

## **CHAPTER 11**

# **Legal and Ethical Considerations**

*Tara sat in her Systems/Problems in Health Care course and listened to the professor. She was surprised to hear that it was both illegal and unethical for physicians to tell patients that they are receiving “physical therapy” when it is provided by aides in their office. The outpatient work injury center in which she had worked for several years prior to her admission to the physical therapist assistant program had a physical*

and standards of practice that apply to their profession and practice setting.

In contrast, *ethical standards* deal with conduct and moral choices that arise from professions, society, religion, and culture. Ethical behavior is about doing the “best” or “right” thing in a given situation, in relation to defined ethical principles. This binds health care providers to the highest level of care possible. Therapists may find themselves struggling to balance proper patient care (doing the “right” thing) within the cost containment realities of the health care environment (various laws and regulations). An ethical dilemma is defined as making performance decisions between unfavorable options.<sup>1</sup> *Ethical dilemmas* are a specific type of problem, where the practitioner must choose a course of action between 2 or more morally correct choices. There is no “right” answer to an ethical dilemma but rather a decision that is reached through consideration of the possible actions and their influence on all the involved stakeholders.

## **Laws**

There are 4 sources of law in the United States<sup>2</sup>:

### **Constitutional Law**

The *US Constitution* guarantees personal rights and liberties in the *Bill of Rights*. In general, these laws take precedence over all other laws and regulations.

### **Statutory Law**

*Statutes* are laws that are established through legislation at either the state or federal level. For example, physical therapy practice acts are state laws; every state's practice act is different.

### **Common Law**

*Common laws* are derived from judicial decisions that create legal precedent in areas that are not covered by previously enacted statutes. Previous cases provide the basis for common laws.

## Administrative Law

Administrative agencies are authorized by executive and legislative branches of government to establish and enforce *administrative law*, the rules and regulations that govern many of the daily activities of health care professionals. For example, the Center for Medicare and Medicaid Services is charged with establishing the regulations by which the Medicare system is administered. Health care providers must follow these laws to be paid for services rendered. In addition, Medicare holds each *provider* responsible for any claim that is billed to be in accordance with all established regulations. Medicare deems the provider to be committing fraud if billing is not done in accordance with its regulations. Another example is the Health Insurance Portability and Accountability Act (HIPAA).<sup>3</sup> The Privacy Rule provides protections for the use and disclosure of an individual's "protected health information," which ensure the individual's rights to both understand and provide

permission for how that information is used. Similarly, the Patient Protection and Affordable Care Act of 2010 provided multiple provisions that ensure health care access and health insurance coverage for millions of uninsured people in the United States.<sup>4</sup> The law enacts multiple reforms and protections that expand coverage and prevent discrimination on the basis of a preexisting disease or disability.<sup>4</sup>

## ***Private Regulatory Authorities***

In addition to the 4 sources of laws, private agencies, such as the Joint Commission on Accreditation of Health Care Organizations, establish standards to which member organizations subscribe. The American Physical Therapy Association (APTA) published the document, *Standards of Practice for Physical Therapy* (see [Appendix 4](#)), which defines acceptable standards for delivering physical therapy services. *Institutional policies and procedures* typically reflect the standards set by the regulatory agencies that monitor their

*therapist on the premises only 2 days per week. The on-the-job trained aides provided the physical therapy treatment activities. She wondered why they didn't know that this was illegal.*

## **Laws, Regulations, and Ethics**

There are many types of legal and regulatory influences that control health care practice. *Laws* are created to protect citizens from unsafe practices. *Regulations* have to do with the fair distribution of goods and services, which often relates to service delivery and reimbursement in health care. The laws and regulations by which health care providers must abide are becoming increasingly complex and numerous. This, coupled with the litigious society in which we live, intensifies the need for health care providers to be astutely aware of the various laws, regulations,

service delivery. Achieving and maintaining accreditation is considered the benchmark of quality and is tied to reimbursement for most health care entities.

### ***Third-Party Payers***

The organizations that provide reimbursement for health insurance plans establish policies that require health care providers to practice in specified ways. A third-party payer creates and enforces *policy* that governs the operation of the organization and the limits of coverage. For example, third-party payers often require specific types of information and may regulate the duration of hospital stays or physical therapy intervention by imposing limits on coverage. Although this is not a statute, compliance with these policies is required for the provider to be paid for his or her services by the third-party payer.

## ***Record Notice***

Most government, administrative, and third-party agencies impose responsibility on the individual physical therapists and physical therapist assistants to comply with new laws and regulations as they take effect. This assumes that one has ample “notice” when the change appears in an official document. For example, when Medicare regulations change, they are published in the *Federal Register*. It is up to the practicing therapists to ensure that the facility in which they work stays abreast of such changes and that they are communicating these changes accurately to all of those impacted.

## ***Code of Ethics***

Professions establish their own codes of conduct, called a *code of ethics*. Codes of ethics are specific to the particular discipline governed by the code,

represent the value set of that group, and are enforced by the profession.

A code of ethics serves several purposes, namely stands of behavior and protection of the public.<sup>5,6</sup>

## Standards for Behavior

A code of ethics provides standards for professional behavior. For example, Standard 5 of the *Standards of Ethical Conduct for the Physical Therapist Assistant* ([Appendix 2](#)) adopted by the APTA states: “Physical therapist assistants shall fulfill their legal and ethical obligations.”

## Protection of the Public

A code of ethics provides mechanisms for the protection of patients, clients, their families, and the public. See if you can find a standard in the APTA *Standards of Ethical Conduct for the Physical Therapist Assistant* ([Appendix 2](#)) that protects the rights of recipients of physical therapy services.


Each of the principles in a code of ethics represents one or more of the following ethical principles ([Table 11-1](#)).

# American Physical Therapy Association Code of Ethics


The APTA represents 85,000 member physical therapists and physical therapist assistants.<sup>9</sup> The *Standards of Ethical Conduct for the Physical Therapist Assistant* ([Appendix 2](#)) and accompanying *Code of Ethics for the Physical Therapist* ([Appendix 3](#)) protect the rights of patients and clients, establish standards for autonomy and supervision, define standards for peer review and reimbursement for services, and outline expectations and responsibilities for members of this organization. These core ethics documents of the physical therapy profession reflect the core values of compassion, integrity, altruism, professional duty, accountabil-

ity, excellence, and social responsibility and they address physical therapist (and physical therapist assistant) roles as patient/client managers, educators, researchers, consultants, and administrators.<sup>10</sup>

In addition, there are disciplinary processes to submit complaints of suspected ethical violations by Association members. Although technically, only members of the APTA can be found in violation of the standards, many state practice acts include language that holds each licensed therapist and therapist assistant bound to the ethical standards espoused by the profession. Indeed, if one's conduct is deemed unethical, a violation of law may have occurred as well.

TABLE 11-1	
<b>ETHICAL PRINCIPLES AND TERMINOLOGY<sup>7,8</sup></b>	
<i>TERM</i>	<i>DEFINITION</i>
	

Non-maleficence	To "do no harm" (even if we cannot do good)
Beneficence	To promote good
Justice	To distribute benefits and burdens fairly
Autonomy	To make one's own choices
Veracity	To speak and act truthfully
Fidelity	To keep promises and commitments
Informed consent	To present benefits and risks of planned interventions to patients
Duty	Obligations that an individual has to society
Confidentiality	Keeping sensitive patient information in confidence
Paternalism	Failure to respect the autonomy of another person



Adapted from Kornblau BL, Burkhardt A. *Ethics in Rehabilitation. A Clinical Perspective*. 2nd ed. Thorofare, NJ: Slack Incorporated; 2012 and Purtilo RB, Doherty R. *Ethical Dimensions in the Health Professions*. 5th ed. Philadelphia, PA: W.B. Saunders Co; 2011.

## ***State Physical Therapy Practice Act***

Each state has jurisdiction over the definition and legal requirements for the practice of physical therapy in the state. Although all state practice acts differ, the *Model Practice Act for Physical Therapy Language* ([Appendix 1](#)) provides a standard for the definition of physical therapy.

### ***Physical Therapy:***

***Physical therapy is the care and services provided by or under the direction of a physical therapist who is licensed pursuant to this [act].***

## ***Licensure***

Each of the 50 states, the District of

Columbia, Puerto Rico, and the US Virgin Islands has specific requirements for the licensure of physical therapists, and all but one has requirements for licensure for physical therapist assistants. The following website provides links to each of these 53 licensing boards: <https://www.fsbpt.org/FreeResources/LicensingAuthoritiesContactInformation.aspx>.

Each state practice act differs. A physical therapist must apply for licensure in each state in which he or she will practice. All 50 states now license or register physical therapist assistants, with the 2013 addition of Hawaii.<sup>11</sup> The APTA is diligently working toward resolving this inconsistency. Some states do not allow practice by qualified physical therapist or assistant license applicants (new graduates) until they have taken and passed the state licensure examination and received a license to practice. Some states offer temporary licenses, and other states define the role of a *physical therapist (or assistant) license applicant*. An online directory to

state practice acts is available at <http://www.apta.org/Licensure/StatePracticeActs/>.

## **Direct Access**

Direct access to physical therapy (without requiring a referral from another health care provider) is another professional practice issue that is governed by state law.

### ***Direct Access<sup>12</sup>***

***Every consumer has the legal right to directly access a physical therapist throughout his/her lifespan for the diagnosis of, interventions for, and prevention of, impairments, functional limitations, and disabilities related to movement, function and health.***

Direct access to physical therapy services, physical therapist evaluation, examination, and intervention varies from state to state. By law, patients have direct access to physical therapy services in 47 US states and jurisdic-

tions.<sup>13</sup> Although evaluation and treatment may be provided without a referral and/or restrictions in 16 states, an additional 29 states permit a physical therapist to perform a patient evaluation without a referral, but they do not permit physical therapy treatment without a referral. Two states still require a referral for both evaluation and treatment. It is also important to note that although state law may provide for the evaluation and treatment without referral, third-party payers may require a referral.<sup>12</sup> Check the status of direct access in your state.

TABLE 11-2

**SAMPLE EXCERPT FROM  
CALIFORNIA PHYSICAL  
THERAPY PRACTICE ACT<sup>14</sup>**

*BUSINESS AND PROFESSIONS CODE*

*SECTION 2630-2640*

2630. It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter. Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500).

A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders,

direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide.

The physical therapist shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide, the supervising physical therapist shall, at some point during the treatment day, provide direct service to the patient as treatment for the patient's condition, or to further evaluate and monitor the patient's progress, and shall correspondingly document the patient's record. The administration of massage, external baths, or normal exercise that is not a part of a physical therapy treatment shall not be prohibited by this section.

Adapted from Physical Therapy Practice Act, Business and Professions Code Section 2630-2640. State of California Department of Consumer Affairs Web page. <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=02001-03000&file=2630-2640>. Accessed July 20, 2013.

## ***Roles of Physical Therapy Personnel***

In addition to governing the access to physical therapy, state practice acts govern the supervisory requirements of physical therapy personnel. State practice acts often define the roles of physical therapists in the supervision of physical therapist assistants, physical therapy aides, physical therapy students, physical therapy license applicants, and other nonlicensed personnel. Some state practice acts are entirely silent on the use of support personnel, other than the physical therapist assistant. Although this may be due to an oversight when the act was originally written or due to the philosophy that no other extender of care is to be providing skilled therapy services, omission

of any direction about the appropriate utilization of nonlicensed physical therapy support personnel can leave much to interpretation and may not be in the best interest of the physical therapist-physical therapist assistant preferred relationship.

Take a look at the how the state laws shown in [Table 11-2](#) define the number of aides allowed and the nature of supervision required for a physical therapy aide.

*Ursula, a licensed physical therapist in California, was delayed arriving at the office following a corporate breakfast meeting. Wayne and Vic, physical therapy aides in her private office, greeted the first patients of the day and started the patients' treatments by having them begin their therapeutic exercise programs by warming up on the treadmill in the gymnasium. Are they in violation of state law? (Check [Table 11-2](#) to read the excerpt of the California State Practice Act that applies and make your interpretation.)*

ANSWER: If you answered yes, you are absolutely correct. They are in violation of state law. There are several issues involved in this case.

First, by state law, only one aide may engage in patient-related tasks under Ursula's supervision. This may already be a violation, in that 2 aides are employed and work simultaneously. Only one may provide patient-related services under Ursula's immediate supervision.

Second, the law states "The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure."

Finally, the law states that "the aide must be supervised by a physical therapist in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide." Ursula is not in the facility. They may prepare the patients for treatment

by taking them to a treatment room, or prepare the treatment area for treatment before Ursula returns to the clinic, but they may not initiate treatment.

The explicit language related to the supervision of the physical therapist assistant significantly differs between state practice acts. It is imperative that each physical therapist and physical therapist assistant have a clear understanding of the wording and interpretation by the regulatory board in that state as to the specific boundaries set forth in the law. Examine [Table 11-3](#) to see how the excerpts from two state practice acts differ and completely alter job responsibilities and practice patterns.

*Yvette, a licensed physical therapist assistant with 3 months of clinical experience, learned that Alejandra, her supervising physical therapist, was suddenly called out of town for the day due to a family emergency. Although Alejandra conferred with Yvette about a patient's progress by phone, she also*

Direct supervision by a physical therapist is also required of physical therapist students and physical therapist assistant students, as well as those who have successfully graduated but who are working under a temporary license. Ignorance of the laws governing practice where you work is unacceptable. Imagine the consequences if you were a physical therapist assistant whose job required crossing state lines on a daily basis. Adherence to the specific practice act in each state may differ, yet it remains obligatory. Check the definitions of Levels of Supervision in [Appendix 7](#).

## American Physical Therapy Association Standards of Practice

The *Standards of Practice for Physical Therapy* ([Appendix 4](#)) is a document published by the APTA that defines the conditions and performance that

***gave specific instructions about the duties of the physical therapy technicians in her absence. Would Yvette be able to supervise the physical therapy technicians on staff to work with the existing caseload today?***

As you can see from comparing these 2 states' laws, Yvette would be permitted to treat the established patients on the case load and supervise the physical therapy technicians only if she lived in Oklahoma, but Yvette would not be able to do so until another physical therapist arrived if she was practicing in Nevada. *Direct supervision by the physical therapist* is required for both the physical therapist assistant and the physical therapy technicians (unlicensed personnel) in Nevada. In the absence of the direct supervision of a physical therapist, the physical therapy technicians in Nevada would be limited to "secretarial, clerical, or housekeeping activities, the transportation of a patient, or the dressing or undressing of a patient."

are essential for high-quality physical therapy. The *Standards* covers conduct in compliance with legal and ethical guidelines, expectations of physical therapist and physical therapist assistant roles, scope of responsibilities, and administration of physical therapy service delivery. The level of expectation found in this core document may surpass the explicit language of a state's physical therapy practice act. The practice act identifies minimally acceptable behavior; licensure boards and courts of law frequently cite the *Standards* as a reference to acceptable standards of care for the profession. Take a few moments to review the *Standards of Practice for Physical Therapy* in [Appendix 4](#).

## **Legal and Ethical Issues for Student Physical**

# Therapists and Physical Therapist Assistants

## *Student Responsibilities*

The actions of student physical therapists and student physical therapist assistants are regulated by state law, the *Standards of Ethical Conduct of the Physical Therapist Assistant* and the *Code of Ethics for the Physical Therapist*.<sup>10</sup> (See [Appendices 2](#) and [3](#).)

## *Student Rights*

The rights of students are protected under many federal and state laws. Educational institutions must establish policies to address the provisions of federal and state legislation that influence many aspects of its programs and operations. Colleges must also provide information regarding channels to pursue for inquiries and complaints.

There may also be specific educational regulations that reflect laws

(Added to NAC by Bd. of Phys. Therapy Exam'rs, eff. 12-27-93; A 3-28-95; R111-02, 1-24-2003; R059-06, 9-18-2006.)

NAC 640.595 Physical therapist's technicians (NRS 640.050). For the purposes of regulating the use of a physical therapist's technician in a physical therapist's practice, the Board will consider any aide or other unlicensed person who performs treatments related to physical therapy, which have been directed by a physical therapist, regardless of the title or designation assigned by his or her employer, to be a physical therapist's technician.

(Added to NAC by Bd. of Phys. Therapy Exam'rs, eff. 3-28-95.)

NAC 640.596 Physical therapist's assistant prohibited from performing certain activities; disciplinary action (NRS 640.050).

1. A physical therapist's assistant shall not:

(a) Perform any activity which requires the unique skills, knowledge and judgment of a physical therapist, whether or not the activity is delegated to him or her by the physical therapist.

(b) Perform any procedures or activities of physical therapy on more than two patients at the same time during the time the supervising physical therapist is not on the premises.

(c) Have less than 2000 hours of experience as a physical therapist's assistant during which the supervising physical therapist is on the premises when any procedures or activities of physical therapy are performed by the physical therapist's assistant, before working in any setting without such supervision.

(d) Supervise another physical therapist's assistant or a physical therapist's technician in the performance of a treatment related to physical therapy.

2. A physical therapist's assistant is subject to disciplinary action if he or she performs any activity in violation of this section.

3. As used in this section, "treatment" does not include secretarial, clerical or house-keeping activities, the transportation of a patient or the dressing or undressing of a patient.

(Added to NAC by Bd. of Phys. Therapy Exam'rs, eff. 12-27-93; A 3-28-95; R153-98, 12-18-98.)

<http://www.leg.state.nv.us/NAC/NAC-640.html#NAC640Sec592>. Accessed July 20, 2013.

physical therapist assistant when treating his/her patient.

When determining the extent of assistance the physical therapist assistant can provide, the physical therapist should consider:

(A) The physical therapist assistant's experience and skill level

(B) The patient/client criticality and complexity

(C) The setting in which the care is being delivered

(D) The predictability of the patient/client outcomes

(E) The needed frequency of re-examination

(2) A physical therapist shall not delegate to a less qualified person any service that requires the skill, knowledge and judgment of a physical therapist. For each date of service, a physical therapist shall provide all therapeutic interventions that require the expertise of a physical therapist and shall determine when assistive personnel may be used to provide delivery of services in a safe, effective, and efficient manner for each patient.

(A) A physical therapist assistant shall work under a physical therapist's direct or general supervision. A physical therapist assistant may document care provided without the co-signature of the supervising physical therapist. The physical therapist assistant will respond to acute changes in the patient's physiological state and report these findings promptly to the physical therapist. Contact, or attempts to contact the physical therapist of record, will be documented in the medical record.

(B) A physical therapist and a physical therapist assistant may use physical therapy aides for designated and immediately supervised routine tasks. The physical therapist shall not delegate the same type and level of duties to the physical therapy aide as are delegated to the physical therapist assistant. A physical therapy aide shall work under immediate supervision of the physical therapist or physical therapist assistant who is continuously on-site and present in the facility.

[http://www.okmedicalboard.org/physical\\_therapists/download/526/PTA\\_Supervision\\_Rule.pdf](http://www.okmedicalboard.org/physical_therapists/download/526/PTA_Supervision_Rule.pdf). Accessed July 20, 2013.



requiring health immunizations and screening tests, such as hepatitis, rubella, and measles immunizations. Some of these laws are as follows.

TABLE 11-3

## COMPARISON OF SUPERVISION LANGUAGE FROM TWO STATE PRACTICE ACTS

NEVADA	OKLAHOMA
<p>Excerpted from: State of Nevada CHAPTER 640 - PHYSICAL THERAPISTS</p> <p>NAC 640.594 Supervision of unlicensed person; limitation on number of persons supervised (NRS 640.050, 640.290, 640.310).</p> <p>1. Except as otherwise provided in NRS 640.310, a physical therapist supervising a person who is not licensed pursuant to the provisions of chapter 640 of NRS must be physically present and immediately available on the premises when any procedures or activities of physical therapy are performed by that person.</p> <p>2. A physical therapist may not supervise more than:</p> <p>(a) Two physical therapist's assistants at the same time.</p> <p>(b) Two physical therapist's technicians at the same time.</p> <p>(c) Two students of physical therapy at the same time.</p> <p>(d) Two graduates of physical therapy at the same time.</p> <p>(e) If supervising any combination of graduates of physical therapy, students of physical therapy, physical therapist's assistants and physical therapist's technicians, a combined total of three such persons at the same time.</p>	<p>Excerpted from: State of Oklahoma Physical Therapy Practice Act Title 59 O.S. Section 887.1 – 887.18 Section 435:20-7-1</p> <p>OKLAHOMA ADMINISTRATIVE CODE</p> <p>TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION</p> <p>SUB CHAPTER 7 Supervision of Physical Therapist Assistants</p> <p>435:20-7-1. Direction and supervision of Physical Therapist Assistants</p> <p>(a) Responsible supervision.</p> <p>(1) Physical therapists have a duty to provide therapy services that protect the public safety and maximize the availability of their services. The physical therapist assistant is the only individual permitted to assist in selected treatment interventions. A physical therapist assistant shall be supervised by a specific physical therapist or group of physical therapists working in the same practice setting or physical facility. A physical therapist assistant may not be supervised by any other person including those licensed in other professions. The physical therapist of record is accountable and responsible at all times for the direction of the actions of the</p>



have legitimate educational interests in such access. The policies of individual institutions should reflect compliance with this legislation.

## **Nondiscrimination**

### **Gender**

Title IX of the Education Amendments of 1972 and related amendments of administrative regulations prohibit discrimination on the basis of gender in education programs and activities of a university. This legislation provides equal opportunities to male and female students in all campus programs, including intercollegiate athletics.

### **Sexual Harassment**

In addition, Title VII of the Civil Rights Amendment also prohibits discrimination on the basis of sex. Sexual harassment violates Section 703 of Title VII.

*Sexual harassment* is defined in a public university's catalog as "unwelcome conduct of a sexual nature

## Student Privacy in Education Records

The federal *Family Educational Rights and Privacy Act of 1974* (FERPA) established requirements designed to protect the privacy of students concerning their education records maintained by universities. This statute governs access to student records maintained by an educational institution and the terms for release of such records. The law requires that the institution must provide students access to records directly related to the student and an opportunity for a hearing to challenge such records on the grounds that they are inaccurate, misleading, or otherwise inappropriate. The law also requires that the conditions under which written consent of the student must be received before releasing personally identifiable data about the student. The law provides that the university is authorized to provide access to student records to campus officials, its employees, and related agencies and organizations that

where such conduct is sufficiently severe, persistent, or pervasive that its effect could be considered by a reasonable person in the shoes of the individual, and is in fact considered by the individual, as limiting the individual's ability to participate in or benefit from the services, activities or opportunities offered by the university. Sexual harassment also includes gender-based harassment even if those acts do not involve conduct of a sexual nature. An act of sexual violence is any physical sexual act perpetrated against an individual without consent or against an individual who is incapable of giving consent due to that individual's use of drugs, alcohol, or disability, and constitutes sexual harassment."<sup>17</sup>

## **Disability**

Section 504 of the Rehabilitation Act of 1973 and related amendments and regulations and the Americans with Disabilities Act (1990) prohibit discrimination on the basis of disability

in admission or access to, or treatment or employment in, a university's programs and activities. See [Chapter 12](#) for a more detailed discussion of student rights related to disabilities.

### **Equal Opportunity**

Most institutions publish policies regarding their commitment to equal opportunity for all, regardless of race, color, national origin, gender, age, marital status, religion, disability, or sexual preference. The provisions of Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act address equal opportunity in employment, admissions, recruitment, financial aid, placement counseling, curricula, and housing for students.

### ***Student Misconduct and Disciplinary Action***

***Brad was not a “morning person.” It was difficult for him to arrive on time for his 7:30 class. In the previous class,***

*the instructor reminded the students to review the syllabus regarding late arrivals and said that he would be closing and locking the classroom door at 7:30 am promptly, so that the students in class would not be interrupted by latecomers. Brad arrived at 7:40 and saw the classroom door was closed. He knocked on the door softly. There was no response. He began to pound on the door, shouting, "Open this door! I've paid money for this class" The instructor, inside the classroom, called the campus police and reported that Brad was disturbing the class in session. Brad had no idea that this was considered student misconduct. The faculty of the physical therapist assistant program had serious concerns about Brad's judgment and recommended that he be placed on probation.*

Colleges publish policies regarding student conduct. Student misconduct, on or off-campus, involving any of the following activities might result in expulsion, suspension, or probation, in

addition to the consequences of violating state and local laws.

- Cheating and plagiarism
- Forgery or alteration of documents
- Misrepresentation or providing misinformation
- Obstructive or disruptive behavior
- Physical abuse or the threat of physical abuse
- Theft or nonaccidental destruction of property
- Unauthorized entry or use of campus property
- Sale or possession of drugs except under specific medical or research purposes
- Possession of explosives, dangerous chemicals, or deadly weapons
- Lewd, indecent or obscene behavior on campus
- Abusive behavior toward another or hazing

The college catalog is a good place to look for a list of policies. Students in health occupation programs, such

as the physical therapist assistant program, are subject to the regulations and disciplinary actions that apply to all students. Most programs issue a *Physical Therapist Assistant Program Handbook* that outlines specific behavioral and performance standards expected of you as you enter the physical therapy profession. It is not uncommon to sign numerous consent and acknowledgment forms during the program orientation or on the first days of classes.

## ***Cheating, Plagiarism, and Copyright Infringement***

***Carley and David had become good friends during their first semester. They often studied together. When they were faced with writing their first patient case study, they worried about what to write. A student from the previous year's class e-mailed them a sample of a model paper that the professor had given to students the year before. They copied the history and tests that would***

members. Receiving old examinations from members of last year's class without the professor's knowledge is cheating. Misrepresenting clinical experience on an evaluation form is cheating.

Do NOT tolerate cheating of any kind in academic or clinical education. Remember that, ultimately, students who cheat are cheating the public, patients, and clients (ie, the consumers who will rely on their care and the profession that they are entering). You never want to be in a position to work side-by-side with a colleague who lacks the ability to provide competent care because he or she cheated to gain a passing grade during a class in the physical therapist assistant program.

## Plagiarism

*Plagiarism* is a serious form of academic fraud when one misrepresents the work of another, whether published or unpublished, as one's own work.<sup>18</sup> This may involve such obvious acts as downloading term papers from the Internet to more subtle forms of plagiarism, such as using phrases of

*assist the therapist and wrote an intervention, sampling liberally from the excellent examples on the model paper. Each student submitted the same paper, with only a different cover sheet. The professor returned the papers 1 week later. They each received a zero on their paper and a note to meet with her after class. They were shocked when the professor explained that they had cheated and this would be noted in their student record.*

Reports of academic dishonesty are on the rise in this country. Students entering the health professions must be specifically aware of issues involving academic dishonesty in actions such as cheating, plagiarism, and copyright infringement.

## Cheating

*Cheating* occurs when students use fraudulent or deceptive means to improve a grade, obtain course credit, or gain an unearned academic advantage.<sup>17</sup> When in doubt, ask faculty

other authors without proper citation. Students sometimes do not understand that they can also plagiarize themselves, in turning in work done for one class as original work for a subsequent class. To avoid plagiarism, always cite your sources.

## Copyright Infringement

*Esther was concerned about the high cost of books. One book that was required for her Modalities class cost \$25.00 and was only 300 pages long. She thought, "I could photocopy this book for only \$15.00 at the office supply store, which advertises photocopies for 5 cents." She further thought, "I could even make a little money if I charged my classmates \$20.00 per book. That would still beat the bookstore's prices."*

*Copyright infringement* is a form of theft. Copyrights are protected by the US Constitution and by the Federal Copyright Statute and protects not only

authors of literary works, but also artistic works, sound recordings, and computer software.<sup>19</sup> Copying a book, an illustration, a video or a portion of a video, a published graph, a cartoon or photograph, a computer program, or a sound recording without permission are all examples of copyright infringement. Be careful ... even copying a photograph from an Internet site into a PowerPoint presentation is a copyright infringement. Charging admission to view a rented DVD or taped sports presentation without paying royalties is also a violation.

It is important to understand that copyrights are property rights of the author that may be sold or transferred to another entity, such as a publisher. Authors, or those to whom they have transferred their copyrights, hold the rights to copy, create new works, distribute, and display their works. To avoid copyright infringement, make sure that you have permission to use the work of the author.<sup>19</sup> Write to the author or publisher and request permission. Be aware that although many

authors are happy to share their work for educational purposes, some authors and their publishers ask for a fee. You have the choice to pay the fee or not use the material. See samples of letters requesting permission to use copyrighted materials in [Tables 11-4](#) and [11-5](#).

## Fair Use

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Remember—when in doubt—ask!

***AVOID ACADEMIC DISHONESTY!***

***To avoid plagiarism, ALWAYS CITE YOUR SOURCES!***

***To avoid copyright infringement, MAKE SURE THAT YOU HAVE PERMISSION TO USE THE WORK OF THE AUTHOR.***

TABLE 11-4

**REQUESTING PERMISSION TO USE  
PREVIOUSLY PUBLISHED MATERIAL**

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City, State, Zip Code

May 14, 2014

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I would like to reproduce 3 tables relating to readability of written patient education ma-

materials from one of your publications, Redman, *The Practice of Patient Education*, 8th edition. The material I would like to have permission to reproduce is:

p. 51, Table 1 Sample material

p. 52, Table 2 Gunning Fog Index Scale

p. 53, Table 3 Flesch formula

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If I can answer any questions, you can reach me at [phone] or by e-mail at the following address: [e-mail address].

I look forward to hearing from you.

Sincerely,

Student name

Student Physical Therapist Assistant

[Name of Physical Therapist Assistant Education Program]

[Name of the Educational Institution]

Attachments: pp 51-53, Redman, The Practice of Patient Education, 8th edition

(attach copies of the requested material)

## ***Research on Human Subjects***

The rights of participants in research studies conducted by faculty, staff, or students at academic or clinical institutions are well-protected. Each institution must establish standards for the conduct of research that uses or influences humans and/or animals. All research must comply with these provisions. Students should familiarize themselves with the provisions for the protection of human subjects before they undertake any research efforts.

TABLE 11-5

## **REQUESTING PERMISSION TO USE MATERIAL FROM AN INTERNET WEBSITE**

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To: Publisher/Author or Web master [look for a link for permissions or "Contact Us" at bottom of a site's home page] (eg, the e-mail address [permissions@webmd.net](mailto:permissions@webmd.net))

From [Your e-mail address]

Subject: Permission to Reproduce Materials From Your Site

Cc: [include your faculty advisor here]

I am a physical therapist assistant student at [college] studying physical therapy. I am doing a presentation on shoulder pathologies for my class, Orthopedic Management, and found the diagrams on your website to be perfect for my presentation.

I would like your permission to electronically reproduce this graphic and use it in a Power-Point presentation. The material I would like to have permission to use is an illustration on the Web page entitled, Shoulder Joint Anatomy,

available at: [http://emedicine.medscape.com/article/1899211-overview#aw2aab6b3](http://<u>emedicine.medscape.com/article/1899211-overview#aw2aab6b3</u>)

Please advise whether reproduction of this material will be permitted. If there is an additional source that I must contact for permission to use the requested material, I would appreciate any information you can forward to me.

If I can answer any questions, you can reach me at [phone] or by e-mail at the following address: [email address].

I look forward to hearing from you.

Sincerely,

Student name

Student Physical Therapist Assistant

[Name of Physical Therapist Assistant Education Program]

[Name of Educational Institution]

Attach the material to the e-mail

## **Informed Consent**

Students must be clear to identify themselves as students or interns when working with patients or clients in academic, clinical, or research situations. They must also be aware that the patient or research participant has the right to refuse participation and that they must respect that right. Inform appropriate clinical or academic faculty and research principal investigators if a patient, client, or participant does not want to participate or does not want to work with a student. Do not take it personally.

## ***Supervision During Clinical Education Experiences***

Students enroll in courses that may encompass clinical training, cooperative education, and service learning. Physical therapist assistant students may practice the techniques and problem-solving activities they are learning

as part of their education while enrolled in such courses, in compliance with state laws governing the practice of physical therapy and supervision of student physical therapist assistants.

Regardless of the practice setting or proximity to graduation, physical therapy and physical therapist assistant students require the *continuous on-site supervision* of the supervising physical therapist or physical therapist assistant as allowed by state law. This means that the student cannot provide care in a single-therapist clinic if the supervising therapist or licensed physical therapist assistant (if permitted by state law) is out for lunch or at a conference off site. Similarly, the student may not visit a patient in his or her home to provide physical therapy services, unless supervised onsite by the physical therapist or licensed physical therapist assistant, where permissible by state law.

In summary, to provide patient-related physical therapy services, physical therapy or physical therapist assistant students completing program coursework require the *continuous on-site*

*supervision* of a supervising academic or clinical faculty member. The supervising clinical instructor cannot transfer this responsibility to a physician, athletic trainer, aide, or other health care provider, even for a few hours.

## ***Student Employment Situations***

Many students work in clinics on a part-time basis during school or during the summer months. Students must remember that their status as a physical therapist assistant student extends only to those situations in which they are enrolled in program coursework for which the clinical staff provides instruction and appropriate supervision.

For all other situations, unless students already hold a state license in another licensed health profession, they *are unlicensed personnel*, usually functioning in the capacity of a physical therapy aide, personal care attendant, or personal trainer. Be careful that you are not practicing physical therapy without a license. Know your state laws!

In addition, there are always potential violations of the *APTA Code of Ethics and Standards of Practice* inherent in these types of employment situations.

If you are instructed to see patients and/or write notes signed as a physical therapist assistant student, it is vital that you explain why you cannot do so. Speak to the supervisor of the facility and your program director or academic coordinator of clinical education at your earliest convenience to ensure no further confusion exists.

## Working as a Physical Therapy Aide

Physical therapy aides (PT aides) are any support personnel who perform designated *tasks* related to the operation of the physical therapy service.<sup>20</sup> They do not independently deliver physical therapy services in any setting. Physical therapy aides do not perform evaluations, determine what they should do with a patient or client, and/or perform “tasks that require the clinical decision making of the physical therapist or the clinical problem solving of the physical therapist assistant.”<sup>20</sup> They do not

make judgments or clinical decisions. Aides may function only with *the direct personal supervision* by the physical therapist, or in some states, the physical therapist assistant. State law governs the extent to which PT aides can participate in patient care.<sup>21</sup>

Personnel who are not physical therapists or physical therapist assistants, regardless of licensure or certification status in other professions, are not allowed to provide physical therapy services without the continuous, direct onsite supervision of a physical therapist or, if allowed by state law, the physical therapist assistant. This includes athletic trainers, massage therapists, personal trainers, and kinesiotherapists who sometimes perform designated physical therapy tasks within the clinical setting. State law also varies as to whether these personnel may be called by their professional titles or whether they are restricted to the title “PT aide” when working under a physical therapist’s supervision.

In some states, there are very specific guidelines regarding the use

of these personnel. For example, The Louisiana Physical Therapy Board issued the following statement: “Athletic trainers can work as unlicensed support personnel under the continuous, on-the-premises, supervision of a PT in the provision of physical therapy services. Athletic trainers cannot identify themselves as anything other than unlicensed supportive personnel in a physical therapy setting.”<sup>22</sup>

Chiropractors, physicians, and other health care providers may *not* provide supervision for PT aides or professionals from any group that provides patient-related services if it is being represented as physical therapy or physiotherapy. State practice acts, as well as core documents published by the professional associations, have specific language that protects the title “*physical therapy*.” *Physical therapy* is to be represented by and billable only when provided by a physical therapist or by a physical therapist assistant who is appropriately supervised by a physical therapist.<sup>23</sup>

This means that physical therapy aides, *who also happen to be physical therapy or physical therapist assistant students*, may not perform the skills they are learning as part of their education, at any point in their education, *unless it is as a part of their enrollment in a course or program-supervised activity*. Students should be wary of inadvertently practicing physical therapy without a license, which is illegal and does a disservice to the patient and the profession.

## **Providing Attendant Care or Home Exercise Programs**

Some students also work as personal care assistants or personal care attendants for persons with disabilities. Personal care assistants (PCAs) are unlicensed personnel as well, usually hired directly by a person who needs such services. The same issues may arise in providing personal assistant care, as students can easily overstep their legal boundaries.

Further, personal trainers, certified or not, are not physical therapists and may not use the initials P.T. Students who work as personal trainers must be very clear to disclose their limitations and their role in working with clients. Practicing physical therapy without a license is a violation of state law. Be sure that you are not in violation of state law or ethical and other published professional guidelines.

You be the judge of the following situation:

***Federico responded to an advertisement in his local newspaper: "Busy physical therapy practice seeks physical therapy aide for afternoon and evening hours."***

***He interviewed for the position, and the employer was delighted to find out that he was a physical therapist assistant student only months away from graduation. The employer gave him a list of patients to treat and his own laptop to document patient care. Federico was***

When a family or person with a disability hires a physical therapy or physical therapist assistant student to carry out a home exercise program or personal care routine, the student must be very careful that a licensed health care provider or professional staff caring for the patient has established the program. The PCA should be carrying out a program of care that could be performed by anyone. It is not the role of the PCA to make clinical judgments or modify or progress the program. The student should be careful to refer the patient or client back to licensed health care providers for any problems or alterations to the care program.

### **Providing Personal Training in Health Clubs or Fitness Facilities**

Students who provide consultation or advice regarding weight training or fitness must also exercise caution. Performing strength and flexibility assessments, setting training goals, and providing exercise interventions to address client needs is *not* physical therapy.

*elated at first but then wondered, "Am I practicing without a license?" What do you think?*

THE ANSWER:

- *During academic or clinical coursework:* When enrolled in a course, students are able to function with direct and immediate supervision of clinical faculty and perform tasks that are indicated by their level of education and the objectives of the clinical experience.
- *In employment situations in the physical therapy field while in school:* Unless the student holds a current state license to practice, the student is restricted to a role as a *physical therapy aide*, regardless of the knowledge or skills acquired in academic or clinical courses.

Therefore, Federico in the previous case *should not agree* to perform functions that clearly go well beyond the

scope of duties of a physical therapy aide.

## ***After Graduation***

In some states, a new-graduate physical therapist assistant may work in a special status as a *physical therapist assistant license applicant* (PTALA) or may work under a *temporary license* only after the requirements of licensure have been met and an application has been filed. In most cases, the PTALA or temporary licensure status is valid only until the first opportunity to take the state licensing examination. Some states do not permit practice until the license has actually been received. Most states have strict supervision requirements for personnel in this status. It is important to know the regulations of your state.

## **Summary**

Students must be aware of ethical and legal issues involved in academic,

clinical education, and part-time employment situations. Federal and state laws, professional codes of ethics, and other practice guidelines must become part of the working knowledge of the physical therapist assistant student. Integrating accurate up-to-date laws, regulations, and practice standards into daily practice not only serves to safeguard you from malpractice liability but it demonstrates your commitment to delivering quality patient care.

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	interventions to patients
Duty	Obligations that an individual has to society
Confidentiality	Keeping sensitive patient information in confidence
Paternalism	Failure to respect the autonomy of another person



Cite particular ethical principles above that apply in each of the *Standards of Ethical Conduct of the Physical Therapist Assistant*.

<i>ETHICAL PRINCIPLE(S)</i>	<i>APTA STANDARDS OF ETHICAL CONDUCT OF THE PHYSICAL THERAPIST ASSISTANT</i>
	1. Physical therapist assistants shall respect the inherent dignity and rights of all individuals.
	2. Physical therapist assistants shall be trustworthy and compassionate in addressing the rights and needs of patients/clients.



	3. Physical therapist assistants shall make sound decisions in collaboration with the physical therapist and within the boundaries established by laws and regulations.
	4. Physical therapist assistants shall demonstrate integrity in their relationships with patients/clients, families, colleagues, students, other health care providers, employers, payers, and the public.
	5. Physical therapist assistants shall fulfill their legal and ethical obligations.
	6. Physical therapist assistants shall enhance their competence through the lifelong acquisition and refinement of knowledge, skills, and abilities.
	7. Physical therapist assistants shall participate in efforts to meet the health needs of people locally, nationally, or globally.



## 2. Patients have direct access by law to physical therapy services

in 47 US states and jurisdictions. Although evaluation and treatment may be provided without a referral and/or restrictions in 16 states, an additional 29 states permit a physical therapist to perform a patient evaluation without a referral, but they do not permit physical therapy treatment without a referral. Download the following file, [https://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Direct\\_Access/DirectAccessbyState.pdf](https://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Direct_Access/DirectAccessbyState.pdf), for a listing of states, and check the status of direct access in your state.

3. Find your state practice act by accessing <http://www.apta.org/Licensure/StatePracticeActs/>. Download the provisions relating to the roles of and supervision requirements for physical therapy and therapist assistant students, temporary licensees or license applicants, physical therapist assistants, and physical therapy aides. Summarize

those provisions in the following table.

<i>ROLE</i>	<i>ROLE DEFINITION</i>	<i>SUPERVISORY REQUIREMENTS</i>
Student physical therapist or physical therapist assistant		
Physical therapist and physical therapist assistant (license applicant or temporary licensee, if these statuses exist)		
Physical therapist assistant		
Physical therapy aide		



# PUTTING IT INTO PRACTICE

1. Using the ethical principles below, identify which of these principles are represented in each of the *Standards of Ethical Conduct for the Physical Therapist Assistant* ([Appendix 2](#)).

<i>TERM</i>	<i>DEFINITION</i>
Non-maleficence	To “do no harm” (even if we cannot do good)
Beneficence	To promote good
Justice	To distribute benefits and burdens fairly
Autonomy	To make one’s own choices
Veracity	To speak and act truthfully
Fidelity	To keep promises and commitments
Informed consent	To present benefits and risks of planned

