

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1259

By: Rep. Ron Fuller

"AN ACT PROVIDING FOR THE APPOINTMENT OF A STATE COMMITTEE OF PHYSICAL THERAPY EXAMINERS; DEFINING THE SCOPE OF ITS DUTIES AND THE LIMITATIONS OF ITS POWERS; REGULATING THE PRACTICE OF PHYSICAL THERAPISTS; PROVIDING FOR THE LICENSING OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS; PRESCRIBING PENALTIES FOR ANY VIOLATIONS OF THIS ACT; PROVIDING FOR THE REPEAL OF ACT 141 OF 1959 [ARK. STAT. 72-1317 TO 72-1332] AND ALL ACTS AMENDATORY THERETO; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. The Legislature finds that the interest of the public requires establishment of licensure standards for the regulation and limitation of the practice of physical therapy in this state for the purpose of safeguarding the life, health, and welfare of the public and therefore identifying to the public as physical therapists those persons qualified under this Act to practice physical therapy within the State of Arkansas and to provide penalties for those persons violating such intent and purpose, thereby making this health specialty available through legally authorized qualified providers to those who seek physical therapy.

SECTION 2. As used in this Act, unless the content requires otherwise, the following words shall have the following meanings:

(a) 'Physical therapy' means the evaluation, instruction, or treatment of any person to detect, assess, prevent, correct, alleviate, or limit physical disability from injury or disease and any other physical and mental condition, by the performance and interpretation of tests and measurements of bodily or neuromuscular function as an aid in the diagnosis, examination, evaluation, or treatment of any human conditions, and the utilization of the

effective properties of physical measures, such as heat, cold, light, air, water, sound, electricity, massage, mobilization, therapeutic exercises, and rehabilitative procedures including training in functional activities, with or without assistive devices. Physical therapy also includes the supervision of physical therapy activities, physical therapy consultation, and the establishment and modification of physical therapy treatment programs. Physical therapy shall not include radiology or electrosurgery.

(b) 'Physical therapist' means a person who is licensed to practice 'physical therapy', has met all the requirements of this Act, and practices physical therapy in accordance with all of the provisions of this Act and rules and regulations adopted pursuant thereto.

(c) 'Physical therapist assistant' means a person who assists licensed physical therapists subject to the provisions of this Act and rules and regulations adopted pursuant thereto and has met all the requirements of this Act.

(d) 'Physical therapy aide' is an unlicensed member of the physical therapy team who may perform under the direct supervision of a licensed physical therapist subject to the provisions of this Act and rules and regulations adopted pursuant thereto.

(e) 'Board' means the State Board of Medical Examiners which shall enforce the provisions of this Act.

(f) 'Committee' means the State Committee of Physical Therapy Examiners which shall administer the provisions of this Act with the approval of the Board.

(g) 'Physical therapy student' means an unlicensed individual currently enrolled in and actively participating in a curriculum of physical therapy which has been approved for the education of physical therapists by the appropriate accrediting agency recognized by the Council on Post Secondary Accreditation (formerly the Federation of Regional Accrediting Commission of Higher Education) or the United States Commission of Education. Said individuals may perform acts constituting physical therapy only under the direct on-site supervision of a licensed physical therapist, subject to the provisions of this Act and the rules and regulations adopted pursuant thereto.

(h) 'Foreign applicant' means an applicant for licensure pursuant to this Act whose application is based on a diploma issued to him by a physical therapy school located outside the borders of the United States.

SECTION 3. (a) There is hereby created the State Committee of Physical Therapy Examiners. The Board hereby delegates to the Committee the administration of this Act subject to the review and approval by the Board of the Committees exercise of its duties and powers hereunder. The Committee shall consist of five members, all of whom shall be residents of Arkansas and one of whom shall be chosen as a representative of the public interest. The remaining four members shall be physical therapists licensed to practice in Arkansas, provided they have worked at least five years in Arkansas as physical therapists immediately preceding their appointment.

(b) The Governor shall appoint the members to serve on the Committee. In appointing persons to fill vacancies in the four Committee positions designated to be held by licensed physical therapists, the Governor may select physical therapists who reside in different regions of the state in an effort to provide statewide representation of physical therapists. The Arkansas Chapter of the American Physical Therapy Association may submit a list of names and addresses of qualified physical therapists willing to serve on the Committee for the Governor's consideration prior to the making of an appointment to fill any vacancies including the Governor's initial appointments.

(c) After the initial term of appointment, the term of office of a Committee member shall be three (3) years. Initially, the Governor shall appoint one initial Committee member to serve a one (1) year term, two other initial Committee members to serve two (2) year terms, and the remaining two initial Committee members to serve three (3) year terms in order to stagger the terms to promote continuity for Committee operations. A member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term, except that each member shall hold office after the expiration of his term until his successor shall be duly appointed and qualified.

(d) A member of the Committee shall be eligible for reappointment. A member shall not be appointed to serve more than two consecutive terms. A term will be considered as full if served one day over one and a half years. A member shall receive reimbursement for reasonable expenses incurred while engaged in the discharge of official duties, as well as an initial per diem allowance which may be increased or reduced from time to time by the Committee with approval of the Board to adequately compensate the Committee members. The Board shall provide the Committee with such facilities and personnel as

shall be required for the proper conduct of its business.

(e) The Committee shall meet at least twice a year during the same time and in the same place as the Board and may hold additional meetings with Board approval whenever necessary to discharge its duties. The location of any additional meetings shall be determined by the Committee, but shall be within the boundaries of the State of Arkansas.

(f) The Committee shall elect annually from its membership a chairman, a vice-chairman, and a secretary. It shall be the duty of the Committee to review and pass upon the qualifications of applicants for licensure and registration, to insure the proper conduct and standards of examinations, to review (and approve) education standards for applicants, to recommend to the Board issuance and renewal of license to physical therapists and certificate to physical therapist assistants who qualify under this Act, and, in proper cases, to recommend suspension or revocation of the license of a physical therapist or certification of a physical therapist assistant to the Board. The Committee shall be authorized and empowered to conduct investigations, including the power, subject to applicable law, to issue subpoenas, and to hold hearings upon charges or information indicating violation of the provisions of this Act or rules and regulations promulgated pursuant hereto.

(g) The Committee shall maintain a record listing the name of every living physical therapist and physical therapist assistant licensed or certified, by the Board, the last known place of business, the last known place of residence, and the date and number of the license of such person. The Committee shall have the power to establish for Board approval and adoption, rules and regulations not inconsistent with law necessary for the performance of the Committee's duties and the proper administration of this Act.

SECTION 4. (a) No person shall practice nor hold himself out as being able to practice physical therapy in this state or act as a physical therapist assistant in any manner whatsoever, whether or not compensation is received or expected, unless he has met all the requirements of this Act including educational requirements and is licensed in accordance with the provisions of this Act and such license is in good standing and has not been suspended or revoked.

(b) This Act shall not prohibit any person licensed to practice in this state under any other law, from engaging in the practice set forth by law for

which such person is licensed, subject to the provisions of Section 11 of this Act.

(c) This Act shall not prohibit students who are enrolled either in schools or post-graduate courses of physical therapy recognized by the Committee and Board, from performing such work or acts of physical therapy as is incidental to their respective course of study.

(d) Nothing in this Act shall apply to any person employed by an agency, bureau, or division of the Federal Government while in the discharge of official duties; however, if such person engages in the practice of physical therapy in this state outside the scope of such official duty, he must be licensed as herein provided.

SECTION 5. (a) To be eligible for licensure as a physical therapist or certification as a physical therapist assistant, an applicant shall submit to the Committee satisfactory evidence of (i) good moral character, (ii) graduation from a school offering a curriculum in physical therapy or physical therapist assistant which curriculum, as offered by such school, has been approved for the educational preparation of physical therapist or physical therapist assistants by the appropriate accrediting agency recognized by the Council on Post Secondary Accreditation (formerly, the Federation of Regional Accrediting Commission of Higher Education) or the United States Commission of Education, at the time of graduation and (iii) passes to the satisfaction of the Committee, an examination administered by the Committee to determine the applicant's fitness to practice physical therapy or to act as a physical therapist assistant as herein provided.

(b) (1) A physical therapist applicant whose application is based on a diploma issued to him by a foreign physical therapy school shall furnish evidence satisfactory to the Committee of the completion of a physical therapy curriculum or resident course of professional instruction equivalent to that required in subsection(a) of this section.

(2) Foreign applicants shall satisfactorily complete a period of service not to exceed one year under the continuous direction and immediate supervision of a licensed physical therapist in a physical therapy setting or in an institution either of which has been approved by the Committee for providing such a period of service, until such time as said applicant has satisfactorily passed an examination provided for in Section 7 of this Act. The

Committee may waive all or any portion of the required period of service based on criteria set forth by the Committee and adopted by the Board in the rules and regulations hereto.

(3) Before a license may be issued, each foreign applicant must meet the requirements of paragraphs (1) and (2) of subsection(b) of this Section and pass a written examination as provided under Section 7 prior to commencing a period of service and may be required to pass an oral examination at the completion of the period of service if such period of service has not been completed to the satisfaction of the supervising physical therapist.

SECTION 6. (a) Each application for licensure under this Act shall be accompanied by a fee determined by the Committee and approved by the Board in rules and regulations. Licenses shall expire annually on December 31 and may be renewed upon submission of a renewal application provided by the Committee and payment of a renewal fee determined by the Board. If the renewal fee is not paid by the expiration date, a license shall automatically expire. A license which has thus expired may within five years of its expiration date be renewed upon the payment of a fee to the Board for each year or part thereof during which the license had expired and an additional restoration fee as determined by the Board, provided the applicant has not practiced physical therapy or acted as a physical therapist in this state during the five year period. After the five year period, such license may be renewed only by complying with the provisions herein relating to the issuance of an original license.

(b) Any applicant who knowingly or willfully makes a false statement of fact in making a license application under this Act shall be subject to prosecution for perjury. The Committee shall have full authority to investigate, in accordance with law, every applicant for a license regarding that applicant's qualifications.

SECTION 7. (a) The Committee shall give an examination to applicants for licensure or certification who comply with Sections 5 and 6. Each examination shall include a written examination which shall test the applicant's knowledge of basic and clinical sciences as they relate to physical therapy and physical therapy theory and practice and such other subjects as the Board may deem useful to test the applicant's fitness to practice physical therapy or to act as

a physical therapist assistant, as the case may be. Examinations shall be held within the state at least twice a year at such time and place as the Board shall determine. The Committee shall also have the authority to establish alternate standards as set forth in rules and regulations adopted by the Board by which an applicant may be qualified to take the physical therapist assistant examination.

(b) In the case of failure to pass the first examination, the applicant shall have the privilege of a second examination after six months and within two years from the date of the first examination. Successive examinations after a second examination failure shall be according to standards set by the Committee.

SECTION 8. The Board shall, with the recommendation of the Committee, issue a license to each physical therapist applicant and a certificate to each physical therapist assistant applicant who satisfies the requirements for licensure or certification set forth in this Act and rules and regulations promulgated hereunder and who is not disqualified to be licensed or certified by operation of the provisions of Section 13 of this Act. The Board shall, with the recommendation of the Committee, issue a license to each physical therapist or a certificate to each physical therapist assistant who: (1) on the effective date of this Act, was licensed as a physical therapist or physical therapist assistant under Act 141 of 1959, as amended; (2) has submitted a written application for a license or a certificate; and (3) has paid a fee to the Committee as determined by the Board.

SECTION 9. Upon payment to the Committee of a fee determined by the Board and on submission of a written application on forms provided by the Committee, the Board shall, upon the recommendation of the Committee, issue a license to a physical therapist or a certificate to a physical therapist assistant without examination, who is licensed or registered as a physical therapist or a physical therapist assistant by another state of the United States, its possessions or the District of Columbia, if the requirements for licensure or certification in such other state, possession or district at the time of licensure or certification by such state are substantially equal to the requirements set forth in this Act; provided however, that such person has not taken and failed, one or more times, the examination referred to in

Section 7, relating to a licensure of physical therapist or the certification of a physical therapist assistant, in which case the issuance of a license or certificate under this section shall be, following review with the Committee, at the discretion of the Board.

SECTION 10. (a) Upon submission of a written application on forms provided by the Committee, the Board shall, upon recommendation of the Committee, issue a temporary license or certificate to a person who has applied for licensure or certification under the provisions of Sections 5 and 6 of this Act and who is, in the judgment of the Committee, eligible to take the examination provided for in Section 7 of this Act. Such temporary licensure or certification shall be available to an applicant only with respect to his first application for licensure or certification and the applicant may only use the temporary licensure or certification while under the preceptorship of a licensed physical therapist, approved by the committee. Such temporary licensure or certification shall expire automatically upon the failure of, or failure to take, a licensure examination and upon such expiration, the temporary license or certificate shall be surrendered to the Board.

(b) Upon payment to the Committee of a fee determined by the Board and the submission of written application on forms provided by the Committee, the Board shall, at its discretion, issue a temporary license to a person upon review with the Committee that such person is in this state on a temporary basis to assist in a medical emergency or to engage in a special project or teaching assignment relating to physical therapy practice. Such temporary license shall expire at the end of one year from the date of its issuance, except it may be renewed by the Board for a period of one additional year. Upon expiration of the temporary license without renewal, the temporary license shall be surrendered to the Board.

SECTION 11. It shall be unlawful for any person, or for any business entity, its employees, agents, or representatives to use in connection with his or its name or business activity the words 'physical therapy', 'physical therapist', 'physiotherapy', 'physiotherapist', 'registered physical therapist', the letters 'PT', 'LPT', 'RPT', or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied in any manner, or to extend or pro-

vide physical therapy services for physical therapy including the billing of 'physical therapy' unless such services are provided by a physical therapist licensed and practicing in accordance with this Act. In this regard, any billing indicating that physical therapy services have been rendered must contain the license number of the physical therapist provided for under this Act.

SECTION 12. Any person who holds a license pursuant to this Act may use the word 'physical therapist' or 'licensed physical therapist' or the letters 'PT', or 'LPT' in connection with his name or place of business to denote his licensure hereunder. Any person who holds a license pursuant to this Act as a physical therapist assistant may use the words 'physical therapist assistant' and may use the letters 'PTA' in connection with his name to denote his registration hereunder.

SECTION 13. (a) The Board, after due notice and hearing and recommendation by the Committee, may refuse to license any applicant or may refuse to renew the license of any person or may suspend or revoke the license of any licensed person who has committed any of the following acts defined as unprofessional conduct. 'Unprofessional conduct' as used in this Act is declared to mean:

(1) Practicing physical therapy or providing acts as a physical therapist assistant in violation of the provisions of this Act and rules and regulations promulgated thereunder;

(2) Attempting to or obtaining licensure or certification by fraud or misrepresentation;

(3) Committing repeated occasions of negligence or incompetence in the practice of physical therapy or acting as a physical therapist assistant;

(4) Having been convicted of a felony in the courts of this state or any other state, territory, or country. Conviction, as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

(5) Habitually indulges in the use of narcotics or other habit forming drugs, or excessively indulges in the use of alcoholic liquors to render himself incapable of exercising that degree of skill and judgment in the treatment of patients which the moral trust and confidence in him demands.

(6) Have had his license to practice physical therapy or certification to act as a physical therapist assistant revoked or suspended or

has had other disciplinary action taken or his application for licensure or certification has been refused, revoked, or suspended by the proper authorities of another state, territory, or country;

(7) Departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice as established by the Committee and adopted by the Board, in which proceeding actual injury to a patient need not be established;

(8) Persistent, flagrant overcharging or overtreating of patients;

(9) Becoming physically or mentally incompetent to practice physical therapy to such an extent as to endanger the public;

(10) Insanity or mental disease, if evidenced by an adjudication or by voluntary commitment to an institution for treatment of a mental disease or as determined by an examination conducted by three (3) impartial psychiatrists retained by the Committee;

(11) Any person who fails to notify the Board that formal criminal charges or the rendering of any civil verdict relating to professional negligence.

(b) Actions of the Board shall be taken subject to the right of notice, hearing, and adjudication and the right of appeal therefrom in accordance with the provisions of Arkansas Law relating to administrative law and procedure.

(c) A person who violates a provision of this Act is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment for not less than thirty (30) days nor more than one hundred eighty (180) days, or by both such fine and imprisonment and for each additional offense that person shall be subject to either a fine or not less than five hundred dollars (\$500.00) or imprisonment of not less than six months, at the discretion of the court.

(d) The Attorney General, the Board with the Committee's recommendation, or any other person may apply for injunctive relief in any court of competent jurisdiction to enjoin any person or entity from committing an act in violation of this Act. The injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in this Act.

(e) Any person who is licensed or certified by the Board or who is an applicant for licensure or certification by the Board, against whom are preferred any of the charges for causing the revocation or suspension of a

license or certificate shall be cited by the Board and shall have a hearing before a hearing examiner as determined by the Board.

(f) The physical therapist is obligated to provide the consumer patient with information concerning the ownership of the therapy services and the right to choose alternative providers of services.

SECTION 14. A complaint may be filed with the Board against a person licensed or certified by the Board charging him with:

1. Failure to have the necessary qualifications as set out in Section 5 of this Act, or
2. With the commission of one or more of the offenses enumerated and described as unprofessional conduct.

The said complaint shall set forth a specification of charges in sufficient detail that the person so accused shall have full and complete disclosure to him of any alleged acts of misconduct, impropriety, or lack of qualifications. When such complaint is filed, the Secretary of the Board shall mail a copy thereof to the person so accused by registered mail, at his last address on record with a written notice of the time and place of the hearing thereon, advising him that he may be present in person or be represented by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for such hearing shall not be less than thirty (30) days from the date of mailing the notice. At the time and place fixed for a hearing before the Board, the Board shall receive evidence upon the subject under consideration and shall accord the person against whom the charges are preferred a full and fair opportunity to be heard in his defense. The Board shall not be bound by strict or technical rules of evidence, but shall consider all evidence fully and fairly, provided, however, that all testimony considered by the Board must be under oath. If the person so charged be found not guilty of the charges, the Board shall dismiss the case, but if such person be found guilty, the Board shall:

- (a) revoke his license;
- (b) suspend his license for a period not to exceed one (1) year; or
- (c) grant him probation under the terms and conditions determined by the Board for the best interest of the people of the State of Arkansas.

Appeal may be handled by either of the parties from the decision of the Board in any manner now provided by law. All evidence considered by the Board shall be reduced to writing and available for the purpose of appeal or certiorari to any of the parties of said hearing. Nothing herein shall be construed so as to deprive any person of his rights without full, fair, and impartial hearing.

SECTION 15. If for any reason any section or provision of this Act shall be held to be unconstitutional or invalid for any reason, such holding shall not affect the remaining sections or provisions of this Act and to this end the sections and provisions of this Act are hereby declared to be separable.

SECTION 16. Act 141 of 1959, as amended, the same being Arkansas Statutes 72-1317 to 72-1332, the Arkansas Physical Therapy Act, and all Acts amendatory thereto are hereby repealed. And further, all laws or parts of laws in conflict with this Act are hereby repealed.

