House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
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CHAPTER 35

HOUSE BILL 2149

AN ACT

AMENDING SECTIONS 32-2003, 32-2022, 32-2023, 32-2027, 32-2028, 32-2042, 32-2044, 32-2046 AND 32-2047, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF PHYSICAL THERAPY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-2003, Arizona Revised Statutes, is amended to read:

32-2003. Board; powers and duties

A. The board shall:

1. Evaluate the qualifications of applicants for licensure and certification.

2. Provide for national examinations for physical therapists and physical therapist assistants and adopt passing scores for these examinations.

3. Issue licenses, permits and certificates to persons who meet the requirements of this chapter.

4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.

5. Adopt and revise rules to enforce this chapter.

6. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.

7. Establish the mechanisms for assessing continuing professional competence of physical therapists to engage in the practice of physical therapy and the competence of physical therapist assistants to work in the field of physical therapy.

8. At its first regular meeting after the start of each calendar year, elect officers from among its members and as necessary to accomplish board business.

9. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.

10. Maintain a current list of all persons regulated under this chapter. This list shall include the person's name, current business and residential addresses, telephone numbers and license or certificate number.

11. Employ necessary personnel to carry out the administrative work of the board. Board personnel are eligible to receive compensation pursuant to section 38-611.

12. Enter into contracts for services necessary for adequate enforcement of this chapter.

13. Report final disciplinary action taken against a licensee or a certificate holder to a national disciplinary database recognized by the board.

14. Publish, at least annually, final disciplinary actions taken against a licensee or a certificate holder.

15. Publish, at least annually, board rulings, opinions and interpretations of statutes or rules in order to guide persons regulated pursuant to this chapter.

16. Not later than December 31 of each year, submit a written report of its actions and proceedings to the governor.

17. Establish and collect fees.

18. Provide information to the public regarding the board, its processes and consumer rights.

B. THE BOARD MAY ESTABLISH A COMMITTEE OR COMMITTEES TO ASSIST IT IN CARRYING OUT ITS DUTIES FOR A TIME PRESCRIBED BY THE BOARD. THE BOARD MAY REQUIRE A COMMITTEE APPOINTED PURSUANT TO THIS SUBSECTION TO MAKE REGULAR REPORTS TO THE BOARD.

Sec. 2. Section 32-2022, Arizona Revised Statutes, is amended to read:

32-2022. Qualifications for licensure and certification

A. An applicant for a license as a physical therapist who has been educated in the United States shall:

1. Be of good moral character.

2. Complete the application process.

3. Be a graduate of a professional physical therapy education program accredited by a national accreditation agency approved by the board.

4. Have successfully passed the national examination approved by the board.

5. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

B. An applicant for a license as a physical therapist who has been educated outside of the United States shall:

1. Be of good moral character.

2. Complete the application process.

3. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs as determined by the board. If the board determines that a foreign educated applicant's education is not substantially equivalent, it may require the person to complete additional ~~course work~~ COURSEWORK before it proceeds with the application process. It is not necessary that coursework completed by the applicant be identical in all respects to that required by an education program in the United States for an entry level physical therapy degree, but all required content areas must be evident as required by board rules. Deficiencies may occur only in coursework and not in essential areas of professional education and shall not be of a magnitude that would cause the education to be deemed below entry level preparation for practice in this state.

4. Provide written proof of legal authorization to practice as a physical therapist without limitation in the country where the professional education occurred. THE BOARD MAY WAIVE THIS REQUIREMENT ON RECEIPT OF WRITTEN PROOF THAT THE APPLICANT CANNOT DEMONSTRATE LEGAL AUTHORIZATION BASED ON THE CITIZENSHIP REQUIREMENTS OF THE COUNTRY WHERE THE PROFESSIONAL EDUCATION OCCURRED.

5. Provide proof of legal authorization to reside and seek employment in the United States or its territories.

6. Have passed the board approved English proficiency examinations if the applicant's native language is not English.

7. Have participated in an interim supervised clinical practice period before licensure as approved by the board or shall have already met this requirement to the board's satisfaction by virtue of the applicant's clinical practice in another jurisdiction of the United States.

8. Have successfully passed the national examination approved by the board.

9. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

C. Notwithstanding the requirements of subsection B, if the foreign educated physical therapist applicant is a graduate of an accredited educational program as determined by the board, the board may waive the requirements of subsection B, paragraphs 3 and 7.

D. An applicant for certification as a physical therapist assistant shall meet the following requirements:

1. Be of good moral character.

2. Complete the application process.

3. Be a graduate of a physical therapist assistant education program accredited by an agency approved by the board.

4. Have successfully passed the national examination approved by the board.

5. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

E. For the purposes of subsection B, paragraph 3, "substantially equivalent" means that the applicant provides documentation satisfactory to the board that:

1. The applicant graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy.

2. The applicant's school of physical therapy education is recognized by its own ministry of education. The board may waive this requirement for good cause shown.

3. The applicant has undergone a credentials evaluation as directed by the board that determines that the applicant has met uniform criteria for educational requirements pursuant to board rules.

4. The applicant has completed any additional education required by the board.

Sec. 3. Section 32-2023, Arizona Revised Statutes, is amended to read:

32-2023. <u>Application; denial; hearing</u>

A. An applicant for licensure or certification shall file a completed application as required by the board. The applicant shall include the application fee prescribed in section 32-2029.

B. THE BOARD MAY DENY A LICENSE OR CERTIFICATE TO AN APPLICANT, A LICENSEE OR A CERTIFICATE HOLDER FOR ANY OF THE FOLLOWING:

1. KNOWINGLY MAKING A FALSE STATEMENT OF FACT REQUIRED TO BE REVEALED IN THE INITIAL APPLICATION, RENEWAL APPLICATION OR REINSTATEMENT APPLICATION FOR A LICENSE OR CERTIFICATE.

2. COMMITTING FRAUD IN THE PROCUREMENT OF A LICENSE OR CERTIFICATE.

3. COMMITTING A FELONY, WHETHER OR NOT INVOLVING MORAL TURPITUDE, OR A MISDEMEANOR INVOLVING MORAL TURPITUDE. IN EITHER CASE CONVICTION BY A COURT OF COMPETENT JURISDICTION IS CONCLUSIVE EVIDENCE OF THE COMMISSION.

4. ATTEMPTING TO ENGAGE IN CONDUCT THAT SUBVERTS OR UNDERMINES THE INTEGRITY OF THE EXAMINATION OR THE EXAMINATION PROCESS, INCLUDING USING IN ANY MANNER RECALLED OR MEMORIZED EXAMINATION QUESTIONS FROM OR WITH A PERSON OR ENTITY, FAILING TO COMPLY WITH ALL TEST CENTER SECURITY PROCEDURES, COMMUNICATING OR ATTEMPTING TO COMMUNICATE WITH OTHER EXAMINEES DURING THE EXAMINATION OR COPYING OR SHARING EXAMINATION QUESTIONS OR PORTIONS OR QUESTIONS.

5. ENGAGING IN ANY CONDUCT THAT WOULD BE CONSIDERED A VIOLATION OF SECTION 32-2044.

~~B.~~ C. If the board denies an application because of deficiencies in an application OR FOR A REASON PRESCRIBED IN SUBSECTION B OF THIS SECTION, the board must inform an applicant of those specific deficiencies. On receipt of a written request by an applicant who disagrees with the board's decision to deny an application, the board shall hold a hearing pursuant to title 41, chapter 6, article 10.

Sec. 4. Section 32-2027, Arizona Revised Statutes, is amended to read:

32-2027. License or certificate renewal; automatic suspension

A. A licensee or certificate holder shall renew the license or certificate pursuant to board rules. Except as provided in section 32-4301, a licensee or certificate holder who fails to renew the license or certificate on or before its expiration date shall not practice as a physical therapist or work as a physical therapist assistant in this state.

B. THE BOARD SHALL ADMINISTRATIVELY SUSPEND A LICENSE OR CERTIFICATE IF THE LICENSEE OR CERTIFICATE HOLDER DOES NOT SUBMIT A COMPLETE APPLICATION FOR RENEWAL AND PAY THE RENEWAL FEE PURSUANT TO BOARD RULES.

Sec. 5. Section 32-2028, Arizona Revised Statutes, is amended to read:

32-2028. Reinstatement of license or certificate

A. The board may reinstate a ~~lapsed~~ license or certificate THAT IT SUSPENDED PURSUANT TO SECTION 32-2027, SUBSECTION B on payment of a renewal fee and reinstatement fee and completion of the application process as prescribed by the board.

B. If a person's license or certificate has ~~lapsed~~ BEEN SUSPENDED PURSUANT TO SECTION 32-2027, SUBSECTION B for more than three consecutive years, THE LICENSE OR CERTIFICATE EXPIRES AND that person shall reapply for a license or certificate pursuant to section 32-2022 or 32-2026 and pay all applicable fees. The person must also demonstrate to the board's

satisfaction competency by satisfying one or more of the following as prescribed by the board:

1. Practicing for a specified time under an interim permit.

2. Completing remedial courses.

3. Completing continuing competence requirements for the period of the lapsed license.

4. Passing an examination.

Sec. 6. Section 32-2042, Arizona Revised Statutes, is amended to read:

32-2042. Use of titles; restrictions; violation; classification

A. A physical therapist shall use the letters ~~"P.T."~~ "PT" in connection with the physical therapist's name or place of business to denote licensure under this chapter.

B. A physical therapist assistant shall use the letters ~~"P.T.A."~~ "PTA" in connection with that person's name to denote certification pursuant to this chapter.

C. A person or business entity or its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business the words "physical therapy", "physical therapist", "physiotherapy", "physiotherapist" or "registered physical therapist", the letters ~~"P.T."~~ "PT", ~~"L.P.T."~~ "LPT", ~~"R.P.T."~~ "RPT", ~~"M.P.T."~~ "MPT" "DScPT" or ~~"D.P.T."~~ "DPT" or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless these services are provided by or under the direction of a physical therapist WHO IS licensed pursuant to this chapter. A person or entity that violates this subsection is guilty of a class 1 misdemeanor.

D. A person or business entity shall not advertise, bill or otherwise promote a person who is not licensed pursuant to this chapter as being a physical therapist or offering physical therapy services.

E. A person shall not use the title "physical therapist assistant" or use the letters ~~"P.T.A."~~ "PTA" in connection with that person's name or any other words, abbreviations or insignia indicating or implying directly or indirectly that the person is a physical therapist assistant unless that person is certified as a physical therapist assistant pursuant to this chapter. A person who violates this subsection is guilty of a class 1 misdemeanor.

Sec. 7. Section 32-2044, Arizona Revised Statutes, is amended to read:

32-2044. Grounds for disciplinary action

The following are grounds for disciplinary action:

1. Violating this chapter, board rules or a written board order.

2. Practicing or offering to practice beyond the scope of the practice of physical therapy.

3. Obtaining or attempting to obtain a license or certificate by fraud or misrepresentation.

4. Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.

5. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform tasks selected and delegated by the supervising licensee regardless of whether actual injury to the patient is established.

6. Failing to supervise assistive personnel, physical therapy students or interim permit holders in accordance with this chapter and rules adopted pursuant to this chapter.

7. ~~Committing~~ CONVICTION OF a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission AND THE BOARD MAY TAKE DISCIPLINARY ACTION WHEN THE TIME FOR APPEAL HAS LAPSED, WHEN THE JUDGMENT OF CONVICTION HAS BEEN AFFIRMED ON APPEAL OR WHEN AN ORDER GRANTING PROBATION IS MADE SUSPENDING THE IMPOSITION OF SENTENCE, IRRESPECTIVE OF A SUBSEQUENT ORDER. FOR THE PURPOSES OF THIS PARAGRAPH, "CONVICTION" MEANS A PLEA OR VERDICT OF GUILTY OR A CONVICTION FOLLOWING A PLEA OF NOLO CONTENDERE.

8. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by disease or trauma, by the use of controlled substances or other habit-forming drugs, chemicals or alcohol or by other causes.

9. Having had a license or certificate revoked or suspended or other disciplinary action taken or an application for licensure or certification refused, revoked or suspended by the proper authorities of another state, territory or country.

10. Engaging in sexual misconduct. For the purposes of this paragraph, "sexual misconduct" includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a provider-patient relationship exists.

(b) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients.

(c) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

11. Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profiting by means of any credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. This paragraph does not prohibit the members of any regularly and properly organized business entity recognized by law and ~~comprised~~ COMPOSED of physical therapists from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expense.

12. Failing to adhere to the recognized standards of ethics of the physical therapy profession.

13. Charging unreasonable or fraudulent fees for services performed or not performed.

14. Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession.

15. Having been adjudged mentally incompetent by a court of competent jurisdiction.

16. Aiding or abetting a person who is not licensed or certified in this state and who directly or indirectly performs activities requiring a license or certificate.

17. Failing to report to the board any direct knowledge of an unprofessional, incompetent or illegal act that appears to be in violation of this chapter or board rules.

18. Interfering with an investigation or disciplinary proceeding by failing to cooperate, by wilful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent the patient or witness from providing evidence in a disciplinary proceeding or any legal action.

19. Failing to maintain patient confidentiality without prior written consent of the patient or unless otherwise required by law.

20. Failing to maintain adequate patient records. For the purposes of this ~~subsection~~ PARAGRAPH, "adequate patient records" means legible records that comply with board rules and that contain at a minimum an evaluation of objective findings, a diagnosis, the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.

21. Promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party.

22. Providing treatment intervention unwarranted by the condition of the patient or treatment beyond the point of reasonable benefit.

23. Failing to report to the board a name change or a change in business or home address within thirty days after that change.

24. FAILING TO COMPLETE CONTINUING COMPETENCE REQUIREMENTS AS ESTABLISHED BY THE BOARD BY RULE.

Sec. 8. Section 32-2046, Arizona Revised Statutes, is amended to read:

32-2046. Informal and formal hearings

A. The board may request an informal hearing with a licensee, a certificate holder or any unlicensed person in order to further its investigation or to resolve a complaint.

B. If at an informal hearing the board finds a violation of this chapter has occurred that constitutes grounds for disciplinary action, it may take any disciplinary actions prescribed in section 32-2047, paragraph 1, ~~or~~ 2 OR 6, EXCEPT THAT A CIVIL PENALTY MAY NOT EXCEED FIVE HUNDRED DOLLARS.

C. If the results of an informal hearing indicate that suspension, revocation or a civil penalty might be in order, the board shall notify the subject of the investigation of the time and place for a hearing pursuant to title 41, chapter 6, article 10.

D. In lieu of or in addition to an informal hearing as provided in subsection A of this section, the board may serve on a licensee or a certificate holder a summons and complaint setting forth the grounds for disciplinary action and notice of a hearing to be held before the board ~~not less than~~ AT LEAST thirty days after the date of the notice. The notice shall state the time and place of the hearing.

E. A motion for rehearing or review of the board's decision in a disciplinary action shall be filed pursuant to title 41, chapter 6, article 10.

F. The service of a summons and complaint and the service of a subpoena shall be as provided for service in civil cases.

G. If a person disobeys a subpoena, the board may petition the superior court for an order requiring appearance or the production of documents.

Sec. 9. Section 32-2047, Arizona Revised Statutes, is amended to read:

32-2047. Disciplinary actions; penalties

On proof that any grounds prescribed in section 32-2044 have been violated, the board may take the following disciplinary actions singly or in combination:

1. Issue a decree of censure.

2. Restrict a license or a certificate. The board may require a licensee or certificate holder to report regularly to the board on matters related to the grounds for the restricted license or certificate.

3. Suspend a license or certificate for a period prescribed by the board.

4. Revoke a license or certificate.

5. Refuse to issue or renew a license or certificate.

6. Impose a civil penalty of at least two hundred fifty dollars but not more than ten thousand dollars for each violation of this chapter. In addition the board may assess and collect the reasonable costs incurred in a disciplinary hearing when action is taken against a person's license or certificate.

7. Accept a voluntary surrendering of a license or certificate~~, if approved~~ PURSUANT TO AN ORDER OF CONSENT by the board.

APPROVED BY THE GOVERNOR APRIL 9, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2010.