

VIRGINIA ACTS OF ASSEMBLY -- 2001 RECONVENED SESSION

CHAPTER 858

An Act to amend and reenact §§ 54.1-2914, 54.1-3473, 54.1-3474, 54.1-3480, 54.1-3482, and 54.1-3483 of the Code of Virginia, relating to physical therapy.

[S 1367]

Approved April 5, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2914, 54.1-3473, 54.1-3474, 54.1-3480, 54.1-3482, and 54.1-3483 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2914. Unprofessional conduct.

A. Any practitioner of the healing arts regulated by the Board shall be considered guilty of unprofessional conduct if he:

1. Undertakes in any manner or by any means whatsoever to procure or perform or to aid or abet in procuring or performing a criminal abortion;

2. Engages in the practice of any of the healing arts under a false or assumed name, or impersonates another practitioner of a like, similar or different name;

3. Prescribes or dispenses any controlled substance with intent or knowledge that it will be used otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with respect to the sale, use or disposition of such drug;

4. Violates provisions of this chapter on division of fees or practices any branch of the healing arts in violation of the provisions of this chapter;

5. ~~Being a practitioner of physical therapy, undertakes to practice physical therapy, independently of the referral and direction of a duly licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery;~~

6. Being a licensed physical therapist assistant, undertakes to practice independently without direction of a physical therapist or under his supervision or control;

~~7.~~ 6. Knowingly and willfully commits any act which is a felony under the laws of this Commonwealth or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude;

~~8.~~ 7. Aids or abets, has professional connection with, or lends his name to any person known to him to be practicing illegally any of the healing arts;

~~9.~~ 8. Conducts his practice in a manner contrary to the standards of ethics of his branch of the healing arts;

~~10.~~ 9. Conducts his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;

~~11.~~ 10. Is unable to practice with reasonable skill or safety because of illness or substance abuse;

~~12.~~ 11. Publishes in any manner an advertisement relating to his professional practice which contains a claim of superiority or violates Board regulations governing advertising;

~~13.~~ 12. Performs any act likely to deceive, defraud or harm the public;

~~14.~~ 13. Violates any provision of statute or regulation, state or federal, relating to the manufacture, distribution, dispensing or administration of drugs;

~~15.~~ 14. Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board; or

~~16.~~ 15. Engages in sexual contact with a patient concurrent with and by virtue of the practitioner/patient relationship or otherwise engages at any time during the course of the practitioner/patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

B. A practitioner of the healing arts shall not engage in selling controlled substances unless he is licensed to do so by the Board of Pharmacy. However, this prohibition shall not apply to a doctor of medicine, osteopathy or podiatry who administers controlled substances to his patients or provides controlled substances to his patient in a bona fide medical emergency or when pharmaceutical services are not available. Practitioners who sell or dispense controlled substances shall be subject to inspection by the Department of Health Professions to ensure compliance with Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of this title and the Board of Pharmacy's regulations. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

C. A practitioner of the healing arts who may lawfully sell medical appliances or devices shall not sell such appliances or devices to persons who are not his own patients and shall not sell such articles to his own patients either for his own convenience or for the purpose of supplementing his income. This

subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

D. A practitioner of the healing arts may, from within the practitioner's office, engage in selling or promoting the sale of eyeglasses and may dispense contact lenses. Only those practitioners of the healing arts who engage in the examination of eyes and prescribing of eyeglasses may engage in the sale or promotion of eyeglasses. Practitioners shall not employ any unlicensed person to fill prescriptions for eyeglasses within the practitioner's office except as provided in subdivision 6 of § 54.1-2901. A practitioner may also own, in whole or in part, an optical dispensary located adjacent to or at a distance from his office.

E. Any practitioner of the healing arts engaging in the examination of eyes and prescribing of eyeglasses shall give the patient a copy of any prescription for eyeglasses and inform the patient of his right to have the prescription filled at the establishment of his choice. No practitioner who owns, in whole or in part, an establishment dispensing eyeglasses shall make any statement or take any action, directly or indirectly, that infringes on the patient's right to have a prescription filled at an establishment other than the one in which the practitioner has an ownership interest.

Disclosure of ownership interest by a practitioner as required by § 54.1-2964 or participation by the practitioner in contractual arrangements with third-party payors or purchasers of vision care services shall not constitute a violation of this subsection.

§ 54.1-3473. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Physical Therapy.

"Physical therapist" means any person licensed by the Board to engage in the practice of physical therapy.

"Physical therapist assistant" means any person licensed by the Board to assist a physical therapist in the practice of physical therapy.

"Practice of physical therapy" means that branch of the healing arts that is concerned with, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders; ~~but~~ *The practice of physical therapy also includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures within the scope of practice of the physical therapist. However, the practice of physical therapy does not include the medical diagnosis of disease or injury, the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.*

§ 54.1-3474. Unlawful to practice without license; continuing competency requirements.

A. It shall be unlawful for any person to practice physical therapy or as a physical therapist assistant in the Commonwealth without a valid unrevoked license issued by the Board.

B. *The Board shall promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants, which may include continuing education, testing, or such other requirements as the Board may determine to be necessary.*

C. *In promulgating continuing competency requirements, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.*

D. *The Board may approve persons who provide or accredit programs to ensure continuing competency.*

§ 54.1-3480. Refusal, revocation or suspension.

A. The Board may refuse to admit a candidate to any examination, may refuse to issue a license to any applicant, and may suspend for a stated period of time or indefinitely or revoke any license or censure or reprimand any person or place him on probation for such time as it may designate for any of the following causes:

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of ~~any branch of the healing arts~~ *physical therapy*;
2. Substance abuse rendering him unfit for the performance of his professional obligations and duties;
3. Unprofessional conduct as defined in this chapter;
4. Gross ignorance or carelessness in his practice, or gross malpractice;
5. Mental or physical incapacity or incompetence to practice his profession with safety to his patients and the public;
6. Restriction of a license to practice physical therapy in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction;
7. Conviction in any state, territory or country of any felony or of any crime involving moral turpitude;
8. Adjudged legally incompetent or incapacitated in any state if such adjudication is in effect and the person has not been declared restored to competence or capacity; or

9. Conviction of an offense in another state, territory or foreign jurisdiction, which if committed in Virginia would be a felony. Such conviction shall be treated as a felony conviction under this section regardless of its designation in the other state, territory or foreign jurisdiction.

B. The Board shall refuse to admit a candidate to any examination and shall refuse to issue a license to any applicant if the candidate or applicant has had his certificate or license to practice physical therapy revoked or suspended, and has not had his certificate or license to so practice reinstated, in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

C. The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee is unable to practice physical therapy with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by physicians designated by it. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice physical therapy with reasonable skill and safety to patients.

§ 54.1-3482. Certain experience and referrals required; unlawful to practice physical therapist assistance except under the direction and control of a licensed physical therapist.

A. It shall be unlawful for a person to engage in the practice of physical therapy except as a licensed physical therapist, upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery; ~~or except as provided in subsection B of this section.~~

B. After completing a three-year period of active practice upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery, a physical therapist may treat a patient for no more than fourteen consecutive calendar days without a referral under the following conditions: (i) the patient has previously been referred to a physical therapist for physical therapy services by a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery; (ii) the patient's referral for physical therapy was made within two years from the date the physical therapist implements a program of physical therapy treatment without referral and direction; (iii) the physical therapy being provided to the patient without referral and direction is for the same injury, disease or condition as indicated in the referral of the licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery; and (iv) the physical therapist notifies the practitioner identified by the patient no later than three days after treatment commences. Treatment for more than fourteen consecutive calendar days of such patient shall only be upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

In addition, after completing a three-year period of active practice upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery, a physical therapist may conduct a one-time evaluation, that does not include treatment, of a patient who does not meet the conditions established in (i) through (iv) without the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery; if appropriate, the physical therapist shall immediately refer such patient to the appropriate practitioner.

C. Invasive procedures within the scope of practice of physical therapy shall at all times be performed only under the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery.

D. It shall be unlawful for any licensed physical therapist to fail to immediately refer any patient to a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery whose medical condition is determined, at the time of evaluation or treatment, to be beyond the physical therapist's scope of practice. Upon determining that the patient's medical condition is beyond the scope of practice of a physical therapist, a physical therapist shall immediately refer such patient to an appropriate practitioner.

E. Any person licensed as a physical therapist assistant shall perform his duties only under the direction and control of a licensed physical therapist and the patient's physician.

~~B. F. This chapter shall not be construed to require referral and direction by a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery for the provision of~~ *However, a licensed physical therapist may provide, without referral or supervision, physical therapy services to (i) a student athlete participating in a school-sponsored athletic activity while such student is at such activity in a public, private, denominational or parochial elementary, middle or high school, or public or private institution of higher education when such services are rendered by a licensed physical therapist who is certified as an athletic trainer by the National Athletic Trainers' Association Board of Certification or as a sports certified specialist by the American Board of Physical Therapy Specialties* ~~or;~~ *(ii) employees solely for the purpose of evaluation and consultation related to workplace ergonomics by a licensed physical therapist; (iii) special education students who, by virtue of their individualized education plans (IEPs), need physical therapy services to fulfill the provisions of their IEPs; (iv) the public for the purpose of wellness, fitness, and health screenings; (v) the public for the purpose of health promotion and education; and (vi) the public for the purpose of prevention of impairments,*

functional limitations, and disabilities.

§ 54.1-3483. Unprofessional conduct.

Any physical therapist or physical therapist assistant licensed by the Board shall be considered guilty of unprofessional conduct if he:

1. Engages in the practice of physical therapy under a false or assumed name or impersonates another practitioner of a like, similar or different name;

2. ~~Undertakes to practice physical therapy independently of the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery;~~

3. Knowingly and willfully commits any act which is a felony under the laws of this Commonwealth or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude;

4. Aids or abets, has professional contact with, or lends his name to any person known to him to be practicing physical therapy illegally;

5. ~~4.~~ Conducts his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;

6. ~~5.~~ Is unable to practice with reasonable skill or safety because of illness or substance abuse;

7. ~~6.~~ Publishes in any manner an advertisement that violates Board regulations governing advertising;

8. ~~7.~~ Performs any act likely to deceive, defraud or harm the public;

9. ~~8.~~ Violates any provision of statute or regulation, state or federal, relating to ~~the manufacture, distribution, dispensing, or administration of controlled substances;~~

10. ~~9.~~ Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board; or

11. ~~10.~~ Engages in sexual contact with a patient concurrent with and by virtue of the practitioner/patient relationship or otherwise engages at any time during the course of the practitioner/patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

2. That the Board of Physical Therapy shall promulgate regulations to implement the provisions of § 54.1-3474 relating to continuing competency within 280 days of the enactment of this act.