

1 HB164
2 136224-2
3 By Representative McClendon
4 RFD: Health
5 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, the Board of Physical
9 Therapy is responsible for regulating the practice
10 of physical therapy in the state.

11 This bill would define an impaired licensee
12 and would provide for the creation and operation of
13 an impaired practitioner program.

14 This bill would change references to
15 physical therapists from registered to licensed.

16 This bill would clarify and remove
17 inconsistencies in the definitions of physical
18 therapist assistant, physical therapy technician,
19 and physical therapy aide.

20 This bill would change references to foreign
21 physical therapists from foreign trained to foreign
22 educated.

23 This bill would transfer the responsibility
24 for certain duties from the secretary of the board
25 to the executive director and would authorize the
26 board to establish the compensation of the
27 executive director.

1 This bill would authorize the board to place
2 restrictions on licenses as a part of the
3 disciplinary process.

4 This bill would also authorize the board to
5 collect a fee from continuing education providers.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 34-24-191, 34-24-193, 34-24-194,
12 34-24-195, 34-24-210, 34-24-211, 34-24-212, 34-24-213, and
13 34-24-217, Code of Alabama 1975, relating to the Alabama
14 Physical Therapy Practice Act; to define an impaired licensee;
15 to provide for the creation and operation of an impaired
16 practitioner program; to change references to physical
17 therapists from registered to licensed; to clarify and remove
18 inconsistencies in the definitions of physical therapist
19 assistant, physical therapy technician, and physical therapy
20 aide; to change references to foreign physical therapists from
21 foreign trained to foreign educated; to transfer the
22 responsibility for certain duties from the secretary of the
23 board to the executive director; to authorize the board to
24 establish the compensation of the executive director; to
25 authorize the board to place restrictions on licenses as a
26 part of the disciplinary process; and to authorize the board
27 to collect a fee from continuing education providers.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 34-24-191, 34-24-193, 34-24-194,
3 34-24-195, 34-24-210, 34-24-211, 34-24-212, 34-24-213, and
4 34-24-217, Code of Alabama 1975, are amended to read as
5 follows:

6 "§34-24-191.

7 "(a) For the purposes of this article, the following
8 words and phrases shall have the meanings respectively
9 ascribed by this section:

10 "(1)(6) BOARD. The Board of Physical Therapy
11 established by Section 34-24-192.

12 "(2)(7) FOREIGN ~~TRAINED~~ EDUCATED PHYSICAL THERAPIST.
13 A person trained or educated in the practice of physical
14 therapy outside of the United States or any of its territorial
15 possessions.

16 "(3) IMPAIRED. The inability of a physical therapy
17 licensee to practice physical therapy with reasonable skill
18 and safety to patients by reason of illness, inebriation,
19 excessive use of drugs, narcotics, alcohol, chemicals, or
20 other substances, or as a result of any physical or mental
21 condition.

22 "(4)(1) PHYSICAL THERAPY. The treatment of a human
23 being by the use of exercise, massage, heat, cold, water,
24 radiant energy, electricity, or sound for the purpose of
25 correcting or alleviating any physical or mental condition or
26 preventing the development of any physical or mental
27 disability, or the performance of neuromuscular-skeletal tests

1 and measurements to determine the existence and extent of body
2 malfunction; provided, that physical therapy shall be
3 practiced only upon the referral of a physician licensed to
4 practice medicine or surgery and a dentist licensed to
5 practice dentistry and shall not include radiology or
6 electrosurgery.

7 "(5) ~~(2)~~ PHYSICAL THERAPIST. A person who practices
8 physical therapy.

9 "(6) PHYSICAL THERAPY LICENSEE. A physical therapist
10 or physical therapist assistant who is licensed under this
11 article.

12 "(7) ~~(3)~~ PHYSIOTHERAPIST. Synonymous with the term
13 "physical therapist," and the term shall be used to identify
14 only those persons ~~registered~~ licensed under this article. The
15 physical therapist may use the letters "P.T." or "R.P.T." in
16 connection with his or her name or place of business to denote
17 his or her registration hereunder.

18 "(8) ~~(4)~~ PHYSICAL THERAPIST ASSISTANT. A person who
19 assists in the practice of physical therapy and whose
20 activities require an understanding of physical therapy but do
21 not require professional or advanced training in the
22 anatomical, biological, and physical sciences involved in the
23 practice of physical therapy. The physical therapist assistant
24 shall practice only under the direction of a ~~registered~~
25 licensed physical therapist.

26 "(9) ~~(5)~~ PHYSICAL THERAPY AIDE. ~~TECHNICIAN. Synonymous~~
27 ~~with the term "physical therapist assistant," and the term~~

1 ~~shall be used to identify only those persons licensed under~~
2 ~~this article. The physical therapist assistant may use the~~
3 ~~letters "L.P.T.A." in connection with his or her name to~~
4 ~~denote his or her being licensed hereunder~~ A person trained
5 under the direction of a physical therapist who performs
6 designated and supervised routine tasks related to physical
7 therapy services.

8 "(10) RESTRICTED LICENSE.

9 "a. For a physical therapist, a license on which the
10 board has placed restrictions or conditions, or both, as to
11 the scope of practice, place of practice, supervision of
12 practice, duration of licensed status, or type or condition of
13 patient to whom the physical therapist may provide services.

14 "b. For a physical therapist assistant, a license on
15 which the board has placed any restriction.

16 "(b) Words importing the masculine gender shall
17 include the feminine.

18 "§34-24-193.

19 "(a) It shall be the duty of the board to pass upon
20 the qualifications of applicants for ~~registration~~ licensing as
21 physical therapists and licensing as physical therapist
22 assistants, to conduct examinations, to issue licenses and
23 renewals to physical therapists and physical therapist
24 assistants qualifying under this article and in a proper case
25 to suspend or revoke the ~~registration or~~ license of such
26 persons. The board may adopt rules and regulations not
27 inconsistent with law as it may deem necessary for the

1 performance of its duties; however, the board shall not issue
2 any rules or regulations that require a physical therapist
3 assistant to be within sight of a consulting physical
4 therapist or a physical therapist supervisor while working
5 under the direction of that physical therapist or issue any
6 rules, regulations, or orders inconsistent with Section
7 34-24-217(b). The board shall maintain a ~~register~~ listing the
8 name of every living physical therapist and physical therapist
9 assistant ~~registered or~~ licensed in this state, his or her
10 last known place of business and last known place of
11 residence, and the date and number of his or her license. The
12 board shall compile a list of physical therapists and physical
13 therapist assistants ~~registered or~~ licensed to practice in
14 this state, and such list shall be available to any person
15 upon application to the board and the payment of such charge
16 as may be fixed by the board. Subject to the provisions of
17 Section 34-24-195, the board shall have the power to make such
18 expenditures and employ such personnel as it may deem
19 necessary for the administration of the provisions of this
20 article. The board shall hire and establish the
21 responsibilities and salary of an executive director.

22 "(b) The board is hereby specifically authorized to
23 establish and collect a fee for certifying to other boards or
24 entities that a licensee is a member in good standing with the
25 Alabama board.

26 "(c) The board may collect a fee from providers of
27 continuing education programs.

1 "~~(d) (c)~~ The board is hereby authorized to discipline
2 its licensees by the adoption and collection of administrative
3 fines, not to exceed one thousand dollars (\$1,000) per
4 violation, and it is further authorized to institute any legal
5 proceedings necessary to effect compliance with this chapter.

6 "(e) The board shall provide for an impaired
7 practitioner program beginning January 1, 2014.

8 "(1) The board shall promote the early
9 identification, intervention, treatment, and rehabilitation of
10 physical therapy licensees who may be impaired by reason of
11 illness, inebriation, excessive use of drugs, narcotics,
12 alcohol, chemicals, or other substances, or as a result of any
13 physical or mental condition.

14 "(2) In order to carry out this obligation the board
15 may contract with any nonprofit corporation or medical
16 professional association for the purpose of creating,
17 supporting, and maintaining a committee to be designated the
18 Alabama Physical Therapy Wellness Committee. The committee
19 shall be selected in a manner prescribed by the board. The
20 board may expend available funds as necessary to adequately
21 provide for the operational expenses of the committee
22 including, but not limited to, the actual cost of travel,
23 office overhead, and personnel expense. The funds provided by
24 the board for the purpose of operating expenses are not
25 subject to any provision of law requiring competitive bidding.

26 "(3) The board may enter into an agreement with a
27 nonprofit corporation or medical professional association for

1 the committee to undertake those functions and
2 responsibilities specified in the agreement, which may include
3 any or all of the following:

4 "a. Contracting with providers of treatment
5 programs.

6 "b. Receiving and evaluating reports of suspected
7 impairment from any source.

8 "c. Intervening in cases of verified impairment.

9 "d. Referring impaired physical therapy licensees to
10 treatment programs.

11 "e. Monitoring the treatment and rehabilitation of
12 impaired physical therapy licensees.

13 "f. Providing post-treatment monitoring and support
14 of rehabilitated impaired physical therapy licensees.

15 "g. Performing other activities as agreed by the
16 board and the committee.

17 "(4) The committee shall develop procedures in
18 consultation with the board for all of the following:

19 "a. Periodic reporting of statistical information
20 regarding impaired physical therapy licensee program activity.

21 "b. Periodic disclosure and joint review of all
22 information the board deems appropriate regarding reports
23 received, contracts or investigations made, and the
24 disposition of each report. The committee may not disclose any
25 personally identifiable information except as otherwise
26 provided in this article.

1 "(5) Any individual appointed to serve as a member
2 of the committee and any auxiliary personnel, consultant,
3 attorney, or other volunteer or employee of the committee
4 taking any action authorized by this article, engaging in the
5 performance of any duties on behalf of the committee, or
6 participating in any administrative or judicial proceeding
7 resulting therefrom, in the performance and operation thereof,
8 shall be immune from any liability, civil or criminal, that
9 might otherwise be incurred or imposed. Any nonprofit
10 corporation or medical professional association or other
11 entity that contracts with or receives funds from the board
12 for the creation, support, and operation of the committee, in
13 so doing, shall be immune from any liability, civil or
14 criminal, that might otherwise be incurred or imposed.

15 "(6) All information, interviews, reports,
16 statements, memoranda, or other documents furnished to or
17 produced by the committee and any findings, conclusions,
18 recommendations, or reports resulting from any investigation,
19 intervention, treatment, or rehabilitation, or other
20 proceeding of the committee is privileged and confidential.
21 All records and proceedings of the committee pertaining to an
22 impaired physical therapy licensee is confidential and shall
23 be used by the committee and the members of the committee only
24 in the exercise of the proper function of the committee and
25 shall not be public record nor available for court subpoena or
26 for discovery proceedings. In the event of a breach of
27 contract between the committee and the impaired physical

1 therapy licensee, all records pertaining to the conduct
2 determined to cause the breach of contract shall be disclosed
3 to the board upon its request for disciplinary purposes only.
4 Nothing contained in this subdivision shall apply to records
5 made in the regular course of business of a physical therapy
6 licensee and any information, document, or record otherwise
7 available from an original source is not to be construed as
8 immune from discovery or use in any civil proceeding merely
9 because it is presented or considered during proceedings of
10 the committee.

11 "(7) The committee shall render an annual report to
12 the board concerning the operations and proceedings of the
13 committee for the preceding year. The committee shall report
14 to the board any physical therapy licensee who in the opinion
15 of the committee is unable to perform physical therapy duties
16 with reasonable skill and safety to patients by reason of
17 illness, inebriation, excessive use of drugs, narcotics,
18 alcohol, chemicals, or other substances, or as a result of any
19 physical or mental condition when it appears that the physical
20 therapy licensee is currently in need of intervention,
21 treatment, or rehabilitation and the licensee has failed or
22 refused to participate in any program of treatment or
23 rehabilitation recommended by the committee. A report to the
24 Alabama Physical Therapy Wellness Committee shall be deemed a
25 report to the board for the purposes of any mandated reporting
26 of physical therapy licensee impairment otherwise provided for
27 by law.

1 "(8) If the board has reasonable cause to believe
2 that a physical therapy licensee is impaired, the board may
3 cause an evaluation of the physical therapy licensee to be
4 conducted by the committee for the purpose of determining if
5 there is an impairment. The committee shall report the
6 findings of its evaluation to the board.

7 "§34-24-194.

8 "(a) Any person may file a complaint with the board
9 against any ~~registered~~ licensed physical therapist or licensed
10 physical therapist assistant in the state charging the person
11 with a violation of this article. The complaint shall set
12 forth specifications of charges in sufficient detail to
13 disclose to the accused fully and completely the alleged acts
14 of misconduct for which he or she is charged. When a complaint
15 is filed, the ~~secretary~~ executive director of the board shall
16 mail a copy thereof to the accused by registered mail at his
17 or her address of record, with a written notice of the time
18 and place of a hearing of the complaint, advising the accused
19 that he or she may be present in person and by counsel if he
20 or she so desires to offer testimony and evidence in his or
21 her defense.

22 "(b) The board may issue subpoenas and compel the
23 attendance of any witness or the production of any book,
24 writing, or other documentation in the possession, custody, or
25 control of any person. Any person refusing to produce any
26 book, writing, or other documentation or to appear to testify,
27 without legal excuse, at a hearing of the board, after having

1 been served with a subpoena issued by the board requiring the
2 person to appear, produce any book, writing, or other form of
3 documentation or testify at the hearing, shall be guilty of
4 contempt. Upon certification of the act of contempt by the
5 board to the judge of the circuit court in whose jurisdiction
6 the hearing is held or is to be held, the judge shall punish
7 the contempt as though committed before the judge. The accused
8 party shall, on application to the board, be furnished by the
9 board with a subpoena for any witness in his or her behalf or
10 for the production of any book, writing, or other
11 documentation to be used in his or her behalf at the hearing.

12 "(c) At the hearing, the board shall receive
13 evidence upon the subject matter under consideration and shall
14 accord the accused person a full and fair opportunity to be
15 heard in his or her defense. The board shall not be bound by
16 strict or technical rules of evidence, but shall consider all
17 evidence fully and fairly except, that all oral testimony
18 considered by the board must be under oath. If the board is
19 convinced that the ~~registered~~ licensed physical therapist or
20 the licensed physical therapist assistant has violated this
21 article, it may revoke his or her license.

22 "(d) The action of the board in revoking or refusing
23 to issue a license may be reviewed by the Circuit Court of
24 Montgomery County by a writ of mandamus, accompanied by a bond
25 to be approved by the court, to determine whether the board
26 acted arbitrarily, capriciously, or illegally. The review

1 procedure provided in this subsection shall not suspend the
2 action of the board in the revocation or refusal of a license.

3 "(e) The board may restrict a license and require
4 the licensee to report regularly to the board on matters
5 related to the reasons for the restricted license.

6 "§34-24-195.

7 "All fees collected by the board shall be paid into
8 the State Treasury and credited to a special fund designated
9 as the "Physical Therapist Fund." There is hereby appropriated
10 to the board all funds appropriated, or otherwise made
11 available, to the board by the Legislature of Alabama, the
12 Congress of the United States, or by any other source for the
13 purpose of carrying out this article, and the board shall have
14 power to direct the disbursement of all money collected
15 hereunder. All expenditures authorized shall be paid for out
16 of the fund on vouchers certified by the ~~chairman~~ executive
17 director of the board.

18 "§34-24-210.

19 "(a) ~~Registration~~ License required. No person shall
20 practice nor hold himself or herself out to be able to
21 practice physical therapy in this state unless he or she is
22 ~~registered~~ licensed in accordance with ~~the provisions of this~~
23 article.

24 "(b) License required. No person shall act nor hold
25 himself or herself out as being able to act as a physical
26 therapist assistant unless he or she is licensed in accordance
27 with ~~the provisions of~~ this article.

1 "(c) Other healing arts not affected. Nothing in
2 this article shall prohibit any person licensed to practice
3 any other of the healing arts in this state under any other
4 law from engaging in the practice for which he or she is
5 licensed.

6 "§34-24-211.

7 "An applicant for ~~registration~~ licensure as a
8 physical therapist or for a license as a physical therapist
9 assistant shall file a written application on forms provided
10 by the board together with fee as set by the board, no part of
11 which shall be returned. The applicant shall present evidence
12 satisfactory to the board that he or she is of good moral
13 character and has completed a program of physical therapy
14 education appropriate for training a physical therapist or a
15 physical therapist assistant, as the case may be, approved by
16 the board or a nationally recognized accrediting agency. Each
17 applicant shall also be a citizen of the United States or, if
18 not a citizen of the United States, a person who is legally
19 present in the United States with appropriate documentation
20 from the federal government.

21 "§34-24-212.

22 "(a) Generally. The board shall give an appropriate
23 examination to every applicant who complies with Section
24 34-24-211 and who pays the fee prescribed for the examination.
25 Examinations shall be held within the state at least once each
26 year, at such times and places as the board determines. A
27 practical or demonstration examination may be required at the

1 discretion of the board when an applicant is retaking a
2 written examination after previously having failed such an
3 examination.

4 "(b) Physical therapist. The examination given
5 applicants for ~~registration~~ licensure as a physical therapist
6 shall be a written examination, approved by the board. Such
7 examination shall test the applicant's knowledge of the basic
8 and clinical sciences as they relate to physical therapy,
9 physical therapy theory and procedures, and such other
10 subjects as the board may deem useful to test the applicant's
11 fitness to practice physical therapy. A practical or
12 demonstration examination may be required if so determined by
13 the board.

14 "(c) Physical therapist assistant. The examination
15 given applicants for ~~licensing~~ licensure as physical therapist
16 assistant will be a written examination, approved by the
17 board. Such examination shall test the applicant's knowledge
18 of the basic and clinical sciences as they relate to physical
19 therapy, physical therapy theory and procedures, and such
20 other subjects as the board may deem useful to test the
21 applicant's fitness to act as a physical therapist assistant.
22 A practical or demonstration examination may be required if so
23 determined by the board.

24 "(d) Foreign ~~trained~~ educated physical therapist.
25 Any foreign ~~trained~~ educated physical therapist who plans to
26 practice in the state must have their educational credentials
27 evaluated by a recognized educational evaluation agency and

1 have that agency send their report directly to the board. The
2 board will determine the acceptability of equivalency in
3 educational preparation. If the board rules the education to
4 be acceptable the routine application process will be
5 followed.

6 "§34-24-213.

7 "The board shall issue a license to each applicant
8 who passes the appropriate examination for ~~registration~~
9 licensure as a physical therapist or ~~licensing~~ licensure as a
10 physical therapist assistant in accordance with standards
11 fixed by it and who is not disqualified to receive a license
12 under the provisions of Section 34-24-217.

13 "§34-24-217.

14 "(a) The board shall refuse to issue a license to
15 any person and, after notice and hearing in accordance with
16 its regulations and rules, shall suspend, restrict, or revoke
17 the license of any person who has:

18 "(1) Practiced physical therapy other than upon the
19 referral of a physician licensed to practice medicine or
20 surgery, and a dentist licensed to practice dentistry; or
21 practiced as a physical therapist assistant other than under
22 the direction of a ~~registered~~ licensed physical therapist;

23 "(2) Used drugs or intoxicating liquors to an extent
24 which affects his or her professional competency;

25 "(3) Been convicted of a felony or of a crime
26 involving moral turpitude;

1 "(4) Obtained or attempted to obtain a license by
2 fraud or deception;

3 "(5) Been grossly negligent in the practice of
4 physical therapy or in acting as a physical therapist
5 assistant;

6 "(6) Been adjudged mentally incompetent by a court
7 of competent jurisdiction;

8 "(7) Been guilty of conduct unbecoming a person
9 ~~registered~~ licensed as a physical therapist or licensed as a
10 physical therapist assistant or of conduct detrimental to the
11 best interest of the public;

12 "(8) Been convicted of violating any state or
13 federal narcotic law;

14 "(9) Treated or undertaken to treat human ailments
15 otherwise than by physical therapy as defined in this article;

16 "(10) Advertised unethically according to standards
17 as set by the board; or

18 "(11) Failed or refused to obey any lawful order or
19 regulation of the board.

20 "(b) For purposes of this article and
21 notwithstanding any other provision of this article or any
22 rules or regulations adopted by the board, any person licensed
23 ~~or registered~~ under this article who has a bona fide
24 employment or independent contract with a physician, a
25 physician group, or an entity with which a physician has a
26 legal compensation arrangement, including fair market value
27 wages, compensation, benefits, or rents for services or

1 property provided, or in which a physician has a legal
2 financial interest, including any direct or indirect ownership
3 or investment interest, shall not be deemed to be engaged in
4 conduct unbecoming a person licensed ~~or registered~~ under this
5 article, or to be engaged in conduct detrimental to the best
6 interest of the public, or to be in violation of any other
7 provision of this article by virtue of any of the above
8 relationships, and shall not be subject to licensure denial,
9 suspension, revocation, or any other disciplinary action or
10 penalty under this article: (1) by virtue of such employment
11 or contract, or (2) by virtue of the provision of physical
12 therapy services pursuant to a referral from the employing or
13 contracting physician, or from a physician with a legal
14 compensation arrangement with or a legal financial interest in
15 the employing or contracting physician group."

16 Section 2. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.