

CHAPTER 313 (HB 618)

AN ACT relating to physical therapy practitioners.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall establish an impaired physical therapy practitioners committee to promote the early identification, intervention, treatment, and rehabilitation of physical therapists and physical therapists' assistants who may be impaired by reason of illness or of alcohol or drug abuse, or as a result of any physical or mental condition.*
- (2) *The board may enter into a contractual agreement with a nonprofit corporation, physical therapy professional organization, or similar organization for the purpose of creating, supporting, and maintaining an impaired physical therapy practitioners committee.*
- (3) *The board may promulgate administrative regulations in accordance with KRS Chapter 13A to effectuate and implement a committee formed by the provisions of this section.*
- (4) *Beginning January 1, 2001, the board shall collect an assessment fee not to exceed twenty dollars (\$20) per licensee or certificate holder, payable to the board, to be added to each licensure and certification renewal application fee. Proceeds from the assessment shall be expended on the operation of an impaired physical therapy practitioner committee formed by the provisions of this section. The fee shall be set by the promulgation of administrative regulations.*
- (5) *Members of an impaired physical therapy practitioners committee, any administrator, staff member, consultant, agent, volunteer, or employee of the committee acting within the scope of their duties and without actual malice, and all other persons who furnish information to the committee in good faith and without actual malice shall not be liable of any claim or damages as a result of any statement, decision, opinion, investigation, or action taken by the committee or by an individual member of the committee.*
- (6) *All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the impaired physical therapy practitioners committee, all communication to or from the committee, and all proceedings, findings, and conclusions of the committee including those relating to intervention, treatment, or rehabilitation, which in any way pertain or refer to a physical therapist or physical therapist's assistant who is or may be impaired, shall be privileged and confidential.*
- (7) *All records and proceedings of the committee that pertain or refer to a licensee or a certificate holder who may be, or actually is, impaired shall be privileged and confidential and shall be used by the committee and its members only in the exercise of the proper function of the committee and shall not be considered public records and shall not be subject to court subpoena and subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except as described in subsection (8) of this section.*
- (8) *The committee may disclose information relative to an impaired physical therapist or physical therapist's assistant only when:*

- (a) *It is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired practitioner;*
 - (b) *Its release is authorized in writing by the impaired physical therapist or physical therapist's assistant; or*
 - (c) *The information is subject to court order.*
- (9) *The impaired physical therapy practitioners committee shall make an annual report to the board.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 327 IS CREATED TO READ AS FOLLOWS:

Any physical therapist, physical therapist's assistant, or employer of physical therapy practitioners having knowledge of facts by actual or direct knowledge shall report to the board of physical therapy a physical therapist or physical therapist's assistant who:

- (1) *Has been convicted of a felony that involved acts that bear directly on the qualifications or ability of the applicant, licensee, or certificate holder to practice physical therapy;*
- (2) *Is suspected of fraud or deceit in procuring or attempting to procure a license to practice physical therapy or of negligently performing actions that justify action against a physical therapist or physical therapist's assistant's license as identified in subsection (2) of Section 7 of this Act;*
- (3) *Has had a license to practice as a physical therapist or a certificate as a physical therapist's assistant denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause a license or certificate to be denied, limited, suspended, probated, or revoked in this Commonwealth; or*
- (4) *Is practicing physical therapy without a current active license, certificate, or valid temporary permit issued by the board.*

Section 3. KRS 327.030 is amended to read as follows:

There is hereby established a State Board of Physical Therapy which shall consist of *seven (7)*~~five (5)~~ members who shall be appointed by the Governor.

- (1) *One (1) member shall be a citizen at large who is not affiliated with and does not have more than five percent (5%) financial interest in any one (1) health care profession or business.*
- (2) *All other*~~[At least three (3) of the]~~ members shall be appointed *and vacancies shall be filled* from a list of five (5) persons *per position* submitted by the Kentucky *Physical Therapy Association*.~~[chapter of the American Physical Therapy Association,]~~ All~~[of whom]~~ shall be residents of Kentucky and shall have engaged in the *unrestricted* practice of physical therapy within this state for at least two (2) years *without disciplinary action*~~[One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated].~~
- (3) *All appointments to the board after the effective date of this Act shall be for a term of four (4)*~~[Members shall be appointed for a term of three (3)]~~ years and until their successors are appointed and qualify. *No member shall serve for more than two (2) successive terms, or for more than ten (10) consecutive years. The Governor may remove any member of the board*

for misconduct, incompetence, or neglect of duty~~[Vacancies of physical therapist members shall be filled by the Governor in like manner from a list of five (5) submitted by the Kentucky chapter of the American Physical Therapy Association].~~

- (4) The board shall annually elect a chairman,~~[and]~~ a secretary, ***and a chairman-elect***~~[A member may be removed from the board only for cause. Failure to attend at least half of the board meetings in a fiscal year shall constitute cause].~~
- (5) ***There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is functioning within the scope of board duties, acting without malice and with the reasonable belief that the actions taken by him or her are warranted by law.***
- (6) ***Each board member shall receive, in addition to travel, lodging, and other actual and necessary expenses, a per diem not to exceed one hundred twenty dollars (\$120) for each day the member is actually engaged in the discharge of official duties approved by the board. The board shall, by promulgation of administrative regulations, set the amount of the per diem.***

Section 4. KRS 327.040 is amended to read as follows:

- (1) It shall be the duty of the State Board of Physical Therapy to receive applications from persons desiring to become physical therapists and to determine whether said applicants meet the qualifications and standards required by this chapter of all physical therapists. The board shall also be charged with enforcement of the provisions of this chapter.
- (2) The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter coming to its notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.
- (3) The board shall meet at least once each quarter at such place in this state as may be selected by the board. ***Four (4)***~~[Three (3)]~~ members of the board shall constitute a quorum for the transaction of business. All meetings shall be held at the call of the chairman or at a call of a quorum of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.
- (4) The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B, to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. ***The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence***~~[Upon majority vote by the board, the board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents in connection with any investigations conducted by the board].~~ In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. ***Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.***

- (5) The board shall keep a minute book containing a record of all meetings of the board.
- (6) The board shall maintain a register of all persons licensed or certified under this chapter. This register shall show the name of every licensee or certificate holder in this state, his current business and residence address and telephone numbers, and the date and number of his license or certificate. ***A licensee or certificate holder shall notify*** the board ~~shall be notified by a licensee or certificate holder~~ of a change of name, address, or telephone number, within thirty (30) days of the change.
- (7) The board's records shall be updated annually.
- (8) The board shall publish annually and make available, a current directory of all ***licensed physical therapists and certified physical therapists' assistants***~~licensees and certificate holders~~.
- (9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.
- (10) The board may promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of this chapter pursuant to the provisions of KRS Chapter 13A.
- (11) The board shall promulgate by administrative regulation a code of ethical standards and standards of practice.
- (12) The board shall have the right to regulate physical therapists' assistants and may promulgate reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapists' assistants. The board may establish reasonable fees for the certification, renewal, and endorsement of physical therapists' assistants. The fees shall not exceed corresponding fees for physical therapists.
- (13) ***The board shall promulgate administrative regulations governing the physical and mental examination of physical therapists, physical therapists' assistants, or applicants, who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a physical therapist, physical therapist's assistant, or applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.***

Section 5. KRS 327.050 is amended to read as follows:

- (1) Before applying for licensure by the board as a physical therapist, a person shall have successfully completed an accredited program in physical therapy ~~and be a graduate of an accredited school of physical therapy~~ approved by the board and shall have fulfilled the requirements of KRS 214.615(1). No school shall be approved by the board unless it has been approved for the educational preparation of physical therapists by the recognized national accrediting agency for physical therapy educational programs.
- (2) Any person who possesses the qualifications required by this chapter and who desires to apply for licensure as a physical therapist in Kentucky shall make written application to the board, on forms to be provided by the board. The application shall be accompanied by a nonrefundable application fee in an amount to be determined by the board, but not to exceed two hundred fifty dollars (\$250). ~~Upon acceptance by the board of the application, the~~

applicant shall pay an examination fee in an amount sufficient to cover the actual cost of the examination and shall successfully complete the board-approved examination.]

- (3) If it appears from the application that the applicant possesses the qualifications required by this chapter and has not yet successfully completed the board-approved examination, the applicant shall be **allowed to sit for the**~~admitted to the next scheduled~~ examination and tested in the subjects the board may determine to be necessary.
- (4) Examinations shall be held within the state at least once a year at the time and place as the board shall determine.
- (5) An applicant who is admitted to the examination or an applicant who has submitted satisfactory evidence that he has been accepted as a candidate for licensure by examination in a state which offers an examination approved by the board may be granted a temporary permit which shall be valid until his examination is graded and he is notified by the board of his score. ***The board may summarily withdraw a temporary permit upon determination that the person has made any false statement to the board on the application, or the person fails to pass an examination approved by the board.***
- (6) An applicant who receives a passing score as determined by the board and who meets the other qualifications required by this chapter shall be licensed as a physical therapist.
- (7) An applicant who fails to receive a passing score on his examination shall not be licensed; but the board may, by administrative regulation, permit applicants to take the examination more than once.
- (8) All licenses ***and certificates*** shall be renewed biennially, upon payment on or before March 31 of each uneven numbered year of a renewal fee ***in an amount*** to be ***promulgated***~~fixed~~ by the board ***by administrative regulations***~~in an amount not to exceed one hundred dollars (\$100)~~. Any licensed ***or certified*** person seeking renewal shall ***retain for three (3) years***~~include~~ proof of the completion of the course described in KRS 214.610(1) on the form provided by the cabinet.
- (9) Licenses ***and certificates*** which are not renewed by March 31 of each uneven numbered year shall lapse.
- (10) This chapter shall not be construed to affect or prevent:
 - (a) A student of physical therapy from engaging in clinical practice under the supervision of a licensed physical therapist, as part of the student's educational program;
 - (b) A physical therapist who is licensed to practice in another state or country from conducting or participating in a clinical residency under the supervision of a physical therapist licensed in Kentucky and for a period of not more than ninety (90) days;
 - (c) A physical therapist who is licensed to practice in another state or country from conducting or participating in the teaching of physical therapy in connection with an educational program and for a period of not more than ninety (90) days;~~or~~
 - (d) ***A physical therapist licensed in another state or country from performing therapy on members of the out-of-state sports or entertainment group they accompany to Kentucky; or***
 - (e) The practice of chiropractic as defined in KRS 312.015(3).

Section 6. KRS 327.060 is amended to read as follows:

The board shall issue a license to:

- (1) An individual who holds a valid license from another state, who meets requirements specified in KRS 327.050 and who has no imposed or pending disciplinary actions.
- (2) An individual who has been *educated as a physical therapist outside the United States and who has*~~[trained in a foreign country, subject to the following requirements]:~~
 - (a) *Completed the application process;*~~[Graduation from a physical therapy program.]~~
 - (b) *Provided satisfactory evidence to the board that his or her education is substantially equivalent to the requirements for physical therapists educated in United States accredited educational programs;*~~[Evaluation of the individual's educational credentials by a credentials evaluation service acceptable to the board.]~~
 - (c) *Provided written proof that the school of physical therapy education outside the United States is recognized by its own ministry of education;*~~[Approval by the board of the individual's educational credentials.]~~
 - (d) *Successfully completed*~~[Successful completion of]~~ the *examinations*~~[examination]~~ provided for in KRS 327.050;~~[.]~~
 - (e) *Passed the board approved English language proficiency examinations if English is not his or her native language;*~~[Demonstration of proficiency in the English language.]~~
 - (f) *Successfully completed, prior to licensure, a board-approved, supervised practice period of not less than three (3) months nor more than six (6) months, under the direct supervision of a physical therapist who holds an unrestricted Kentucky license*~~[Successful completion of one (1) year of board approved supervised practice under a physical therapist licensed under this chapter].~~ This requirement may be satisfied by *at least three (3) months*~~[one (1) year]~~ of supervised practice as a~~[icensed]~~ physical therapist in a state with license requirements comparable to or more stringent than those of Kentucky.
 - (g) *Fulfilled the requirements of KRS 214.615(1);*
 - (h) *Provided proof of legal authorization to reside and seek employment in the United States or its territories;*
 - (i) *Provided proof of authorization to practice as a physical therapist without limitations in the country where the professional education occurred;*
 - (j) *Submitted to a prescreening process by an agency approved by the board; and*
 - (k) *Submitted educational credentials to the board for evaluation by an agency approved by the board.*
- (3) *The board may approve an agency to prescreen applicants for initial licensure under this section.*
- (4) *The board may approve one or more services to provide an evaluation of the applicant's educational credentials for board approval for licensing under this section.*

- (5) ***The board may waive the requirements of paragraphs (c), (j), and (k) of subsection (2) of this section if the applicant is a graduate of a professional physical therapy education program pre-approved by the board.***

Section 7. KRS 327.070 is amended to read as follows:

- (1) The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B may ***take any one (1) or a combination of the following actions against any licensee, certificate holder, or applicant:***
- (a) Refuse to license or certify any applicant;
 - (b) ~~[, and may]~~ Refuse to renew the license or certificate of any person;
 - (c) ~~[, and may]~~ Suspend or revoke or place on probation the license or certificate of any person;
 - (d) ***Impose restrictions on the scope of practice of any person;***
 - (e) ~~[and may]~~ Issue an administrative reprimand to any ***person***; ~~[licensee or certificate holder.]~~
 - (f) ***Issue a private admonishment to any person; and***
 - (g) ***Impose fines for violations of this chapter not to exceed two thousand five hundred dollars (\$2,500).***
- (2) ***The following acts by a licensee, certificate holder, or applicant may be considered cause for disciplinary action:***
- (a) ~~[(1)]~~ ***Indulgence*** ~~[Who indulges]~~ in excessive use of alcoholic beverages or ***abusive use of controlled substances*** ~~[who is addicted to the use of narcotic drugs];~~
 - (b) ~~[(2)]~~ ***Engaging*** ~~[Who has engaged]~~ in, ***permitting, or attempting to engage in or permit*** ~~[or permitted]~~ the performance of substandard patient care by himself or by persons working under his supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;
 - (c) ~~[(3)]~~ ***Having*** ~~[Who has, in the judgment of the board,]~~ engaged in ***or attempted to engage in*** a course of lewd or immoral conduct ***with any person***; ~~[in connection with the delivery of health care services to patients;]~~
 - 1. ***While that person is a patient of a health care facility defined by KRS 216B.015(10) where the physical therapist or physical therapist's assistant provides physical therapy services; or***
 - 2. ***While that person is a patient or client of the physical therapist or physical therapist's assistant;***
 - (d) ***Having sexual contact, as defined by KRS 510.010(7), without the consent of both parties, with an employee or coworker of the licensee or certificate holder;***
 - (e) ***Sexually harassing an employee or coworker of the licensee or certificate holder;***
 - (f) ~~[(4)]~~ ***Conviction*** ~~[Who has been convicted]~~ of a felony or misdemeanor in the courts of this state or any other state, territory, or country which affects his ability to continue to practice competently and safely on the public. "Conviction," as used in this subsection,

shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

- (g)~~[(5)]~~ ***Obtaining***~~[Who has obtained]~~ or ***attempting***~~[attempted]~~ to obtain a license or certificate by fraud or material misrepresentation or ***making***~~[who has made]~~ any other false statement to the board;
- (h)~~[(6)]~~ ***Engaging***~~[Who engaged]~~ in fraud or material deception in the delivery of professional services, including reimbursement, or ***advertising***~~[has advertised]~~ services in a false or misleading manner;
- (i)~~[(7)]~~ ***Evidence***~~[Who is guilty, in the judgment of the board,]~~ of gross negligence or gross ***incompetence***~~[incompetency]~~ in his practice of physical therapy;
- (j)~~[(8)]~~ ***Documentation of being***~~[Who has been]~~ declared mentally disabled by a court of competent jurisdiction and~~[has]~~ not thereafter ***having*** had his rights restored;
- (k)~~[(9)]~~ ***Failing***~~[Who has failed]~~ or ***refusing***~~[refused]~~ to obey any lawful order or administrative regulation of the board;
- (l)~~[(10)]~~ ***Promoting***~~[Who has promoted]~~ for personal gain an unnecessary device, treatment, procedure, or service, or ***directing***~~[who has directed]~~ or ***requiring***~~[required]~~ a patient to purchase a device, treatment, procedure, or service from a facility or business in which he has a financial interest; and
- (m)~~[(11)]~~ ***Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently***~~[Who has been adjudged unfit to practice due to a physical or mental disability. When physical or mental capacity is at issue in a board proceeding, the board may order the practitioner to submit to a reasonable physical or mental examination. Failure to comply shall be grounds for the summary denial of an application or the summary revocation of the practitioner's license or certificate to be executed in accordance with KRS 13B.125].~~

(3) *A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.* Section 8. KRS 327.075 is amended to read as follows:

- (1) The board may reinstate within three (3) years a license or certificate which has lapsed, upon payment of the prescribed renewal fee and, in addition, the payment of a reinstatement fee ***to be promulgated by the board by administrative regulations***~~[not to exceed twenty five dollars (\$25)].~~
- (2) The board may reinstate a license or certificate which has been lapsed for more than three (3) years, upon showing that the applicant is able to practice with reasonable competency. In determining competency, the board may require the applicant to successfully complete all or any part of the required examination.
- (3) The board may reinstate a license which has been suspended or revoked under provisions of this chapter, if after a hearing conducted in accordance with KRS Chapter 13B, the board determines the applicant is able to practice the profession with reasonable competency and is able to maintain the ethical code and standards of practice promulgated by administrative

regulation. As a condition of reinstatement, the board may impose reasonable restrictions under which the licensee or certificate holder shall practice.

- (4) Any person aggrieved by a final order of the board denying, suspending, or revoking his license or certificate may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 9. KRS 327.080 is amended to read as follows:

- (1) All fees ~~received~~~~collected~~ by the board **and collected under this chapter or the administrative regulations adopted in accordance with this chapter** shall be **deposited with**~~paid into~~ the State ~~Treasurer~~~~Treasury~~ and credited to ***the revolving fund of the board, a trust and agency fund, to be used by the board in defraying the costs and expenses of the board in the administration of the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth***~~[an account for the payment of all lawful expenses of the board]~~.
- (2)~~Each member of the board shall be entitled to a per diem to be established by the board but not to exceed sixty dollars (\$60) and his reasonable expenses for attending each meeting of the board or for representing the board in an official, board approved capacity.~~
- (3)~~The board may employ *an executive director and other*~~such~~ personnel and *may* purchase such materials and supplies as it may deem necessary for the proper discharge of its duties~~, all of which shall be paid for out of its account on vouchers certified by the chairman or, when authorized in writing by the chairman, on vouchers certified by the executive secretary~~.~~

Approved April 4, 2000