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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 2939

02/22/2018 Authored by Lohmer, Backer, Kunesh-Podein, Poston and Sandstede
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to health occupations; modifying grounds for disciplinary action and
1.3 prohibited conduct for physical therapists; amending Minnesota Statutes 2016,
1.4 sections 148.75; 148.76, subdivision 2.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 148.75, is amended to read:

1.7 **148.75 DISCIPLINARY ACTION.**

1.8 (a) The board may impose disciplinary action specified in paragraph (b) against an
1.9 applicant or licensee whom the board, by a preponderance of the evidence, determines:

1.10 (1) has violated a statute, rule, order, or agreement for corrective action that the board
1.11 issued or is otherwise authorized or empowered to enforce;

1.12 (2) is unable to practice physical therapy with reasonable skill and safety by reason of
1.13 any mental or physical illness or condition, including deterioration through the aging process
1.14 or loss of motor skills, or use of alcohol, drugs, narcotics, chemicals, or any other type of
1.15 material;

1.16 (3) has been convicted of or has pled guilty or nolo contendere to a felony or other crime,
1.17 an element of which is dishonesty or fraud, or has been shown to have engaged in acts or
1.18 practices tending to show that the applicant or licensee is incompetent or has engaged in
1.19 conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in
1.20 the practice of physical therapy;

1.21 (4) has been convicted of violating any state or federal narcotic law;

2.1 (5) has obtained or attempted to obtain a license or approval of continuing education
2.2 activities, or passed an examination, by fraud or deception;

2.3 (6) has engaged in unprofessional conduct or any other conduct which has the potential
2.4 for causing harm to the public, including any departure from or failure to conform to the
2.5 minimum standards of acceptable and prevailing practice without actual injury having to
2.6 be established;

2.7 (7) has engaged in gross negligence in the practice of physical therapy as a physical
2.8 therapist;

2.9 ~~(8) has treated human ailments by physical therapy after an initial 90-day period of~~
2.10 ~~patient admittance to treatment has lapsed, except by the order or referral of a person licensed~~
2.11 ~~in this state in the practice of medicine as defined in section 147.081, the practice of~~
2.12 ~~chiropractic as defined in section 148.01, the practice of podiatry as defined in section~~
2.13 ~~153.01, or the practice of dentistry as defined in section 150A.05, or the practice of advance~~
2.14 ~~practice nursing as defined in section 148.171, subdivision 3, when orders or referrals are~~
2.15 ~~made in and whose license is in collaboration with a physician, chiropractor, podiatrist, or~~
2.16 ~~dentist, and whose license is in good standing; or when a previous diagnosis exists indicating~~
2.17 ~~an ongoing condition warranting physical therapy treatment, subject to periodic review~~
2.18 ~~defined by board of physical therapy rule. The 90-day limitation of treatment by a physical~~
2.19 ~~therapist without an order or referral does not apply to prevention, wellness, education, or~~
2.20 ~~exercise;~~

2.21 ~~(9) for a physical therapist licensed less than one year, has treated human ailments,~~
2.22 ~~without referral, by physical therapy treatment without first having practiced one year in~~
2.23 ~~collaboration with a physical therapist with more than one year of experience or under a~~
2.24 ~~physician's orders or referrals as verified by the board's records;~~

2.25 ~~(10)~~ (8) has failed to consult with the patient's licensed health care provider, or licensed
2.26 health care professional, who prescribed the physical therapy treatment if the treatment is
2.27 altered by the physical therapist from the original written order. The provision does not
2.28 include written orders to "evaluate and treat";

2.29 ~~(11)~~ (9) has inappropriately delegated to a physical therapist assistant or inappropriately
2.30 assigned tasks to an aide, or inadequately supervised a student physical therapist, physical
2.31 therapist assistant, student physical therapist assistant, or a physical therapy aide;

2.32 ~~(12)~~ (10) has practiced as a physical therapist performing medical diagnosis, the practice
2.33 of medicine as defined in section 147.081, or the practice of chiropractic as defined in
2.34 section 148.01;

3.1 ~~(13)~~ (11) has failed to comply with a reasonable request to obtain appropriate clearance
3.2 for mental or physical conditions that would interfere with the ability to practice physical
3.3 therapy, and that may be potentially harmful to patients;

3.4 ~~(14)~~ (12) has divided fees with, or paying or promising to pay a commission or part of
3.5 the fee to, any person who contacts the physical therapist for consultation or sends patients
3.6 to the physical therapist for treatment;

3.7 ~~(15)~~ (13) has engaged in an incentive payment arrangement, other than that prohibited
3.8 by clause ~~(14)~~ (12), that tends to promote physical therapy overuse, that allows the referring
3.9 person or person who controls the availability of physical therapy services to a client to
3.10 profit unreasonably as a result of patient treatment;

3.11 ~~(16)~~ (14) has failed to refer to a licensed health care professional a patient ~~whose medical~~
3.12 ~~condition has been determined by the physical therapist to be beyond the scope of practice~~
3.13 who is not responding as expected to treatment, or whose medical condition has been
3.14 determined by the physical therapist to be beyond the scope of practice of a physical therapist;

3.15 ~~(17)~~ (15) has failed to report to the board other licensees who violate this section;

3.16 ~~(18)~~ (16) has engaged in the practice of physical therapy under lapsed or nonrenewed
3.17 credentials;

3.18 ~~(19)~~ (17) has had a license, certificate, charter, registration, privilege to take an
3.19 examination, or other similar authority denied, revoked, suspended, canceled, limited,
3.20 reprimanded, or otherwise disciplined, or not renewed for cause in any jurisdiction; or has
3.21 surrendered or voluntarily terminated a license or certificate during a board investigation
3.22 of a complaint, as part of a disciplinary order, or while under a disciplinary order;

3.23 ~~(20)~~ (18) has been subject to a corrective action or similar action in another jurisdiction
3.24 or by another regulatory authority; or

3.25 ~~(21)~~ (19) has failed to cooperate with an investigation of the board, including responding
3.26 fully and promptly to any question raised by or on behalf of the board relating to the subject
3.27 of the investigation, executing all releases requested by the board, providing copies of patient
3.28 records, as reasonably requested by the board to assist it in its investigation, and appearing
3.29 at conferences or hearings scheduled by the board or its staff.

3.30 (b) If grounds for disciplinary action exist under paragraph (a), the board may take one
3.31 or more of the following actions:

3.32 (1) deny the application for licensure;

4.1 (2) deny the renewal of the license;

4.2 (3) revoke the license;

4.3 (4) suspend the license;

4.4 (5) impose limitations or conditions on the licensee's practice of physical therapy,
4.5 including the: (i) limitation of scope of practice to designated field specialties; (ii) imposition
4.6 of retraining or rehabilitation requirements; (iii) requirement of practice under supervision;
4.7 or (iv) conditioning of continued practice on demonstration of knowledge or skills by
4.8 appropriate examination, monitoring, or other review of skill and competence;

4.9 (6) impose a civil penalty not to exceed \$10,000 for each separate violation, the amount
4.10 of the civil penalty to be fixed so as to deprive the physical therapist of any economic
4.11 advantage gained by reason of the violation charged, to discourage similar violations, or to
4.12 reimburse the board for the cost of the investigation and proceeding including, but not
4.13 limited to, fees paid for services provided by the Office of Administrative Hearings, legal
4.14 and investigative services provided by the Office of the Attorney General, court reporters,
4.15 witnesses, reproduction of records, board members' per diem compensation, board staff
4.16 time, and travel costs and expenses incurred by board staff and board members;

4.17 (7) order the licensee to provide unremunerated service;

4.18 (8) censure or reprimand the licensee; or

4.19 (9) any other action as allowed by law and justified by the facts of the case.

4.20 (c) A license to practice as a physical therapist or physical therapist assistant is
4.21 automatically suspended if (1) a guardian of the licensee is appointed by order of a court
4.22 pursuant to sections 524.5-101 to 524.5-502, for reasons other than the minority of the
4.23 licensee; or (2) the licensee is committed by order of a court pursuant to chapter 253B. The
4.24 license remains suspended until the licensee is restored to capacity by a court and, upon
4.25 petition by the licensee, the suspension is terminated by the Board of Physical Therapy after
4.26 a hearing.

4.27 Sec. 2. Minnesota Statutes 2016, section 148.76, subdivision 2, is amended to read:

4.28 Subd. 2. **Prohibitions.** (a) No physical therapist may:

4.29 ~~(1) treat human ailments by physical therapy after an initial 90-day period of patient~~
4.30 ~~admittance to treatment has lapsed, except by the order or referral of a person licensed in~~
4.31 ~~this state to practice medicine as defined in section 147.081, the practice of chiropractic as~~
4.32 ~~defined in section 148.01, the practice of podiatry as defined in section 153.01, the practice~~

5.1 ~~of dentistry as defined in section 150A.05, or the practice of advanced practice nursing as~~
5.2 ~~defined in section 62A.15, subdivision 3a, when orders or referrals are made in collaboration~~
5.3 ~~with a physician, chiropractor, podiatrist, or dentist, and whose license is in good standing;~~
5.4 ~~or when a previous diagnosis exists indicating an ongoing condition warranting physical~~
5.5 ~~therapy treatment, subject to periodic review defined by Board of Physical Therapy rule.~~
5.6 ~~The 90-day limitation of treatment by a physical therapist without an order or referral does~~
5.7 ~~not apply to prevention, wellness, education, or exercise;~~

5.8 ~~(2)~~ (1) use any chiropractic manipulative technique whose end is the chiropractic
5.9 adjustment of an abnormal articulation of the body; ~~and~~ or

5.10 ~~(3)~~ (2) treat human ailments other than by physical therapy unless duly licensed or
5.11 registered to do so under the laws of this state.

5.12 ~~(b) No physical therapist licensed less than one year may treat human ailments, without~~
5.13 ~~referral, by physical therapy treatment without first having practiced one year in collaboration~~
5.14 ~~with a physical therapist with more than one year of experience or under a physician's orders~~
5.15 ~~or referrals as verified by the board's records.~~