

FIRST REGULAR SESSION

HOUSE BILL NO. 410

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREGORY.

0314H.021

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 334.506 and 334.613, RSMo, and to enact in lieu thereof two new sections relating to the scope of practice for physical therapists.

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

Section A. Sections 334.506 and 334.613, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 334.506 and 334.613, to read as follows:

334.506. 1. As used in this section, "approved health care provider" means a person holding a current and active license as a physician and surgeon under this chapter, a chiropractor under chapter 331, a dentist under chapter 332, a podiatrist under chapter 330, a physician assistant under this chapter, an advanced practice registered nurse under chapter 335, or any licensed and registered physician, chiropractor, dentist, or podiatrist practicing in another jurisdiction whose license is in good standing.

2. A physical therapist ~~[shall not]~~ **may evaluate and** initiate treatment ~~[for a new injury or illness]~~ **on a patient** without a prescription **or referral** from an approved health care provider.

3. A physical therapist may provide educational resources and training, develop fitness or wellness programs ~~[for asymptomatic persons]~~, or provide screening or consultative services within the scope of physical therapy practice without ~~[the]~~ **a prescription [and direction of] or referral from** an approved health care provider.

4. ~~[A physical therapist may examine and treat without the prescription and direction of an approved health care provider any person with a recurring self-limited injury within one year of diagnosis by an approved health care provider or a chronic illness that has been previously diagnosed by an approved health care provider. The physical therapist shall:~~

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.

17 ~~—— (1) Contact the patient's current approved health care provider within seven days of~~
18 ~~initiating physical therapy services under this subsection;~~
19 ~~—— (2) Not change an existing physical therapy referral available to the physical therapist~~
20 ~~without approval of the patient's current approved health care provider;~~
21 ~~—— (3) Refer to an approved health care provider any patient whose medical condition at the~~
22 ~~time of examination or treatment is determined to be beyond the scope of practice of physical~~
23 ~~therapy;~~
24 ~~—— (4) Refer to an approved health care provider any patient whose condition for which~~
25 ~~physical therapy services are rendered under this subsection has not been documented to be~~
26 ~~progressing toward documented treatment goals after six visits or fourteen days, whichever first~~
27 ~~occurs;~~
28 ~~—— (5) Notify the patient's current approved health care provider prior to the continuation~~
29 ~~of treatment if treatment rendered under this subsection is to continue beyond thirty days. The~~
30 ~~physical therapist shall provide such notification for each successive period of thirty days]~~ **A**
31 **physical therapist shall refer to an approved health care provider any patient whose**
32 **medical condition at the time of evaluation or treatment is determined to be beyond the**
33 **scope of practice of physical therapy.**

34 5. The provision of physical therapy services of evaluation and screening pursuant to this
35 section shall be limited to a physical therapist, and any authority for evaluation and screening
36 granted within this section may not be delegated. Upon each reinitiation of physical therapy
37 services, a physical therapist shall provide a full physical therapy evaluation prior to the
38 reinitiation of physical therapy treatment. ~~[Physical therapy treatment provided pursuant to the~~
39 ~~provisions of subsection 4 of this section may be delegated by physical therapists to physical~~
40 ~~therapist assistants only if the patient's current approved health care provider has been so~~
41 ~~informed as part of the physical therapist's seven-day notification upon reinitiation of physical~~
42 ~~therapy services as required in subsection 4 of this section.]~~ Nothing in this subsection shall be
43 construed as to limit the ability of physical therapists or physical therapist assistants to provide
44 physical therapy services in accordance with the provisions of this chapter, and upon the referral
45 of an approved health care provider. Nothing in this subsection shall prohibit an approved health
46 care provider from acting within the scope of their practice as defined by the applicable chapters
47 of RSMo.

48 6. No person licensed to practice, or applicant for licensure, as a physical therapist or
49 physical therapist assistant shall make a medical diagnosis.

50 7. A physical therapist shall only delegate physical therapy treatment to a physical
51 therapist assistant or to a person in an entry level of a professional education program approved
52 by the Commission on Accreditation in Physical Therapy Education (CAPTE) who satisfies

53 supervised clinical education requirements related to the person's physical therapist or physical
54 therapist assistant education. The entry-level person shall be under the supervision of a physical
55 therapist.

334.613. 1. The board may refuse to issue or renew a license to practice as a physical
2 therapist or physical therapist assistant for one or any combination of causes stated in subsection
3 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and
4 shall advise the applicant of the applicant's right to file a complaint with the administrative
5 hearing commission as provided by chapter 621. As an alternative to a refusal to issue or renew
6 a license to practice as a physical therapist or physical therapist assistant, the board may, at its
7 discretion, issue a license which is subject to probation, restriction, or limitation to an applicant
8 for licensure for any one or any combination of causes stated in subsection 2 of this section. The
9 board's order of probation, limitation, or restriction shall contain a statement of the discipline
10 imposed, the basis therefor, the date such action shall become effective, and a statement that the
11 applicant has thirty days to request in writing a hearing before the administrative hearing
12 commission. If the board issues a probationary, limited, or restricted license to an applicant for
13 licensure, either party may file a written petition with the administrative hearing commission
14 within thirty days of the effective date of the probationary, limited, or restricted license seeking
15 review of the board's determination. If no written request for a hearing is received by the
16 administrative hearing commission within the thirty-day period, the right to seek review of the
17 board's decision shall be considered as waived.

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 who has failed to renew or has surrendered his or her
21 license for any one or any combination of the following causes:

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

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

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

- 34 (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct, or
35 unprofessional conduct in the performance of the functions or duties of a physical therapist or
36 physical therapist assistant, including but not limited to the following:
- 37 (a) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by
38 fraud, deception, or misrepresentation; willfully and continually overcharging or overtreating
39 patients; or charging for sessions of physical therapy which did not occur unless the services
40 were contracted for in advance, or for services which were not rendered or documented in the
41 patient's records;
- 42 (b) Attempting, directly or indirectly, by way of intimidation, coercion, or deception, to
43 obtain or retain a patient or discourage the use of a second opinion or consultation;
- 44 (c) Willfully and continually performing inappropriate or unnecessary treatment or
45 services;
- 46 (d) Delegating professional responsibilities to a person who is not qualified by training,
47 skill, competency, age, experience, or licensure to perform such responsibilities;
- 48 (e) Misrepresenting that any disease, ailment, or infirmity can be cured by a method,
49 procedure, treatment, medicine, or device;
- 50 (f) Performing services which have been declared by board rule to be of no physical
51 therapy value;
- 52 (g) Final disciplinary action by any professional association, professional society,
53 licensed hospital or medical staff of the hospital, or physical therapy facility in this or any other
54 state or territory, whether agreed to voluntarily or not, and including but not limited to any
55 removal, suspension, limitation, or restriction of the person's professional employment,
56 malpractice, or any other violation of any provision of this chapter;
- 57 (h) Administering treatment without sufficient examination, or for other than medically
58 accepted therapeutic or experimental or investigative purposes duly authorized by a state or
59 federal agency, or not in the course of professional physical therapy practice;
- 60 (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual,
61 while a physical therapist or physical therapist assistant/patient relationship exists; making sexual
62 advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of
63 a sexual nature with patients or clients;
- 64 (j) Terminating the care of a patient without adequate notice or without making other
65 arrangements for the continued care of the patient;
- 66 (k) Failing to furnish details of a patient's physical therapy records to treating physicians,
67 other physical therapists, or hospitals upon proper request; or failing to comply with any other
68 law relating to physical therapy records;

- 69 (l) Failure of any applicant or licensee, other than the licensee subject to the
70 investigation, to cooperate with the board during any investigation;
- 71 (m) Failure to comply with any subpoena or subpoena duces tecum from the board or
72 an order of the board;
- 73 (n) Failure to timely pay license renewal fees specified in this chapter;
- 74 (o) Violating a probation agreement with this board or any other licensing agency;
- 75 (p) Failing to inform the board of the physical therapist's or physical therapist assistant's
76 current telephone number, residence, and business address;
- 77 (q) Advertising by an applicant or licensee which is false or misleading, or which
78 violates any rule of the board, or which claims without substantiation the positive cure of any
79 disease, or professional superiority to or greater skill than that possessed by any other physical
80 therapist or physical therapist assistant. An applicant or licensee shall also be in violation of this
81 provision if the applicant or licensee has a financial interest in any organization, corporation, or
82 association which issues or conducts such advertising;
- 83 (5) Any conduct or practice which is or might be harmful or dangerous to the mental or
84 physical health of a patient or the public; or incompetency, gross negligence, or repeated
85 negligence in the performance of the functions or duties of a physical therapist or physical
86 therapist assistant. For the purposes of this subdivision, "repeated negligence" means the failure,
87 on more than one occasion, to use that degree of skill and learning ordinarily used under the
88 same or similar circumstances by the member of the applicant's or licensee's profession;
- 89 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling
90 any person to violate, any provision of this chapter, or of any lawful rule adopted under this
91 chapter;
- 92 (7) Impersonation of any person licensed as a physical therapist or physical therapist
93 assistant or allowing any person to use his or her license or diploma from any school;
- 94 (8) Revocation, suspension, restriction, modification, limitation, reprimand, warning,
95 censure, probation, or other final disciplinary action against a physical therapist or physical
96 therapist assistant for a license or other right to practice as a physical therapist or physical
97 therapist assistant by another state, territory, federal agency or country, whether or not voluntarily
98 agreed to by the licensee or applicant, including but not limited to the denial of licensure,
99 surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the
100 practice of physical therapy while subject to an investigation or while actually under
101 investigation by any licensing authority, medical facility, branch of the Armed Forces of the
102 United States of America, insurance company, court, agency of the state or federal government,
103 or employer;

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

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

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

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

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

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

121 (15) Using, or permitting the use of, the person's name under the designation of "physical
122 therapist", "physiotherapist", "registered physical therapist", "P.T.", "Ph.T.", "P.T.T.", "D.P.T.",
123 "M.P.T." or "R.P.T.", "physical therapist assistant", "P.T.A.", "L.P.T.A.", "C.P.T.A.", or any
124 similar designation with reference to the commercial exploitation of any goods, wares or
125 merchandise;

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

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

134 (18) Any candidate for licensure or person licensed to practice as a physical therapist or
135 physical therapist assistant paying or offering to pay a referral fee or~~notwithstanding section~~
136 ~~334.010 to the contrary, practicing or offering to practice professional physical therapy~~
137 ~~independent of the prescription and direction of a person licensed and registered as a physician~~
138 ~~and surgeon under this chapter, as a physician assistant under this chapter, as a chiropractor~~
139 ~~under chapter 331, as a dentist under chapter 332, as a podiatrist under chapter 330, as an~~

~~advanced practice registered nurse under chapter 335, or any licensed and registered physician, chiropractor, dentist, podiatrist, or advanced practice registered nurse practicing in another jurisdiction, whose license is in good standing]~~ **evaluating or treating a patient in a manner inconsistent with section 224.506;**

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

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

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

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

(23) Any candidate for licensure or person licensed to practice as a physical therapist or physical therapist assistant who requests, receives, participates or engages directly or indirectly in the division, transferring, assigning, rebating or refunding of fees received for professional services or profits by means of a credit or other valuable consideration such as wages, an unearned commission, discount or gratuity with any person who referred a patient, or with any relative or business associate of the referring person;

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

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

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

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

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

(e) In any proceeding under this subdivision neither the record of proceedings nor the orders entered by the board shall be used against a physical therapist or physical therapist assistant in any other proceeding. Proceedings under this subdivision shall be conducted by the board without the filing of a complaint with the administrative hearing commission;

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

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

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

(2) Suspend the physical therapist's or physical therapist assistant's license for a period 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.

✓