

No. 1985-117

AN ACT

HB 1363

Amending the act of October 10, 1975 (P.L.383, No.110), entitled "An act relating to the practice of physical therapy," further providing for the board, qualifications for licenses and renewal thereof, registration of physical therapy assistants and certification of athletic trainers; providing penalties; and making an editorial change.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of October 10, 1975 (P.L.383, No.110), known as the Physical Therapy Practice Act, amended April 4, 1984 (P.L.196, No.41), is amended to read:

Section 2. Definitions.—The following definitions shall apply, when used in this act, unless otherwise expressed therein:

"Athletic trainer" shall mean a person certified by the State Board of Physical Therapy [Examiners] as an athletic trainer after meeting the requirements of this act and rules and regulations promulgated pursuant thereto.

"Athletic Trainer Advisory Committee" shall mean the committee created by section 10.1 of this act to advise the board.

"Board" means the State Board of Physical Therapy [Examiners established in accordance with the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."].

"Commissioner" shall mean the Commissioner of the Bureau of Professional and Occupational Affairs.

"Healing arts" shall mean the science and skill of diagnosis and treatment in any manner whatsoever of disease or any ailment of the human body.

"Physical therapist" shall mean a person who has met all the requirements of this act and is licensed to practice physical therapy in accordance with this act.

"Physical therapist assistant" shall mean a person who has met all the requirements of this act and is registered as a physical therapist assistant in accordance with this act.

"Physical therapy" means the evaluation and treatment of any person by the utilization of the effective properties of physical measures such as mechanical stimulation, heat, cold, light, air, water, electricity, sound, massage, mobilization and the use of therapeutic exercises and rehabilitative procedures including training in functional activities, with or without assistive devices, for the purpose of limiting or preventing disability and alleviating or correcting any physical or mental conditions, and the performance of tests and measurements as an aid in diagnosis or evaluation of function.

"Physician" means a person as defined in 1 Pa.C.S. § 1991 (relating to definitions).

Section 2. The act is amended by adding a section to read:

Section 2.1. State Board of Physical Therapy.—(a) The board shall consist of nine members, all of whom shall be residents of Pennsylvania. Five members shall be physical therapists licensed to practice in this Commonwealth, each having had at least five years of experience as a physical therapist, three years of which must have immediately preceded the appointment to the board. One member shall be a physical therapist assistant currently registered with the board or an athletic trainer currently certified by the board, provided that the initial appointee shall be a physical therapist assistant who is currently listed with the board and who shall not be required to be registered until the provisions of section 9.1 have been implemented. Two members shall be representatives of the public. One member shall be the Commissioner of Professional and Occupational Affairs. The members of the board shall be appointed by the Governor, with the advice and consent of a majority of the members elected to the Senate.

(b) Professional and public members appointed after the expiration of the terms of current board members shall serve the following terms: one physical therapist shall serve one year; one physical therapist shall serve two years; one physical therapist and one public member shall serve three years; and two physical therapists, one physical therapist assistant and one public member shall serve four years. Thereafter, professional and public members shall serve four-year terms. No member may be eligible for appointment to serve more than two consecutive terms. A member may continue to serve for a period not to exceed six months beyond the expiration of his term, if a successor has yet to be duly appointed and qualified according to law.

(c) The board shall select, from among their number, a chairman, a vice chairman and a secretary.

(d) A majority of the members of the board serving in accordance with law shall constitute a quorum for purposes of conducting the business of the board. Except for temporary and automatic suspensions under sections 11.1 and 11.2, a member may not be counted as part of a quorum or vote on any issue unless he or she is physically in attendance at the meeting.

(e) Each public and professional member of the board shall be paid reasonable traveling, hotel and other necessary expenses and per diem compensation at the rate of \$60 for each day of actual service while on board business.

(f) A member who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family member.

(g) In the event that a member of the board dies or resigns or otherwise becomes disqualified during the term of office, a successor shall be appointed in the same way and with the same qualifications as set forth in subsection (a) and shall hold office for the unexpired term.

(h) The board is subject to evaluation, review and termination within the time and in the manner provided in the act of December 22, 1981 (P.L.508, No.142), known as the "Sunset Act."

(i) *A public member who fails to attend two consecutive statutorily mandated seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," shall forfeit his or her seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.*

Section 3. Sections 3, 4(a), 6 and 7 of the act, amended April 4, 1984 (P.L.196, No.41), are amended to read:

Section 3. Powers and Duties of Board.—(a) [The board shall elect annually from its membership a chairman and a vice-chairman and shall select a secretary who need not be a member of the board.] It shall be the duty of the board to pass upon the qualifications of applicants for licensure as physical therapists, *registration as physical therapist assistants* and certification as athletic trainers, to conduct examinations, to issue and renew licenses to physical therapists, *registrations to physical therapist assistants* and certifications to athletic trainers who qualify under this act, and in proper cases to *refuse to issue*, suspend or revoke the license of any physical therapist, *registration of any physical therapist assistant* or certification of any athletic trainer. The board may adopt rules and regulations not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of this law. The board is authorized and empowered to appoint hearing examiners and to conduct investigations and hearings upon charges for discipline of a licensee, *registrant* or certificate holder or for violations of this act, and to cause, through the office of the Attorney General, the prosecution and enjoinder of persons violating this act. The board shall maintain a register listing the name of every living physical therapist licensed to practice in this State, every physical therapist assistant *duly registered pursuant to section 9.1* and every athletic trainer certified to practice in this State, such individual's last known place of business and last known place of residence, and the date and number of the physical therapist's license or athletic trainer's certification.

(b) The board shall submit annually to the Department of State and to the House and Senate Appropriations Committees, within 15 days of the date on which the Governor has submitted his budget to the General Assembly, an estimate of the financial requirements of the board for its administrative, investigative, legal and miscellaneous expenses.

(c) *The board shall submit annually a report, to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate, containing a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.*

Section 4. Training and License Required; Exceptions.—(a) It shall be unlawful for any person to practice or hold himself out as being able to practice physical therapy in this State in any manner whatsoever unless such person has met the educational requirements and is licensed in accordance

with the provisions of this act. *The board shall determine standards, by regulations, regarding qualifications necessary for the performance of such tests or treatment forms as the board shall determine require additional training or education beyond the educational requirements set forth by this act, as such relates to the practice of physical therapy in accordance with law.* Nothing in this act, however, shall prohibit any person trained and licensed or certified to practice or to act within the scope of his certification in this State under any other law, from engaging in the licensed or certified practice for which he is trained.

* * *

Section 6. Qualifications for License; Examinations; Failure of Examinations; Licensure Without Examination; Issuing of License; Foreign Applicants for Licensure; Temporary License; Perjury.—(a) To be eligible for licensure as a physical therapist, an applicant must be at least 20 years of age unless otherwise determined by the board in its discretion, be of good moral character, not be addicted to the habitual use of alcohol or narcotics or other habit-forming drugs, and **[has graduated from]** *be a graduate of a school offering an educational program in physical therapy as adopted by the board, which program has been approved for the education and training of physical therapists by the appropriate nationally recognized accrediting agency. By the time of completion of the professional study of physical therapy, a physical therapist must hold a minimum of a baccalaureate degree from a regionally accredited institution of higher education. In the case of those applicants who have completed requirements prior to the first day of January, 1967, but who may not technically or totally fulfill the above requirements, the board at its discretion and by the majority vote of all members present may accept evidence of satisfactory equivalence. The board shall not issue a license to an applicant who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or of an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act," unless:*

- (1) *at least ten years have elapsed from the date of conviction;*
- (2) *the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations; and*
- (3) *the applicant otherwise satisfies the qualifications contained in or authorized by this act.*

As used in this subsection the term "convicted" includes a judgment, an admission of guilt or a plea of nolo contendere.

(b) An applicant for licensure must pass[, to the satisfaction of the board,] a written examination which shall test the applicant's knowledge of the basic and clinical sciences as they relate to physical therapy theory and physical therapy procedures and such other subjects as the board may deem

necessary to test the applicant's fitness to practice physical therapy. [Such examination may also include an oral examination or practical examination or both at the discretion of the board.] *No license shall be granted unless an applicant has attained passing scores established by the testing agency and published prior to the administration of the examination.* The examination shall be held within the Commonwealth of Pennsylvania twice a year at such time and place as the board shall determine.

(c) In case of failure at the first examination, the applicant for licensure shall have, after the expiration of six months and within two years from the first failure, the privilege of a second examination. [In case of failure in a second examination, any further examinations shall be given at the discretion of the board, but in any such case the applicant must make a new application, and otherwise qualify under the conditions in force at the time of the application for a third or successive examinations.] *The board may adopt regulations governing the eligibility of applicants who have failed to pass two examinations in order to be admitted to subsequent examinations.*

[(d) On payment to the board of a fee as set by regulation and on submission of a written application on forms provided by the board, the board shall issue a license without examination to any person who is a licensed or otherwise registered as a physical therapist by another state or territory of the United States of America, or the District of Columbia and whose license or registration is valid and in good standing; and further that the requirements for license or registration, as the case may be, in such state, territory, or district were or are substantially equal to the requirements set forth in this act: Provided, That such person has not taken and failed, one or more times, the examination referred to in subsection (b), in which case, the issuance of a license under this paragraph shall be at the discretion of the board.]

(d.1) The board may grant licenses and registrations without further examination to individuals from another state, territory or the District of Columbia if the following conditions exist:

(1) Licensing or registration standards in the other state, territory or the District of Columbia are substantially the same as those of this act.

(2) Similar privileges are accorded persons licensed or registered in this Commonwealth.

(3) The applicant holds a valid license or registration issued by the other state, territory or the District of Columbia.

(4) The applicant complies with the rules and regulations of the board.

(e) The board shall issue a license to a physical therapist who successfully establishes his eligibility under the terms of this act and any person who holds a license pursuant to this section may use the words physical therapist or licensed physical therapist and he may use the letters LPT in connection with his name or place of business to denote his licensure hereunder.

(f) Foreign trained physical therapists who desire and apply to be licensed as a physical therapist by the board shall, before examination, furnish proof as to age, moral character, *and* no addiction to the use of alcohol or narcotics or other habit-forming drugs, *and* shall present proof indicating the completion of educational requirements substantially equal to

those in subsection (a). In addition thereto, the foreign trained applicant must complete, at the board's discretion, up to one year of supervised clinical experience as prescribed by the board prior to taking the examination for licensure.

[(g) Upon the submission of a written application on forms provided by it, the board shall also issue a temporary license to a person who has applied for a license under the provisions of subsection (a) and who is, in the judgment of the board, eligible to take the examination provided for in subsection (b). Such temporary license shall be available to an applicant with respect to his application for a license under subsection (a), but the applicant may only use the temporary license while under the direct supervision of a licensed physical therapist. Such temporary license shall expire upon the failure of the first examination and upon expiration the license must be surrendered to the board except that the board may reissue such temporary license in its discretion and in accordance with rules and regulations to be established.]

(g) Upon the submission of a written application, on forms provided by it, the board shall issue a temporary license to an applicant for licensure who has met all of the requirements of subsection (a) and who is eligible to take the examination provided for in subsection (b). The board shall issue only one temporary license to an applicant, and such temporary license shall expire upon failure of the first examination or six months after the date of issue, whichever first occurs. Issuance by the board of a temporary license shall permit the applicant to practice physical therapy only while under the direct on-premises supervision of a licensed physical therapist with at least two years of experience. Upon expiration, the temporary license shall be promptly returned by the applicant to the board.

(h) [The granting or issuing of any temporary license or permit relating to the practice of physical therapy in the Commonwealth for any reason other than as set forth in subsection (g) shall be within the sole discretion of the board subject to rules and regulations established by the board.]

(i)] Any applicant who knowingly or willfully makes a false statement of fact in any application shall be subject to prosecution for perjury.

Section 7. Renewal of License.—[(a)] Each license issued under the provisions of this act shall be renewed biennially[, except as provided in subsection (b)]. On or before November 1 of each renewal year, the board shall mail an application for renewal of license to each person to whom a license was issued or renewed during the current licensing period, which application shall be mailed to the most recent address of said person as it appears on the records of the board. Such person shall complete the renewal application and return it to the board with a renewal fee before December 31 of the year in which said application was received. Upon receipt of any such application and fee, the board shall verify the accuracy of such application and issue to the applicant a certificate of renewal of license for the next licensing period as described above. The renewal fee for each licensing period shall be set by regulation.

[(b) If any person shall not so renew his or her license such license shall automatically expire. A license which has thus expired may, within three years of its expiration date, be renewed on the payment to the board of the fee for each licensing period or part thereof, pro-rata, during which the license was ineffective and the payment of a restoration fee set by regulation. After said three years period such license shall be renewed only by complying with the provisions in subsections (a) and (b) of section 6 relating to obtaining an original license.]

Section 4. The act is amended by adding sections to read:

Section 7.1. Reporting of Multiple Licensure.—*Any licensed physical therapist or registered physical therapist assistant of this Commonwealth who is also licensed to practice physical therapy or registered as a physical therapist assistant in any other state, territory or country shall report this information to the board on the biennial registration application. Any disciplinary action taken in such other jurisdiction shall be reported to the board on the biennial registration application, or within 90 days of final disposition, whichever occurs sooner. Multiple licensure or registration shall be noted by the board on the physical therapist or physical therapist assistant's record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against said physical therapist or physical therapist assistant in this Commonwealth.*

Section 9.1. Physical Therapist Assistant; Education and Examination; Scope of Duties; Registration.—*(a) To be eligible to register with the board as a physical therapist assistant, an applicant must be at least 20 years of age unless otherwise determined by the board, be of good moral character, not be addicted to the habitual use of alcohol or narcotics or other habit-forming drugs, be a graduate of a physical therapist assistant program adopted by the board, which program has been approved for the education and training for physical therapist assistants by the appropriate nationally recognized accrediting agency and be successful in passing an examination adopted by the board, subject to rules and regulations established by the board and administered in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." No applicant shall be registered unless he has attained passing scores established by the testing agency and published prior to the administration of the examination.*

(b) In case of failure of the first examination, the applicant for registration shall have, after the expiration of six months and within two years from the first failure, the privilege of a second examination. The board may adopt regulations governing the eligibility of applicants who have failed to pass two examinations in order to be admitted to subsequent examinations.

(c) A physical therapist assistant while assisting a licensed physical therapist in the practice of physical therapy shall only perform patient-related physical therapy acts and services that are assigned or delegated by and under the direct on-premises supervision of a licensed physical therapist. Such acts and services of a physical therapist assistant shall not include evaluation, testing, interpretation, planning or modification of patient programs. For purposes of this section the term "direct on-premises supervision" shall

mean the physical presence of a licensed physical therapist on the premises who is immediately available to exercise supervision, direction and control.

(d) Only a person who has properly registered as a physical therapist assistant with the board, pursuant to the provisions of this section and rules and regulations promulgated by the board thereto, shall assist a licensed physical therapist in the practice of physical therapy as a physical therapist assistant and use the title "physical therapist assistant."

(e) The qualifications provision of this section shall not apply and an applicant shall be registered without examination if the applicant has submitted an application for registration accompanied by an application fee as specified by the board within two years after the effective date of this amendatory act and is a resident of Pennsylvania or has practiced in this Commonwealth for a two-year period; and

(1) on the effective date of this amendatory act, is a graduate of a physical therapist assistant program acceptable to the board and has engaged in physical therapist assistant practice acceptable to the board for two years; and

(2) on the effective date of this amendatory act, is listed with the board as a physical therapist assistant.

(f) The board shall renew, revoke or suspend the registration of physical therapist assistants pursuant to rules and regulations promulgated by the board. All actions of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(g) Unless ordered to do so by a court, the board shall not reinstate the registration of a person to practice as a physical therapist assistant which has been revoked, and such person shall be required to apply for registration after a five-year period in accordance with the provisions of this section, including the examination requirement, if he desires to practice at any time after such revocation.

Section 9.2. Supportive Personnel.—Nothing in this act or the act of October 10, 1975 (P.L.383, No.110), known as the "Physical Therapy Practice Act," shall prohibit a licensed physical therapist from assigning or delegating various activities to other persons who may, from time to time, aid and assist a licensed physical therapist in the provision of physical therapy services; provided that such activities are performed under the direct on-premises supervision of a licensed physical therapist and the level of such activities do not require formal education or training in the practice of physical therapy, the skill and knowledge of a licensed physical therapist and the skill and knowledge of a properly registered physical therapist assistant.

Section 5. Section 10 of the act is repealed.

Section 6. Section 10.2 of the act is amended by adding a subsection to read:

Section 10.2. Certification of Athletic Trainers; Certification Renewal, Revocation or Suspension.—* * *

(d) Unless ordered to do so by a court, the board shall not reinstate the certificate of a person to practice as an athletic trainer which has been revoked, and such person shall be required to apply for a certificate after a five-year period in accordance with this section, if he desires to practice at any time after such revocation.

Section 7. Section 11 of the act, amended April 4, 1984 (P.L.196, No.41), is amended to read:

Section 11. Refusal or Suspension or Revocation of License.—(a) The board shall refuse to issue a license to any person and after notice and hearing in accordance with rules and regulations, may suspend or revoke the license of any person who has:

- (1) been found to have violated section 9;
- (2) attempted to or obtained licensure by fraud or misrepresentation;
- (3) committed repeated occasions of negligence or incompetence in the practice of physical therapy;
- (4) been convicted of a felony *in a Federal court or* in the courts of this Commonwealth or any other state, territory or country. Conviction, as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere;
- (5) habitually indulged in the use of narcotics or other habit-forming drugs, or excessively indulged in the use of alcoholic liquors;
- (6) been *found* guilty of unprofessional conduct. Unprofessional conduct shall include any departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice, in which proceeding actual injury to a patient need not be established;
- [(7) been adjudged mentally incompetent by a court of competent jurisdiction;]**

[(8)] (7) treated or undertaken to treat human ailments otherwise than by physical therapy as defined in this act; **[and]**

[(9)] (8) had his license to practice physical therapy revoked or suspended or having other disciplinary action taken, or his application for a license refused, revoked or suspended by the proper licensing authority of another state, territory or country; *and*

(9) made misleading, deceptive, untrue or fraudulent representations in violation of this act or otherwise in the practice of the profession.

(b) All actions of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with **[(the provisions of the act of June 4, 1945 (P.L.1388, No.442), known as the "Administrative Agency Law.")] Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).**

(c) Unless ordered to do so by a court, the board shall not reinstate the license of a person to practice as a physical therapist which has been revoked, and such person shall be required to apply for a license after a five-year period in accordance with section 6, if he desires to practice at any time after such revocation.

Section 8. The act is amended by adding sections to read:

Section 11.1. Automatic Suspension.—*A license, registration or certificate issued under this act shall automatically be suspended upon the legal commitment of a licensee, registrant or certificate holder to an institution because of mental incompetency from any cause upon filing with the board a certified copy of such commitment; conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act"; or conviction of an offense under the laws of another jurisdiction which, if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act."* As used in this section the term "conviction" shall include a judgment, an admission of guilty or a plea of nolo contendere. Automatic suspension under this section shall not be stayed pending any appeal of a conviction. Restoration of such license, registration or certificate shall be made as provided in this act for revocation or suspension of such license, registrant or certificate holder.

Section 11.2. Temporary Suspension.—*The board shall temporarily suspend a license, registration or certificate under circumstances as determined by the board to be an immediate and clear danger to the public health or safety. The board shall issue an order to that effect without a hearing, but upon due notice, to the licensee, registrant or certificate holder concerned at his last known address, which shall include a written statement of all allegations against the licensee, registrant or certificate holder. The provisions of section 11(c) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license, registration or certificate of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license, registration or certificate, the board shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee, registrant or certificate holder whose license, registration or certificate has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license, registration or certificate shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than 180 days.*

Section 11.3. Subpoenas; Reports; Surrender of License.—*(a) The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses and to take testimony or compel the production of books, records, papers and documents as it may deem necessary or proper in and pertinent to any proceeding, investigation or hearing held by it. Patient records may not be subpoenaed without consent of the patient or without order of a court of*

competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoena as are necessary to prevent unnecessary intrusion into patient confidential information. The board is authorized to apply to Commonwealth Court to enforce its subpoenas.

(b) An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall notify the board immediately upon receiving notification of an alleged violation of this act. The board shall maintain current records of all reports of alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

(c) The board shall require a person whose license, certificate or registration has been suspended or revoked to return the license, certificate or registration in such manner as the board directs. A person who fails to do so commits a misdemeanor of the third degree.

Section 9. Section 12 of the act is amended by adding subsections to read:

Section 12. Penalties; Injunctive Relief.—* * *

(c) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by this act or by a vote of the majority of the qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to \$1,000 on any current licensee or registrant who violates any provisions of this act or on any person who practices physical therapy without being properly licensed to do so under this act or who practices as a physical therapist assistant without being properly registered to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(d) All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.

Section 10. The act is amended by adding a section to read:

Section 13. Impaired Professional.—(a) The board, with the approval of the Commissioner of Professional and Occupational Affairs, shall appoint and fix the compensation of a professional consultant who is a licensee of the board, or such other professional as the board may determine, with education and experience in the identification, treatment and rehabilitation of persons with physical or mental impairments. Such consultant shall be accountable to the board and shall act as a liaison between the board and treatment programs, such as alcohol and drug treatment programs licensed by the Department of Health, psychological counseling and impaired professional support groups, which are approved by the board and which provide services to licensees under this act.

(b) The board may defer and ultimately dismiss any of the types of corrective action set forth in this act for an impaired professional so long as the professional is progressing satisfactorily in an approved treatment program,

provided that the provisions of this subsection shall not apply to a professional convicted of a felonious act prohibited by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An approved program provider shall, upon request, disclose to the consultant such information in its possession regarding an impaired professional in treatment which the program provider is not prohibited from disclosing by an act of this Commonwealth, another state or the United States. Such requirement of disclosure by an approved program provider shall apply in the case of impaired professionals who enter an agreement in accordance with this section, impaired professionals who are the subject of a board investigation or disciplinary proceeding and impaired professionals who voluntarily enter a treatment program other than under the provisions of this section but who fail to complete the program successfully or to adhere to an after-care plan developed by the program provider.

(c) An impaired professional who enrolls in an approved treatment program shall enter into an agreement with the board under which the professional's license shall be suspended or revoked, but enforcement of that suspension or revocation may be stayed for the length of time the professional remains in the program and makes satisfactory progress, complies with the terms of the agreement and adheres to any limitations on his practice imposed by the board to protect the public. Failure to enter into such an agreement shall disqualify the professional from the impaired professional program and shall activate an immediate investigation and disciplinary proceeding by the board.

(d) If, in the opinion of the consultant after consultation with the provider, an impaired professional who is enrolled in an approved treatment program has not progressed satisfactorily, the consultant shall disclose to the board all information in his possession regarding said professional, and the board shall institute proceedings to determine if the stay of the enforcement of the suspension or revocation of the impaired professional's license shall be vacated.

(e) An approved program provider who makes a disclosure pursuant to this section shall not be subject to civil liability for such disclosure or its consequences.

(f) Any hospital or health care facility, peer or colleague who has substantial evidence that a professional has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his or her license shall make or cause to be made a report to the board: Provided, That any person or facility who acts in a treatment capacity to an impaired physical therapist in an approved treatment program is exempt from the mandatory reporting requirements of this subsection. Any person or facility who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of

impairment shall subject the person or facility to a fine not to exceed \$1,000. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 11. Each rule and regulation of the board in effect on the effective date of this act shall remain in effect after such date until amended by the board, provided that the board shall immediately initiate the repeal or amendment of any rule or regulation which is inconsistent with the provisions of this act. Each fee of the board in effect on the effective date of this act, and not inconsistent with this act, shall remain in effect after such date until repealed or amended in the manner provided by law.

Section 12. This act constitutes the legislation necessary to reestablish the State Board of Physical Therapy Examiners under section 7 of the act of December 22, 1981 (P.L. 508, No. 142), known as the Sunset Act.

Section 13. (a) Section 412.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, is repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 14. The presently confirmed members of the State Board of Physical Therapy Examiners constituted under section 412.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, as of the effective date of this act, shall continue to serve as board members until their present terms of office expire, provided that any present board member whose term has expired on or before the effective date of this act shall serve until a successor has been appointed and qualified, but no longer than six months after the effective date of this act.

Section 15. Any person who holds a valid license or certificate issued by, or is listed with, the State Board of Physical Therapy Examiners under the act of October 10, 1975 (P.L. 383, No. 110), known as the Physical Therapy Practice Act, relating to the practice of physical therapy, prior to the effective date of this amendatory act shall, on and after the effective date hereof, be deemed to be licensed or certificated by, or to be listed with, the State Board of Physical Therapy as provided for in this amendatory act.

Section 16. This act shall take effect January 1, 1986, or immediately, whichever is later.

APPROVED—The 20th day of December, A. D. 1985.

DICK THORNBURGH