

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE DRH11142-LU-77 (03/15)

Short Title: Update/Modernize Physical Therapy Act. (Public)

Sponsors: Representatives Howard, McLawhorn, Carney, and Ingle (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA PHYSICAL THERAPY PRACTICE ACT BY PROVIDING FOR PROFESSIONAL ASSOCIATION BUSINESS ORGANIZATION STATUS FOR PHYSICAL THERAPISTS AND SOME ASSOCIATED PROFESSIONALS, CLARIFYING THE DEFINITION OF PHYSICAL THERAPY AIDE, AUTHORIZING THE NORTH CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS TO CONDUCT CRIMINAL BACKGROUND CHECKS OF APPLICANTS FOR LICENSURE, AND MAKING OTHER MODERNIZING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55B-2(6) reads as rewritten:

"§ 55B-2. Definitions.

As used in this Chapter, the following words shall, unless the context requires otherwise, have the following meanings:

...

(6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and the following Articles in Chapter 90: Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses, Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18B, 'Physical Therapy,' Article 18C, "Marriage and Family Therapy Licensure," Article 18D, "Occupational Therapy," Article 22, "Licensure Act for Speech and Language Pathologists and Audiologists," and Article 24, "Licensed Professional Counselors"; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification and Licensure Act" with regard to Licensed Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, "Geologists"; Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act"."

SECTION 2. G.S. 55B-14(c) is amended by adding a new subdivision to read:



"(c) A professional corporation may also be formed by and between or among:

(10) A physician licensed under Article 1 of Chapter 90 of the General Statutes practicing orthopedics and a physical therapist licensed under Article 18B of Chapter 90 of the General Statutes rendering either orthopedic services or physical therapy and related services, or both, that the respective stockholders are licensed to provide so long as a majority of the shares of each class of stock of the professional corporation is owned by one or more physicians licensed under Article 1 of Chapter 90 of the General Statutes."

SECTION 3. G.S. 90-18(c) is amended by adding a new subdivision to read:

"(c) The following shall not constitute practicing medicine or surgery as defined in subsection (b) of this section:

(21) The lawful practice of physical therapy under Article 18B of this Chapter."

SECTION 4. G.S. 90-270.24(5) reads as rewritten:

"§ 90-270.24. Definitions.

In this Article, unless the context otherwise requires, the following definitions shall apply:

(5) "Physical therapy aide" means any nonlicensed person who aids in the practice of physical therapy in accordance with the provisions of this Article, and who at all times acts under the orders, direction, and on-site supervision of a licensed physical therapist or physical therapist assistant. ~~An assistant acting within the scope of the physical therapist assistant's authorized areas of practice. An aide may perform only physical therapy related activities which are assigned and are commensurate with an aide's training and abilities, but an aide's work shall not include the interpretation and implementation of referrals from licensed medical doctors or dentists, the performance of evaluations, the determination and modification of treatment programs, or any independent performance of any physical therapy procedures.~~ expressly assigned routine tasks related to physical therapy services that do not require a license under this Article. However, in providing rehabilitation of athletic injuries, a licensed physical therapist may use the services of an athletic trainer licensed under Article 34 of this Chapter acting as an aide, not inconsistent with the limitations of the athletic trainer's required written physician protocol under G.S. 90-523(2) as filed with the North Carolina Medical Board, (i) to assist with or administer certain physical modalities, specifically heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment, or (ii) to assist with or implement certain physical therapy programs, specifically particular sport-related exercise drills or activities designed by the supervising physical therapist to address particular athletic injuries. Such actions by athletic trainers are authorized only under on-site supervision and overall control by the physical therapist, with applicable written treatment plans, program descriptions, orders, and directions by the physical therapist preserved in the physical therapy patient's treatment records. A physical therapist may not supervise more than one licensed athletic trainer working under authority of this subdivision at any one time."

SECTION 5. G.S. 90-270.26 is amended by adding a new subdivision to read:

"§ 90-270.26. Powers of the Board.

The Board shall have the following general powers and duties:

...

1 (9) Request the Department of Justice to provide criminal history checks
2 pursuant to G.S. 90-270.26.1 in connection with licensure or investigation
3 matters.

4 "

5 **SECTION 6.** Article 18B of Chapter 90 is amended by adding the following new
6 sections to read:

7 "**§ 90-270.26.1. Criminal history record checks of applicants for licensure.**

8 (a) All applicants for licensure shall consent to a criminal history record check. Refusal
9 to consent to a criminal history record check may constitute grounds for the Board to deny
10 licensure to an applicant. The Board shall ensure that the State and national criminal history of
11 an applicant is checked. The Board shall be responsible for providing to the North Carolina
12 Department of Justice the fingerprints of the applicant to be checked, a form signed by the
13 applicant consenting to the criminal history record check and the use of fingerprints and other
14 identifying information required by the State or National Repositories, and any additional
15 information required by the Department of Justice. The Board shall keep all information
16 obtained pursuant to this section confidential. For purposes of this section, a 'criminal history
17 record check' is a report resulting from a request made by the Board to the North Carolina
18 Department of Justice for a history of conviction of a crime, whether a misdemeanor or felony,
19 that bears on an applicant's fitness for licensure to practice physical therapy.

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

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

25 (1) The level of seriousness of the crime.

26 (2) The date of the crime.

27 (3) The age of the person at the time of the conviction.

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

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

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

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

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

43 "**§ 90-270.31.1. Physical therapy professional corporations.**

44 (a) Physical therapists licensed in North Carolina are authorized to form professional
45 corporations engaged in rendering physical therapy professional services in accordance with
46 Chapter 55B of the General Statutes.

47 (b) The Board shall not issue a certification to a professional corporation pursuant to
48 G.S. 55B-6 for the issue or transfer of stock to an individual who is not licensed as a physical
49 therapist under this Article unless the individual presents evidence satisfactory to the Board that
50 the laws governing or regulating physical therapy practices and professional corporations in the
51 jurisdiction where the individual is duly licensed and the performance of physical therapy

1 professional services are equivalent to the provisions of this Article and Chapter 55B of the
2 General Statutes."

3 **SECTION 7.** G.S. 90-270.39 reads as rewritten:

4 "**§ 90-270.39. OsteopathsPhysicians, chiropractors, and podiatrists not restricted.**

5 Nothing in this Article shall restrict the use of physical therapy modalities by ~~licensed~~
6 ~~osteopaths, chiropractors, physicians~~ licensed under Article 1 of this Chapter or licensed
7 chiropractors or podiatrists, in the lawful practice of their professions; except that, these
8 licensed professionals shall not be permitted to in any way hold themselves, or any employee or
9 associate, out as practicing physical therapy or being licensed by the Board of Physical Therapy
10 Examiners, or any other agency, to do so."

11 **SECTION 8.** Article 4 of Chapter 114 of the General Statutes is amended by
12 adding a new section to read:

13 "**§ 114-19.31. Criminal history record checks of licensure applicants or investigation**
14 **subjects in the practice of physical therapy.**

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

29 **SECTION 9.** This act is effective when it becomes law.