Admin. Rules, Phy 402.05 (a), Phy 402.10, and Phy 406.01(a).

⁴ N.H. Admin. Rules, Phy 408.01 (b).