

Adopted & Repeal of Rule Amendments: to be effective 11/15/2024

Chapter 343. Contested Case Procedures - §343.1. Definitions, §343.23. Hearings, §343.24. Payment of Costs for a Contested Case Hearing Resulting in the Discipline of a Licensee or the Denial of an Application for License, §343.25. Continuance, §343.26. Commutation of Time, §343.27. Probation, §343.28. Records Retention Schedule, §343.29. Failure To Appear at Informal Settlement Conference or Hearing, §343.35. Complaint Investigation and Disposition, §343.48. Dismissal of Complaint, §343.50. Application for Reinstatement of License, §343.51. Evaluation for Reinstatement, §343.52. Procedure upon Request for Reinstatement, §343.53. Board Action Possible upon Reinstatement of Revoked License, §343.55. Failure To Appear, and §343.56. Monitoring of Licensees.

Summary of Amendments: the amendments are adopted in order to provide clarity to the procedures for contested cases, to correct inaccurate and outdated references, and to conform the rules in Chapter 343 with the physical therapy provisions in Chapter 453, Occupations Code, with the administrative procedures in Chapter 2001, Government Code, and with Title 1 Texas Administrative Code. Additionally, §343.25. Continuance is repealed is adopted as the procedure is covered under the State Office of Administrative Hearings (SOAH) rules for hearings.

Rulemaking Process:

- Proposed by the Texas Board of Physical Therapy Examiners (PT Board) at July 19, 2024 meeting.
- Proposed Rulemaking Memorandum sent to the Office of the Governor on July 30, 2024 for review.
- Approved by the Executive Council of Physical Therapy & Occupational Therapy Examiners (ECPTOTE) at August 07, 2024 meeting.
- Notification of review from Office of the Governor on August 20, 2024 with no recommended changes.
- Published in the September 6, 2024 edition of the *Texas Register* for public comment. No comments received.
- Final adoption by the PT Board at October 25, 2024 meeting.

Chapter 343

§343.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Physical Therapy Practice Act, Occupations Code, Chapter 453 [~~Texas Civil Statutes, Article 4512e~~].

(2) Agency--The Executive Council of Physical Therapy & Occupational Therapy Examiners [~~Board of Physical Therapy Examiners~~].

~~(3) APTRA--The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 625213a].~~

(3) [(4)] Applicant--A qualified individual who presents application for licensure as a physical therapist or physical therapist assistant or for reinstatement of a previously suspended or revoked license.

(4) [(5)] Board—The Texas Board of Physical Therapy Examiners whose members [~~of the Board of Physical Therapy Examiners who~~] are appointed pursuant to Occupations Code, Chapter 453.051 [~~Texas Civil Statutes, Article 4512e~~].

(5) [(6)] Board order--A final decision of the board issued in a contested or uncontested proceeding [~~or in lieu of such proceeding~~], which may include findings of fact and conclusions of law, separately stated.

(6) [(7)] Complaint--A written statement of allegations filed with the board which includes a statement of the matters asserted, including any supporting documentation available, the filing of which may initiate a contested case proceeding.

(7) [(8)] Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board [~~agency~~] after an opportunity for adjudicative hearing.

(8) [(9)] Disciplinary action--Imposition of a sanction by the board which may include reprimand, suspension, probation, or revocation of a license, or other appropriate requirements.

(9) [(10)] Executive director--The chief officer [~~executive director~~] of the Executive Council of Physical Therapy & Occupational Therapy Examiners [~~Board of Physical Therapy Examiners~~].

(10) Informal Settlement Conference (ISC) -- a conference designed to resolve contested cases by informally disposing of matters by agreement and voluntary settlement without the need for a formal hearing at the State Office of Administrative Hearings (SOAH).

(11) Investigation Committee -- a standing committee of the board that reviews complaint investigations with recommendation of appropriate action made to the board.

(12) [(14)] Licensee--A person who holds a license either permanent or temporary under the [~~Physical Therapy Practice~~] Act.

[(12) ~~Moral turpitude--Baseness, vileness, or dishonesty of a high degree.~~]

(13) No change.

(14) Party—A [~~Each~~] person or a state agency named or admitted as a party in [~~with a sufficient legal, economic, or other interest to be named or admitted as such by the agency to~~] a contested case proceeding [~~before the agency~~].

(15) Probation—A period of time when a license is subject to conditions or limitations. [~~Each person whose license is suspended is placed on probation for the length of the suspension.~~]

(16) Reinstatement—To reactivate a license that was previously revoked or voluntarily surrendered. [~~The individual with a revoked license must demonstrate or supply evidence to the board of his or her rehabilitation or current fitness to hold a~~

~~license. Reinstatement petitions shall be considered no sooner than 180 days after the revocation order becomes final and enforceable.]~~

(17) No change.

(18) Respondent--A person who has been made the subject of a formal or informal complaint alleging violation of the ~~[Texas Physical Therapy Practice]~~ Act, ~~[or]~~ rules, other laws or regulations, or orders of the board ~~[Board of Physical Therapy Examiners]~~.

(19) Revocation--The withdrawal or repeal of a license. ~~[Revocation is established for minimum period of one year.]~~

(20) Staff--The investigative staff of the board ~~[Board of Physical Therapy Examiners]~~.

(21) No change.

(22) Voluntary surrender -- The act of relinquishing a license at the will of the licensee in lieu of disciplinary action.

§343.23. Hearings.

~~[(a)]~~ The State Office of Administrative Hearings (SOAH) shall conduct all administrative hearings of ~~[in]~~ contested cases ~~[under the Administrative Procedure Act (APA)]~~ that are before the board in accordance with Texas Government Code 2001 and Title 1 Texas Administrative Code.

~~[(b) Transcription of hearing. Each hearing will be recorded by a court reporter.~~

~~(1) The cost of the transcription shall be borne by the person making the request.~~

~~(2) A party who appeals a final decision of the board shall pay all of the cost of preparation of the original and any certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.]~~

§343.24. Payment of Penalties after ~~[Costs for]~~ a Contested Case Hearing Resulting in the Discipline of a Licensee or the Denial of an Application for License.

(a) No change.

(b) A person whose application for a license has been denied by the staff or a licensee who has been found in violation of the Act or rules as a result of a contested case hearing may ~~[will]~~ be required to pay administrative penalties ~~[submit a fee for costs]~~ to the board. Payment of penalties are due to the Board in accordance with the final order. ~~[The costs will be those fees billed by SOAH to the board for conducting the hearing and rendering the proposal for final decision.]~~

~~§343.25. Continuance.~~

~~A licensee who has been served with proper notice of hearing may make a motion to the board for a continuance of the said hearing in writing. Said motion shall be supported by a sworn affidavit detailing the reasons for the continuance and must be received in the board office no later than five days prior to the set hearing date.]~~

§343.26. Computation ~~[Commutation]~~ of Time.

(a) No change.

(b) Extension. Unless otherwise provided by statute, the time for filing any pleading, motion, or request may be extended by order of the executive director or designee,

upon written motion filed prior to the expiration of the applicable period of time for the filing of the same, showing that the need for extension is not caused by the neglect, indifference, or lack of diligence of the requesting party.

§343.27. Probation.

~~If [It]~~ placing a person on probation whose license has been suspended, the board may impose such additional terms and conditions as it deems appropriate for the period of probation. The board shall specify the exact duration of the probationary period. Upon finding that a person placed on probation has failed to comply with the terms and condition of the board's order, the board may take ~~[such]~~ additional disciplinary action as it deems appropriate, following notice and hearing.

§343.28. Records Retention Schedule.

All investigations files ~~[records]~~ shall be maintained in accordance with the approved records retention schedule on file with the Texas State Library and Archives Commission.

§343.29. Failure To Appear at Informal Settlement Conference or Hearing.

(a) Informal Settlement Conference. Failure to respond to the allegations, either by personal appearance at the informal settlement conference or in writing, may result in the allegations being confirmed at the informal settlement conference and the highest proposed sanction being recommended to the board. The notice of the informal settlement conference shall be served by delivering a copy to the respondent or licensee in accordance with Texas Government Code §2001.054(c)(1), to the licensee's last known address of record as shown by agency records, not less than 10 days prior to the date of the conference. [Even though some or all of the parties or their duly authorized representatives should fail to appear, the board may consider fully the matter pending if notice has been given in accordance with this chapter. Such consideration shall be on the basis of any evidence admitted at the hearings and all pleadings, exhibits, briefs, and other materials presented in connection therewith.]

(b) State Office of Administrative Hearings (SOAH) - If a respondent fails to appear in person or by attorney on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the judge shall, upon adequate proof that proper notice under the Texas Government Code chapter 2001 and Title 1 Texas Administrative Code Part 7 was served upon the defaulting party, enter a default judgment in the matter adverse to the respondent. [Absence of counsel shall not be good cause for a continuance or postponement of a cause when called for hearing, except that it be allowed in the discretion of the hearings examiner or board, upon cause shown or upon matters within the knowledge or information of the hearings examiner or board to be stated on the record.]

§343.35. Complaint Investigation and Disposition.

(a) Complaints shall be assigned a priority status in the following categories:
(1) those indicating that credible evidence exists showing a violation of the ~~[Physical Therapy Practice]~~ Act involving actual deception, fraud or injury to clients or the public or a high probability of immediate deception, fraud, or injury to clients or the public;

(2) those indicating that credible evidence exists showing a violation of the ~~[Physical Therapy Practice]~~ Act involving a high probability of potential deception, fraud, or injury to clients or the public;

(3) those indicating that credible evidence exists showing a violation of the ~~[Physical Therapy Practice]~~ Act involving a potential for deception, fraud, or injury to clients or the public;

(4) all other complaints.

(b) Not later than the 30th day after a complaint is received, the staff shall place a timeline for completion, not to exceed one year, in the investigative file and notify all parties to the complaint. Any change in the timeline must be noted in the file and all parties notified of the change not later than seven days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(1) No change.

(2) staff determines there is sufficient evidence to demonstrate a violation of the act, board rules, or board order and drafts proposed board order ~~[formal charges]~~.

(c) – (e) No change.

§343.48. Dismissal of Complaint.

(a) Complaints may be dismissed for the following reasons:

(1) No change

(2) unable to locate ~~[respondent has left the state]~~;

(3) No change

(4) other reasons which the Investigation Committee believe justify dismissal ~~[are justification for dismissal]~~.

(b) Upon the decision of the Investigation Committee to dismiss a complaint, the person who filed the complaint is provided with a letter explaining why the complaint has been dismissed.

(c) No change

§343.50. Request ~~[Application]~~ for Reinstatement of License.

(a) At the expiration of 180 days from the date of revocation, the Investigation Committee ~~[board]~~ may consider a request for reinstatement by the former licensee ~~(applicant)~~.

(b) The request for reinstatement must be submitted to the agency ~~[board office]~~ in writing and should include a short and plain statement of the reasons why the requestor ~~[applicant]~~ believes the license should be reinstated.

(c) Upon denial of any request ~~[application]~~ for reinstatement, the board may not consider a subsequent request ~~[application]~~ until the expiration of one year from the date of denial of the prior request ~~[application]~~.

(d) No change

§343.51. Evaluation for Reinstatement.

In considering reinstatement of a revoked or voluntarily surrendered ~~[suspended]~~ license, the board will evaluate:

(1) the severity of the act which resulted in revocation or voluntary surrender of the license;

(2) the conduct of the applicant subsequent to the revocation or voluntary surrender of license;

- (3) the lapse of time since revocation or voluntary surrender;
- (4) No change
- (5) the degree of rehabilitation attained by the applicant as evidenced by [~~sworn~~
~~notarized~~] statements sent directly to the board from qualified people who have personal and professional knowledge of the applicant; and
- (6) No change

§343.52. Procedure upon Request for Reinstatement.

- (a) An applicant for reinstatement of a revoked license must personally appear before the Investigation Committee [~~board~~] at a scheduled date and time to show why the license should be reinstated.
- (b) [~~Upon submission of proof of past revocation of the applicant's license,]~~ The [~~the~~] applicant has the burden of proof to show present fitness and/or rehabilitation to practice physical therapy.
- (c) Where the applicant's license has been revoked or voluntarily surrendered based on a finding, admission, or allegation that the applicant was unfit to practice physical therapy by reasons of intemperate use of alcohol or drugs, misappropriation of controlled substances, an adjudication of mental incompetence, or the existence of any mental disorder, the applicant must submit a written psychiatric or psychological evaluation or [~~and~~] written medical evaluation. Said evaluations shall be obtained solely at the applicant's expense and forwarded directly to the agency by the examiner. The psychiatric or psychological evaluation must be prepared by a licensed psychiatrist or psychologist and the medical evaluation must be prepared by a licensed physician. Said reports shall include such information as the agency may specifically require with notice to the applicant.
- (d) Upon receipt of a written request for reinstatement and all information required by subsection (c) of this section, the applicant will be notified of the [~~a~~] date and time of an appearance before the Investigation Committee [~~board~~].

§343.53. Board Action [~~Possible~~] upon Reinstatement of Revoked or Voluntarily Surrendered License.

After evaluation, the board may:

- (1) - (2) No change.
- (3) require the satisfactory completion of a pending Agreed Order, or a specific program or remedial education approved by the board [~~agency~~]; and
- (4) No change.

§343.55. Failure To Appear.

An applicant for reinstatement of a revoked or voluntarily surrendered license who makes a commitment to appear before the board, and fails to appear at a hearing set with notice by the agency, shall not be authorized to appear before the board before the expiration of six months. For good cause shown, the executive director may authorize an exception to this rule.

§343.56. Monitoring of Licensees.

A licensee who is ordered by the board to perform certain acts will be monitored by the agency [~~board~~] to ensure that the required acts are completed per the order of the board.