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Mr. Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Advisory Opinion Request

**Directors**  
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Nicole L. Stout, PT, MPT,  
CLT-LANA

Dear Mr. Herman:

The American Physical Therapy Association (APTA or Association), the national professional organization for physical therapists, physical therapist assistants, and students of physical therapy, is a membership association that has individual but not corporate members. The Association has established the American Physical Therapy Association Physical Therapy Political Action Committee (PT-PAC) as a separate segregated fund (SSF) within 2 U.S.C. § 441b. The APTA is interested in making a payroll deduction system available to members who are employed by corporations owned entirely or in part by APTA members.

Pursuant to 2 U.S.C. § 437f and 11 CFR § 112.1, the APTA hereby submits a request for an advisory opinion from the Federal Election Commission (FEC or Commission). Specifically, the APTA requests confirmation that implementation of the payroll deduction system described below would not be in violation of the Federal Election Campaign Act of 1971 (FECA or Act) or FEC regulations.

The FEC has jurisdiction over this question pursuant to 11 CFR § 112.1 because the APTA is seeking advice concerning the application of the Act and FEC regulations to a specific transaction or activity that the APTA would like to undertake.

**A. Background**

The APTA is a nonprofit corporation subject to the Illinois General Not For Profit Corporation Act of 1986. It is the national professional organization representing physical therapists (PTs), physical therapist assistants (PTAs), and individuals studying to become PTs or PTAs. It has over 80,000 members

Chief Executive Officer  
John D. Barnes

Combined Sections Meeting  
February 8-11, 2012  
Chicago, IL

PT 2012  
June 6-9, 2012  
Tampa, FL

nationwide. A copy of the APTA's Bylaws is enclosed as Attachment 1. The APTA makes its Bylaws available to its members upon request. The APTA also has posted its Bylaws on its website.<sup>1</sup>

All of the APTA's members are human beings. It does not have any members that are corporations or other business entities.

The APTA is an organization within § 503(c)(6) of the Internal Revenue Code. The APTA does not issue stock. No part of its profits inure to the benefit of any of its members.

The APTA seeks to improve the health and quality of life of individuals in society by advancing physical therapist practice, education, and research, and by increasing the awareness and understanding of physical therapy's role in the nation's health care system.

The APTA performs various functions that are typical for a national professional organization. For example, the APTA accredits educational programs that educate PTs and PTAs through the Commission on Accreditation in Physical Therapy Education (CAPTE or Commission), a body whose members are appointed by the APTA's Board of Directors. The Commission is the only national accrediting body for physical therapist professional education, and it is recognized by the U.S. Department of Education (USDE) as a reliable authority regarding the quality of education or training provided by the programs it accredits. In addition, the APTA certifies clinicians who have responded to a specific area of patient need by acquiring knowledge, skill, and experience that exceeds that of the entry-level physical therapist and that is unique to the specialized area of practice. The APTA recognizes such clinicians through the American Board of Physical Therapy Specialties (ABPTS). The APTA each year sponsors two major national meetings that offer members opportunities to take advantage of educational presentations and to network with their peers. It offers an extensive array of continuing education courses online. The APTA's official journal, *Physical Therapy*, publishes peer-reviewed articles. The APTA website has a portal to evidence-based practice, called Open Door, that provides members access to several databases and health care literature. Members also can access Hooked on Evidence to search article extractions or clinical scenarios for evidence related to physical therapy interventions.

The APTA actively advocates for the profession in both governmental and non-governmental forums. It is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office.

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<sup>1</sup> See Policies & Bylaws at <http://www.apta.org/Policies/>.

The Association itself does not engage in the practice of physical therapy.<sup>2</sup> Although the APTA obtains revenue from various sources (e.g., member dues, meeting registrations, publications, advertising), it is not organized to engage in a regular business of a kind ordinarily carried on for profit.

The Bylaws of the APTA provide for the following categories of dues-paying members, with the annual dues as indicated:

- (i) physical therapist, dues \$295
- (ii) retired physical therapist, dues \$120
- (iii) life physical therapist, dues \$60
- (iv) student physical therapist, dues \$80
- (v) physical therapist assistant, dues \$190
- (vi) retired physical therapist assistant, dues \$120
- (vii) life physical therapist assistant, dues \$60
- (viii) student physical therapist assistant, dues \$80

Bylaws, Article IV, Section 1, Article XI, Section 3.

The Bylaws also provide for honorary members, who are individuals not in any of the foregoing categories who have rendered outstanding service to the Association or have made notable contribution to the health of humanity, and who do not pay dues or have any role in the governance of the APTA. Bylaws, Article IV, Section 1(I). The APTA has fewer than twenty honorary members.

In addition, the Bylaws provide for Catherine Worthingham Fellows of the American Physical Therapy Association, who are APTA members recognized by the Board of Directors for their contributions to the profession and who continue to belong to one of the categories listed above and to pay the associated dues. Bylaws, Article IV, Section 1(J).

In general, dues are for 12 months of membership. The exception is that members may elect to pay for less than 12 months in order to change the due date for future years. Bylaws, Article XI, Section 3(B-C).

State licensure laws do not require PTs and PTAs to belong to the APTA. Because membership is voluntary, the APTA actively solicits individuals to join the Association. By way of example, the APTA website explains the benefits of membership and urges visitors to join.<sup>3</sup>

<sup>2</sup> The APTA has a staff of over 150 people, of whom fewer than 20 are themselves physical therapists. The staff members who are physical therapists work primarily in the practice, education, and advocacy areas. In their capacity as staff members they do not engage in the practice of physical therapy.

<sup>3</sup> See Membership & Benefits at <http://www.apta.org/Membership/>.

Individuals must act affirmatively to become an APTA member. They may mail an application, apply online, or apply over the phone.

The APTA mails a membership card to all new members. In addition, it mails a membership card to existing members when they renew their membership.

The APTA has an affiliated Chapter in all fifty states and the District of Columbia. The Chapters are separately incorporated entities. In general, every member of the Association must belong to the Chapter in which he/she practices, resides, or attends school. Bylaws, Article IV, Section 4. Chapters impose their own dues, which for PT members range from \$75 to \$245 annually.

The affairs of the APTA are directed by a fifteen-member Board of Directors. The members of the Board are elected by the House of Delegates, a national body with about 400 voting Delegates. The voting Delegates are selected by the APTA's Chapters. The Chapter delegates are apportioned on the basis of the number of members each Chapter has, although each Chapter is guaranteed at least two Delegates. See APTA Bylaws, Article VIII. Only physical therapist members who have been APTA members in good standing for two years may serve as Chapter Delegates. APTA Bylaws, Article VIII, Section 3(A). Only individuals who have been physical therapist members in good standing for at least five years may serve on the Board of Directors. APTA Bylaws, Article IX, Section 2.

### **B. Proposed Payroll Deduction System**

The APTA would like to put into place a payroll deduction system as described below.

A significant number of the APTA's individual members are physical therapists who conduct their practice through a corporation. The APTA has received requests from some members who are owners of corporations that employ physical therapists (Employers) to allow the corporation to use a payroll deduction system to collect and forward contributions to the PT-PAC from certain employees. The APTA would like to arrange for certain corporations to participate in a payroll deduction system by which employees who are dues-paying<sup>4</sup> APTA members (Member-Employees) could utilize the system to send contributions to the PT-PAC.

In order to participate, a corporation would have to be one that is owned in whole or in part by an APTA member (a Member-Owner). In addition, one or

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<sup>4</sup> Honorary members of the APTA do not pay dues, and they would not be eligible to participate. Individuals who are in the category of Catherine Worthingham Fellows also belong to a dues-paying category of membership, and as such they could be eligible to participate.

more Member-Owners would have to request in writing that the APTA permit the Employer to participate in the payroll deduction system.

An Employer would be required to specifically approve the APTA's solicitation of the Member-Employees employed by the Employer.

An Employer would be required to agree that it will not approve the solicitation of its employees by another association (or another association's separate segregated fund) in any calendar year.

A Member-Employee would be allowed to participate only if he or she affirmatively and in advance authorized the deduction of contributions from his/her paycheck. The authorization would have to be in a writing that manifests the contributor's specific and voluntary donative intent. The Member-Employee would be able to cancel the payroll deduction authorization at any time.

The written authorization would have to contain the Member-Employee's certification that he/she is a United States citizen (and therefore is not a foreign national of the kind described in 2 U.S.C. § 441e(b)).

The written authorization would have to contain the Member-Employee's certification that he/she is not a federal contractor of the kind described in 2 U.S.C. § 441c(a).

The deductions authorized by the Member-Employee could not exceed five thousand dollars in any calendar year.

An Employer that chose to participate in the payroll deduction system would provide the APTA with the names of its employees who are physical therapists or physical therapist assistants.

The APTA would determine which employees are APTA members. The APTA would contact such Member-Employees to advise them that their Employer was participating in a payroll deduction system and to invite them to participate by signing an authorization.

In accordance with 11 CFR § 114.5(a)(3-5), any such communication would inform the Member-Employee of the political purpose of the PT-PAC and of his/her right to refuse to contribute to the PT-PAC without any reprisal.

The Employer would deduct contributions to the PT-PAC from Member-Employees who have signed an authorization. The Employer would not deduct contributions from a Member-Employee unless he/she had signed an authorization.

The Employer would collect and forward contributions to the PT-PAC from Member-Employees who had authorized the Employer to deduct a specified amount each pay period from the Member-Employee's paycheck and to forward such amount to the PT-PAC.

The PT-PAC would maintain the Member-Employee's written authorization for audit and inspection purposes for at least three years after the filing date of each report that discloses a contribution made pursuant to the authorization.

The APTA would bear the costs incident to the Employer's administration of the payroll deduction program in either of two ways. First, the APTA might reimburse the Employer for the actual expenses incurred by the Employer in providing the payroll deduction system contemplated by this arrangement. As an alternative, the APTA and the Employer might arrange for advance reimbursement of the Employer for its costs of administering the payroll deduction system. Such advance reimbursement would be based on the Employer's reasonable estimate of the costs that will be incurred incident to the Employer's administration of the payroll deduction program.

If a labor organization representing any employees of the Employer were to make a written request that the Employer make available the method of facilitating voluntary contributions for which its arrangement with the APTA provides, then the Employer would be required to comply with such a request. The Employer would make the payroll deduction method available at a cost to the labor organization sufficient only to reimburse the Employer for the expenses incurred in complying with the request. The foregoing requirements would apply to the Employer and to its subsidiaries, branches, divisions, and affiliates, if any.

### **C. Issues Presented**

The APTA's proposed payroll deduction system raises the following questions under the Act and regulations.

(#1) Is the APTA a membership organization within the FEC's regulations?

(#2) Would the APTA's solicitation of Member-Employees to participate in the payroll deduction system violate 2 U.S.C. § 441b(b)(4)(A)(i)?

(#3) Would participation in the payroll deduction system by an Employer or the APTA violate either of the prohibitions in 2 U.S.C. § 441b(a) against making or knowingly accepting a contribution?

(#4) Is the APTA's proposed payroll deduction system authorized under 11 CFR § 114.7?

(#5) Would an Employer's participation in the proposed payroll deduction system violate 2 U.S.C. § 441b(b)(6)?

(#6) Would an Employer's participation in the payroll deduction system violate 11 CFR § 114.2(f)(1)?

#### D. Analysis

The APTA submits that the answer to each of the questions raised in this request is favorable to its proposed payroll deduction system.

##### 1. The APTA is a membership organization

The question whether the APTA is a membership organization within the FEC's regulations is consequential because the APTA's proposal relies on 11 CFR § 114.7, a regulation that addresses, inter alia, membership organizations. As demonstrated below, the APTA is a membership organization.

The regulations define "membership organization" at 11 CFR § 100.134(e) and 11 CFR § 114.1(e)(1), in each case for a distinct purpose.<sup>5</sup> The two definitions are substantially similar, and their small dissimilarities are not relevant to the APTA's status. The APTA is a membership corporation as defined in 11 CFR § 100.134(e) and 11 CFR § 114.1(e)(1). It is a corporation without capital stock, and it has the six characteristics set forth in the regulatory definitions.

First, the APTA is composed of members. With the exception of the handful of "honorary members" who pay no dues and have no role in governance, all of the APTA's 80,000-plus dues-paying members are "members" as defined in 11 CFR § 100.134(f) and 11 CFR § 114.1(e)(2).<sup>6</sup> That is, all such individuals (a) satisfy the requirements for membership, (b) affirmatively accept the APTA's invitation to become a member (as evinced by their applying online, by phone, or by mail), and (c) pay membership dues annually in a specific amount predetermined by the APTA Bylaws. Some of the APTA's members are vested with the power to operate or administer the

<sup>5</sup> The definition at 11 CFR § 100.134(e) is for purposes of § 100.134, which provides that any "cost incurred for any communication by a membership organization . . . to its members . . . is not an expenditure." 11 CFR § 100.134(a). The definition at 11 CFR § 114.1(e)(1) is for purposes of 11 CFR Part 114 (Corporate and Labor Organization Activity).

<sup>6</sup> The FEC's regulations contain distinct definitions of "member," in 11 CFR § 100.134(f) and 11 CFR § 114.1(e)(2). The two definitions are substantially similar, and their small dissimilarities are not relevant to the status of the APTA's 80,000-plus dues-paying members.

organization pursuant to its bylaws. As indicated, the authority to direct the APTA's affairs belongs to its fifteen-member Board of Directors, all of whom are required to be APTA members. APTA Bylaws, Article IX, Section 2, Qualifications.

Second, the APTA Bylaws expressly state the qualifications and requirements for membership. See APTA Bylaws, Article IV, Section 1, Categories and Qualifications of Members. The Bylaws authorize the Board of Directors to prescribe and publish qualifications in addition to those set forth in the Bylaws.<sup>7</sup> See Bylaws Article IV, Section 1. The APTA Board has prescribed and published additional qualifications. See Membership Qualifications Prescribed by the Board of Directors (BOD Y10-09-08-18), a copy of which is enclosed as Attachment 2.<sup>8</sup>

Third, the APTA makes its bylaws available to its members upon request, and they also are posted on the Association's website.

Fourth, the APTA expressly solicits individuals to become members.

Fifth, the APTA expressly acknowledges an individual's acceptance of membership in the Association. It mails a membership card to individuals when they join the APTA and when they renew their membership.

Sixth, the APTA is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office. See APTA Bylaws Article II, Objects, and Article III, Functions.

## **2. The APTA's solicitation would not violate 2 U.S.C. § 441b(b)(4)(A)(i)**

As part of the proposed payroll deduction system the APTA would solicit eligible Member-Employees to participate by authorizing payroll deductions that would be contributions to the PT-PAC. As explained below, such solicitation would not violate 2 U.S.C. § 441b(b)(4)(A)(i).

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<sup>7</sup> The APTA is subject to the Illinois General Not For Profit Corporation Act of 1985 (GNPCA). The statute defines "Bylaws" as follows:

(e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

805 ILCS 105/101.80(e). Thus, for purposes of the applicable state corporation law, the Membership Qualifications Prescribed by the Board of Directors (BOD Y10-09-08-18) are part of the Association's "bylaws."

<sup>8</sup> These qualifications are posted on the APTA website at [http://www.apta.org/uploadedFiles/APTAorg/About Us/Policies/BOD/Membership/MembershipQualifications.pdf](http://www.apta.org/uploadedFiles/APTAorg/About%20Us/Policies/BOD/Membership/MembershipQualifications.pdf).

The FECA in general prohibits a corporation or its SSF from soliciting contributions to the SSF from "any person other than [the corporation's] stockholders and their families and its executive or administrative personnel and their families." 2 U.S.C. § 441b(b)(4)(A)(i). The APTA does not have stockholders, and the Member-Employees would not be among the Association's executive or administrative personnel. However, the prohibition does not "prevent a membership organization... or corporation without capital stock, or a separate segregated fund established by a membership organization... or corporation without capital stock, from soliciting contributions to such a fund from members of such organization... or corporation without capital stock." (Emphasis added.) 2 U.S.C. § 441b(b)(4)(C). The APTA is a membership organization, and it also is a corporation without capital stock. Therefore, the emphasized terms mean that the prohibition in 2 U.S.C. § 441b(b)(4)(A)(i) does not apply to the APTA's solicitation of contributions to the PT-PAC from Member-Employees, all of whom would be APTA members.<sup>9</sup>

**3. Participation in the proposed system would not violate the prohibitions in 2 U.S.C. § 441b(a) against making contributions or knowingly accepting prohibited contributions**

The FECA in general prohibits corporations, such as the Employers, from making a contribution or expenditure in connection with various federal elections, and it prohibits a political committee such as the PT-PAC from knowingly accepting a prohibited contribution. 2 U.S.C. § 441b(a). However, neither prohibition applies to the proposed payroll deduction system because it does not involve the making of any contribution to the PT-PAC by an Employer.

The Employers that choose to participate in the payroll deduction system described above would not be violating the prohibition in 2 U.S.C. § 441b(a) against a corporation's making a contribution or expenditure. Such Employers would not be making unlawful contributions or expenditures because the APTA would be bearing the Employer's costs associated with implementing the payroll deduction system, either by way of reimbursement or payment in advance.

The foregoing analysis is entirely consistent with the FEC's treatment of a corporation that makes a payroll deduction arrangement available to a labor

<sup>9</sup> Such solicitation also would not constitute a violation of the general prohibition against corporate contributions/expenditures in 2 U.S.C. § 441b(a) because the terms "contribution" and "expenditure" do not include "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, ... membership organization, ... or corporation without capital stock." (Emphasis added.) 2 U.S.C. § 441b(2)(C).

union representing some of its employees. In AO 1979-21, 10/05/1979, the Commission responded to a request from the SSF of the Communications Workers of America (CWA), which wanted New York Telephone Company to make a payroll deduction system available to CWA members and to do so without reimbursement or for less than full reimbursement of the Company's costs of establishing and administering the payroll deduction program for CWA members.<sup>10</sup> The FEC determined that the Company was not permitted to establish and administer the program without reimbursement or with less than full reimbursement of the costs. It reasoned:

The prohibition on the use of corporate and union treasury funds in connection with Federal elections contained in 2 U.S.C. 441b is a broad one and the exceptions to that prohibition are intended to be read narrowly. Section 441b(b)(2)(C) permits a corporation or a labor organization to pay for the establishment, administration and solicitation of contributions in a separate segregated fund to be utilized by the corporation or labor organization. The Commission's regulations similarly state that a corporation or labor organization is permitted to use general treasury funds for "the establishment, administration, and solicitation of contributions to its segregated fund." 11 CFR 114.5(b). Accordingly, the Commission believes that payment by a corporation of costs incident to maintaining a payroll deduction system for facilitating the making of voluntary contributions by employee-union members to a union's separate segregated fund would be prohibited by 441b.

(Emphasis in original.) The FEC cited legislative history supporting the view that the labor union would be required to reimburse the corporation, and it concluded that the union was "required to reimburse New York Telephone Company for the expenses incurred in making the described payroll deduction plan available to [the SSF]."

In AO 1981-39, 10/05/1981, a subsequent opinion involving a corporation's making a payroll deduction program available to members of a labor union, both the corporation and the union agreed that the corporation could not do so gratuitously, and the issue was whether the Act would permit a method of advance payment by the union (of an estimate made by the company of the costs to be incurred) instead of direct reimbursement of the corporation after it incurred the costs of making the program available. The Commission concluded that "the method proposed for advance payment by the union of the

<sup>10</sup> The Company operated a payroll deduction program for certain levels of its management employees to facilitate the making of voluntary contributions to the separate segregated fund established by the Company. Consequently, the Company was obligated by 2 U.S.C. § 441b(b)(6) to make that method of facilitating contributions available to a labor organization representing union members employed by the Company, at a cost "sufficient only to reimburse the corporation for the expenses incurred" in making the method available.

costs that will be incurred to administer the payroll deduction program is permissible under the Act.”

The rationale underlying both AO 1979-21 and 1981-39 was that it would amount to a contribution to the labor organization or its SSF if the corporation established and administered a payroll deduction program for union members gratuitously – without any advance payment or reimbursement by the union. The FEC followed the same line of reasoning in the rulemaking triggered by the 2003 petition of America’s Community Bankers (ACB), which sought a rule change to eliminate the provision concerning corporate members of a trade association, in the second sentence of existing 11 CFR § 114.8(e)(3), that said:

The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.

The FEC in 2005 amended its regulations by deleting this sentence and adding a new 11 CFR § 114.8(e)(4) that allows a corporate member of a trade association to implement a payroll deduction system to collect and forward to the association’s SSF contributions from its employee stockholders and executive and administrative personnel.<sup>11</sup>

Of course, in the ACB rulemaking the Commission followed 2 U.S.C. § 441b(b)(6) in requiring the corporate employer to make such a system available to a labor organization representing employees of the corporation. For the reasons discussed above in connection with AO 1979-21 and AO 1981-39, the new rule required the labor union to bear the cost of the expenses incurred in making available the services incident to offering the payroll deduction system to union members. In this connection the FEC explained:

A labor organization or its SSF that receives incidental services from a corporate employer of members of the labor organization, by contrast, is required to reimburse the corporation for the cost of providing those services. See AOs 1981-39 and 1979-21. The Commission has previously concluded that a prohibited corporate contribution would result from a failure by a labor organization to reimburse a corporation for actual expenses incurred by the corporation in providing a payroll deduction or check-off system for contributions to the labor organization’s SSF. Id.

(Emphasis added.) 70 FR 41943, 07/21/2005.

The APTA’s proposed payroll deduction system does not involve any prohibited contribution from a corporate Employer to the APTA or the PT-

<sup>11</sup> See 70 FR 41939-41944, 07/21/2005.

PAC. On the contrary, the APTA would bear the expenses incurred by the Employers in providing the payroll deduction system either by way of reimbursement of the kind approved in AO 1979-21 or advance reimbursement of the kind approved in AO 1981-39.

**4. The APTA's proposed payroll deduction system is authorized under 11 CFR § 114.7**

The APTA's proposed payroll deduction system is authorized under 11 CFR § 114.7. That section begins by saying that "membership organizations" and "corporations without capital stock" (or SSFs established by such persons) **"may solicit contributions to the fund from members . . . of the organization . . . or corporation without capital stock."** 11 CFR § 114.7(a). The APTA is both a membership organization and a corporation without capital stock, and this subsection authorizes it to solicit contributions from Member-Employees.

The regulation goes on to provide that certain "trade associations" are subject to 11 CFR § 114.8 when soliciting stockholders or executive or administrative personnel of "member corporations," but that a "trade association" that is a membership organization **"may solicit its noncorporate members under the provisions of this section."** (Emphasis added.) 11 CFR § 114.7(c). The APTA is a trade association as defined in 11 CFR § 114.8(a), since it is a "membership organization" that has the characteristics set forth in the definition. First, the APTA is an organization of "persons engaging in a similar or related line of commerce," that is, the practice of physical therapy. Second, the APTA is organized to promote and improve business conditions in the practice of physical therapy. The Association's Bylaws declare that its functions include promoting access to and the availability of physical therapy services, promoting and advancing physical therapy practice, promoting public recognition of the physical therapy profession, and promoting and protecting the professional welfare of its members. See APTA Bylaws, Article III clauses (A), (D), (I), and (K). Third, the APTA is not organized to engage in a regular business of a kind ordinarily carried on for profit. On the contrary, the APTA is a natiçent membership organization representing healthcare professionals – an enterprise on which for-profit organizations never embark.<sup>12</sup> See AO 2005-14, 10/20/2005, finding that the Association of Kentucky Fried Chicken Franchisees, Inc. was not organized to engage in a regular business of a kind ordinarily carried on for profit. Fourth, no part of the APTA's net earnings inure to the benefit of any of its members. The

<sup>12</sup> The APTA's case is clearly distinguishable from that of the Virginia Poultry Growers Cooperative, Inc. (VPGC), which the Commission recently determined was not a trade association. See AO 2011-16, 12/16/2011. The purpose of the VPGC, an agricultural cooperative, was "to grow and process turkeys" and to engage in other activity permitted by the statute governing such cooperatives. Growing and processing turkeys is a business of a kind that is ordinarily carried on for profit.

APTA does not propose to solicit the stockholders or personnel of member corporations – indeed, it has no member corporations – so it may solicit its members as permitted by 11 CFR § 114.7.

Section 114.7 of 11 CFR clearly authorizes the APTA to implement a payroll deduction system of the kind described above. The regulation says:

A trade association which is a membership organization may solicit its noncorporate members<sup>13</sup> under the provisions of this section.

11 CFR § 114.7(c).<sup>14</sup> Elsewhere that regulation says explicitly:

**(f) There is no limitation under this section on the method of solicitation or the method of facilitating the making of voluntary contributions which may be used.**

(Emphasis added.) 11 CFR § 114.7(f). The term “method of facilitating the making of contributions” is defined to mean the manner in which contributions are received or collected, including “**payroll deduction or checkoff systems.**” 11 CFR § 114.1(f). Thus, **the Part 114 regulations provide explicitly that the APTA’s proposed payroll deduction system is permissible.**<sup>15</sup>

<sup>13</sup> In addition, 11 CFR § 114.7(a) provides that “membership organizations ... or corporations without capital stock, or separate segregated funds established by such persons **may solicit contributions to the fund from members.**” (Emphasis added.) The general rule set forth in 11 CFR § 114.5(g)(1) is that a corporation or its SSF may not solicit contributions from “any person other than its stockholders and their families and its executive or administrative personnel and their families.” However, this provision begins, “Except as specifically provided in §§ 114.6, 114.7, and 114.8,” so § 114.7’s grant of permission for a corporate membership organization to solicit its members trumps the general rule of § 114.5(g)(1).

<sup>14</sup> The regulation says that a trade association whose membership includes any corporations is subject to 11 CFR § 114.8 when soliciting any stockholders or executive or administrative personnel of member corporations. 11 CFR § 114.7(c). This provision is inapplicable to the APTA because (i) none of its members is a corporation and (ii) it is interested in soliciting its individual members in their capacity as APTA members, not in their capacity as stockholders or executive or administrative personnel of participating Employers.

<sup>15</sup> The fact that 11 CFR § 114.7 has no clause analogous to § 114.8(e)(4) does not undermine this conclusion in any way. Prior to the ACB rulemaking, the regulation devoted to trade associations said:

**(3) There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use. The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.**

(Emphasis added.) The rulemaking petition noted the clash between the permissive first sentence and the restrictive second sentence and urged the Commission to permit utilization of payroll deduction or checkoff systems by striking the word “not” from the second sentence.

The FEC regulations prohibit a corporation from using a payroll deduction system to facilitate the making of contributions by **employees under 11 CFR § 114.6**. See 11 CFR § 114.6(e)(1). However, this prohibition is inapplicable to the APTA's proposal because the APTA plan involves contributions from APTA members, not APTA employees, and the APTA's proposal relies on 11 CFR § 114.7, not § 114.6.

**5. An Employer's participation in the payroll deduction system would not violate the equal access provision in 2 U.S.C. § 441b(b)(6)**

An Employer that chose to participate in the APTA's payroll deduction system would not be violating 2 U.S.C. § 441b(b)(6). Such an Employer would be subject to the Act's provision designed to ensure that labor organizations enjoy the same access to their constituents as do corporations. The statute provides:

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

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Instead, the FEC deleted the second sentence entirely and added a new paragraph, which provides:

(4) A corporation may provide incidental services to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including a payroll deduction or checkoff system, upon written request of the trade association. Any corporation that provides such incidental services, and the corporation's subsidiaries, branches, divisions, and affiliates, shall make those incidental services available to a labor organization representing any members working for the corporation or the corporation's subsidiaries, branches, divisions, or affiliates, upon written request of the labor organization and at a cost sufficient only to reimburse the corporation or the corporation's subsidiaries, branches, divisions, and affiliates, for the expenses incurred thereby.

11 CFR § 114.8(e)(4). In effect, the Commission removed the prior ban on the use of payroll deductions systems and replaced it with an essentially permissive paragraph that nevertheless imposed certain restrictions grounded in the text or policy of the Act. The APTA, unlike the petitioner in the ACB rulemaking proceeding, is interested in relying not on 11 CFR § 114.8 but on § 114.7 – a section that never has contained a prohibition analogous to the former second sentence of § 114.8(e)(3). Since 11 CFR § 114.7 never contained a specific prohibition against the use of payroll deduction systems, the Commission never has had occasion to remove such a prohibition and to replace it with a provision analogous to 11 CFR § 114.8(e)(4).

2 U.S.C. §441b(b)(6). An Employer that chooses to participate in a payroll deduction arrangement of the kind described above undoubtedly would be "utiliz[ing] a method of ... facilitating the making of voluntary contributions" by Member-Employees to the PT-PAC. Therefore, the Employer would be required to make this method available to a labor union representing its employees, upon the union's request, and to do so at a cost sufficient only to reimburse the Employer for the expenses it incurred. Under the APTA's proposal, an Employer that receives any such request from a labor organization would be required to comply, at a cost to the labor organization sufficient only to reimburse the Employer for the expenses incurred in complying with the request. Therefore, an Employer's participation in the APTA's proposed payroll deduction system would not violate 2 U.S.C. § 441b(b)(6).

**6. An Employer's participation in the payroll deduction system would not violate 11 CFR § 114.2(f)(1)**

An Employer's participation in the payroll deduction plan described above would not constitute a violation of the provision in 11 CFR § 114.2(f)(1) relating to "facilitating the making" of contributions. The regulation provides:

**(f) Facilitating the making of contributions.**

**(1) Corporations and labor organizations (including officers, directors or other representatives acting as agents of corporations and labor organizations) are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations and labor organizations. Facilitation means using corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election, such as activities which go beyond the limited exemptions set forth in 11 CFR part 100, subparts B and C, part 100, subparts D and E, 114.9(a) through (c) and 114.13. A corporation does not facilitate the making of a contribution to a candidate or political committee if it provides goods or services in the ordinary course of its business as a commercial vendor in accordance with 11 CFR part 116 at the usual and normal charge.**

(Emphasis added.) 11 CFR § 114.2(f)(1). Although the clause might cover an Employer's participation if the emphasized terms were interpreted literally and expansively, a literal and expansive interpretation of the terms is impossible to square with the Act, and it would not be consistent with the Commission's approach to 11 CFR § 114.2(f)(1).

The regulation, if given a merely literal interpretation, would be in conflict with the Act. The text of 11 CFR § 114.2(f) clearly would apply if a

corporation utilized its inter-office mail system to collect and forward contribution checks from its executive and administrative personnel to its SSF and then – upon a written request from a labor organization representing employees – made this method of facilitating contributions available to the labor organization to facilitate contributions from union members to the union's SSF. The corporation's accommodating the labor union clearly would amount to "facilitating the making of contributions" to a political committee, and that committee would not be the corporation's own SSF. However, the corporation's accommodation would be mandated by 2 U.S.C. § 441b(b)(6), which explicitly requires a corporation that "utilizes a method of ... facilitating the making of voluntary contributions" to make the method available to a labor organization representing any members working for the corporation. Nothing in 11 CFR § 114.2(f) eliminates the conflict between the Act's requirement and the regulation's prohibition. In such a case, of course, the Act has to prevail over the letter of the regulation, since the FECA does not authorize the Commission to adopt regulations that conflict with statutory mandates.<sup>16</sup> To give 11 CFR § 114.2(f)(i) a literal interpretation would lead to an absurd result.

The Commission in fact gives the regulation an appropriately nuanced interpretation, as illustrated in AO 2003-22, 08/28/2003, an opinion that strongly supports the conclusion that an Employer would not violate 11 CFR § 114.2(f)(1) by participating in a payroll deduction system as described above. The opinion involved the American Bankers Association (ABA), an incorporated trade association having corporations as its members. The ABA proposed having executives of the member corporations manually collect and forward to the ABA's separate segregated fund contributions from executive and administrative personnel of the member corporations. The Commission opined that such activity by the executives was permissible. It noted that the member corporations were subject to the general prohibition against corporate contributions, but pointed out that the Act explicitly allows a trade association or its SSF to solicit contributions from the executive and administrative personnel of the member corporations, citing 2 U.S.C. § 441b(b)(4)(D). The Commission then grappled with the applicability of 11 CFR § 114.2(f)(1) to the activity of the executives of the member corporations. It began with the proposition that a corporation's collecting and forwarding of contribution checks to an SSF other than its own SSF "generally is both a 'method of facilitating the making of contributions' under 11 CFR 114.1(f) and is 'facilitation' subject to the prohibition in 11 CFR 114.2(f)(1)." (Emphasis added.) Despite the fact that the proposed corporate activity clearly violated

<sup>16</sup> The Act says the FEC has the power "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of this Act." 2 U.S.C. § 437d(a)(8). This grant of rulemaking authority does not extend to rules that purport to vitiate or override statutory provisions. If 11 CFR § 114.2(f)(1) must be given a literal and expansive interpretation, then it is a regulation beyond the Commission's authority. However, as explained in the text, the Commission has not given the text such a sweeping definition.

the letter of 11 CFR § 114.2(f)(1), the FEC concluded that it was permissible, reasoning as follows:

**11 CFR 114.8, however, recognizes that certain activity in regards to a trade association, which would be impermissible facilitation under section 114.2(f), is permissible under section 114.8. In particular, 11 CFR 114.8(e)(3) provides that "[t]here is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use" and then states only one condition: that "[t]he member corporation may not use a payroll deduction or checkoff system for executive and administrative personnel contributing to the separate segregated fund of the trade association." 11 CFR 114.8(e)(3) thus appears to contemplate that executives of member corporations may collect and forward contribution checks for a trade association's SSF.**

Similarly, 11 CFR 114.8(d)(1) provides that a member corporation "must knowingly and specifically approve any solicitation for a trade association, whether the solicitation is done by the trade association, its separate segregated fund, or the corporation or any of its personnel, for contributions to the trade association's [SSF]" (emphasis added). This provision also contemplates some limited facilitation by executives of member corporations.

Thus, the Commission concludes that **the activity you ask about, in relation to a trade association, is excluded from the prohibition in 11 CFR 114.2(f)(1).**

(Emphasis added.) AO 2003-22, p. 3. The upshot is that the FEC approved the proposed activity because it was permitted by 11 CFR § 114.8, even though neither § 114.2(f) nor § 114.8 contained any explicit exemption or "exclusion" from the prohibitory language in 11 CFR § 114.2(f)(1). In effect, the Commission concluded that the clear prohibition is not applicable to activity if some other statutory or regulatory provision condones it.

The clear implication of AO 2003-22 is that an Employer may participate in a payroll deduction system of the kind described above. In AO 2003-22, the ABA was allowed by statute (2 U.S.C. § 441b(b)(4)(D)) to solicit individuals who were executive or administrative personnel of member corporations. Similarly, the APTA is allowed by statute (2 U.S.C. § 441b(b)(4)(C)) to solicit individuals who are members of the APTA. In AO 2003-22, the ABA's proposal was structured to comply with a regulation applicable to trade associations, 11 CFR § 114.8. Similarly, the APTA's proposal is structured to comply with a regulation applicable to membership organizations, 11 CFR § 114.7. In AO 2003-22, the FEC ruled in the ABA's favor because the

regulation applicable to solicitation by trade associations provided that “[t]here is no limitation on . . . the method of facilitating the making of voluntary contributions which a trade association may use.” 11 CFR § 114.8(e)(3). Similarly, the regulation applicable to solicitation by a membership organization such as the APTA provides that “[t]here is no limitation under this section on . . . the method of facilitating the making of voluntary contributions which may be used.” 11 CFR § 114.7(f). Indeed, this language gives stronger support to the APTA than the corresponding language gave to the ABA because 11 CFR § 114.8(e)(3) says there is no limitation on the method that “a trade association may use” (emphasis added), whereas 11 CFR § 114.7(f) says more broadly there is no limitation on “the method . . . which may be used.” In AO 2003-22 the Commission quite reasonably relied on 11 CFR § 114.8(e)(3) to conclude that activity by member corporations – as distinct from the trade association itself – was permissible. In the APTA’s case the permissive language in 11 CFR § 114.7(f) is not limited to what “the trade association” may do. In sum, the FEC’s opinion in the ABA case compels the conclusion that an Employer’s participating in the payroll deduction system proposed by the APTA would not violate 11 CFR § 114.2(f)(1).<sup>17</sup>

<sup>17</sup> The difference between the permissive provision in the ABA case and that in the APTA’s case does not undermine this conclusion. At the time of the ABA opinion 11 CFR § 114.8(e)(3) differed significantly from current § 114.7(f), in that it contained a second sentence that imposed a limitation on the otherwise permissive language of the first sentence. The second sentence provided:

The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.

Former 11 CFR § 114.8(e)(3). Fortunately for the APTA, 11 CFR § 114.7(f) does not contain any corresponding restriction on the broad grant of freedom to use methods of facilitating contributions. As explained above, in the ACB rulemaking proceeding the FEC (a) removed from 11 CFR § 114.8(e) the prohibition against using a payroll deduction or checkoff system, (b) replaced it with a paragraph (11 CFR § 114.8(e)(4)) explicitly authorizing use of such a system, and (c) added a provision, 11 CFR § 114.2(f)(5), clarifying that the prohibition against facilitating the making of contributions does not apply to a corporation’s implementing a payroll deduction or checkoff system authorized by 11 CFR § 114.8(e)(4). The APTA cannot point to any clause in 11 CFR § 114.2(f) that explicitly excludes the activity of participating employers from the scope of the subsection’s prohibition. The Commission obviously had no occasion to add such a clarification to 11 CFR § 114.2(f), because § 114.7(f) never had a limitation corresponding to that in the second sentence of former § 114.8(e)(3). Moreover, AO 2003-22 demonstrates that a clarifying clause in 11 CFR § 114.2(f) is not essential to the APTA’s argument. The Commission in AO 2003-22 ruled in the ABA’s favor even though 11 CFR § 114.2(f) had no provision saying that executive personnel of a trade association’s member corporation were not “facilitating the making” of contributions to the association’s SSF when they were engaged in – well, facilitating the making of contributions to the association’s SSF in the manner proposed by the ABA. In other words, an explicit “exemption” or “exclusion” in 11 CFR § 114.2(f) is not necessary to conclude that an Employer’s participating in the APTA’s proposed payroll deduction system would not violate 11 CFR § 114.2(f)(1), properly construed.

The opinion issued to the ABA demonstrates that the FEC does not apply 11 CFR § 114.2(f)(1) to activity authorized by the Act and other regulations. The prohibition in 11 CFR § 114.2(f)(1) does not extend to the APTA's proposal because: (i) the FECA permits a membership organization to solicit contributions from its members, (ii) the regulations state explicitly and without qualification that "[t]here is no limitation [under 11 CFR § 114.7] on the ... method of facilitating the making of voluntary contributions which may be used," and (iii) the regulations specify that "method of facilitating the making of contributions" includes, without limitation, payroll deduction systems. See 2 U.S.C. § 441b(b)(4)(C), 11 CFR § 114.7(f), § 114.1(f).

The Commission's cautious approach to 11 CFR § 114.2(f)(1) is well justified. The prohibitory language in 11 CFR § 114.2(f)(1) is not based on any statutory prohibition against a corporation's "facilitating the making" of contributions,<sup>18</sup> nor does it flow from the FEC's exercise of any statutory grant of discretionary authority to impose such a prohibition by adopting a regulation. The background to 11 CFR § 114.2(f)(1) indicates that the phrase "facilitating the making of contributions" is not used as a rule to guide decision-making by the FEC so much as a label the FEC attaches to corporate activity that it has determined to be tantamount to the making of a prohibited contribution. In fact, the FEC began using the phrase before<sup>19</sup> it adopted 11 CFR § 114.2(f)(1). When it adopted the regulation in 1995 it cited<sup>20</sup> one Matter Under Review, MUR 3540, in which Prudential Securities, Inc. (Prudential) paid a \$550,000 fine for violating 2 U.S.C. § 441b(a) by its fundraising activities on behalf of various candidates. The description of the

<sup>18</sup> The Act uses the term "facilitate" or a cognate term in only two provisions, 2 U.S.C. § 441b(b)(5) and § 441b(b)(6). The first says that any method of facilitating the making of voluntary contributions to an SSF that is permitted to corporations, with respect to their stockholders and executive/administrative personnel, "shall also be permitted" to labor organizations with respect to their members. The second says that any corporation that utilizes a "method ... of facilitating the making of voluntary contributions" shall make the method available to a labor organization representing members who work for the corporation. Far from prohibiting a corporation from facilitating the making of contributions the two statutory provisions clearly treat such facilitation as permissible, at least in some circumstances.

<sup>19</sup> In the 2003 opinion issued to the ABA the FEC noted:

2 Although 11 CFR 114.2(f)(1) was adopted in 1995, facilitation has been prohibited at least since 1977. See generally Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977).

AO 2003-22, fn. 2. The reference to 1995 is to the final rule adopted that year. See 60 FR 64260-64279, 12/14/1995, especially the discussion under the heading "3. Facilitating the Making of Contributions" at 64264-64265. (The citation to the FEC's Explanation and Justification evidently intended to refer to House Document No. 95-44, 95th Cong., 1st Sess., dated 01/12/1977, in particular the discussion at pages 104-105 of the House Document, which was cited in the preamble to the final rule in 1995, 60 FR 64264. See [http://www.fec.gov/law/cfr/ej\\_compilation/1977/95-44.pdf](http://www.fec.gov/law/cfr/ej_compilation/1977/95-44.pdf).)

<sup>20</sup> See 60 FR 64264, 12/14/1995.

Matter in the FEC Record reports that the FEC concluded that Prudential's "facilitation" of contributions was unlawful because it violated the statutory prohibition in 2 U.S.C. § 441b(a) against a corporation's making a contribution, not some separate prohibition against a corporation's "facilitating the making" of a contribution.<sup>21</sup> In 1995 the FEC also cited three opinions – AO 1982-2, AO 1986-4, and AO 1987-29 – of which two were favorable to the requester and one was unfavorable. The trio of opinions stands for the proposition that when a corporation sends its executives a communication urging them to contribute to a particular candidate (a) it is not "facilitating" the making of a contribution if the body of the communication imparts mundane but crucial information (the name and address of the candidate's committee), but (b) it is "facilitating" the making of a contribution if it includes an envelope (worth well under a dollar) with that information imprinted upon it.<sup>22</sup> A moment's reflection surely will reveal that option (a) "facilitates" the making of a contribution very nearly as much as option (b), so the FEC's line-drawing cannot depend on the ordinary dictionary meaning of "facilitate." An executive's being relieved of the need to find, copy, paste, and save the committee's address is a "thing of value"<sup>23</sup> even in an era when executives have access to the Internet, and that benefit in fact well might be a thing of greater value than the addressed envelope, depending on the executive's facility with Google and the quality of the envelope.<sup>24</sup> The APTA does not object to the Commission's drawing a distinction between options (a)

<sup>21</sup> See FEC Record, June 1995, Vol. 21, No. 6, "Corporate Facilitation v. Individual Volunteer Activity at the Work Place," pp. 1-3, which said in part:

But the Commission concluded that the involvement of a number of PSI officials and employees working in concert on company time and using company facilities to collect contributions for federal candidates constituted corporate facilitation; such activities violate the Act's ban on corporate contributions and expenditures. 2 U.S.C. § 441b(a)

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The circumstances of the PSI case led the Commission to conclude that PSI was facilitating contributions to federal candidates, in violation of 2 U.S.C. § 441b(a).

(Emphasis added.) See also FEC Record, January, 1995, Vol. 21, No. 1, p. 2.

<sup>22</sup> See (a) AO 1986-4, fn. 5, a communication that provides "envelopes addressed to the candidate or committee" does facilitate the making of a contribution, and (b) AO 1987-29, p. 3, a communication that "state[s] the names and addresses of the endorsed candidates' committees" does not facilitate the making of a contribution.

<sup>23</sup> See 2 U.S.C. § 431(8)(A)(i), defining "contribution" to include the gift or advance of "anything of value" made for the purpose of influencing a Federal election.

<sup>24</sup> In an informal experiment, this office found that it took on average 59 seconds, using Google, to find, copy, paste and save the mailing address for each of the four leading candidates who currently are vying for the Republican Presidential nomination: Mitt Romney (46 seconds), Newt Gingrich (62 seconds), Ron Paul (51 seconds), and Rick Santorum (77 seconds). If an executive were compensated at a rate equivalent to, say, \$100 per hour, the average time to obtain an address would cost about \$1.63. How if any business envelopes cost nearly as much.

and (b). However, the fact that some facilitative activity amounts to "facilitating" within 11 CFR § 114.2(f)(1) while very similar facilitative activity does not is a circumstance that counsels against giving a broad interpretation to the text of the regulation.

### E. Conclusion

The APTA respectfully submits that the Commission should determine that the proposed payroll deduction system is permissible. For the reasons set forth above, the proposed system does not violate any applicable provisions of the Act or regulations. In particular, because the APTA will bear the Employers' costs of implementing the system **it will not involve any contribution on the part of Employers.**

Moreover, the proposed system would serve to further important policy goals of the Act. In Buckley v. Valeo, 424 U.S. 1, 36 (1976), the Supreme Court alluded to Congress' "interest in encouraging citizen participation in political campaigns while continuing to guard against the corrupting potential of large financial contributions to candidates." Allowing the APTA to implement the proposed payroll deduction system would bring many advantages to APTA members. Most members already are familiar with payroll deductions, which they use to pay for a variety of goods and services, such as health and life insurance premiums, flexible spending accounts, retirement savings plans, charitable contributions, and gym memberships. Payroll deduction systems are widely available. They are reliable, and they impose minimal or no cost on the corporations that offer them. In addition, the APTA's proposal would give members the option of signing up for the payroll deduction in a single transaction rather than having to write multiple checks to the PT-PAC, and this approach also would enable them to spread out their contributions over time. By reducing members' transaction costs and by enabling them to engage in prudent budgeting, the APTA's proposal would serve the goal of encouraging citizen participation in the political process.

The Commission's rulemaking in the ACB proceeding clearly supports a favorable opinion in response to the APTA's request. Our request involves payroll deductions – a means to facilitate political giving that the FEC considered in depth in the ACB rulemaking. Nothing in the letter or spirit of the Act would justify treating the APTA's proposed use of a payroll deduction system less favorably than the use of such a system by a trade association within 11 CFR § 114.8(e)(4).<sup>25</sup>

<sup>25</sup> The Commission surely need not undertake notice-and-comment rulemaking in order to reach a determination favorable to the APTA's proposal. The Act gives the FEC the flexibility to render advisory opinions or to adopt rules. 2 U.C.C. § 437d(a)(7) and (8). Rulemaking was necessary with respect to the issues resolved in the ACB proceeding because the FEC had adopted a rule explicitly prohibiting use of a payroll deduction system, and it hardly could have issued an advisory opinion favorable to a trade association in the face of the explicit prohibition in former 11 CFR § 114.8(e)(3). In the APTA's case, by contrast, no such

The APTA's situation is substantially the same as that of the trade associations that take advantage of 11 CFR § 114.8(e)(4). The differences between the APTA's situation and those addressed by the ACB rulemaking do not militate against our request.

A principal difference is that the corporate Employers are not members of the APTA, whereas 11 CFR § 114.8(e)(4) involves corporations that are members of a trade association. However, the Employers are owned, at least in part, by individual APTA members, and they will be allowed to participate in the payroll deduction system only if one or more Member-Owners approve. As a practical matter, therefore, the link between the APTA and an Employer is substantially as strong as the link between a trade association and a corporate member within 11 CFR § 114.8(e)(4).<sup>26</sup>

The other principal difference is that the APTA's proposal is open to members of the Association, whereas the individuals using a payroll deduction system under 11 CFR § 114.8(e)(4) are not members of the trade association but merely employee stockholders or executive/administrative personnel of the corporate member. This difference is actually favorable to the APTA's argument. The prohibition that the FEC eliminated in the ACB proceeding dated back to 1976. See 41 FR 35932, 35961, 08/25/1976 ("The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association."). It is reasonable to assume that this regulatory prohibition, like the limitations on solicitations imposed by 2 U.S.C. § 441b(b)(4)(D), was designed to shield individuals whose connection to the soliciting trade association was comparatively remote. The individuals solicited under 11 CFR § 114.8(e)(4) simply happen to be employees of a corporation that belongs to a trade association and wishes to assist the association's SSF. In the APTA's case, by contrast, the individuals solicited are themselves members of the Association, which they have voluntarily chosen to join at the cost of several hundred dollars annually. The Act gives a membership organization such as the APTA much broader permission to solicit its members than it gives to a trade association interested in soliciting individuals connected with

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explicit prohibition ever has been in the relevant regulation, 11 CFR § 114.7(f). (The APTA notes that in the ACB proceeding it submitted a comment favoring an amendment to 11 CFR § 114.7, and that the Commission quite correctly determined "that this proposal falls outside of the scope of this rulemaking." 70 FR 41939, 41943, 07/21/2005.)

<sup>26</sup> In addition, the APTA has voluntarily imposed on participating Employers two requirements that are similar to the requirements that 2 U.S.C. § 441b(b)(4)(D) imposes on corporate members of a trade association. That is, in the APTA's proposal an Employer will be allowed to participate only if it specifically approves the solicitation of its employees who are Member-Employers by the APTA or the PT-PAC as allowed by 2 U.S.C. § 441b(b)(4)(C) and FEC regulations. In addition, an Employer will be allowed to participate only if it agrees that it will not approve the solicitation of its employees by another association (or its separate segregated fund) in any calendar year.

its corporate members. Compare the provisions applicable to members of a membership organization in 2 U.S.C. § 441b(b)(4)(C) and 11 CFR § 114.7(e-f) with the more restrictive provisions applicable to employees of a corporate member of a trade association in 2 U.S.C. § 441b(b)(4)(D) and 11 CFR § 114.8(c-e). In sum, a decision to treat the APTA less favorably than a trade association within 11 CFR § 114.8(e)(4) would be a capricious decision, one not based on anything in the text or policy of the Act.

Sincerely,



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**Attachments**

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|---------------|---|
| Attachment #1 | APTA Bylaws   |
| Attachment #2 | Membership Qualifications Prescribed by the Board of Directors (BOD Y10-09-08-18) |

[PT-PAC\Advisory-Opinion-Request-2012-02-01-APTA\_fec]

# **Attachment #1**

## BYLAWS OF THE AMERICAN PHYSICAL THERAPY ASSOCIATION

*Adopted June 1970; amended June of each year 1971-1982, June 1985 and 1986, June of each year 1988-1994, June 1996, and May 1997; adopted revision June 1998; amended June of each year 1999-2005; amended May 2007; June 2011.*

### ARTICLE I. NAME

The name of this organization is the American Physical Therapy Association, hereinafter referred to as the Association.

### ARTICLE II. OBJECT

The object of this Association is to represent and promote the profession of physical therapy and to meet the needs and interests of its members in order to address the physical therapy needs of members of society and to develop and advance the art and science of physical therapy, including practice, education and research.

### ARTICLE III. FUNCTIONS

The functions of the Association shall be to:

- A. Address the needs of members of society and the demand for physical therapy services through the promotion of access to and availability of these services.
- B. Maintain and promote ethical principles and standards of conduct for its members.
- C. Maintain and promote standards for physical therapy practice, education, and research.
- D. Promote and advance physical therapy practice, education, and research.
- E. Further the profession of physical therapy in the enhancement of the health and well-being of members of society.
- F. Promote the profession of physical therapy in prevention, evaluation, diagnosis, and intervention related to impairments in body functions and structures, activity limitations, participation restrictions, and environmental barriers.
- G. Represent the profession of physical therapy.
- H. Serve as the principal source of information on physical therapy.
- I. Promote public recognition of the profession of physical therapy.
- J. Influence public policy such as it will further the object of the Association.
- K. Promote and protect the professional welfare of Association members.
- L. Promote the professional development of Association members.
- M. Promote affirmative action.
- N. Provide such services as will further the object of the Association.

### ARTICLE IV. MEMBERSHIP

#### Section 1: Categories and Qualifications of Members

All members in the various categories shall possess the following qualifications and, in addition, shall possess the qualifications prescribed and published by the Board of Directors:

- A. Physical Therapist
  - (1) Be a graduate physical therapist.
  - (2) Physical Therapist – Post-professional Student: Be a Physical Therapist member who is enrolled in a post-professional masters or doctoral program, or APTA credentialed post-professional residency or fellowship program, and meets the *Membership Qualifications Prescribed by the Board of Directors*.
- B. Retired Physical Therapist
  - (1) Be a graduate physical therapist.
  - (2) Meet qualifications regarding age, disability, and practice status, as published in the *Membership Qualifications Prescribed by the Board of Directors*.
- C. Life Physical Therapist
  - (1) Be a graduate physical therapist.
  - (2) Meet qualifications regarding age, disability, and practice status, as published in the *Membership Qualifications Prescribed by the Board of Directors*.
- D. Student Physical Therapist  
Be enrolled in a physical therapist curriculum.
- E. Physical Therapist Assistant  
Be a graduate physical therapist assistant.

- F. Retired Physical Therapist Assistant
  - (1) Be a graduate physical therapist assistant.
  - (2) Meet qualifications regarding age, disability, and work status, as published in the *Membership Qualifications Prescribed by the Board of Directors*.
- G. Life Physical Therapist Assistant
  - (1) Be a graduate physical therapist assistant.
  - (2) Meet qualifications regarding age, disability, and work status, as published in the *Membership Qualifications Prescribed by the Board of Directors*.
- H. Student Physical Therapist Assistant
  - Be enrolled in a physical therapist assistant curriculum.
- I. Honorary
  - (1) Be an individual, other than a member of any other membership category of the Association, who has rendered outstanding service to the Association or made notable contribution to the health of humanity.
  - (2) Have been proposed by a chapter, nominated by the Board of Directors by a two-thirds vote, and elected by the House of Delegates by a two-thirds vote.
- J. Catherine Worthingham Fallow of the American Physical Therapy Association
  - (1) A Physical Therapist or Life Physical Therapist member of the Association whose contributions to the profession through leadership, influence, and achievements demonstrate frequent and sustained efforts to advance the profession for a period of not less than 15 years preceding the nomination for election.
  - (2) Has been nominated by a member or a component and elected by a ballot vote of at least two-thirds of the entire membership of the Board of Directors.
  - (3) Continues in Physical Therapist membership or in another membership category after election.

**Section 2: Rights and Privileges of Members**

- A. All members shall have the following rights:
  - (1) To attend all meetings (except section and assembly business meetings).
  - (2) To speak and debate.
- B. Only members in certain categories have the following privileges (subject to restriction as otherwise provided in Association bylaws):
  - (1) To make and second motions.
    - a. At House of Delegates meetings: All registered delegates.
    - b. At chapter or section meetings by members of the chapter or section: Physical Therapist, Retired Physical Therapist, Life Physical Therapist, Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant, except when chapter or section bylaws provide for a representative body.
    - c. At assembly meetings: Members of the assembly.
    - d. At committee meetings: Any member serving on the committee.
  - (2) To vote.
    - a. At House of Delegates meetings: Chapter delegates, 1 vote.
    - b. At chapter or section meetings by members of the chapter or section: Physical Therapist, Retired Physical Therapist, and Life Physical Therapist, 1 vote; Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant, one-half vote; except when chapter or section bylaws provide for a representative body.
    - c. At assembly meetings: Members of the assembly, 1 vote.
    - d. At committee meetings: Any member serving on the committee, 1 vote.
  - (3) To hold office.
    - a. For the Association: Physical Therapist.
    - b. For the chapter or section: Physical Therapist, Retired Physical Therapist, and Life Physical Therapist, subject to additional eligibility requirements in the chapter or section bylaws; when provided for in the chapter or section bylaws, Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members may hold office, with the exception of the office of president, president elect, vice president, chief delegate, or any position that may succeed to the presidency, subject to additional eligibility requirements in the chapter or section bylaws.
    - c. For the assembly: Assembly member, subject to additional eligibility requirements in the assembly bylaws.
  - (4) To serve as a delegate to the House of Delegates.
    - a. As chapter delegate: Physical Therapist.
    - b. As section delegate: Physical Therapist and Physical Therapist Assistant.

- c. As PTA Caucus delegate: Physical Therapist Assistant, subject to qualifications identified in Article VIII., Section 4., of these bylaws.
  - d. As assembly delegate: Assembly member, subject to additional eligibility requirements in the assembly bylaws.
- (5) To serve on a Nominating Committee, which shall be elected.
- a. For the Association: Physical Therapist.
  - b. For the chapter or section: Physical Therapist, Retired Physical Therapist, and Life Physical Therapist, subject to additional eligibility requirements in the chapter or section bylaws; when provided for in the chapter or section bylaws, Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members may be elected to a chapter or section nominating committee, subject to additional eligibility requirements in the chapter or section bylaws.
  - c. For the assembly: Assembly member, subject to additional eligibility requirements in the assembly bylaws.
- (6) To serve on House of Delegates Reference Committee: Physical Therapist.
- (7) To serve as chair of committees:
- a. In the Association, chapter, or section: Physical Therapist, Retired Physical Therapist, Life Physical Therapist, Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant, except as provided for elsewhere in the Association bylaws.
  - b. In the assembly: Assembly member, subject to additional eligibility requirements in the assembly bylaws.
- (8) To serve as a member of committees: Physical Therapist, Retired Physical Therapist, Life Physical Therapist, Student Physical Therapist, Physical Therapist Assistant, Retired Physical Therapist Assistant, Life Physical Therapist Assistant, and Student Physical Therapist Assistant, except as provided for elsewhere in the Association bylaws.
- (9) To petition to form a chapter: Physical Therapist, Retired Physical Therapist, Life Physical Therapist, Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant.
- (10) To petition to form a section: Physical Therapist, Retired Physical Therapist, Life Physical Therapist, Student Physical Therapist, Physical Therapist Assistant, Retired Physical Therapist Assistant, Life Physical Therapist Assistant, and Student Physical Therapist Assistant.
- (11) To receive the official journal of the Association: All members except Retired Physical Therapist, Life Physical Therapist, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members, who may subscribe at a courtesy rate.
- (12) To use the initials FAPTA after their name signifying a Catherine Worthingham Fellow of APTA: Catherine Worthingham Fellows.

### **Section 3: Admission to Membership**

Applications for admission to membership in any category, proposals for honorary membership, and nominations for Catherine Worthingham Fellow of APTA must be submitted in writing to the Board of Directors. The Board of Directors shall admit to membership in the appropriate categories those who meet the prescribed qualifications and pay required dues.

### **Section 4: Chapter Assignment**

All members, except those employed by the Association and those who reside for at least 1 year where a chapter does not exist, shall be assigned to a chapter having territorial jurisdiction of the area where the member practices, resides, or attends school or to an immediately adjacent chapter in which the member evinces the possibility of more active participation.

### **Section 5: Good Standing**

An individual member is in good standing within the meaning of these bylaws if the member:

- A. Complies with the ethical principles or standards of the Association applicable to the individual's membership category.
- B. Makes timely payments of all Association, chapter, and applicable assembly dues. A member whose dues have not been received by the due date shall be considered to be in arrears and shall have all membership privileges suspended. If the dues are not received within 30 calendar days after the due date, the membership shall be revoked.
- C. Is not under current suspension or revocation of a license or certificate of registration to practice physical therapy or to act as a physical therapist assistant in any jurisdiction.

## Section 6: Disciplinary Action

The Association shall expel from membership or otherwise discipline any member who is not in good standing. Complaints to the effect that a member has violated the ethical principles or standards of the Association shall be processed in accordance with the Association's *Disciplinary Action Procedural Document*.

## Section 7: Reinstatement

- A. On approval of the Board of Directors, any former member may be reinstated to membership in accordance with the standing rules.
- B. There shall be no reinstatement fee charged by the Association or its components, but persons seeking reinstatement shall pay the dues as provided in the standing rules.

## ARTICLE V. COMPONENTS: CHAPTERS, SECTIONS, AND ASSEMBLIES

### Section 1: Chapters

#### A. Definition

A chapter of the Association consists of a group of members of the Association in the United States or its possessions that is chartered by the Association as having territorial jurisdiction over a geographic area.

#### B. Formation

The Board of Directors may establish a chapter, as prescribed in the standing rules, by the issuance of a charter.

#### C. Charters

All charters issued by the Association shall continue in force and effect until revoked (as provided for in the Association bylaws) or until notification is received from the chapter of its dissolution.

#### D. Structure

- (1) Every chapter shall enact bylaws that, in their original form and as amended, shall not be inconsistent with the Association bylaws and shall be approved in writing by the Board of Directors.
- (2) If a chapter is to be incorporated it shall submit its proposed certificate of incorporation, and any subsequently proposed amendments to this certificate, to the Board of Directors for prior written approval.
- (3) A chapter may create districts within its territorial jurisdiction. These districts shall:
  - a. Operate under bylaws or rules of order that shall not be inconsistent with chapter or Association bylaws and that shall be approved by the chapter.
  - b. Not establish dues.
- (4) A chapter may create a representative body for the transaction of chapter business provided that the basis for establishing and apportioning the membership of the representative body shall be included in the chapter bylaws. A chapter's method of apportioning representatives of Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members of the representative body shall be proportional to one-half the number of Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members in the chapter.
- (5) A chapter may authorize the establishment of special interest groups within its territorial jurisdiction. These special interest groups shall be subject to rules and conditions set down by the chapter.
- (6) Chapter dues for any category of membership shall not exceed Association dues for that membership category without specific approval of the Board of Directors. Such approval shall be granted when the chapter has complied with criteria established and published by the Board of Directors. Failure of the Board of Directors to grant approval under such circumstances shall be subject to appeal to the House of Delegates.
- (7) Chapters shall maintain a single corresponding membership category in chapter bylaws for Physical Therapist, Retired Physical Therapist, Life Physical Therapist, Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members who are not assigned to that chapter. Dues for corresponding members shall not exceed the chapter's physical therapist dues. Corresponding members of a chapter shall have the following rights and privileges:
  - Attend chapter meetings
  - Speak and debate at chapter meetings
  - Receive all chapter publications and correspondence and have access to chapter information resources provided to chapter members.

#### E. Obligations

Each chapter shall do the following:

- (1) Further the object and the functions of the Association as set forth in the Association bylaws and in policy statements made by the House of Delegates in the area of the chapter's authority and within its territorial jurisdiction.
- (2) Perform the duties and assume the responsibilities that Association bylaws place on chapters.
- (3) Conduct its affairs in accordance with its bylaws.
- (4) Maintain complete and accurate financial records that shall be audited annually.
- (5) Submit to the Board of Directors annual reports of its activities and such other reports as may be requested by the Board of Directors.
- (6) Hold an annual meeting of the general membership or representative body and, in chapters in which no meetings are held at district level, hold at least one additional general membership meeting a year.
- (7) Be represented in the House of Delegates at least every third year.
- (8) Investigate any complaints of violations of ethical principles or standards made against any member in its jurisdiction in accordance with the Association's Disciplinary Action Procedural Document.
- (9) Limit attendance at chapter business meetings to Association members and invited guests approved by the chapter officers.

#### F. Trusteeship

The Board of Directors may, at its discretion, conduct the affairs and assume custody of the records, funds, and management of any chapter that it finds has failed to comply with its obligations. Such action shall be subject to ratification by the House of Delegates at its next session.

#### G. Dissolution

- (1) A chapter may dissolve pursuant to the provisions of its bylaws or pursuant to its articles of incorporation.
- (2) The Board of Directors may revoke the charter of any chapter if the chapter has failed to satisfy its obligations or to observe the limitations on chapters as set forth in the Association bylaws.
  - a. The chapter must be given timely notice of the charges against it and the opportunity to be heard in its own defense, and the judgment of revocation must be supported by at least two-thirds of the members of the Board of Directors.
  - b. A chapter whose charter has been revoked by the Board of Directors shall have the right to appeal to the House of Delegates at the next session of the House of Delegates following the decision of the Board of Directors. The decision of the House of Delegates in the matter shall be final. Pending the determination of the House of Delegates, the decision of the Board of Directors shall be given full force and effect.

#### H. Property and Records

If the charter of the chapter is revoked or if the chapter is dissolved or its existence otherwise terminated, all property and records of whatever nature in the possession of the chapter shall, after payment of its bona fide debts, be conveyed to the Association. The Association shall not be obligated for any debts incurred by a chapter unless the chapter has been specifically authorized in writing by the Board of Directors to act on behalf of the Association. In the case of 2 or more chapters merging, all property and records will be turned over to the continuing chapter without being returned through headquarters.

### Section 2: Sections

#### A. Purpose

Sections may be organized to provide a means by which members having a common interest in special areas of physical therapy may meet, confer, and promote the interests of the respective sections.

#### B. Formation

A section may be established as prescribed in the standing rules.

#### C. Structure

- (1) Each section shall operate under bylaws that in their original form and as amended shall not be inconsistent with Association bylaws and shall be approved in writing by the Board of Directors.
- (2) If a section is to be incorporated, it shall submit its proposed certificate of incorporation, and any subsequently proposed amendments to this certificate, to the Board of Directors for prior approval in writing.
- (3) A section may be organized regionally.
- (4) A section may authorize the establishment of special interest groups within its area of authority. These special interest groups shall be subject to limits and conditions set down by the section.
- (5) Section dues for any category of membership shall not exceed Association dues for that membership category without specific approval of the Board of Directors.

#### D. Obligations

Each section shall do the following:

- (1) Further the object and the functions of the Association as set forth in Association bylaws and in policy statements made by the House of Delegates in the area of the section's authority.
- (2) Perform the duties and assume the responsibilities that Association bylaws place on sections.
- (3) Conduct its affairs in accordance with its bylaws.
- (4) Maintain complete and accurate financial records that shall be audited annually.
- (5) Submit to the Association annual reports of its activities and such other reports as may be requested by the Board of Directors.
- (6) Hold meetings in conformity with Association policy.
- (7) Be represented in the House of Delegates at least every third year.
- (8) Limit attendance at section business meetings to section members and invited guests approved by the section officers.

**E. Trusteeship**

The Board of Directors may, at its discretion, conduct the affairs and assume custody of the records, funds, and management of any section that it finds has failed to comply with its obligations. Such action shall be subject to ratification by the House of Delegates at its next session.

**F. Dissolution**

- (1) A section may dissolve pursuant to the provisions of its bylaws.
- (2) A section may be dissolved by a two-thirds vote of the Board of Directors if the membership of the section remains fewer than 200 members during any consecutive 12-month period.
- (3) The House of Delegates may, by a two-thirds vote, dissolve a section if the section has failed to satisfy its obligations or has failed to observe the limitations on sections as set forth in these bylaws. The House of Delegates shall have the power so to act only on the recommendation of a majority of the Board of Directors that is made after the section has been given timely notice of charges against it and the opportunity to be heard in its own defense.

**G. Property and Records**

If a section is dissolved, all property and records of whatever nature in the possession of the section shall, after payment of its bona fide debts, be conveyed to the Association. The Association shall not be obligated for any debts incurred by a section unless the section has been specifically authorized in writing by the Board of Directors to act on behalf of the Association. In the case of 2 or more sections merging, all property and records shall be turned over to the continuing section without being returned through headquarters.

**Section 3: Assemblies**

**A. Purpose**

Assemblies may be organized to provide a means by which members of the same category, except Physical Therapist, Physical Therapist Assistant, and Honorary, having a common interest because of their membership category, may meet, confer, and promote the interests of the respective membership categories and assemblies. Exception: Student Physical Therapist and Student Physical Therapist Assistant categories may combine to form one assembly.

**B. Formation**

An assembly may be established in accordance with procedures prescribed by the Board of Directors, except that the decision to form shall not be effective unless made or approved by the House of Delegates.

**C. Structure**

- (1) Each assembly shall operate under bylaws that in their original form and as amended shall not be inconsistent with Association bylaws and shall be approved in writing by the Board of Directors.
- (2) An assembly shall not establish a representative body.
- (3) An assembly shall not be incorporated.
- (4) An assembly may be organized regionally.
- (5) An assembly may request that a chapter or section authorize the establishment of a chapter or section special interest group within the chapter or section. The special interest group shall be subject to rules and conditions set down by the chapter or section.
- (6) An assembly shall not charge dues.

**D. Obligations**

Each assembly shall do the following:

- (1) Further the object and the functions of the Association as set forth in Association bylaws and in policy statements made by the House of Delegates in the area of the assembly's authority.
- (2) Perform the duties and assume the responsibilities that Association bylaws place on assemblies.
- (3) Conduct its affairs in accordance with its bylaws.
- (4) Hold meetings in conformity with Association policy.

(5) Be represented in the House of Delegates at least every third year.

**E. Dissolution**

An assembly may be dissolved in accordance with procedures prescribed by the Board of Directors, except that the decision to dissolve shall not be effective unless made or approved by the House of Delegates.

**F. Property and Records**

If an assembly is dissolved, all property and records of whatever nature in the possession of the assembly shall, after payment of its bona fide debts, be conveyed to the Association. The Association shall not be obligated for any debts incurred by an assembly unless the assembly has been specifically authorized in writing by the Board of Directors to act on behalf of the Association.

**Section 4: Limitations**

Components are subject to the following limitations:

- A. The bylaws of the Association. If the component bylaws, rules, or resolutions are inconsistent with the bylaws of the Association, the part or parts of the component bylaws, rules, or resolutions that are inconsistent are void and of no effect.
- B. Policies adopted by the House of Delegates or by the Board of Directors.
- C. Membership categories and the rights and privileges for each category only as established in Association bylaws. Chapter and section bylaws shall provide for all categories of members established in Association bylaws, except they need not provide for the Honorary and the Catherine Worthingham Fellow of APTA membership categories. Assembly bylaws shall provide for only the category or categories of members appropriate to the respective assembly. Chapters and sections retain the right to provide for the privilege of Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members to hold office, with the exception of the office of president, president elect, vice president and chief delegate, or any position that may succeed to the presidency.
- D. No component shall profess or imply that it speaks for or represents the Association or members other than those currently holding membership in the component unless authorized to do so in writing by the Board of Directors.

**ARTICLE VI: PHYSICAL THERAPIST ASSISTANT CAUCUS**

**Section 1: Composition**

A Physical Therapist Assistant Caucus, hereinafter referred to as the PTA Caucus, shall be organized for such purposes as the Board of Directors may prescribe and publish, including the election of PTA Caucus delegates to the House of Delegates. The PTA Caucus shall consist of representatives who must be Physical Therapist Assistant, Life Physical Therapist Assistant, or Retired Physical Therapist Assistant members and who shall be elected or selected at the chapter level.

**Section 2: Limitations**

The PTA Caucus shall be subject to the following limitations:

- A. The bylaws of the Association.
- B. Policies adopted by the House of Delegates.
- C. Rules prescribed and published by the Board of Directors.
- D. The PTA Caucus shall not profess or imply that it speaks for or represents the Association or members other than those currently holding membership in the PTA Caucus unless authorized to do so in writing by the Board of Directors.

**ARTICLE VII. MEETINGS**

**Section 1: Annual Session**

The annual session of the Association shall consist of one or more meetings of the House of Delegates, held at a time and place specified by the Board of Directors.

**Section 2: Special Sessions**

A special session of the House of Delegates may be called between annual sessions by a two-thirds vote of the Board of Directors and shall be called in response to a written request from chapters representing a majority of the delegate votes in the previous annual session of the House of Delegates.

### Section 3: Notice of Sessions

#### A. Annual Session

The time and place of the annual session shall be announced in the official journal of the Association, and notice shall be sent to each component president or chair and to each chapter chief delegate at least six weeks before the session is scheduled to convene. This notice may be made by mail or any telecommunications method including, but not limited to, fax and e-mail transmissions which must ensure the timely receipt of the notice and may ensure verifiable receipt of the notice by the intended recipients.

#### B. Special Sessions

- (1) At least 30 days before a special session, official notice of that session shall be sent to each component president or chair, to each component delegate registered at the immediately preceding House of Delegates, and to members of the Board of Directors. This notice may be made by mail or any telecommunications method including, but not limited to, fax and e-mail transmissions which must ensure the timely receipt of the notice and may ensure verifiable receipt of the notice by the intended recipients.
- (2) The time, place, and purpose of the session shall be stated in the notice.

### Section 4: Annual Conference

An annual conference of members shall be scheduled by the Board of Directors unless there is a state of national emergency.

## ARTICLE VIII. HOUSE OF DELEGATES OF THE AMERICAN PHYSICAL THERAPY ASSOCIATION

### Section 1: General Powers

The House of Delegates of the American Physical Therapy Association has all legislative and elective powers and authority to determine policies of the Association, including the power to:

- A. Amend and repeal these bylaws;
- B. Amend, suspend, or rescind the standing rules;
- C. Adopt ethical principles and standards to govern the conduct of members of the Association in their roles as physical therapists or physical therapist assistants; and
- D. Modify or reverse a decision of the Board of Directors.

### Section 2: Composition

#### A. Registered Delegates

The House of Delegates shall consist of all registered delegates. Registered delegates shall include:

- (1) All those who have filed delegate credentials approved by the Officers of the House of Delegates.
- (2) Members of the Board of Directors.

#### B. Consultants

Consultants shall include all members of the Reference Committee, a member of the Ethics and Judicial Committee, a member of the American Board of Physical Therapy Specialties, and Association staff designated by the Chief Executive Officer in consultation with the Board of Directors. All consultants shall be available in the House of Delegates to reply to inquiries as directed by the Speaker of the House of Delegates.

### Section 3: Voting Delegates

The voting delegates of the House of Delegates shall be the chapter delegates.

#### A. Qualifications of Voting Delegates

- (1) Chapter delegates: Only Physical Therapist members may serve as chapter delegates. Only Physical Therapist members who have been Association members in good standing in any category of membership for no fewer than the 2 years immediately preceding the start of the House session may serve as chapter delegates.
- (2) Members of the Board of Directors may not serve as chapter delegates.
- (3) A delegate of any one component may not serve concurrently as a delegate of another component.

#### B. Number of Voting Delegates

The number of chapter delegates shall be based on, but not limited to, 400, which shall be apportioned among the chapters on the basis of the number of Physical Therapist, Retired Physical Therapist, Life Physical Therapist, Physical Therapist Assistant, Retired Physical Therapist Assistant, and Life Physical Therapist Assistant members in each chapter according to membership records in the Association headquarters and as described in the standing rules. No chapter shall have fewer than 2 delegates.

**C. Selection of Voting Delegates**

Each chapter shall select the delegates who will represent it at the annual session. Each chapter shall designate 1 delegate as its chief delegate.

**D. Credentials**

Credentials shall be issued by the Association. Delegates shall register and file credentials before the first meeting of the House of Delegates and at such other times as designated by the Officers of the House of Delegates.

**E. Voting Body**

Each chapter delegate shall have 1 vote, except that if any of the delegates to which a chapter is entitled does not attend a meeting of the House of Delegates, the vote(s) may be transferred to the remaining member(s) of the delegation who are present.

**Section 4: Nonvoting Delegates**

The nonvoting delegation of the House of Delegates shall be the section delegates, PTA Caucus delegates, Student Assembly delegates, and the members of the Board of Directors.

**A. Qualifications of Nonvoting Delegates**

- (1) Section delegates: Only Physical Therapist and Physical Therapist Assistant members may serve as section delegates. Only Physical Therapist and Physical Therapist Assistant members who have been Association members in good standing in any category of membership for no fewer than the 2 years immediately preceding the start of the House session may serve as section delegates.
- (2) PTA Caucus delegates: Only Physical Therapist Assistant members who have been Association members in good standing for no fewer than 2 years immediately preceding the start of the House session may serve as PTA Caucus delegates.
- (3) Student Assembly delegates: Only Student Physical Therapist and Student Physical Therapist Assistant members who have been Association members in good standing for the 4 months immediately preceding the start of the House session may serve as Student Assembly delegates.
- (4) Members of the Board of Directors may not serve as section or assembly delegates.
- (5) A section delegate or Student Assembly delegate may not serve concurrently as a delegate of another component. A PTA Caucus delegate may not serve concurrently as a section delegate.

**B. Number of Nonvoting Delegates**

- (1) Section delegates: Each section shall be entitled to 1 delegate.
- (2) PTA Caucus delegates: The PTA Caucus shall be entitled to 5 delegates.
- (3) Student Assembly delegates: The Student Assembly shall be entitled to 2 delegates.

**C. Selection of Nonvoting Delegates**

Each section, the PTA Caucus, and the Student Assembly shall select the delegate(s) who will represent it at the House session.

**D. Credentials**

Credentials shall be issued by the Association. Delegates shall register and file credentials before the first meeting of the House of Delegates and at such other times as designated by the Officers of the House of Delegates.

**E. Rights and privileges of nonvoting delegates**

Section delegates, PTA Caucus delegates, Student Assembly delegates, and members of the Board of Directors may speak, debate, and make and second motions.

**Section 5: Conduct of Business**

**A. Officers of the House of Delegates**

- (1) The officers shall be the Speaker of the House of Delegates, the Vice Speaker of the House of Delegates, and the Secretary.
- (2) The officers shall be responsible for registering delegates, transferring voting privileges, preparing rules of order and an agenda for the consideration of the House of Delegates, recording and reporting the proceedings, appointing the Committee to Approve the Minutes, making appointments to the Reference Committee, conducting elections, making editorial changes to the bylaws and standing rules, and performing other duties as determined by their bylaws or the standing rules.

**B. Quorum**

Delegates representing one-third of the chapters and numbering one-third of the total number of chapter votes that could be cast if all delegates from all chapters were present shall constitute a quorum.

**C. Voting**

- (1) Voting on motions and resolutions in the House may be by voice, show of hands, standing, roll call, or use of electronic equipment.
- (2) If a decision must be made during the interval between annual sessions, a majority vote of the Board of Directors may determine that the chapter delegates be polled by mail. These delegates shall be those registered at the immediately preceding session of the House of Delegates. If the delegate is no longer a member of the chapter or holds membership in a category other than that held when the delegate registered at the immediately preceding session of the House of Delegates or for any other reason no longer meets the qualifications for delegate, an alternate delegate shall be named by that chapter. At least 50 percent of the ballots of the eligible delegates must be returned to validate the vote.
- (3) Election of officers, directors, and members of the Nominating Committee shall be by ballot or use of electronic equipment. Officers shall be elected by a majority of the votes cast. Directors and members of the Nominating Committee shall be elected by a plurality of the votes cast. If the vote fails to determine election, reballoting shall be conducted under procedures determined by the Officers of the House of Delegates.

**D. Memorials and Resolutions**

Only memorials or resolutions adopted by the House of Delegates can be issued validly in the name of the Association.

**ARTICLE IX. BOARD OF DIRECTORS OF THE AMERICAN PHYSICAL THERAPY ASSOCIATION**

**Section 1: Composition**

**A. Board of Directors of the American Physical Therapy Association**

The 6 officers of the Association together with 9 directors shall constitute the Board of Directors.

**B. Executive Committee**

The Executive Committee shall consist of the President, Vice President, Secretary, Treasurer, and 1 of the 9 directors. This fifth member shall be elected to the Executive Committee annually by members of the Board of Directors who are not members of the Executive Committee.

**Section 2: Qualifications**

Only Physical Therapist members of the Association can serve, and they are eligible to serve if they have:

- A. Been Physical Therapist members in good standing for at least 5 years immediately preceding their election or appointment, and
- B. Consented to serve.

**Section 3: Officers**

The officers of the Association shall be the President, Vice President, Secretary, Treasurer, Speaker of the House of Delegates, and Vice Speaker of the House of Delegates.

**A. President**

The President shall preside at all meetings of the Board of Directors and of the Executive Committee and shall be an ex-officio member of all committees appointed by the Board of Directors except the Ethics and Judicial Committee. Only the President or his designee shall serve as the official spokesman of the Association.

**B. Vice President**

The Vice President shall assume the duties of the President in the absence or incapacitation of the President. In the event of a vacancy in the office of President, the Vice President shall succeed to the Presidency for the unexpired portion of the term, and the office of Vice President shall be declared vacant.

**C. Secretary**

The Secretary shall be responsible for keeping the minutes of the proceedings of the House of Delegates, of the Board of Directors, and of the Executive Committee; for making a report in writing to the House of Delegates at each annual session and to the Board of Directors on request; and for preparing a summary of the proceedings of the House of Delegates for publication as soon as practical after the session. The Secretary shall also serve as an officer of the House of Delegates.

**D. Treasurer**

The Treasurer shall be responsible for reporting in writing on the financial status of the Association to the House of Delegates and to the Board of Directors on request. The Treasurer shall also serve as chair of the Finance and Audit Committee.

**E. Speaker of the House of Delegates**

The Speaker of the House of Delegates shall preside at sessions of the House of Delegates, be an ex-officio member of the Reference Committee, and serve as an officer of the House of Delegates.

**F. Vice Speaker of the House of Delegates**

The Vice Speaker of the House of Delegates shall act as an officer of the House of Delegates and shall assume the duties of the Speaker of the House of Delegates in the absence or incapacitation of the Speaker. In the event of a vacancy in the office of Speaker of the House of Delegates, the Vice Speaker shall succeed to the office of Speaker for the unexpired portion of the term, and the office of the Vice Speaker of the House of Delegates shall be declared vacant.

**Section 4: Tenure**

**A.** Members of the Board of Directors shall assume office at the close of the annual session of the House of Delegates at which they were elected.

**B.** The term of office of each member of the Board of Directors shall be 3 years or until their successors are elected.

**C.** No member shall serve more than 3 complete consecutive terms on the Board of Directors or more than 2 complete consecutive terms in the same office.

**D.** A complete term for a member of the Board of Directors shall be defined as 3 years.

**E. Vacancies**

In the event that a position on the Board of Directors becomes vacant, the vacancy shall be filled in the manner prescribed in the standing rules. (Exceptions: President and Speaker of the House of Delegates.)

**Section 5: Duties**

The Board of Directors shall, in addition to the duties otherwise imposed by these bylaws and the standing rules:

**A.** Carry out the mandates and policies of the Association as determined by the House of Delegates. Between sessions of the House of Delegates, the Board of Directors may make and enforce such policy on behalf of the Association as is not inconsistent with the mandates and policies determined by the House of Delegates.

**B.** Direct all business and financial affairs for and on behalf of the Association, be responsible for all of its property and funds, and provide for an annual audit by a certified public accountant.

**C.** Foster the growth and development of the Association.

**D.** Provide for the maintenance of a headquarters of the Association and assume responsibility for personnel policies.

**E.** Appoint and employ a chief executive officer who shall be the administrator of the headquarters and who shall be responsible to the Board of Directors.

**F.** Provide for bonding of all persons handling money or other property of the Association.

**G.** Prescribe and publish with these bylaws the qualifications for each category of individual membership and provide for appropriate action on all applications for membership.

**H.** Be responsible for filling vacancies on the Board of Directors and on committees, except as otherwise provided in these bylaws and in the standing rules.

**I.** Be responsible for creation, appointment, purposes, and activities of such committees as it deems necessary.

**J.** Be responsible for the creation of and facilitation of activities of such councils as it deems necessary.

**K.** Be responsible for the program, time, and place of the annual conference of the Association.

**L.** Be responsible for publication of the official journal of the Association.

**M.** Provide for development and maintenance of procedural documents related to these bylaws.

**N.** Approve the procedure by which reported violations of the ethical principles and standards of the Association are to be processed.

**O.** Review and revise existing Association policies, except in these bylaws, for consistency of intent and language with such new policies as may be adopted from time to time by the House of Delegates.

**Section 6: Conduct of Business**

**A. Board of Directors**

The Board of Directors shall meet not less than once a year. Ten members shall constitute a quorum. The President may call a special meeting of the Board of Directors and must call a special meeting on written request of 10 members of the Board. Notice of all meetings shall be sent to all members of the Board of Directors not later than 10 days before the date fixed for the meeting. This notice may be made by mail or any telecommunications method including, but not limited to, fax and e-mail transmissions which must ensure the timely receipt of the notice and may ensure verifiable receipt of the notice by the intended recipients. When a decision is needed between meetings of the Board of Directors, voting may be conducted by mail or fax.

**B. Executive Committee**

The Executive Committee shall meet not less than twice a year and shall exercise the power of the Board of Directors between its meetings. Three members shall constitute a quorum. The President may call a special meeting of the Executive Committee and must call a special meeting on request of 3 members of the Committee. Notice of all meetings shall be given to all members of the Executive Committee not later than 5 days before the date fixed for the meeting.

**ARTICLE X. COMMITTEES AND COUNCILS**

**Section 1: Committees of the Association**

Besides such other committees as shall be created by the Board of Directors, the Board shall appoint the following:

**A. Finance and Audit Committee**

This committee shall consist of at least 5 members, 1 of whom shall be the Treasurer, and each member other than the Treasurer shall serve a term of 4 years. At least 1 member shall be appointed annually. This committee shall advise the Board of Directors on matters pertaining to the Association's financial needs, growth, and stability based on periodic review of income, expenditure, and investments. The committee shall present an annual budget to the Board of Directors. The committee shall be the point of contact and meet at least annually with the Association's independent auditors to discuss the annual audit. The committee shall advise the Board of Directors of any irregularities or material findings that arise from the independent audit or other sources.

**B. Ethics and Judicial Committee**

This committee shall consist of at least 5 members, and each member shall serve a term of 5 years. At least 1 member shall be appointed annually. No member shall be appointed to successive complete terms. This committee shall:

- (1) Interpret the ethical principles and standards of the Association.
- (2) Propose revisions of the ethical principles and standards of the Association and the Disciplinary Action Procedural Document of the Association.
- (3) Make revisions, as necessary, to the documents that interpret the ethical principles and standards of the Association and disseminate these documents for the management of judicial affairs.
- (4) Promote activities for the dissemination of information on ethics.
- (5) Process reported violations of ethical principles and standards in accordance with approved procedures.
- (6) Make final decisions in disciplinary proceedings against a member, subject only to appeal to the Board of Directors by the member.
- (7) Carry out other duties as may be requested by the Board of Directors.

**Section 2: Committee of the House of Delegates**

**A. Nominating Committee**

- (1) This committee, elected by the House of Delegates, shall consist of 5 Physical Therapist members of the Association who have:
  - a. Been physical therapist members in good standing for at least 5 years immediately preceding their election or appointment, and
  - b. Consented to serve.
- (2) Members shall serve 3-year terms or until their successors are elected. The terms of 2 members shall expire each year except that every third year the term of only 1 member shall expire. No member shall be elected to successive complete terms.
- (3) The chair shall be elected by the committee and shall serve until the successor assumes office.
- (4) Vacancies on this committee shall be filled by appointment by the Nominating Committee until the next session of the House of Delegates, when an election shall be held to fill the unexpired portion of the term.
- (5) This committee shall, in addition to the duties otherwise directed by the House of Delegates:
  - a. Prepare a slate of at least 2 candidates, if possible, for each position from those consenting to serve, if elected, for officers and directors and for members of the Nominating Committee. This slate of candidates shall be published and distributed to the members as soon as available, but no later than 3 months before the annual session.
  - b. Foster activities that maintain and promote a pool of nominees.
- (6) On petition of 5 chapters, a qualified consenting member shall be placed in nomination for a position as an officer or director or as a member of the Nominating Committee. Such a petition must be filed with the officers of the House of Delegates no later than 45 days after the slate of candidates prepared by the Nominating Committee has been published and distributed to members. A candidate nominated by petition shall be afforded

similar opportunities for publication of candidacy to the membership as those afforded a candidate nominated by the Nominating Committee, except that this individual shall be identified as nominated by petition.

- (7) When nominations are presented to the House of Delegates, nominations from the floor for any position shall be in order.

**B. Reference Committee**

- (1) This committee shall consist of at least 3 Physical Therapist members appointed by the officers of the House of Delegates. The Speaker of the House of Delegates shall serve as an ex officio member.
- (2) Members shall serve 3-year terms with at least one member being appointed each year.

**C. Special Committees**

The House may create and appoint such special committees as it deems necessary.

**Section 3: Councils**

The Board of Directors may establish a council as prescribed in the standing rules.

**ARTICLE XI. FINANCE**

**Section 1: Fiscal Year**

The fiscal year of the Association is from January 1 through December 31. The fiscal year of components may be either January 1 through December 31 or July 1 through June 30.

**Section 2: Limitation on Expenditures**

No officer, employee, or committee shall expend any money not provided in the budget as adopted or spend any money in excess of the budget allotment except by order of the Board of Directors. The Board shall not commit the Association to any financial obligation in excess of its current financial resources.

**Section 3: Dues**

**A. The dues for each membership category shall be:**

- (1) Physical Therapist member: \$265 in 2005, \$280 in 2007, and \$295 in 2009 and thereafter. Physical Therapist – Post-Professional Student member: \$150.
- (2) Retired Physical Therapist and Retired Physical Therapist Assistant members: \$120.
- (3) Life Physical Therapist and Life Physical Therapist Assistant members: \$60.  
Proviso: Current Life Physical Therapist and Life Physical Therapist Assistant members (as of June 4, 2002) may opt to continue as non-dues paying Life Physical Therapist or Life Physical Therapist Assistant members with benefits as before.
- (4) Student Physical Therapist and Student Physical Therapist Assistant member: \$75 in 2003 and 2004, \$80 in 2005 and thereafter.
- (5) Physical Therapist Assistant member: \$180 in 2005; \$183 in 2007; and \$190 in 2009, and thereafter.
- (6) Honorary member: no dues.
- (7) Catherine Worthingham Fellow of the APTA: no dues other than those payable for continuing membership in another category.
- (8) Student Physical Therapist and Student Physical Therapist Assistant member dues are for 12 months from the time of renewal or join date. As of the last day of the graduation month, the Student Physical Therapist or Student Physical Therapist Assistant member automatically converts to the Physical Therapist or Physical Therapist Assistant member category for the remainder of the 12 months of membership. Once the membership remainder expires, these new Physical Therapist or Physical Therapist Assistant members are eligible for 1 year of membership at 50% of the Association and chapter dues rate for a Physical Therapist or Physical Therapist Assistant member.

**B. All dues shall be for 12 months of membership.**

**C. On a 1-time-only basis, a member may pay for less than 12 months of membership in order to change the due date for all future dues payments. The member must simultaneously pay comparable dues for the same number of months.**

**D. Dues Changes**

All dues changes passed by the House of Delegates shall become effective on the first of the Association's fiscal year following the House of Delegates' action, and the new dues shall apply to the members at the time of individual renewal.

- E. The Board of Directors may waive in whole or in part in extreme circumstances the annual national dues and annual component dues of an eligible member.
- F. The Board of Directors may offer reduced rates for Association dues as an incentive to promote membership.

## **ARTICLE XII. OFFICIAL PUBLICATION**

*Physical Therapy* shall be the official Journal of the Association.

## **ARTICLE XIII. PARLIAMENTARY AUTHORITY**

The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Association and all components in all cases to which they are applicable and in which they are not inconsistent with these bylaws, the standing rules of the Association, and any special rules of order adopted by the Association or its components.

## **ARTICLE XIV. AMENDMENTS**

These bylaws may be amended at the Annual Session of the House of Delegates in years ending in 0 and 5 by the affirmative vote of at least two-thirds of the chapter delegates present and voting, or at any special session of the House of Delegates or the Annual Session of the House of Delegates during years not ending in 0 or 5 by the consent to consider, without debate, of two-thirds of the chapter delegates present and voting and by the affirmative vote of at least two-thirds of the chapter delegates present and voting, providing the following:

- A. Any proposed amendment has been submitted in writing to the Association's headquarters by a date set by the Speaker of the House of Delegates, which shall be at least 4 months but no more than 5 months before the session of the House of Delegates.
- B. Copies of all proposed amendments have been printed in an Association publication or distributed to all Association members at least 2 months before the session of the House of Delegates. This distribution may be made by mail or any telecommunications method including, but not limited to, fax and e-mail transmissions, which must ensure the timely receipt of the notice and may ensure verifiable receipt of the notice by the intended recipients.

Bylaw amendments pertaining to Article X: Finance, Section 3: Dues, may be amended at any Annual Session or special session of the House of Delegates by the affirmative vote of at least two-thirds of the chapter delegates present and voting, provided that the conditions of subparagraphs A and B above are satisfied.

# **Attachment #2**



American Physical Therapy Association  
*The Science of Healing. The Art of Caring.*

**MEMBERSHIP QUALIFICATIONS PRESCRIBED BY THE BOARD OF DIRECTORS BOD Y10-09-08-18** [Amended BOD G07-09-07-09; BOD 01-09-03-07; BOD 11-08-04-05; BOD 08-07-01-01/Ratified BOD 09-07; BOD 11-02-11-32; BOD 07-02-04-09; BOD 02-02-10-10; BOD 11-08-09-22; BOD 03-00-09-11; BOD 07-98-01-01; BOD 11-96-06-14; BOD 03-86-12-36; BOD 06-94-07-14; BOD 11-92-87-28; BOD 08-87-05-16; BOD 03-88-06-23; BOD 11-85-03-14; BOD 03-84-05-17; BOD 11-81-03-06; BOD 03-81-02-04; BOD 11-80-02-08; BOD 11-79-02-05; BOD 02-74-13-29] [Policy]

The qualifications for membership in the American Physical Therapy Association shall be as stated in the Association Bylaws, and in addition:

**A. Physical Therapist Membership**

1. Graduation from an education program accredited by the Commission on Accreditation in Physical Therapy Education. If graduation in the United States occurred prior to 1977, then graduation from a program recognized by the American Medical Association in collaboration with the American Physical Therapy Association is required.
2. If educated outside of the United States by a program not accredited by the Commission on Accreditation in Physical Therapy Education and living in the United States, graduation from an education program that by credentials evaluation is determined to be substantially equivalent, with respect to professional physical therapist education in the United States, or a license from a jurisdiction that requires a credentials evaluation prior to licensure.
3. **Physical Therapist – Post-Professional Student Membership:**
  - a. a graduate physical therapist as defined in A. 1 or 2 above;
  - b. a graduate physical therapist enrolled full time in a post-professional master's or doctoral program (excluding transition DPT) or APTA credentialed post-professional residency or fellowship program;
  - c. be limited to two years in a master's program, five years in a doctoral program and two years in a post-professional residency or fellowship program; and
  - d. have an official statement furnished to APTA by the program at which the graduate student, resident or fellow is enrolled verifying the individual's full-time enrollment, as defined by that program, at each dues period for which the individual is eligible for physical therapist post-professional student status.
4. Previous Student Physical Therapist membership in the Association is neither a necessary nor a sufficient qualification for Physical Therapist membership.
5. Agreement to comply with the *Code of Ethics* of the American Physical Therapy Association.

**B. Retired Physical Therapist Membership**

1. Attainment of the age of 55 years and completion of 20 years of membership.
2. Have had a career change and no longer engaged in an occupation related to physical therapy.

3. Member signs an official statement, at each dues period for which the individual is eligible for Retired Physical Therapist membership, certifying they are no longer engaged in an occupation related to physical therapy.
4. Agreement to comply with the *Code of Ethics* of the American Physical Therapy Association.

C. Life Physical Therapist Membership

1. Attainment of the age of 65 years and completion of 30 years of membership; or
2. If retired because of disability, completion of at least 5 years of membership.
3. Agreement to comply with the *Code of Ethics* of the American Physical Therapy Association.

D. Student Physical Therapist Membership

1. Enrollment in a physical therapist education program that is accredited or is seeking or granted candidacy status by the Commission on Accreditation in Physical Therapy Education.
2. Agreement to comply with the *Code of Ethics* of the American Physical Therapy Association.

E. Physical Therapist Assistant Membership

1. Graduation from an education program accredited by the Commission on Accreditation in Physical Therapy Education.
2. If trained outside of the United States by a program not accredited by the Commission on Accreditation in Physical Therapy Education and living in the United States, graduation from an education program that by credentials evaluation is determined to be equivalent with respect to physical therapist assistant entry level education in the United States, or a license from a jurisdiction that requires a credentials evaluation prior to licensure is required.
3. Previous Student Physical Therapist Assistant membership in the Association is neither a necessary nor a sufficient qualification for Physical Therapist Assistant membership.
4. Agreement to comply with the *Standards of Ethical Conduct for the Physical Therapist Assistant* of the American Physical Therapy Association.

F. Retired Physical Therapist Assistant Membership

1. Attainment of the age of 55 years and completion of 20 years of membership.
2. Have had a career change and no longer engaged in an occupation related to physical therapy.
3. Member signs an official statement, at each dues period for which the individual is eligible for Retired Physical Therapist Assistant membership, certifying they are no longer engaged in an occupation related to physical therapy.
4. Agreement to comply with the *Standards of Ethical Conduct for the Physical Therapist Assistant* of the American Physical Therapy Association.

**G. Life Physical Therapist Assistant Membership**

1. Attainment of the age of 65 years and completion of 30 years of membership; or
2. If retired because of disability, completion of at least 5 years of membership.
3. Agreement to comply with the *Standards of Ethical Conduct for the Physical Therapist Assistant* of the American Physical Therapy Association.

**H. Student Physical Therapist Assistant Membership**

1. Enrollment in a physical therapist assistant education program that is accredited or is seeking or granted candidacy status by the Commission on Accreditation in Physical Therapy Education.
2. Agreement to comply with the *Standards of Ethical Conduct for the Physical Therapist Assistant* of the American Physical Therapy Association.

**I. Honorary Membership**

Contribution(s) are:

1. Significant to the profession of physical therapy.
2. National in recognition and scope.
3. Of unique quality.

**J. Catherine Worthingham Fellow of the APTA**

1. Demonstrated excellence in a primary domain of research, education, practice, or advocacy with translation of contributions and achievements across the other domains.
2. National recognition by APTA members and by leaders outside the physical therapy profession regarding the impact achieved in the primary domain of research, education, practice, or advocacy.
3. Frequent and sustained contributions (leadership, influence, and achievements) that have advanced the profession over a period of not less than fifteen years.
4. Definitive ways in which advancement of the physical therapy profession have been achieved.

**EXAMPLES THAT MAY REFLECT A CATHERINE WORTHINGHAM FELLOW NOMINEE'S CONTRIBUTIONS AND ACHIEVEMENTS WITHIN EACH DOMAIN & ACROSS DOMAINS**

**TABLE 1: Examples that may reflect a nominee's contributions and achievements within each domain. Note: A column is provided for each domain. Read columns top to bottom for information specific to each domain.**

<b>A nominee may demonstrate excellence in <u>ADVOCACY</u> by...</b>	<b>A nominee may demonstrate excellence in <u>EDUCATION</u> by...</b>	<b>A nominee may demonstrate excellence in <u>PRACTICE</u> by...</b>	<b>A nominee may demonstrate excellence in <u>RESEARCH</u> by...</b>
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<ul style="list-style-type: none"> <li>• Developing and implementing innovative methods and/or materials for advocacy about physical therapy (e.g., public service announcements)</li> </ul>	<ul style="list-style-type: none"> <li>• Developing and implementing innovative instructional methods and/or materials related to physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>• Developing and implementing innovative physical therapy service delivery methods and/or programs</li> </ul>	<ul style="list-style-type: none"> <li>• Developing and implementing innovative research relevant to physical therapist practice</li> </ul>
<ul style="list-style-type: none"> <li>• Developing and implementing innovative community outreach programs to inform the public about physical therapy</li> </ul>	<ul style="list-style-type: none"> <li>• Developing and implementing innovative academic or continuing education courses related to physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>• Developing and implementing innovative physical therapy patient/client management methods</li> </ul>	<ul style="list-style-type: none"> <li>• Developing and implementing innovative research relevant to basic science, health policy, education, clinical practice or other topics that extend beyond physical therapist practice.</li> </ul>
<ul style="list-style-type: none"> <li>• Participating in or leading interdisciplinary collaborative efforts regarding policy relevant to physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>• Participating in or leading interdisciplinary collaborative educational activities or projects</li> </ul>	<ul style="list-style-type: none"> <li>• Participating in or leading interdisciplinary collaborative practice activities or projects</li> </ul>	<ul style="list-style-type: none"> <li>• Participating in or leading interdisciplinary collaborative research activities or projects</li> </ul>
<ul style="list-style-type: none"> <li>• Serving in leadership positions related to the development and promotion of policy or legislation relevant to physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>• Serving in leadership positions in education-related interdisciplinary or governmental organizations (e.g., regional accreditation bodies)</li> </ul>	<ul style="list-style-type: none"> <li>• Serving in leadership positions in practice-related interdisciplinary organizations (e.g., The Joint Commission)</li> </ul>	<ul style="list-style-type: none"> <li>• Serving in leadership positions on scientific review panels or research-related advisory boards</li> </ul>
<ul style="list-style-type: none"> <li>• Serving in an administrative or leadership role focused on advocacy related to physical therapist practice and/or health care</li> </ul>	<ul style="list-style-type: none"> <li>• Serving in an administrative or leadership role in an academic setting</li> </ul>	<ul style="list-style-type: none"> <li>• Serving in an administrative or leadership role in a clinical setting</li> </ul>	<ul style="list-style-type: none"> <li>• Serving in an administrative or leadership role in a research setting</li> </ul>

<b>A nominee may demonstrate excellence in <u>ADVOCACY</u> by...</b>	<b>A nominee may demonstrate excellence in <u>EDUCATION</u> by...</b>	<b>A nominee may demonstrate excellence in <u>PRACTICE</u> by...</b>	<b>A nominee may demonstrate excellence in <u>RESEARCH</u> by...</b>
<ul style="list-style-type: none"> <li>Serving in an elected or appointed position in state or federal government (e.g., state licensing board, health policy committees)</li> </ul>	<ul style="list-style-type: none"> <li>Obtaining advanced credentialing and demonstrating leadership in the clinical instructor credentialing process, or serving as an exceptional clinical preceptor</li> </ul>	<ul style="list-style-type: none"> <li>Obtaining board certification and demonstrating leadership in clinical specialization</li> </ul>	<ul style="list-style-type: none"> <li>Serving as an editor or serving on an editorial board of a refereed scientific or clinical journal</li> </ul>
<ul style="list-style-type: none"> <li>Providing consultation to others related to development and promotion of legislation related to physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>Providing consultation to others related to development and implementation of educational methods and/or materials</li> </ul>	<ul style="list-style-type: none"> <li>Providing consultation to others related to development and implementation of innovative physical therapist practice methods</li> </ul>	<ul style="list-style-type: none"> <li>Providing consultation to others related to development and implementation of research methods</li> </ul>
<ul style="list-style-type: none"> <li>Obtaining grants for projects related to advocacy</li> </ul>	<ul style="list-style-type: none"> <li>Obtaining grants for projects related to education</li> </ul>	<ul style="list-style-type: none"> <li>Obtaining grants for projects related to practice</li> </ul>	<ul style="list-style-type: none"> <li>Obtaining grants for original research</li> </ul>
<ul style="list-style-type: none"> <li>Serving as an invited speaker or keynote speaker at advocacy-related meetings or conferences</li> </ul>	<ul style="list-style-type: none"> <li>Serving as an invited speaker or keynote speaker at education-related meetings or conferences</li> </ul>	<ul style="list-style-type: none"> <li>Serving as an invited speaker or keynote speaker at practice-related meetings or conferences</li> </ul>	<ul style="list-style-type: none"> <li>Serving as an invited speaker or keynote speaker at research-related meetings or conferences</li> </ul>
<ul style="list-style-type: none"> <li>Serving in voluntary advocacy-related roles in APTA or other professional organizations</li> </ul>	<ul style="list-style-type: none"> <li>Serving in voluntary education-related roles in APTA or other professional organizations</li> </ul>	<ul style="list-style-type: none"> <li>Serving in voluntary practice-related roles in APTA or other professional organizations</li> </ul>	<ul style="list-style-type: none"> <li>Serving in voluntary research-related roles in APTA or other professional organizations</li> </ul>
<ul style="list-style-type: none"> <li>Receiving honors and/or awards specific to their contributions to advocacy</li> </ul>	<ul style="list-style-type: none"> <li>Receiving honors and/or awards specific to their contributions to education</li> </ul>	<ul style="list-style-type: none"> <li>Receiving honors and/or awards specific to their contributions to practice</li> </ul>	<ul style="list-style-type: none"> <li>Receiving honors and/or awards specific to their contributions to research</li> </ul>

TABLE 2: Examples that may reflect a nominee's contributions and achievements across domains. Note: A column is provided for each domain. Read columns top to bottom for information specific to each domain.

<b>A nominee may demonstrate evidence of <u>TRANSLATION OF ADVOCACY</u> contributions and achievements TO THE <u>ADVOCACY DOMAIN</u> by...</b>	<b>A nominee may demonstrate evidence of <u>TRANSLATION OF EDUCATION</u> contributions and achievements TO THE <u>ADVOCACY DOMAIN</u> by...</b>	<b>A nominee may demonstrate evidence of <u>TRANSLATION OF PRACTICE</u> contributions and achievements TO THE <u>ADVOCACY DOMAIN</u> by...</b>	<b>A nominee may demonstrate evidence of <u>TRANSLATION OF RESEARCH</u> contributions and achievements TO THE <u>ADVOCACY DOMAIN</u> by...</b>

<i>Translation not applicable/needed if primary domain is advocacy</i>	<ul style="list-style-type: none"> <li>Advocating about educational needs and or standards on national and/or state levels</li> </ul>	<ul style="list-style-type: none"> <li>Advocating about practice needs and/or standards at national and/or state levels</li> </ul>	<ul style="list-style-type: none"> <li>Advocating about research needs and/or standards on national and/or state levels</li> </ul>
	<ul style="list-style-type: none"> <li>Educating consumers and legislators about physical therapy education</li> </ul>	<ul style="list-style-type: none"> <li>Educating consumers and legislators about physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>Advocating for change in practice based on research</li> </ul>
	<ul style="list-style-type: none"> <li>Participating in community outreach to inform people about physical therapy education</li> </ul>	<ul style="list-style-type: none"> <li>Participating in community outreach to inform people about physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>Contributing to media coverage about implications of nominee's research for policy</li> </ul>
<b>A nominee may demonstrate evidence of TRANSLATION OF ADVOCACY contributions and achievements TO THE EDUCATION DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF EDUCATION contributions and achievements TO THE EDUCATION DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF PRACTICE contributions and achievements TO THE EDUCATION DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF RESEARCH contributions and achievements TO THE EDUCATION DOMAIN by...</b>
<ul style="list-style-type: none"> <li>Mentoring students and/or professionals in advocacy techniques and projects</li> </ul>	<i>Translation not applicable/needed if primary domain is education</i>	<ul style="list-style-type: none"> <li>Mentoring students in clinical internships and/or professionals in clinical residency or fellowship programs</li> </ul>	<ul style="list-style-type: none"> <li>Mentoring students and/or professionals in research methods and projects</li> </ul>
<ul style="list-style-type: none"> <li>Teaching advocacy methods in academic and continuing education courses</li> </ul>		<ul style="list-style-type: none"> <li>Teaching clinical practice methods in academic and continuing education courses</li> </ul>	<ul style="list-style-type: none"> <li>Teaching research methods in academic and continuing education courses</li> </ul>
<ul style="list-style-type: none"> <li>Teaching public policy content in academic or continuing education courses</li> </ul>		<ul style="list-style-type: none"> <li>Teaching practice management content in academic or continuing education courses</li> </ul>	<ul style="list-style-type: none"> <li>Teaching evidence-based practice content in academic or continuing education courses</li> </ul>
<b>A nominee may demonstrate evidence of TRANSLATION OF ADVOCACY contributions and achievements TO THE EDUCATION DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF EDUCATION contributions and achievements TO THE EDUCATION DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF PRACTICE contributions and achievements TO THE EDUCATION DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF RESEARCH contributions and achievements TO THE EDUCATION DOMAIN by...</b>

<ul style="list-style-type: none"> <li>Serving as an invited speaker or key note speaker at research-, education- or practice-related meetings or conferences</li> </ul>		<ul style="list-style-type: none"> <li>Serving as an invited speaker or key note speaker at research-, education- or advocacy-related meetings or conferences</li> </ul>	<ul style="list-style-type: none"> <li>Serving as an invited speaker or key note speaker at education-, practice- or advocacy-related meetings or conferences</li> </ul>
<ul style="list-style-type: none"> <li>Presenting educational sessions at international meetings or conferences</li> </ul>		<ul style="list-style-type: none"> <li>Presenting educational sessions at international meetings or conferences</li> </ul>	<ul style="list-style-type: none"> <li>Presenting educational sessions at international meetings or conferences</li> </ul>
<ul style="list-style-type: none"> <li>Testifying before state and/or federal government panels</li> </ul>	<p><i>Translation not applicable/needed if primary domain is education</i></p>	<ul style="list-style-type: none"> <li>Presenting grand rounds to medical staff</li> </ul>	<ul style="list-style-type: none"> <li>Presenting research platforms or posters</li> </ul>
<ul style="list-style-type: none"> <li>Influencing a change in CAPTE standards based on advocacy contributions and achievements</li> </ul>		<ul style="list-style-type: none"> <li>Influencing a change in CAPTE standards based on practice contributions and achievements</li> </ul>	<ul style="list-style-type: none"> <li>Influencing a change in CAPTE standards based on research contributions and achievements</li> </ul>
<p><b>A nominee may demonstrate evidence of <u>TRANSLATION OF ADVOCACY</u> contributions and achievements <u>TO THE PRACTICE DOMAIN</u> by...</b></p>	<p><b>A nominee may demonstrate evidence of <u>TRANSLATION OF EDUCATION</u> contributions and achievements <u>TO THE PRACTICE DOMAIN</u> by...</b></p>	<p><b>A nominee may demonstrate evidence of <u>TRANSLATION OF PRACTICE</u> contributions and achievements <u>TO THE PRACTICE DOMAIN</u> by...</b></p>	<p><b>A nominee may demonstrate evidence of <u>TRANSLATION OF RESEARCH</u> contributions and achievements <u>TO THE PRACTICE DOMAIN</u> by...</b></p>
<ul style="list-style-type: none"> <li>Contributing to media coverage about implications of public or and/or payment policy for physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>Contributing to media coverage regarding changes in PT patient/client management</li> </ul>	<p><i>Translation not applicable/needed if primary domain is practice</i></p>	<ul style="list-style-type: none"> <li>Contributing to media coverage about implications of nominee's research for practice</li> </ul>
<ul style="list-style-type: none"> <li>Developing and administering methods for integrating public policy into clinical practice</li> </ul>	<ul style="list-style-type: none"> <li>Developing and administering a clinical residency or fellowship program</li> </ul>		<ul style="list-style-type: none"> <li>Developing and outlining methods for translating basic science and clinical research into clinical practice</li> </ul>
<ul style="list-style-type: none"> <li>Providing consultation related to the application of public policy in physical therapist practice</li> </ul>	<ul style="list-style-type: none"> <li>Providing consultation related to the application of changes in physical therapy education to physical therapist practice</li> </ul>		<ul style="list-style-type: none"> <li>Providing consultation related to the application of research findings to physical therapist practice</li> </ul>

<b>A nominee may demonstrate evidence of TRANSLATION OF ADVOCACY contributions and achievements TO THE RESEARCH DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF EDUCATION contributions and achievements TO THE RESEARCH DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF PRACTICE contributions and achievements TO THE RESEARCH DOMAIN by...</b>	<b>A nominee may demonstrate evidence of TRANSLATION OF RESEARCH contributions and achievements TO THE RESEARCH DOMAIN by...</b>
<ul style="list-style-type: none"> <li>Publishing policy-related research articles in refereed and/or non-refereed journals</li> </ul>	<ul style="list-style-type: none"> <li>Publishing education-related research articles in refereed and/or non-refereed journals</li> </ul>	<ul style="list-style-type: none"> <li>Publishing practice-related research articles in refereed and/or non-refereed journals</li> </ul>	<i>Translation not applicable/needed if primary domain is research</i>
<ul style="list-style-type: none"> <li>Publishing policy-related chapters and/or textbooks</li> </ul>	<ul style="list-style-type: none"> <li>Publishing education-related chapters and/or textbooks</li> </ul>	<ul style="list-style-type: none"> <li>Publishing practice-related chapters and/or textbooks</li> </ul>	
<ul style="list-style-type: none"> <li>Serving as an editor for a refereed policy-related research journal</li> </ul>	<ul style="list-style-type: none"> <li>Serving as an editor for a refereed education-related research journal</li> </ul>	<ul style="list-style-type: none"> <li>Serving as an editor for a refereed practice-related research journal</li> </ul>	<i>Translation not applicable/needed if primary domain is research</i>
<ul style="list-style-type: none"> <li>Participating in or leading research that results in public policy changes</li> </ul>	<ul style="list-style-type: none"> <li>Demonstrating scholarly activity (e.g. curricular revisions) in education over the course of career</li> </ul>	<ul style="list-style-type: none"> <li>Delivering presentations to the research community about changes in practice</li> </ul>	

(Member Services Department, ext 3395)

[Document updated: 12/14/2009]

**Explanation of Reference Numbers:**

**BOD P00-00-00-00** stands for Board of Directors/month/year/page/vote in the Board of Directors Minutes; the "P" indicates that it is a position (see below). For example, BOD P11-97-06-18 means that this position can be found in the November 1997 Board of Directors minutes on Page 6 and that it was Vote 18.

P: Position | S: Standard | G: Guideline | Y: Policy | R: Procedure



"Bennett, John"  
<johnbennett@aptr.org>  
03/29/2012 10:54 AM

To "jblume@fec.gov" <jblume@fec.gov>  
cc "rknop@fec.gov" <rknop@fec.gov>

RECEIVED  
FEDERAL ELECTION  
COMMISSION

2012 MAR 29 AM 10:59

bcc

Subject RE: Your Advisory Opinion Request  
OFFICE OF GENERAL  
COUNSEL

Joshua Blume  
Attorney, Policy Division  
Federal Election Commission  
999 E Street, N.W., Room 642  
Washington, D.C. 20463  
(202) 694-1533  
jblume@fec.gov

Dear Mr. Blume:

Thank you for your email of 03/28/2012 setting forth your understanding of points I made on the APTA's behalf during our telephone conversation of Friday, March 16, 2012.

The statements in your email of 03/28/2012 are accurate.

Thank you very much for your consideration of the APTA's request for an advisory opinion.

Sincerely,

John J. Bennett  
General Counsel  
American Physical Therapy Association  
1111 North Fairfax Street  
Alexandria, VA 22314  
703-706-3107

**From:** JBlume@fec.gov [mailto:JBlume@fec.gov]  
**Sent:** Wednesday, March 28, 2012 2:30 PM  
**To:** Bennett, John  
**Cc:** rknop@fec.gov  
**Subject:** Your Advisory Opinion Request

Dear Mr. Bennett:

In our telephone conversation on Friday, March 16, you provided me with additional information regarding APTA's request for an advisory opinion. I have set out below my understanding of certain points that you made during the conversation. Please review the statements below and either confirm their accuracy or correct any misperceptions.

1. The Commission should assume for the purpose of answering the question presented that the APTA members whom APTA plans to solicit under its plan all qualify as "members" under Commission regulations.
2. The Employers (the corporations that will be administering the payroll deduction system) are neither affiliated with, nor subsidiaries, branches, departments, or local units of, APTA. The only link between APTA and the Employers is that the Employers are all wholly or partly owned by one or more members of APTA.
3. The Employers regularly administer payroll deduction systems on behalf of their employees for various purposes, but they do not provide payroll management or processing services to third parties in their ordinary course of business.
4. APTA will send all the solicitation messages to its members who are employed by the Employers.
5. APTA will include messages that may be required under 11 CFR 104.7 and 11 CFR 102.5(a)(2)(ii) in their solicitation forms.
6. The Employers will deduct contributions from the salary or wages of member-employees who have consented to such deductions when they pay the member-employees, which will occur on a periodic basis such as once in the middle of the month and once at the end of the month. They will transmit these deducted contributions to PT-PAC within 10 days of receiving them in the form of a single check that aggregates all the deducted amounts from all the employees. Accompanying the check to PT-PAC will be an itemized list of the names of each individual for whom a deduction was made and the amount of the deduction for that individual. The deducted amounts that are not transmitted immediately to PT-PAC will remain in the Employers' payroll accounts until they are transmitted.
7. PT-PAC will reimburse the Employers in the amount of the actual cost to the Employers of administering the payroll deduction system.
8. The lists of employees who are physical therapists and physical therapy assistants that the Employers will provide to PT-PAC will contain only the names of these employees. As indicated above, PT-PAC will reimburse the Employers in the amount of the Employers' actual cost of providing the lists to PT-PAC.

Please respond via e-mail. Your response may be treated as part of APTA's advisory opinion request, and, as such, may be posted on the Commission's website.

Thank you very much for your cooperation.

Sincerely,

Joshua Blume  
Attorney, Policy Division  
Federal Election Commission  
999 E Street, N.W., Room 642  
Washington, D.C. 20463

**(202) 694-1533**  
**[iblume@fec.gov](mailto:iblume@fec.gov)**

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**American Physical Therapy Association - 1111 N. Fairfax Street, Alexandria, VA, 22314. 800-999-APTA (2782). To manage the types of e-mail messages you receive from APTA, please visit [www.apta.org/email](http://www.apta.org/email)**