

May 31st, 2016

Ms. Shenda Tanchak
Registrar

College of Physiotherapists of Ontario
375 University Avenue, Suite 901
Toronto, Ontario
M5G 2J5

Submitted by email

RE: Ontario Physiotherapy Association's Response to Standards Consultation

Dear Ms. Tanchak,

I am writing on behalf of the Ontario Physiotherapy Association (OPA) and our over 6000 members in response to the College of Physiotherapists of Ontario's (the College) public consultation on two revised standards: *Performing Controlled Acts and Other Restricted Activities* and *Physiotherapists Working with Assistants*.

Changes to Standards have real and substantial impacts, not only on patients and the day-to-day practice of physiotherapists and physiotherapist assistants, but also on the profession as a whole. OPA consulted our members and reviewed the proposed changes and submit to you our feedback and concerns specific to the two standards currently being considered.

General Comments

The OPA provides the following high-level comments, questions and recommendations as they apply to both standards:

- **Streamlining/Simplification:** OPA commends the College for its work in simplifying the Standards which assists in ensuring that needed information is available in an accessible and clear way.



- **No Standard Stands Alone:** The Standards as presented hold no reference to other standards that also apply to the specific points being made. It would be important to facilitate practitioners' adherence to standards and for clarity for the public that those references be added in the final drafts.
- **Preambles:** For clarity some form of a preamble is needed for both Standards to assist the reader in understanding the terms used and the overall concepts of the Standard. Specific recommendations concerning what should be included for each Standard are noted in the Standard-specific section of this submission.

Performing Controlled Acts and Other Restricted Activities

The OPA offers the following comments, questions and recommendations for this Standard:

The Need for a Preamble

Though we understand the desire to make the Standard as lean and simple as possible, the Standard needs to provide sufficient information as a stand-alone document to inform practice and provide transparency and clarity to the public. The preamble should note that physiotherapists may be lawfully and properly authorized to perform controlled acts and other authorities not authorized to the profession under the Physiotherapy Act. The authority to perform these acts and authorities may come through delegation and other mechanisms such as hospital policies and protocols and that these mechanisms are recognized by the College.

It is very important that there be a common understanding of and consistency in terminology. Though the title of the standard includes the term 'restricted activities', the only place that 'restricted activity' is mentioned again is in section 1. We would recommend that short definitions of 'controlled act' and 'other restricted activity' be included in the preamble for clarity. It is unclear in this standard whether 'restricted activity' can be delegated in the same way as controlled acts and if all the remaining sections of the standard apply to the 'restricted activities' as they do to 'controlled acts'. Further in the Standard the term 'authorized activity' is used where we assume what is meant is a delegated controlled act.

Importantly the standard should indicate that physiotherapists who are lawfully authorized to perform a controlled act should always perform the controlled act under their own authority and not via delegation. The standard as written seems to entertain the possibility that physiotherapists would be delegated controlled acts that are authorized to the profession under the Physiotherapy Act. Assuming responsibility for the performance of controlled acts should include assuming responsibility to do so under their own authority when appropriate, for transparency and safety to the public and to other health professionals.



Section 2. *‘Every controlled act performed by a physiotherapist must be within the scope of practice of physiotherapy’*

This statement is overly limiting and can cause confusion in applying the Standard. We believe the intent of this statement is to set out that all controlled acts, whether included in the Physiotherapy Act or delegated by another regulated health professional, must only be performed by a physiotherapist if that act is being performed as part of the physiotherapy plan of care.

This overall statement seems to refer to the performance of controlled acts under the Physiotherapy Act *and* those authorized through delegation or other means. In the case of those by delegation or other means the statement as written would prove to be excessively limiting to the growth and evolution of the profession. One example includes circumstances where physiotherapists working with specialists in extended roles receive delegation of an act with the intention that the management of the result of that act (e.g. ordering a diagnostic test) would be managed by the specialist and, therefore, not be currently in the scope of practice of the profession of physiotherapy.

Section 3. *‘In order to perform a controlled act, physiotherapists must assume the responsibility for the decision to offer the act and the actual performance of it.’*

As an overall statement we assume that this section applies equally to performing a controlled act under the authority given in the Physiotherapy Act and those performed under delegation or other means of authorization. If that is the case, this statement may lead to some confusion in the wording *‘must assume the responsibility for the decision to offer the act...’* If the intent is that regardless of how the act is authorized a physiotherapist maintains the responsibility to decide whether or not to offer the controlled act, then the following wording would be more clear; *‘...physiotherapists must make their own determination as to whether the performance of the controlled act is appropriate under the circumstances and must assume responsibility for the actual performance of the controlled act.’*

Section 7 (c). *‘They have written instructions describing what to do if performing a controlled act results in an adverse outcome.’*

This statement appears repetitive to the statement that precedes it which speaks to the requirement for the physiotherapist to have the knowledge to manage adverse outcomes. If this statement is meant to set out a requirement for written instructions to be made available to the patient receiving the controlled act then that would need to be clarified.

We note that managing adverse outcomes is situation specific with variables specific to the patient and the environment that cannot be predicted fully. While an organization may have a policy on managing adverse outcomes it would be unrealistic to create written instructions for every situation.



We would recommend a more general statement that a physiotherapist should be able to communicate their plan for managing adverse outcomes.

Section 8. Setting out the need to roster and exceptions to the requirement to roster

There is another potential exception that would apply to the need to roster, namely when a physiotherapist is performing a controlled act while still training to complete the educational requirement of the standard. Though that exemption exists in the RHPA, the reference to rostering in this section requires that this exception be noted here for clarity.

Section 9. *‘Physiotherapists who perform controlled acts that may impact the care their patients are receiving from other health care professionals must provide relevant and timely information to these caregivers.’*

This statement would benefit from a link to the Standard that specifies the requirements when providing concurrent treatment. This section refers to care being received by other health care professionals and then switches to the term ‘caregivers’ at the end of the statement. As the term ‘caregiver’ by definition is broader than ‘health care professional’ this might lead to some confusion. We would recommend changing ‘caregiver’ to ‘professional’ to avoid misinterpretation.

Section 10. *‘Physiotherapists must only accept the delegation of a controlled act when the following conditions are met:...c) They believe that the delegating professional...’*

This statement should be amended to add the threshold of reasonableness, that is ‘c) They **reasonably** believe that the delegating professional...’

In addition for clarity Section 10 c) (i) should be amended to state the following...‘has the legal authority to perform the controlled act.’

Section 11. *‘Physiotherapists who perform controlled acts under delegation must tell patients the authority they are using to perform the act.’*

This appears to be a new requirement under the revised Standard and it is not clear how this will ensure patient safety or consent. Whether the authority is received via the Physiotherapy Act or other means of delegation, the physiotherapist has the authority and must meet the requirements for deciding to offer the act, for performing the act and managing the outcomes. The disclosure of the mechanism for having the authority does not contribute to patient safety, adds additional requirements that go beyond what is required for consent and is unlikely to be understood by most patients. We would ask for clarification as to why this section is deemed to be necessary.



Section 13. *‘Physiotherapists must not delegate any component of the controlled act of performing acupuncture.’*

Physiotherapists have the full authority to perform the controlled act of acupuncture through an exemption by regulation. This does not mean that the controlled act of acupuncture is any different, or should be regulated differently, from other controlled acts performed by physiotherapists, such as spinal manipulation or procedures below the dermis for wound care. It is unclear why this act is being singled out as non-delegable, particularly in light of the fact that until a few years ago it was a public domain act. Other controlled acts authorized to the profession hold significant risk of harm and require extensive training to achieve competence, yet are not limited or prohibited for purposes of delegation.

Section 14. *‘Physiotherapists may delegate the controlled acts they are authorized to perform...’*

The physiotherapy profession has had the ability to delegate its controlled acts for many years, but the Standard related to the performance of controlled acts did not, with clarity and transparency, address this aspect of care. The revised Standard attempts to do so.

It is professional misconduct for a physiotherapist to delegate *‘a controlled act to another person unless that person has the knowledge, skills and judgement to perform the controlled act.’*¹ We believe that physiotherapists have the knowledge, skills and judgment to fulfill the requirements to know when it is appropriate to delegate. Notwithstanding, many members have expressed their profound concerns that this Standard as written would be viewed as permissive to delegate acts which have significant risk to the safety of patients to those with insufficient knowledge and training. Strengthening the language around responsibility and liability assumed by the physiotherapist engaging in delegating a controlled act might address some of these concerns.

We recommend that *‘a) They assume the responsibility for the decision to delegate the act’* include language that extends the responsibility beyond the decision so as to include the performance of the act and the management of the outcomes.

We also recommend that a preamble be included in this section of the standard to set out that it is professional misconduct to delegate a controlled act to someone who doesn’t have the knowledge, skills and judgment to perform the act safely and effectively. The preamble, for clarity, should also include the circumstances where the performance of a controlled act can be performed under exception (Section 29 (1) of the RHPA) to facilitate understanding in circumstances where a physiotherapist would train a family member or caregiver, or when a physiotherapist or student would do a controlled act while training.

¹ Physiotherapy Act, 1991, Ontario Regulation 388/08 Professional Misconduct, <https://www.ontario.ca/laws/regulation/080388>



Physiotherapists Working With Assistants

The OPA offers the following comments, questions and recommendations for this standard:

The Need for a Preamble

As with the Standard for controlled acts, this Standard needs to provide sufficient information as a stand-alone document to inform practice and provide transparency and clarity to the public. The preamble should speak to whether the Standard applies only to physiotherapists working with physiotherapist assistants, or applies to all who may be part of the delivery of physiotherapy services, including other regulated or unregulated professionals and caregivers.

The term ‘assign’ must be defined and distinguished from the term ‘delegate’ where it should be made clear that delegation only applies to controlled/restricted acts. Assign in this context refers only to public domain acts and applies only to care that is part of the delivery of physiotherapy services.

There needs to be a section in the preamble that defines supervision and that definition should provide the components that must be met for supervision of assigned care, including evaluating the performance of the person performing the assigned task.

It should also be clarified that assignment is to a specific individual or a specific group of individuals that a physiotherapist has assessed to have the competencies to perform the assigned care – that substitution of the assistant or the addition of a new assistant to the group by the employer or anyone other than the physiotherapist does not transfer the assignment of care until competency is assessed by the physiotherapist assigning the care.

It remains OPA’s position that the requirement to roster if a physiotherapist works with an assistant is unnecessary for the safety of the public. However if mentioned in the standard, for clarity, any mention of the roster should be in the preamble and not in the sections of the standard as the Standard relates to the inclusion of assistants in the delivery of care for a specific patient and care plan and the roster speaks to working with an assistant generally.

The Format of the Standard

In addition to the inclusion of a preamble the format of the standard would benefit from headings such as; Consent for the Inclusion of Assistants in the Delivery of Physiotherapy, Assigning Care, Supervising Assigned Care and Responsibilities of Physiotherapist Acting as Alternate Contact.



Section 1 and all sections addressing the requirements when assigning care.

There are no points in the Standard that address the need to have regular re-assessments by the physiotherapist for assigned care, or that the care assigned must be part of an ongoing physiotherapy program requiring the knowledge, skills and competencies of a physiotherapist to treat or supervise care.

Section 3. Activities that must not be assigned

It is important to note that any controlled act may not be assigned and may only be delegated. Reference should be made to the Standard related to controlled acts for Section 3. e. and f. and the title of the section should include the word 'delegate'.

Section 7. Assistant's name and job title on invoices

Members have been clear that this requirement would be unduly burdensome logistically without providing any additional benefit to patients or payors. As consent is already required in other parts of the Standard, the patient or substitute decision maker is already aware of the involvement of an assistant in the delivery of care.

The separate listing of the assistant on the invoice implies that the physiotherapy services can be split and that the care provided by the assistant is separate and not an assigned extension of the care provided by the physiotherapist. It confuses the public and the payors whether the assigned work is 'physiotherapy' or not. This may result in the implementation of policy decisions at the level of payors to limit funding for services based on who provided elements of the treatment plan. This will become a barrier for patients accessing needed services. For example, if parts of the plan provided by a physiotherapist assistant are funded differently, this will influence the use of assistants and result in increased costs to provide care thereby further limiting access to care.

We are concerned that instead of addressing situations where physiotherapists are not appropriately involving assistants in the care of their patients, this section will have, the unintended consequence of increasing resistance to the appropriate incorporation of assistants.

For those employed in the public sector (e.g. hospital, home care) this section is confusing as invoicing is not applicable in those circumstances.



Conclusion

Standards have major impacts on patients, how physiotherapists practise, on the profession as a whole and on the health system. They can facilitate quality care and conversely they can also create a barrier to the evolution of the profession, or needed access to care without further improving patient safety.

The OPA appreciates the College working to improve the clarity of our Standards for Professional Practice to serve and protect the public and our profession and the OPA wishes to assist in any way we can. We would be very pleased to meet with you to discuss the points we have made in this submission.

We look forward to working with the College in this regard.

Respectfully submitted,

A handwritten signature in black ink that reads "D. Sauvé".

Dorianne Sauvé
Chief Executive Officer

Cc: Mr. Peter Ruttan, President, College of Physiotherapists of Ontario
Ms. Wendy Smith, President, Ontario Physiotherapy Association