

SECOND REGULAR SESSION

HOUSE BILL NO. 1768

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CRAWFORD.

5897H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 334.613, RSMo, and to enact in lieu thereof one new section relating to physical therapists.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 334.613, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 334.613, to read as follows:

334.613. 1. The board may refuse to issue or renew a license to practice as a physical therapist or physical therapist assistant for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621. As an alternative to a refusal to issue or renew a license to practice as a physical therapist or physical therapist assistant, the board may, at its discretion, issue a license which is subject to probation, restriction, or limitation to an applicant for licensure for any one or any combination of causes stated in subsection 2 of this section. The board's order of probation, limitation, or restriction shall contain a statement of the discipline imposed, the basis therefor, the date such action shall become effective, and a statement that the applicant has thirty days to request in writing a hearing before the administrative hearing commission. If the board issues a probationary, limited, or restricted license to an applicant for licensure, either party may file a written petition with the administrative hearing commission within thirty days of the effective date of the probationary, limited, or restricted license seeking review of the board's determination. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered as waived.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 2. The board may cause a complaint to be filed with the administrative hearing
19 commission as provided by chapter 621 against any holder of a license to practice as a physical
20 therapist or physical therapist assistant, **or any physical therapist or physical therapy assistant**
21 who has failed to renew or has surrendered his or her license for any one or any combination of
22 the following causes:

23 (1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to
24 an extent that such use impairs a person's ability to perform the work of a physical therapist or
25 physical therapist assistant;

26 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
27 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
28 for any offense reasonably related to the qualifications, functions, or duties of a physical therapist
29 or physical therapist assistant, for any offense an essential element of which is fraud, dishonesty,
30 or an act of violence, or for any offense involving moral turpitude, whether or not sentence is
31 imposed;

32 (3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of
33 registration or authority, permit, or license issued under this chapter or in obtaining permission
34 to take any examination given or required under this chapter;

35 (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct, or
36 unprofessional conduct in the performance of the functions or duties of a physical therapist or
37 physical therapist assistant, including but not limited to the following:

38 (a) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by
39 fraud, deception, or misrepresentation; willfully and continually overcharging or overtreating
40 patients; or charging for sessions of physical therapy which did not occur unless the services
41 were contracted for in advance, or for services which were not rendered or documented in the
42 patient's records;

43 (b) Attempting, directly or indirectly, by way of intimidation, coercion, or deception, to
44 obtain or retain a patient or discourage the use of a second opinion or consultation;

45 (c) Willfully and continually performing inappropriate or unnecessary treatment or
46 services;

47 (d) Delegating professional responsibilities to a person who is not qualified by training,
48 skill, competency, age, experience, or licensure to perform such responsibilities;

49 (e) Misrepresenting that any disease, ailment, or infirmity can be cured by a method,
50 procedure, treatment, medicine, or device;

51 (f) Performing services which have been declared by board rule to be of no physical
52 therapy value;

53 (g) Final disciplinary action by any professional association, professional society,
54 licensed hospital or medical staff of the hospital, or physical therapy facility in this or any other
55 state or territory, whether agreed to voluntarily or not, and including but not limited to any
56 removal, suspension, limitation, or restriction of the person's professional employment,
57 malpractice, or any other violation of any provision of this chapter;

58 (h) Administering treatment without sufficient examination, or for other than medically
59 accepted therapeutic or experimental or investigative purposes duly authorized by a state or
60 federal agency, or not in the course of professional physical therapy practice;

61 (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual,
62 while a physical therapist or physical therapist assistant/patient relationship exists; making sexual
63 advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of
64 a sexual nature with patients or clients;

65 (j) Terminating the care of a patient without adequate notice or without making other
66 arrangements for the continued care of the patient;

67 (k) Failing to furnish details of a patient's physical therapy records to treating physicians,
68 other physical therapists, or hospitals upon proper request; or failing to comply with any other
69 law relating to physical therapy records;

70 (l) Failure of any applicant or licensee, other than the licensee subject to the
71 investigation, to cooperate with the board during any investigation;

72 (m) Failure to comply with any subpoena or subpoena duces tecum from the board or
73 an order of the board;

74 (n) Failure to timely pay license renewal fees specified in this chapter;

75 (o) Violating a probation agreement with this board or any other licensing agency;

76 (p) Failing to inform the board of the physical therapist's or physical therapist assistant's
77 current telephone number, residence, and business address;

78 (q) Advertising by an applicant or licensee which is false or misleading, or which
79 violates any rule of the board, or which claims without substantiation the positive cure of any
80 disease, or professional superiority to or greater skill than that possessed by any other physical
81 therapist or physical therapist assistant. An applicant or licensee shall also be in violation of this
82 provision if the applicant or licensee has a financial interest in any organization, corporation, or
83 association which issues or conducts such advertising;

84 (5) Any conduct or practice which is or might be harmful or dangerous to the mental or
85 physical health of a patient or the public; or incompetency, gross negligence, or repeated
86 negligence in the performance of the functions or duties of a physical therapist or physical
87 therapist assistant. For the purposes of this subdivision, "repeated negligence" means the failure,

88 on more than one occasion, to use that degree of skill and learning ordinarily used under the
89 same or similar circumstances by the member of the applicant's or licensee's profession;

90 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling
91 any person to violate, any provision of this chapter, or of any lawful rule adopted under this
92 chapter;

93 (7) Impersonation of any person licensed as a physical therapist or physical therapist
94 assistant or allowing any person to use his or her license or diploma from any school;

95 (8) Revocation, suspension, restriction, modification, limitation, reprimand, warning,
96 censure, probation, or other final disciplinary action against a physical therapist or physical
97 therapist assistant for a license or other right to practice as a physical therapist or physical
98 therapist assistant by another state, territory, federal agency or country, whether or not voluntarily
99 agreed to by the licensee or applicant, including but not limited to the denial of licensure,
100 surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the
101 practice of physical therapy while subject to an investigation or while actually under
102 investigation by any licensing authority, medical facility, branch of the Armed Forces of the
103 United States of America, insurance company, court, agency of the state or federal government,
104 or employer;

105 (9) A person is finally adjudged incapacitated or disabled by a court of competent
106 jurisdiction;

107 (10) Assisting or enabling any person to practice or offer to practice who is not licensed
108 and currently eligible to practice under this chapter; or knowingly performing any act which in
109 any way aids, assists, procures, advises, or encourages any person to practice physical therapy
110 who is not licensed and currently eligible to practice under this chapter;

111 (11) Issuance of a license to practice as a physical therapist or physical therapist assistant
112 based upon a material mistake of fact;

113 (12) Failure to display a valid license pursuant to practice as a physical therapist or
114 physical therapist assistant;

115 (13) Knowingly making, or causing to be made, or aiding, or abetting in the making of,
116 a false statement in any document executed in connection with the practice of physical therapy;

117 (14) Soliciting patronage in person or by agents or representatives, or by any other means
118 or manner, under the person's own name or under the name of another person or concern, actual
119 or pretended, in such a manner as to confuse, deceive, or mislead the public as to the need or
120 necessity for or appropriateness of physical therapy services for all patients, or the qualifications
121 of an individual person or persons to render, or perform physical therapy services;

122 (15) Using, or permitting the use of, the person's name under the designation of "physical
123 therapist", "physiotherapist", "registered physical therapist", "P.T.", "Ph.T.", "P.T.T.", "D.P.T.",

124 "M.P.T." or "R.P.T.", "physical therapist assistant", "P.T.A.", "L.P.T.A.", "C.P.T.A.", or any
125 similar designation with reference to the commercial exploitation of any goods, wares or
126 merchandise;

127 (16) Knowingly making or causing to be made a false statement or misrepresentation of
128 a material fact, with intent to defraud, for payment under chapter 208 or chapter 630 or for
129 payment from Title XVIII or Title XIX of the federal Medicare program;

130 (17) Failure or refusal to properly guard against contagious, infectious, or communicable
131 diseases or the spread thereof; maintaining an unsanitary facility or performing professional
132 services under unsanitary conditions; or failure to report the existence of an unsanitary condition
133 in any physical therapy facility to the board, in writing, within thirty days after the discovery
134 thereof;

135 (18) Any candidate for licensure or person licensed to practice as a physical therapist or
136 physical therapist assistant paying or offering to pay a referral fee or, notwithstanding section
137 334.010 to the contrary, practicing or offering to practice professional physical therapy
138 independent of the prescription and direction of a person licensed and registered as a physician
139 and surgeon under this chapter, as a physician assistant under this chapter, as a chiropractor
140 under chapter 331, as a dentist under chapter 332, as a podiatrist under chapter 330, as an
141 advanced practice registered nurse under chapter 335, or any licensed and registered physician,
142 chiropractor, dentist, podiatrist, or advanced practice registered nurse practicing in another
143 jurisdiction, whose license is in good standing;

144 (19) Any candidate for licensure or person licensed to practice as a physical therapist or
145 physical therapist assistant treating or attempting to treat ailments or other health conditions of
146 human beings other than by professional physical therapy and as authorized by sections 334.500
147 to 334.685;

148 (20) A pattern of personal use or consumption of any controlled substance unless it is
149 prescribed, dispensed, or administered by a physician who is authorized by law to do so;

150 (21) Failing to maintain adequate patient records under 334.602;

151 (22) Attempting to engage in conduct that subverts or undermines the integrity of the
152 licensing examination or the licensing examination process, including but not limited to utilizing
153 in any manner recalled or memorized licensing examination questions from or with any person
154 or entity, failing to comply with all test center security procedures, communicating or attempting
155 to communicate with any other examinees during the test, or copying or sharing licensing
156 examination questions or portions of questions;

157 (23) Any candidate for licensure or person licensed to practice as a physical therapist or
158 physical therapist assistant who requests, receives, participates or engages directly or indirectly
159 in the division, transferring, assigning, rebating or refunding of fees received for professional

160 services or profits by means of a credit or other valuable consideration such as wages, an
161 unearned commission, discount or gratuity with any person who referred a patient, or with any
162 relative or business associate of the referring person;

163 (24) Being unable to practice as a physical therapist or physical therapist assistant with
164 reasonable skill and safety to patients by reasons of incompetency, or because of illness,
165 drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any mental or physical
166 condition. The following shall apply to this subdivision:

167 (a) In enforcing this subdivision the board shall, after a hearing by the board, upon a
168 finding of probable cause, require a physical therapist or physical therapist assistant to submit
169 to a reexamination for the purpose of establishing his or her competency to practice as a physical
170 therapist or physical therapist assistant conducted in accordance with rules adopted for this
171 purpose by the board, including rules to allow the examination of the pattern and practice of such
172 physical therapist's or physical therapist assistant's professional conduct, or to submit to a mental
173 or physical examination or combination thereof by a facility or professional approved by the
174 board;

175 (b) For the purpose of this subdivision, every physical therapist and physical therapist
176 assistant licensed under this chapter is deemed to have consented to submit to a mental or
177 physical examination when directed in writing by the board;

178 (c) In addition to ordering a physical or mental examination to determine competency,
179 the board may, notwithstanding any other law limiting access to medical or other health data,
180 obtain medical data and health records relating to a physical therapist, physical therapist assistant
181 or applicant without the physical therapist's, physical therapist assistant's or applicant's consent;

182 (d) Written notice of the reexamination or the physical or mental examination shall be
183 sent to the physical therapist or physical therapist assistant, by registered mail, addressed to the
184 physical therapist or physical therapist assistant at the physical therapist's or physical therapist
185 assistant's last known address. Failure of a physical therapist or physical therapist assistant to
186 submit to the examination when directed shall constitute an admission of the allegations against
187 the physical therapist or physical therapist assistant, in which case the board may enter a final
188 order without the presentation of evidence, unless the failure was due to circumstances beyond
189 the physical therapist's or physical therapist assistant's control. A physical therapist or physical
190 therapist assistant whose right to practice has been affected under this subdivision shall, at
191 reasonable intervals, be afforded an opportunity to demonstrate that the physical therapist or
192 physical therapist assistant can resume the competent practice as a physical therapist or physical
193 therapist assistant with reasonable skill and safety to patients;

194 (e) In any proceeding under this subdivision neither the record of proceedings nor the
195 orders entered by the board shall be used against a physical therapist or physical therapist

196 assistant in any other proceeding. Proceedings under this subdivision shall be conducted by the
197 board without the filing of a complaint with the administrative hearing commission;

198 (f) When the board finds any person unqualified because of any of the grounds set forth
199 in this subdivision, it may enter an order imposing one or more of the disciplinary measures set
200 forth in subsection 3 of this section.

201 3. After the filing of such complaint before the administrative hearing commission, the
202 proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding
203 by the administrative hearing commission that the grounds provided in subsection 2 of this
204 section for disciplinary action are met, the board may, singly or in combination:

205 (1) Warn, censure or place the physical therapist or physical therapist assistant named
206 in the complaint on probation on such terms and conditions as the board deems appropriate for
207 a period not to exceed ten years;

208 (2) Suspend the physical therapist's or physical therapist assistant's license for a period
209 not to exceed three years;

210 (3) Restrict or limit the physical therapist's or physical therapist assistant's license for an
211 indefinite period of time;

212 (4) Revoke the physical therapist's or physical therapist assistant's license;

213 (5) Administer a public or private reprimand;

214 (6) Deny the physical therapist's or physical therapist assistant's application for a license;

215 (7) Permanently withhold issuance of a license;

216 (8) Require the physical therapist or physical therapist assistant to submit to the care,
217 counseling or treatment of physicians designated by the board at the expense of the physical
218 therapist or physical therapist assistant to be examined;

219 (9) Require the physical therapist or physical therapist assistant to attend such continuing
220 educational courses and pass such examinations as the board may direct.

221 4. In any order of revocation, the board may provide that the physical therapist or
222 physical therapist assistant shall not apply for reinstatement of the physical therapist's or physical
223 therapist assistant's license for a period of time ranging from two to seven years following the
224 date of the order of revocation. All stay orders shall toll this time period.

225 5. Before restoring to good standing a license issued under this chapter which has been
226 in a revoked, suspended, or inactive state for any cause for more than two years, the board may
227 require the applicant to attend such continuing medical education courses and pass such
228 examinations as the board may direct.

229 6. In any investigation, hearing or other proceeding to determine a physical therapist's,
230 physical therapist assistant's or applicant's fitness to practice, any record relating to any patient
231 of the physical therapist, physical therapist assistant, or applicant shall be discoverable by the

232 board and admissible into evidence, regardless of any statutory or common law privilege which
233 such physical therapist, physical therapist assistant, applicant, record custodian, or patient might
234 otherwise invoke. In addition, no such physical therapist, physical therapist assistant, applicant,
235 or record custodian may withhold records or testimony bearing upon a physical therapist's,
236 physical therapist assistant's, or applicant's fitness to practice on the grounds of privilege between
237 such physical therapist, physical therapist assistant, applicant, or record custodian and a patient.
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