

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2013**

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**HOUSE BILL 828**

Short Title: Update Physical Therapy Practice Act. (Public)

Sponsors: Representatives Fulghum, Hollo, Faircloth, and Murry (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Health and Human Services.

April 11, 2013

A BILL TO BE ENTITLED  
AN ACT UPDATING THE PHYSICAL THERAPY PRACTICE ACT.  
The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 90-270.25 reads as rewritten:

**"§ 90-270.25. Board of Examiners.**

The North Carolina Board of Physical Therapy Examiners is hereby created. The Board shall consist of eight members, including one medical doctor licensed and residing in North Carolina, four physical therapists, two physical therapist assistants, and one public member. The public member shall be appointed by the Governor and shall be a person who is not licensed under Chapter 90 who shall represent the interest of the public at large. The medical doctor, physical therapists, and physical therapists assistants shall be appointed by the Governor from a list compiled by the North Carolina Physical Therapy Association, Inc., following the use of a nomination procedure made available to all physical therapists and physical therapist assistants licensed and residing in North Carolina. In soliciting nominations and compiling its list, the Association will give consideration to geographic distribution, practice setting (institution, independent, academic, etc.), and other factors that will promote representation of all aspects of physical therapy practice on the Board. The records of the operation of the nomination procedure shall be filed with the Board, to be available for a period of six months following nomination, for reasonable inspection by any licensed practitioner. Each physical therapist member of the Board shall be licensed and reside in this State; provided that the physical therapist shall have not less than three years' experience as a physical therapist immediately preceding appointment and shall be actively engaged in the practice of physical therapy in North Carolina during incumbency. Each physical therapist assistant member shall be licensed and reside in this State; provided that the physical therapist assistant shall have not less than three years' experience as a physical therapist assistant immediately preceding appointment and shall be actively engaged in practice as a physical therapist assistant in North Carolina during incumbency.

Members shall be appointed to serve three-year terms, or until their successors are appointed, to commence on January 1 in respective years. In the event that a member of the Board for any reason shall become ineligible to or cannot complete a term of office, another appointment shall be made by the Governor, in accordance with the procedure stated above, to fill the remainder of the term. No member may serve for more than two successive three-year terms.

The Board may immediately remove a member from the Board if the member is found by the remainder of the Board to have (i) ceased to meet the qualifications specified in this section,



1 (ii) failed to attend three successive Board meetings without just cause, (iii) violated any of the  
2 provisions of this Article or rules adopted by the Board, or (iv) otherwise engaged in immoral,  
3 dishonorable, unprofessional, or unethical conduct. To implement removal for immoral,  
4 dishonorable, unprofessional, or unethical conduct, the Board shall further find that the relevant  
5 conduct has compromised the integrity of the Board.

6 The Board each year shall designate one of its physical therapist members as chairman and  
7 one member as secretary-treasurer. Each member of the Board shall receive such per diem  
8 compensation and reimbursement for travel and subsistence as shall be set for licensing boards  
9 generally."

10 **SECTION 2.** G.S. 90-270.26 reads as rewritten:

11 **"§ 90-270.26. Powers of the Board.**

12 The Board shall have the following general powers and duties:

- 13 (1) Examine and determine the qualifications and fitness of applicants for a  
14 license to practice physical therapy in this ~~State~~; State.
- 15 (2) Issue, renew, deny, suspend, or revoke licenses to practice physical therapy  
16 in this State, or reprimand or otherwise discipline licensed physical  
17 therapists and physical therapist ~~assistants~~; assistants.
- 18 (3) Conduct confidential investigations for the purpose of determining whether  
19 violations of this Article or grounds for disciplining licensed physical  
20 therapists or physical therapist assistants ~~exist~~; exist. Investigation records  
21 shall not be considered public records under Chapter 132 of the General  
22 Statutes. However, hearing notices, statements of charges, and any materials  
23 received and admitted into evidence at Board hearings shall be public  
24 records, regardless of whether the notices, statements, or materials are  
25 developed or compiled as a result of an investigation.
- 26 (3a) Establish mechanisms for assessing the continuing competence of licensed  
27 physical therapists or physical therapist assistants to engage in the practice  
28 of physical therapy, including approving rules requiring licensees to  
29 periodically, or in response to complaints or incident reports, submit to the  
30 Board: (i) evidence of continuing education experiences; (ii) evidence of  
31 minimum standard accomplishments; or (iii) evidence of compliance with  
32 other Board-approved measures, audits, or evaluations; and specify remedial  
33 actions if necessary or desirable to obtain license renewal or  
34 ~~reinstatement~~; reinstatement.
- 35 (4) Employ such professional, clerical or special personnel necessary to carry  
36 out the provisions of this Article, and may purchase or rent necessary office  
37 space, equipment and ~~supplies~~; supplies.
- 38 (5) Conduct administrative hearings in accordance with Chapter 150B of the  
39 General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises  
40 under this ~~Article~~; Article.
- 41 (6) Appoint from its own membership one or more members to act as  
42 representatives of the Board at any meeting where such representation is  
43 deemed ~~desirable~~; desirable.
- 44 (7) Establish reasonable fees for applications for examination, certificates of  
45 licensure and renewal, and other services provided by the ~~Board~~; Board.
- 46 (8) Adopt, amend, or repeal any rules or regulations necessary to carry out the  
47 purposes of this Article and the duties and responsibilities of the  
48 ~~Board~~; Board.
- 49 (9) Request the Department of Justice to provide criminal background checks  
50 pursuant to G.S. 90-270.29.1 in connection with licensure or investigative  
51 matters.

- 1           (10) Issue subpoenas to compel the attendance of any witness or the production  
2 of any documents relative to investigations or Board proceedings.
- 3           (11) Establish or participate in programs for aiding in the recovery and  
4 rehabilitation of physical therapists and physical therapist assistants who  
5 experience chemical or alcohol addiction or abuse or mental health  
6 problems.
- 7           (12) Acquire, hold, rent, encumber, alienate, and otherwise deal with real  
8 property in the same manner as a private person or corporation, subject only  
9 to approval of the Governor and the Council of State. Collateral pledged by  
10 the Board for an encumbrance is limited to the assets, income, and revenues  
11 of the Board.

12           The powers and duties enumerated above are granted for the purpose of enabling the Board  
13 to safeguard the public health, safety and welfare against unqualified or incompetent  
14 practitioners of physical therapy, and are to be liberally construed to accomplish this objective.  
15 In instances where the Board makes a decision to discipline physical therapists or physical  
16 therapist assistants under powers set out by any of subsections (2) through (5) of this section, it  
17 may as part of its decision charge the reasonable costs of investigation and hearing to the  
18 person disciplined."

19           **SECTION 3.** Article 18B of Chapter 90 of the General Statutes is amended by  
20 adding the following new section to read:

21 **"§ 90-270.29.1. Criminal history record checks of applicants for licensure.**

22           (a) All applicants for licensure shall consent to a criminal history record check. Refusal  
23 to consent to a criminal history record check may constitute grounds for the Board to deny  
24 licensure to an applicant. The Board shall ensure that the State and national criminal history of  
25 an applicant is checked. The Board shall be responsible for providing to the North Carolina  
26 Department of Justice the fingerprints of the applicant to be checked, a form signed by the  
27 applicant consenting to the criminal history record check and the use of fingerprints and other  
28 identifying information required by the State or National Repositories, and any additional  
29 information required by the Department of Justice. The Board shall keep all information  
30 obtained pursuant to this section confidential. For purposes of this section, a "criminal history  
31 record check" is a report resulting from a request made by the Board to the North Carolina  
32 Department of Justice for a history of conviction of a crime, whether a misdemeanor or felony,  
33 that bears on an applicant's fitness for licensure to practice physical therapy.

34           (b) The cost of the criminal history record check and the fingerprinting shall be borne  
35 by the applicant.

36           (c) If an applicant's criminal history record check reveals one or more criminal  
37 convictions, the conviction shall not automatically bar licensure. The Board shall consider all  
38 of the following factors regarding the conviction:

- 39           (1) The level of seriousness of the crime.  
40           (2) The date of the crime.  
41           (3) The age of the person at the time of the conviction.  
42           (4) The circumstances surrounding the commission of the crime, if known.  
43           (5) The nexus between the criminal conduct of the person and the job duties of  
44 the position to be filled.  
45           (6) The person's prison, jail, probation, parole, rehabilitation, and employment  
46 records since the date the crime was committed.

47 If, after reviewing the factors, the Board determines that any of the grounds set forth in the  
48 subdivisions of G.S. 90-270.36 exist, the Board may deny licensure of the applicant. The Board  
49 may disclose to the applicant information contained in the criminal history record check that is  
50 relevant to the denial. The Board shall not provide a copy of the criminal history record check  
51 to the applicant. The applicant shall have the right to appear before the Board to appeal the

1 Board's decision. However, an appearance before the full Board shall constitute an exhaustion  
2 of administrative remedies in accordance with Chapter 150B of the General Statutes.

3 (d) The Board, its officers, and employees, acting in good faith and in compliance with  
4 this section, shall be immune from civil liability for denying licensure to an applicant based on  
5 information provided in the applicant's criminal history record check."

6 **SECTION 4.** G.S. 90-270.30 reads as rewritten:

7 **"§ 90-270.30. Licensure of foreign-trained physical therapists.**

8 Any person who has been trained as a physical therapist or physical therapist assistant in a  
9 foreign county [country] country and desires to be licensed under this Article and who:

10 (1) Is of good moral character;

11 (2) Holds a diploma from an educational program for physical therapists or  
12 physical therapist assistants approved by the Board:

13 (3) Submits documentary evidence to the Board of completion of a course of  
14 instruction substantially equivalent to that obtained by an applicant for  
15 licensure under G.S. 90-270.29; and

16 (4) Demonstrates satisfactory proof of proficiency in the English language;

17 may make application on a form furnished by the Board for examination as a foreign-trained  
18 ~~physical therapist~~ physical therapist or physical therapist assistant. At the time of making such  
19 application, the applicant shall pay to the secretary-treasurer of the Board the fee prescribed by  
20 the Board, no portion of which shall be returned."

21 **SECTION 5.** G.S. 90-270.34(a) is amended by adding the following new  
22 subdivisions to read:

23 "(a) The following persons shall be permitted to practice physical therapy or assist in the  
24 practice in this State without obtaining a license under this Article upon the terms and  
25 conditions specified herein:

26 ...

27 (7) Physical therapists or physical therapist assistants who are licensed in  
28 another jurisdiction of the United States or credentialed in another country, if  
29 that person by contract or employment is providing physical therapy to  
30 individuals affiliated with or employed by established athletic teams, athletic  
31 organizations, or performing arts companies temporarily practicing,  
32 competing, or performing in this State for no more than 60 days in a  
33 calendar year;

34 (8) Physical therapists or physical therapist assistants licensed in another  
35 jurisdiction of the United States who enter this State to provide physical  
36 therapy during a declared local, State, or national disaster or emergency. The  
37 exemption applies no longer than the standard annual renewal time in the  
38 State. To be eligible for the exemption, the licensee shall notify the Board of  
39 the licensee's intent to practice physical therapy pursuant to this subdivision.

40 (9) Physical therapists or physical therapist assistants licensed in another  
41 jurisdiction of the United States who are forced to leave their residence or  
42 place of employment due to a declared local, State, or national disaster or  
43 emergency, and, due to such displacement, need to practice physical therapy.  
44 The exemption applies no longer than the standard annual renewal time but  
45 may be renewed by the Board for additional periods. To be eligible for the  
46 exemption, the licensee shall notify the Board of the licensee's intent to  
47 practice physical therapy pursuant to this subdivision."

48 **SECTION 6.** Article 4 of Chapter 114 of the General Statutes is amended by  
49 adding the following new section to read:

50 **"§ 114-19.33. Criminal history record checks of applicants for licensure as physical**  
51 **therapists, physical therapist assistants, or subjects of investigation.**

1       The Department of Justice may provide to the North Carolina Board of Physical Therapy  
2 Examiners a criminal history record check from the State and National Repositories of  
3 Criminal Histories for applicants for licensure or subjects of investigation by the Board. Along  
4 with a request for criminal history records, the Board shall provide to the Department of Justice  
5 the fingerprints of the applicant or subject, a form signed by the applicant or subject consenting  
6 to the criminal history record check and use of the fingerprints and other identifying  
7 information required by the Repositories, and any additional information required by the  
8 Department. The fingerprints shall be forwarded to the State Bureau of Investigation for a  
9 search of the State's criminal history record file, and the State Bureau of Investigation shall  
10 forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal  
11 history record check. The Board shall keep all information obtained pursuant to this section  
12 confidential. The Department of Justice may charge a fee to offset the cost incurred by the  
13 Department of Justice to conduct a criminal history record check under this section, but the fee  
14 shall not exceed the actual cost of locating, editing, researching, and retrieving the  
15 information."

16               **SECTION 7.** This act is effective when it becomes law.