

# Emergency Rules

## Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

### Division 2150—State Board of Registration for the Healing Arts

#### Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

#### EMERGENCY AMENDMENT

**20 CSR 2150-3.010 Applicants for Licensure as Professional Physical Therapists.** The board is amending section (8).

*PURPOSE:* This amendment specifies which applicants are required to take the Test of English as a Foreign Language (TOEFL) examination.

*EMERGENCY STATEMENT:* The Missouri State Board of Registration for the Healing Arts (board) finds that this emergency amendment is necessary to preserve a compelling governmental interest by ensuring that the board requires only applicants who have not previously demonstrated a proficiency in the English language by attending a physical therapy program in the United States or a foreign program where the instruction was done in English to take the Test of English as a Foreign Language (TOEFL) examination. The board's goal is to license only competent and qualified physical therapists that are proficient in the English language, so that both the Missouri physical therapist and patient are able to clearly and effectively communicate during the rehabilitation process, ensuring safe and effective treatment. An early effective date is required because this amendment will modify the requirements by specifying who must take the TOEFL examination. Currently, the rule states that if an applicant is "from a country in which the predominate language is not English" the applicant must take the TOEFL examination. This means that someone who moved to the United States as a child and attended school here would have to take the TOEFL examination, which is not the intent of the rule. It is also sometimes difficult for the board to determine the "predominate language" of a country. The change clarifies and narrows the group of applicants required to take the TOEFL examination. It does not require the TOEFL examination of anyone who graduated from a physical therapy program in the United States nor of anyone who can prove that the language of instruction in their foreign program was English. As the licensure examination is only taken two (2) times a year—on July 21 and again on October 28—some applicants are waiting to take the licensure examination until after they have passed the TOEFL examination, thus unnecessarily prolonging the period of time before an applicant can be licensed and begin providing physical therapy services in the state of Missouri. The normal rulemaking process would require these applicants to wait six (6) months for the rule change to go through the process, delaying their ability to obtain employment and provide much needed physical therapy treatment to Missouri patients. Furthermore, as there is, on average, a one-hundred-ninety-dollar (\$190) fee associated with taking the TOEFL examination, this amendment would remove such a cost for applicants for whom TOEFL examination is unnecessary. Additionally, the recent decision of the United States Supreme Court in *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. \_\_\_\_, 135 S. Ct. 1101 (February 25, 2015), may impact the board by requiring board licensure decisions that negatively impact trade to be based on clearly articulated state policies authorizing such conduct which are supervised by the state. The current rule is not narrowly tailored as to who is required to take the TOEFL examination, and may arguably create a barrier to licensure for certain applicants. As there is a need for physical therapists in Missouri, the current rule may negatively impact trade contrary to the above referenced decision of the United

States Supreme Court. Following the above decision, the board has seen an increased trend in legal challenges to the rules of other state licensing boards resulting in injunctions and litigation effectively eliminating those boards' ability to effectively regulate their professions. Most recently the state of Texas had its telemedicine rules invalidated by court injunction because its rules and rulemaking authority were not based on clearly articulated policy. This amendment will avoid such a result without the need for costly litigation by more clearly stating which applicants are required to take the TOEFL examination related to their education and training. Therefore, an emergency regulation is necessary. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The board believes this emergency amendment to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed July 27, 2015, becomes effective August 6, 2015, and expires February 25, 2016.

(8) [If the applicant is from a country in which the predominant language is not English, the applicant must provide the board with documentation of the following directly from the Educational Testing Service (ETS):] **Any applicant who has graduated from a physical therapy program outside the United States shall provide—**

**(A) Documentation that the primary language of instruction in the physical therapy program was English;**

[(A)](B) A current Test of English as a Foreign Language (TOEFL) [C]certificate in which the applicant has obtained, on the TOEFL paper-based, a minimum score of 55 in each section and a total score of 560 and a current Test of Spoken English (TSE) [C]certificate in which the applicant has obtained a minimum score of 50; or

[(B)] A current TOEFL computer-based testing certificate in which the applicant has obtained a total score of 220 and a current Test of Spoken English (TSE) Certificate in which the applicant has obtained a minimum score of 50; or]

*AUTHORITY:* section 334.125, RSMo [2000] **Supp. 2014**, and sections 334.530, 334.540, 334.550, and 334.687, RSMo **Supp. [2011] 2013**. This rule originally filed as 4 CSR 150-3.010. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed July 27, 2015, effective Aug. 6, 2015, expires Feb. 25, 2016. An emergency amendment and a proposed amendment covering this same material will be published in the September 1, 2015, issue of the *Missouri Register*.