

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 828
Committee Substitute Favorable 5/1/13
Third Edition Engrossed 5/29/13

Short Title: Update Physical Therapy Practice Act.

(Public)

Sponsors:

Referred to:

April 11, 2013

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

4 SECTION 1. G.S. 90-270.25 reads as rewritten:
5 "§ 90-270.25. Board of Examiners.

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

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

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



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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. Before removing a board member for
4 immoral, dishonorable, unprofessional, or unethical conduct, the Board shall further find that
5 the relevant 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. These records are privileged and not subject to discovery,
23 subpoena, or other means of legal compulsion for release to any person other
24 than the Board or its employees or consultants, except as provided in this
25 section. However, any Board decisions rendered, hearing notices and
26 statements of charges, and any material received and admitted into evidence
27 at Board hearings shall be public records, regardless of whether the notices,
28 statements, or materials are developed or compiled as a result of an
29 investigation; provided that identifying information concerning the treatment
30 or delivery of professional services to a patient who has not consented to its
31 public disclosure may be deleted or redacted.
- 32 (3a) Establish mechanisms for assessing the continuing competence of licensed
33 physical therapists or physical therapist assistants to engage in the practice
34 of physical therapy, including approving rules requiring licensees to
35 periodically, or in response to complaints or incident reports, submit to the
36 Board: (i) evidence of continuing education experiences; (ii) evidence of
37 minimum standard accomplishments; or (iii) evidence of compliance with
38 other Board-approved measures, audits, or evaluations; and specify remedial
39 actions if necessary or desirable to obtain license renewal or
40 ~~reinstatement~~; reinstatement.
- 41 (4) Employ such professional, clerical or special personnel necessary to carry
42 out the provisions of this Article, and may purchase or rent necessary office
43 space, equipment and ~~supplies~~; supplies.
- 44 (5) Conduct administrative hearings in accordance with Chapter 150B of the
45 General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises
46 under this ~~Article~~; Article.
- 47 (6) Appoint from its own membership one or more members to act as
48 representatives of the Board at any meeting where such representation is
49 deemed ~~desirable~~; desirable.
- 50 (7) Establish reasonable fees for applications for examination, certificates of
51 licensure and renewal, and other services provided by the ~~Board~~; Board.

- 1 (8) Adopt, amend, or repeal any rules or regulations necessary to carry out the
2 purposes of this Article and the duties and responsibilities of the
3 ~~Board.~~Board.
- 4 (9) Request the Department of Justice to provide criminal history record checks
5 pursuant to G.S. 90-270.29A in connection with licensure or investigative
6 matters.
- 7 (10) Issue subpoenas, on signature of the Board Chair or Executive Director, to
8 compel the attendance of any witness or the production of any documents
9 relative to investigations or Board proceedings. Upon written request, the
10 Board shall revoke a subpoena if, upon a hearing, it finds that the evidence
11 sought does not relate to a matter in issue, the subpoena does not describe
12 with sufficient particularity the evidence sought, or for any other reason in
13 law the subpoena is invalid.
- 14 (11) Establish or participate in programs for aiding in the recovery and
15 rehabilitation of physical therapists and physical therapist assistants who
16 experience chemical or alcohol addiction or abuse or mental health
17 problems.
- 18 (12) Acquire, hold, rent, encumber, alienate, and otherwise deal with real
19 property in the same manner as a private person or corporation, subject only
20 to approval of the Governor and the Council of State. Collateral pledged by
21 the Board for an encumbrance is limited to the assets, income, and revenues
22 of the Board.

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

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

32 **"§ 90-270.29A. Criminal history record checks of applicants for licensure.**

33 (a) All applicants for licensure shall consent to a criminal history record check. Refusal
34 to consent to a criminal history record check may constitute grounds for the Board to deny
35 licensure to an applicant. The Board shall be responsible for providing to the North Carolina
36 Department of Justice the fingerprints of the applicant to be checked, a form signed by the
37 applicant consenting to the criminal history record check and the use of fingerprints and other
38 identifying information required by the State or National Repositories, and any additional
39 information required by the Department of Justice. The Board shall keep all information
40 obtained pursuant to this section confidential. For purposes of this section, a "criminal history
41 record check" is a request for a report made by the Board to the North Carolina Department of
42 Justice for a history of conviction of a crime, whether a misdemeanor or felony, that bears on
43 an applicant's fitness for licensure to practice physical therapy.

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

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

- 49 (1) The level of seriousness of the crime.
50 (2) The date of the crime.
51 (3) The age of the person at the time of the conviction.

- 1 (4) The circumstances surrounding the commission of the crime, if known.
- 2 (5) The nexus between the criminal conduct of the person and the job duties of
- 3 the position to be filled.
- 4 (6) The person's prison, jail, probation, parole, rehabilitation, and employment
- 5 records since the date the crime was committed.

6 If, after reviewing the factors, the Board determines that any of the grounds set forth in the
7 subdivisions of G.S. 90-270.36 exist, the Board may deny licensure of the applicant. The Board
8 may disclose to the applicant information contained in the criminal history record that is
9 relevant to the denial. The Board shall not provide a copy of the criminal history record to the
10 applicant. The applicant shall have the right to appear before the Board to appeal the Board's
11 decision. However, an appearance before the full Board shall constitute an exhaustion of
12 administrative remedies in accordance with Chapter 150B of the General Statutes.

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

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

17 **"§ 90-270.30. Licensure of foreign-trained physical therapists.**

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

- 20 (1) Is of good moral character;
- 21 (2) Holds a diploma from an educational program for physical therapists or
- 22 physical therapist assistants approved by the Board;
- 23 (3) Submits documentary evidence to the Board of completion of a course of
- 24 instruction substantially equivalent to that obtained by an applicant for
- 25 licensure under G.S. 90-270.29; and
- 26 (4) Demonstrates satisfactory proof of proficiency in the English language;

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

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

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

- 36 ...
- 37 (7) Physical therapists or physical therapist assistants who are licensed in
38 another jurisdiction of the United States or credentialed in another country, if
39 that person by contract or employment is providing physical therapy to
40 individuals affiliated with or employed by established athletic teams, athletic
41 organizations, or performing arts companies temporarily practicing,
42 competing, or performing in this State for no more than 60 days in a
43 calendar year;
 - 44 (8) Physical therapists or physical therapist assistants licensed in another
45 jurisdiction of the United States who enter this State to provide physical
46 therapy during a declared local, State, or national disaster or emergency. The
47 exemption applies no longer than the standard annual renewal time in the
48 State. To be eligible for the exemption, the licensee shall notify the Board of
49 the licensee's intent to practice physical therapy pursuant to this subdivision.
 - 50 (9) Physical therapists or physical therapist assistants licensed in another
51 jurisdiction of the United States who are forced to leave their residence or

1 place of employment due to a declared local, State, or national disaster or
2 emergency, and, due to such displacement, need to practice physical therapy.
3 The exemption applies no longer than the standard annual renewal time but
4 may be renewed by the Board for additional periods. To be eligible for the
5 exemption, the licensee shall notify the Board of the licensee's intent to
6 practice physical therapy pursuant to this subdivision."

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

9 **"§ 114-19.33. Criminal history record checks of applicants for licensure as physical**
10 **therapists, physical therapist assistants, or subjects of investigation.**

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

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