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# HOUSE FILE NO. 1189

## *FIRST COMMITTEE ENGROSSMENT*

February 19, 2007

Authored by Thissen, Finstad, Thao, Otremba, Ruth and others

The bill was read for the first time and referred to the Committee on Health and Human Services

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*Referred by Chair to Licensing Subcommittee.*

*Feb/12/2008*

*Returned to the Committee on Health and Human Services as Amended.*

1.1 A bill for an act

1.2 relating to health occupations; changing provisions for physical therapy  
1.3 licensure; amending Minnesota Statutes 2006, sections 148.65, by adding  
1.4 a subdivision; 148.76, subdivision 2; Minnesota Statutes 2007 Supplement,  
1.5 section 148.75; repealing Minnesota Rules, parts 5601.0100, subparts 5, 6, 7,  
1.6 8; 5601.1200; 5601.1800; 5601.1900.

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

1.8 Section 1. Minnesota Statutes 2006, section 148.65, is amended by adding a  
1.9 subdivision to read:

1.10 **Subd. 9. Licensed health care professional or licensed health care provider.**

1.11 "Licensed health care professional" or "licensed health care provider" means a person  
1.12 licensed in good standing in Minnesota to practice medicine, osteopathy, chiropractic,  
1.13 podiatry, dentistry, or advanced practice nursing.

1.14 Sec. 2. Minnesota Statutes 2007 supplement, section 148.75, is amended to read:

1.15 **148.75 DISCIPLINARY ACTION.**

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

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

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

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

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

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

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

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

2.15 (8) has treated human ailments by physical therapy after an initial ~~30-day~~ 90-day  
2.16 period of patient admittance to treatment has lapsed, except by the order or referral of a  
2.17 person licensed in this state in the practice of medicine as defined in section 147.081, the  
2.18 practice of chiropractic as defined in section 148.01, the practice of podiatry as defined in  
2.19 section 153.01, or the practice of dentistry as defined in section 150A.05, or the practice  
2.20 of advance practice nursing as defined in section 148.171, subdivision 3, when orders or  
2.21 referrals are made in and whose license is in collaboration with a physician, chiropractor,  
2.22 podiatrist, or dentist, and whose license is in good standing; or when a previous diagnosis  
2.23 exists indicating an ongoing condition warranting physical therapy treatment, subject  
2.24 to periodic review defined by board of physical therapy rule. The 90-day limitation of  
2.25 treatment by a physical therapist without an order or referral does not apply to prevention,  
2.26 wellness, education, or exercise;

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

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

3.1 (11) has inappropriately delegated to a physical therapist assistant or inappropriately  
3.2 assigned tasks to an aide, or inadequately supervised a student physical therapist, physical  
3.3 therapist assistant, student physical therapist assistant, or a physical therapy aide;

3.4 (12) has practiced as a physical therapist performing medical diagnosis, the practice  
3.5 of medicine as defined in section 147.081, or the practice of chiropractic as defined  
3.6 in section 148.01;

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

3.10 (14) has divided fees with, or paying or promising to pay a commission or part of the  
3.11 fee to, any person who contacts the physical therapist for consultation or sends patients to  
3.12 the physical therapist for treatment;

3.13 (15) has engaged in an incentive payment arrangement, other than that prohibited  
3.14 by clause (14), that tends to promote physical therapy overuse, that allows the referring  
3.15 person or person who controls the availability of physical therapy services to a client to  
3.16 profit unreasonably as a result of patient treatment;

3.17 (16) has failed to refer to a licensed health care professional a patient whose medical  
3.18 condition ~~at the time of evaluation~~ has been determined by the physical therapist to be  
3.19 beyond the scope of practice of a physical therapist;

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

3.21 (18) has engaged in the practice of physical therapy under lapsed or nonrenewed  
3.22 credentials;

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

3.28 (20) has been subject to a corrective action or similar action in another jurisdiction  
3.29 or by another regulatory authority; or

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

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

- 4.1 (1) deny the application for licensure;
- 4.2 (2) deny the renewal of the license;
- 4.3 (3) revoke the license;
- 4.4 (4) suspend the license;
- 4.5 (5) impose limitations or conditions on the licensee's practice of physical therapy,
- 4.6 including the: (i) limitation of scope of practice to designated field specialties; (ii)
- 4.7 imposition of retraining or rehabilitation requirements; (iii) requirement of practice under
- 4.8 supervision; or (iv) conditioning of continued practice on demonstration of knowledge or
- 4.9 skills by appropriate examination, monitoring, or other review of skill and competence;
- 4.10 (6) impose a civil penalty not to exceed \$10,000 for each separate violation,
- 4.11 the amount of the civil penalty to be fixed so as to deprive the physical therapist of
- 4.12 any economic advantage gained by reason of the violation charged, to discourage
- 4.13 similar violations, or to reimburse the board for the cost of the investigation and
- 4.14 proceeding including, but not limited to, fees paid for services provided by the Office of
- 4.15 Administrative Hearings, legal and investigative services provided by the Office of the
- 4.16 Attorney General, court reporters, witnesses, reproduction of records, board members'
- 4.17 per diem compensation, board staff time, and travel costs and expenses incurred by board
- 4.18 staff and board members;
- 4.19 (7) order the licensee to provide unremunerated service;
- 4.20 (8) censure or reprimand the licensee; or
- 4.21 (9) any other action as allowed by law and justified by the facts of the case.
- 4.22 (c) A license to practice as a physical therapist or physical therapist assistant is
- 4.23 automatically suspended if (1) a guardian of the licensee is appointed by order of a court
- 4.24 pursuant to sections 524.5-101 to 524.5-502, for reasons other than the minority of the
- 4.25 licensee; or (2) the licensee is committed by order of a court pursuant to chapter 253B.
- 4.26 The license remains suspended until the licensee is restored to capacity by a court and,
- 4.27 upon petition by the licensee, the suspension is terminated by the Board of Physical
- 4.28 Therapy after a hearing.
- 4.29 (d) No physical therapist shall be subject to disciplinary action by the state Board
- 4.30 of Physical Therapy for a patient's refusal to comply with a referral, as required under
- 4.31 paragraph (a), clause (16), when the referral is documented in the physical therapy record.

4.32 Sec. 3. Minnesota Statutes 2006, section 148.76, subdivision 2, is amended to read:

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

4.34 (1) treat human ailments by physical therapy after an initial ~~30-day~~ 90-day period

4.35 of patient admittance to treatment has lapsed, except by the order or referral of a person

5.1 licensed in this state to practice medicine as defined in section 147.081, the practice of  
5.2 chiropractic as defined in section 148.01, the practice of podiatry as defined in section  
5.3 153.01, the practice of dentistry as defined in section 150A.05, or the practice of advanced  
5.4 practice nursing as defined in section 62A.15, subdivision 3a, when orders or referrals  
5.5 are made in collaboration with a physician, chiropractor, podiatrist, or dentist, and whose  
5.6 license is in good standing; or when a previous diagnosis exists indicating an ongoing  
5.7 condition warranting physical therapy treatment, subject to periodic review defined by  
5.8 Board of Physical Therapy rule. The 90-day limitation of treatment by a physical therapist  
5.9 without an order or referral does not apply to prevention, wellness, education, or exercise;  
5.10 ~~(2) treat human ailments by physical therapy treatment without first having practiced~~  
5.11 ~~one year under a physician's orders as verified by the board's records;~~  
5.12 ~~(3) (2) use any chiropractic manipulative technique whose end is the chiropractic~~  
5.13 ~~adjustment of an abnormal articulation of the body; and~~  
5.14 ~~(4) (3) treat human ailments other than by physical therapy unless duly licensed or~~  
5.15 ~~registered to do so under the laws of this state.~~

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

5.20 Sec. 4. **BOARD OF PHYSICAL THERAPY REPORT.**

5.21 By January 15, 2010, the Board of Physical Therapy must report to the legislature any  
5.22 disciplinary actions taken against physical therapists whose conduct resulted in physical  
5.23 harm to a patient, only if that conduct was a result of the statutory changes made in the  
5.24 2008 legislative session to Minnesota Statutes, sections 148.75 and 148.76, subdivision 2.

5.25 Sec. 5. **REPEALER.**

5.26 Minnesota Rules, parts 5601.0100, subparts 5, 6, 7, and 8; 5601.1200; 5601.1800;  
5.27 and 5601.1900, are repealed.