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Short Title: Update Physical Therapy Practice Act.

(Public)

Sponsors:

Referred to:

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.



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1 The Board may immediately remove a member from the Board if the member is found by
2 the remainder of the Board to have (i) ceased to meet the qualifications specified in this section,
3 (ii) failed to attend three successive Board meetings without just cause, (iii) violated any of the
4 provisions of this Article or rules adopted by the Board, or (iv) otherwise engaged in immoral,
5 dishonorable, unprofessional, or unethical conduct. Before removing a board member for
6 immoral, dishonorable, unprofessional, or unethical conduct, the Board shall further find that
7 the relevant conduct has compromised the integrity of the Board.

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

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

13 **"§ 90-270.26. Powers of the Board.**

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

- 15 (1) Examine and determine the qualifications and fitness of applicants for a
16 license to practice physical therapy in this ~~State~~;State.
- 17 (2) Issue, renew, deny, suspend, or revoke licenses to practice physical therapy
18 in this State, or reprimand or otherwise discipline licensed physical
19 therapists and physical therapist ~~assistants~~;assistants.
- 20 (3) Conduct confidential investigations for the purpose of determining whether
21 violations of this Article or grounds for disciplining licensed physical
22 therapists or physical therapist assistants ~~exist~~;exist. Investigation records
23 shall not be considered public records under Chapter 132 of the General
24 Statutes. These records are privileged and not subject to discovery,
25 subpoena, or other means of legal compulsion for release to any person other
26 than the Board or its employees or consultants, except as provided in this
27 section. However, any Board decisions rendered, hearing notices and
28 statements of charges, and any material received and admitted into evidence
29 at Board hearings shall be public records, regardless of whether the notices,
30 statements, or materials are developed or compiled as a result of an
31 investigation; provided that identifying information concerning the treatment
32 or delivery of professional services to a patient who has not consented to its
33 public disclosure may be deleted or redacted.
- 34 (3a) Establish mechanisms for assessing the continuing competence of licensed
35 physical therapists or physical therapist assistants to engage in the practice
36 of physical therapy, including approving rules requiring licensees to
37 periodically, or in response to complaints or incident reports, submit to the
38 Board: (i) evidence of continuing education experiences; (ii) evidence of
39 minimum standard accomplishments; or (iii) evidence of compliance with
40 other Board-approved measures, audits, or evaluations; and specify remedial
41 actions if necessary or desirable to obtain license renewal or
42 ~~reinstatement~~;reinstatement.
- 43 (4) Employ such professional, clerical or special personnel necessary to carry
44 out the provisions of this Article, and may purchase or rent necessary office
45 space, equipment and ~~supplies~~;supplies.
- 46 (5) Conduct administrative hearings in accordance with Chapter 150B of the
47 General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises
48 under this ~~Article~~;Article.
- 49 (6) Appoint from its own membership one or more members to act as
50 representatives of the Board at any meeting where such representation is
51 deemed ~~desirable~~;desirable.

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

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

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

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

(a) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) The cost of the criminal history record check and the fingerprinting shall be borne by the applicant. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

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

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

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

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

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

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

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

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

(1) Is of good moral character;

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

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

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

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

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

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

...

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

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

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

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

"§ 114-19.33. Criminal history record checks of applicants for licensure as physical therapists or physical therapist assistants."

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

SECTION 7. This act becomes effective October 1, 2013.