



Executive Council of
Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners
Texas Board of Occupational Therapy Examiners

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September 19, 2000

Honorable John Cornyn, Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0287-JC

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ATTN: Opinion Committee

OPINION COMMITTEE

Dear General Cornyn:

The Texas Board of Physical Therapy Examiners requests your assistance in interpreting a section of the Physical Therapy Practice Act (Act), Chapter 453 of the Occupations Code. The Board requests a legal interpretation of the word "accompanied" contained in §453.202. This section provides as follows:

Sec. 453.202. LICENSE APPLICATION.

(a) An applicant for a physical therapist license or a physical therapist assistant license must submit to the board a written application on a form provided by the board.

(b) The application must be accompanied by:

- (1) an examination fee prescribed by the board; and
- (2) a nonrefundable application fee prescribed by the board.

(c) The examination fee under Subsection (b)(1) is refundable if the applicant does not take the examination.

(Emphasis added)

When the Act was enacted in 1971, the process for administering the physical therapy exam was very different than it is today. Until 1994, the Board paid Professional Examination Service, the owner of the exam, directly for the exams before applicants took it. (At that time, the Board's appropriated funds included a rider for the estimated cost of the exam.) The written exam was offered three times a year in Austin. When applicants signed up for it, they also sent the exam fee to the Board. The Board deposited the exam fee into the General Revenue Fund.

The exam is now owned by the Federation of State Boards of Physical Therapy (Federation), of which the Texas Physical Therapy Board is a voting member. In 1994, the Board was one of the first Federation members to switch to a computer-based exam format. Applicants now take the exam, at their convenience, at Sylvan Learning Centers all over the United States. Also in 1994, the Board began acting as a "pass through" for the exam fee. The appropriations rider was

discontinued and the Board no longer paid for all of the exams it expected to give at one time, i.e., before the candidates applied to take it. For the last six years, applicants have sent certified checks to the Board, payable to the Federation, with their applications. The Board keeps the certified check in its office safe until an applicant meets all of the Board's requirements to sit for the exam. Once all requirements are met, the Board sends the certified check it received from the applicant to the Federation via two-day courier service. Since applicants have the freedom to take the exam any time after they have met the requirements, the Board sends certified checks to the Federation on a frequent basis, usually twice a week.

The Federation will soon be offering exam applicants the opportunity to register for the exam online and pay for the exam with a credit card. The Federation has asked the Board to determine whether the Physical Therapy Act permits it to allow applicants to pay the exam fee directly to the Federation.

The Board's question is this: Can the word "accompany" in §453.202(b) be interpreted broadly to mean "occur at the same time?" This interpretation would mean that a person could register to take the exam as part of the application process, and pay the examination fee directly to the Federation. In other words, does §453.202(b) allow the applicant to pay the examination fee directly to the provider of the exam?

Thank you very much for your assistance in this matter. If you have any questions, please contact me at 512/305-6900.

Sincerely,



John P. Maline
Executive Director