

**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.