

New Hampshire Physical Therapy Governing Board

Petition for Declaratory Ruling

Petitioner: Kristine Dugan Kearns, PT

August 24, 2021

Kristine Dugan Kearns, PT (“Ms. Kearns”) asked the Physical Therapy Governing Board (“Board”) whether her role as a medical care evaluator/clinical liaison with a rehabilitation hospital with four levels of care (acute rehab, long term acute rehab, transitional care, outpatient/day rehab), and additional sub-acute facilities, would be considered a consulting role under the New Hampshire Physical Therapy Practice Act. Ms. Kearns detailed the specific responsibilities and expectations of that role in her initial request. She subsequently supplied the Board with additional documentation regarding how her physical therapy license is beneficial to this position and what specific duties she performs related to physical therapy.

I. Standard of review

The Board first notes that while some of the specific requirements of a declaratory ruling are not identified in Ms. Kearns initial email, it does contain all of the essential elements of a petition for declaratory ruling and the Board will treat it as such.

A declaratory ruling is “an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency.” RSA 541-A:1, V; and N.H. Admin. R. Pt. Ahp (“Ahp”) 202.01(d). A declaratory ruling is a statement by the Board regarding whether a particular statute or rule applies to the facts outlined in the petition. “A declaratory ruling shall apply only to the board and to the individual or entity requesting it...” Ahp 217.05. Declaratory

rulings are limited to the facts of the petition. Therefore, they do not have precedential value; nor do they apply to anyone other than the petitioner who submitted the particular petition.

II. Legal Analysis

The Board is required to issue fully renewed licenses to applicants who fall into one of three categories and meet the basic application requirements. Phy 402.12(a) and (b). In this instance, Ms. Kearns falls into the third category of applying for licensure more than four (4) years after initial licensure. Therefore, to receive a fully renewed license, Ms. Kearns must have completed basic application requirements and also have been ‘active in the profession’ for the four (4) years preceding the application. Phy 402.12 (a)(1)(c). ‘Active in the profession’ means having engaged in physical therapy as a direct care-giver; a physical therapy educator; a physical therapy administrator; **a physical therapy consultant**; a student enrolled full time in an advanced physical therapy degree program; or a physical therapy researcher; for 100 hours during each 12-month period for the 24 months immediately preceding the completed application. Phy 401.01 (a) and (b) (*Emphasis added*).

While consultation and consultant are not specifically defined in the Physical Therapy Practice Act with respect to being ‘active in the profession’, it does define “Consultation by means of telecommunication” as meaning that “**a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider** via telecommunications or computer technology from a distant location.” RSA 328-A:2, II (*Emphasis added*). Thus, being a consultant or providing consultation contemplates a physical therapist using his or her professional knowledge and skills as a basis to provide professional opinion or advice to another physical therapist or health care provider.

In this instance, Ms. Kearns has been working full time as a medical care evaluator/clinical liaison with: a rehabilitation hospital providing multiple levels of care, including acute rehab, long term acute rehab, transitional care, outpatient/day rehab; and additional sub-acute care facilities. While she is not providing direct patient care, she is interfacing with patients and management in different departments and using her clinical judgement--much of which is related to physical therapy—to determine a prospective patient's clinical medical and functional status. She also has input in developing and/or modifying treatment plans and goals in conjunction with other the patient, family, and healthcare professionals. Ms. Kearns assists with conducting ongoing assessments of patient status and makes recommendations regarding potential outcomes and challenges facing the patient upon discharge and the appropriate ongoing follow up care for patients.

In order to do perform these duties, Ms. Kearns is utilizing her professional knowledge and experience as a physical therapist and giving professional advice and/or recommendations to patients, their families and other health care professionals on the team. Given that Ms. Kearns is functioning in a rehab setting, her professional knowledge and experience as a physical therapist are being utilized and are directly related to the professional input and advice she is giving to patients, family members and other members of the healthcare team. Thus, at its core, her position as a medical care evaluator/clinical liaison is directly utilizing her professional skills and knowledge as a physical therapist.


III. Conclusion

For the foregoing reasons, the Board concludes that Ms. Kearns' current role as a medical care evaluator/clinical liaison with a rehabilitation hospital providing multiple levels of care

would qualify as a physical therapy consultant for the specific purpose of remaining 'active in the profession' and renewing her physical therapy license.

Date: [XXX]

10-20-2020


[Board administrator or Board Chair]
On behalf of the Physical Therapy
Governing Board