

## **STATE ACTS AND REGULATIONS ON IMAGING: WEST VIRGINIA**

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### **Introduction**

APTA supports the ability of physical therapists to order appropriate tests as part of their diagnostic process. This includes ordering imaging studies that are performed and interpreted by other health professionals, as well as performing or interpreting selected imaging or other studies. One aspect of achieving this goal is at the state level, under jurisdictional scope of practice. This includes not only the physical therapist scope of practice, but other provider and facility laws that may come into play. To help identify potential hurdles, APTA conducted an environmental scan of 25 selected states. The purpose is to identify any statutory considerations, as well case law and attorney general opinions that may impact the ability of APTA chapters to pursue legislative efforts on this issue.

### **Summary**

The physical therapy practice act and the West Virginia Code of State Rules are silent on the use of radiology in the practice of physical therapy. The radiation technologist practice act requires that individuals performing medical imaging or radiation therapy are licensed. Furthermore, The West Virginia Code of State Rules requires that nursing homes obtain radiology and other diagnostic services only when ordered by the attending physician. Moreover, the West Virginia Code of State Rules requires that individuals shall not be exposed to “useful beams” except for healing arts purposes if it has been authorized by licensed practitioner of the healing arts.

### **Physical Therapy Practice Act and Regulations**

The West Virginia Physical Therapy Practice Act states that “[a] physical therapist may: (1) Examine, evaluate and test patients or clients with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement related conditions in order to determine a diagnosis, prognosis and plan of treatment intervention, and to assess the ongoing effects of intervention: Provided, That electromyography examination and electrodiagnostic studies other than the determination of chronaxia and strength duration curves shall not be performed except under the supervision of a physician electromyographer and electrodiagnostician; (2)

Alleviate impairments, functional limitations and disabilities by designing, implementing and modifying treatment interventions that may include, but are not limited to: therapeutic exercise; functional training in self-care in relation to motor control function; mobility; in home, community or work integration or reintegration; manual therapy techniques including mobilization of the joints; therapeutic massage; fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; patient-related instruction; mechanical and electrotherapeutic modalities; and physical agent or modalities including, but not limited to, heat, cold, light, air, water and sound; (3) Reduce the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and wellness in populations of all ages; and (4) Engage in administration, consultation and research.” *W. Va. Code §30-20-9 (2010)*.

The Rules for the West Virginia Board of Physical Therapy state that: “A physical therapist may perform the following: 7.1.a. Examine, evaluate and test patients/clients with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement related conditions in order to determine a diagnosis, prognosis and plan of treatment intervention, and to assess the ongoing effects of intervention: provided, that electromyography examination and electro diagnostic studies other than the determination of chronaxia and strength duration curves shall not be performed except under the supervision of a physician electromyographer and electro diagnostician; 7.1.b. Alleviate impairments, functional limitations and disabilities by designing, implementing and modifying treatment intervention that may include, but are not limited to: therapeutic exercise, functional training in self-care in relation to motor control function; mobility; and in home, community or work integration or re-integration; manual therapy techniques including mobilization of the joints, therapeutic massage; fabrication of assistive; adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; patient-related instruction, mechanical and electrotherapeutic modalities, and physical agent or modalities including, but not limited to, heat, cold, light, air, water, and sound; 7.1.c. Reduce the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and wellness in population of all ages; and, 7.1.d. Engage in administration, consultation, and research.” *W Va Code R §16-1-7.1 (2018)*

The Rules for the West Virginia Board of Physical Therapy provide that “[a] licensee shall adhere to the minimal standard of acceptable prevailing practice. Failure to adhere to the minimal standards of practice, whether or not actual injury to a patient occurred, includes, but is not limited to: . . . Performing or attempting to perform techniques, procedures, or both in which the licensee is untrained by education or experience[.]” *W Va Code R §16-1-7.6.b (2018)*

## Non-Physical Therapy Practice Acts and Regulations

The radiologic technologist practice act states: “[t]he Legislature finds that in the interest of public health that:… (2) A person performing medical imaging or radiation therapy technology in this State shall be licensed.” Therefore, it is the purpose of this article to regulate the practice of medical imaging or radiation therapy in this State by requiring that a person have a license, apprentice license or permit when practicing medical imaging or radiation therapy technology. *W Va Code §30-23-1 (2) (2007)*

The act further provides that “[i]t is unlawful for any person to practice or offer to practice medical imaging or radiation therapy technology in this State without a license, apprentice license or permit issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that the person is a licensed Medical Imaging Technologist or Radiation Therapy Technologist, unless such person has been duly licensed under the provisions of this article, and such license, apprentice license or permit has not expired, been suspended or revoked.” *W Va Code §30-23-2 (a) (2007)*

It also states: “Without a licensee, it is unlawful for any business entity to render any service or engage in any activity which if rendered or engaged in by an individual, would constitute the practice of medical imaging or radiation therapy technology.” *W Va Code §30-23-2 (b) (2007)*

The radiologic technologist practice act includes the following definitions:

“‘License’ means a medical imaging and radiation therapy technology license issued under the provisions of this article.” *W Va Code §30-23-4 (i) (2009)*

“‘Licensed practitioner’ means a person licensed in West Virginia to practice medicine, chiropractic, podiatry, osteopathy or dentistry.” *W Va Code §30-23-4 (j) (2009)*

“‘Radiologic technologist’ means a person, other than a licensed practitioner, who applies medical imaging or assists in the application of ionizing radiation to human beings for diagnostic or therapeutic purposes as prescribed by a licensed practitioner.” *W Va Code §30-23-4 (w) (2009)*

“‘Radiologist’ means a licensed practitioner who has successfully completed a residency in the field of Radiology and specializes in the use of medical imaging for the diagnosis or treatment of disease.” *W Va Code §30-23-4 (y) (2009)*

The chiropractic practice act states: “‘Chiropractic’ is the science and art which utilizes the inherent recuperative powers of the body and the relationship between the

neuromusculoskeletal structures and functions of the body, particularly of the spinal column and the nervous system, in the restoration and maintenance of health. The use of the designation doctor of chiropractic, chiropractor, chiropractic physician or D.C., is the practice of chiropractic. The practice of chiropractic also includes the examination and assessment of members of the public that are not patients of the examining chiropractor. Further, the practice of chiropractic includes the review of information relating to the duration and necessity of chiropractic care that affects the course of care, the treatment plan or payment and reimbursement concerning chiropractic patients residing within the State of West Virginia. The practices and procedures which may be employed by doctors of chiropractic are based on the academic and clinical training received in and through chiropractic colleges accredited by the Council of Chiropractic Education or its successors and as determined by the board. These include the use of diagnostic, analytical and therapeutic procedures specifically including the adjustment and manipulation of the articulations and adjacent tissues of the human body, particularly of the spinal column, including the treatment of intersegmental disorders. Patient care and management is conducted with due regard for environmental and nutritional factors, as well as first aid, hygiene, sanitation, rehabilitation and physiological therapeutic procedures designed to assist in the restoration and maintenance of neurological integrity and homeostatic balance[.]” *W Va Code §30-16-3 (4) (1998)*

### **Attorney General Opinions**

No attorney general opinions on point were identified.

### **Jurisdictional Case Law**

No jurisdictional case law on point was identified.

### **State Law and Regulations Governing Hospitals and Other Facilities and Services**

The Nursing Home Licensure Rule states: “A nursing home shall . . . Provide or obtain radiology and other diagnostic services only when ordered by the attending physician[.]” *W Va Code R §64-13-12.2.d.1 (2018)*

The Hospital Licensure Rule states: “Radiology services shall only be provided according to a practitioner's orders consistent with State law, as authorized by the medical staff and the governing body.” *W Va Code R §64-12-10.4.c (2018)*

The Hospital Licensure Rule further provides that “[r]adiology services shall be under the medical direction of a qualified full-time, part-time, or consulting radiologist. A qualified radiologist is a Doctor of Medicine or Osteopathy who is qualified by education and experience in radiology and is licensed by the West Virginia Board of Medicine or West Virginia Board of Osteopathy. A radiologist’s responsibilities shall include: 10.4.d.1. Ensuring that radiology reports are signed by the practitioner who interpreted them; 10.4.d.2. Enforcing safety and infection control standards; 10.4.d.3. Assigning duties to radiology personnel based on their training, experience, and licensure when applicable; 10.4.d.4. Ensuring files, scans, and other image records are secure, retrievable, and maintained for a minimum of five (5) years; and 10.4.d.5. Providing in-services and training to radiology personnel including management of radiation hazards and equipment safety, etc.” *W Va Code R §64-12-10.4.d (2018)*

The Radiological Health Rules include the following definition: “Healing Arts - diagnostic or healing treatment of human and animal maladies including but not limited to the following which are duly registered by the State of West Virginia for the lawful practice of: medicine and its associated specialties, dentistry, veterinary medicine, osteopathy, chiropractic, and podiatry.” *W Va Code R §64-23-3.39 (2018)*

The Radiological Health Rules include the following definition: “Healing Arts Screening - the testing of human beings using x-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe such x-ray tests for the purpose of diagnosis or treatment.” *W Va Code R §64-23-7.2.36 (2018)*

The Radiological Health Rules state: “[i]ndividuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed practitioner of the healing arts. This provision specifically prohibits deliberate exposure for the following purposes: 7.3.a.7.A. Exposure of an individual for training, demonstration, or other non-healing arts purposes; and 7.3.a.7.B. Exposure of an individual for the purpose of healing arts screening except as authorized by Paragraph 7.3.a.11.” *W Va Code R §64-23-7.3.a.7 (2018)*