

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 342 Session of 2011

INTRODUCED BY GREENLEAF, BROWNE, WAUGH AND FERLO, JANUARY 28, 2011

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, AS AMENDED, FEBRUARY 14, 2011

AN ACT

1 Amending the act of June 15, 1982 (P.L.502, No.140), entitled
2 "An act regulating the practice and licensure of occupational
3 therapy, creating the State Board of Occupational Therapy
4 Education and Licensure with certain powers and duties and
5 prescribing penalties," further providing for definitions,
6 for creation of board, for requirements for licensure, for
7 practice and referral, for renewal of licenses and for
8 refusal, suspension or revocation of license; and providing
9 for impaired professionals program.

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

12 Section 1. The definition of "occupational therapy" in
13 section 3 of the act of June 15, 1982 (P.L.502, No.140), known
14 as the Occupational Therapy Practice Act, is amended to read:

15 Section 3. Definitions.

16 The following words and phrases when used in this act shall
17 have, unless the context clearly indicates otherwise, the
18 meanings given to them in this section:

19 * * *

20 "Occupational therapy." The evaluation of learning and
21 performance skills and the analysis, selection and adaptation of

1 activities for an individual whose abilities to cope with the
2 activities of daily living, to perform tasks normally performed
3 at a given stage of development and to perform essential
4 vocational tasks which are threatened or impaired by that
5 person's developmental deficiencies, aging process,
6 environmental deprivation or physical, psychological, injury or
7 illness, through specific techniques which include:

8 (1) Planning and implementing activity programs to
9 improve sensory and motor functioning at the level of
10 performance normal for the individual's stage of development.

11 (2) Teaching skills, behaviors and attitudes crucial to
12 the individual's independent, productive and satisfying
13 social functioning.

14 (3) The design, fabrication and application of [splints]
15 orthotics to enhance performance in occupations, not to
16 include prosthetic [or orthotic] devices, and the adaptation
17 of equipment necessary to assist patients in adjusting to a
18 potential or actual impairment and instructing in the use of
19 such devices and equipment.

20 (4) Analyzing, selecting and adapting activities to
21 maintain the individual's optimal performance of tasks to
22 prevent disability.

23 * * *

24 Section 2. Section 4(d) of the act is amended and the
25 section is amended by adding a subsection to read:

26 Section 4. Creation of board, appointment and term of members,
27 officers.

28 * * *

29 (d) A member of the board shall be eligible for
30 reappointment. A member shall not be appointed to serve more

1 than two consecutive terms. A member shall receive reimbursement
2 for reasonable expenses incurred while engaged in the discharge
3 of official duties, as well as a [\$30] \$60 per diem allowance.

4 * * *

5 (f) A member who fails to attend three meetings in 18 months
6 shall forfeit the member's seat unless the commissioner, upon
7 written request from the member, finds that the member should be
8 excused from a meeting because of illness or death of a family
9 member.

10 Section 3. Section 8 of the act is amended to read:

11 Section 8. Requirements for licensure.

12 An applicant applying for a license as an occupational
13 therapist or as an occupational therapy assistant shall submit a
14 written application on forms provided by the board evidencing
15 and showing to the satisfaction of the board that he or she:

16 (1) Is of good moral character.

17 (2) Has completed the academic requirements of an
18 approved educational program in occupational therapy
19 recognized by the board with the advice and consultation of
20 recognized national accrediting agencies and professional
21 organizations including the American Occupational Therapy
22 Association as follows:

23 (i) For an occupational therapist, a four-year
24 program, or its equivalent as established by the board.

25 (ii) For an occupational therapy assistant, a two-
26 year program, or its equivalent as established by the
27 board.

28 (3) Has successfully completed a period of supervised
29 fieldwork experience at a recognized educational institute or
30 a training program approved by the educational institution

1 where the academic requirements met were as follows:

2 (i) For an occupational therapist a minimum of six
3 months of supervised fieldwork experience.

4 (ii) For an occupational therapy assistant, a
5 minimum of two months of supervised fieldwork.

6 (4) Has passed an examination approved by the board.

7 (5) Has professional liability insurance in accordance
8 with the following provisions:

9 (i) Effective by the next biennial period for
10 license renewal following the effective date of this
11 paragraph, an occupational therapist shall obtain and
12 maintain professional liability insurance as specified in
13 subparagraphs (ii) and (iii). The occupational therapist
14 shall notify the board within 30 days of the occupational
15 therapist's failure to be covered by the required
16 insurance. Failure to notify the board shall be
17 actionable under section 16. Further, the ~~certificate of~~ ←
18 ~~authorization~~ LICENSE of the occupational therapist shall ←
19 automatically be suspended upon failure to be covered by
20 the required insurance and shall not be restored until
21 submission to the board of satisfactory evidence that the
22 occupational therapist has the required professional
23 liability insurance coverage.

24 (ii) The board shall accept from an occupational
25 therapist as satisfactory evidence of insurance coverage
26 under this paragraph any or all of the following: self-
27 insurance, personally purchased professional liability
28 insurance, professional liability insurance coverage
29 provided by the occupational therapist's employer or any
30 similar type of coverage acceptable to the board.

1 (iii) The level of professional liability insurance
2 coverage shall be in the minimum amount of \$1,000,000 per
3 occurrence or claims made. Failure to maintain the
4 required insurance coverage shall subject the
5 occupational therapist to disciplinary proceedings.

6 (iv) The applicant for an occupational therapist's
7 license shall provide proof that the applicant has
8 obtained professional liability insurance in accordance
9 with subparagraph (iii). It is sufficient if:

10 (A) the applicant files with the application a
11 copy of a letter from the applicant's professional
12 liability insurance carrier indicating that the
13 applicant will be covered against professional
14 liability in the required amounts effective upon the
15 issuance of the applicant's license to practice
16 occupational therapy in this Commonwealth; or

17 (B) the applicant certifies that the applicant
18 will be covered by an employer against professional
19 liability in required amounts upon the commencement
20 of employment as an occupational therapist, provided
21 that the applicant does not practice occupational
22 therapy prior to the commencement of such employment.

23 (v) Within 30 days after the issuance of a license
24 or within 30 days after the commencement of employment as
25 described in subparagraph (iv), the occupational
26 therapist shall submit to the board the certificate of
27 insurance or a copy of the policy declaration page.

28 (vi) The board shall adopt, by regulation, standards
29 and procedures established by the Insurance Commissioner
30 for self-insurance. In the absence of these standards and

1 procedures, the board, after consultation with the
2 Insurance Commissioner, shall establish standards and
3 procedures by regulation for self-insurance under this
4 paragraph.

5 Section 4. Section 14 of the act, amended May 18, 2004
6 (P.L.220, No.30), is amended to read:

7 Section 14. Practice and referral.

8 (a) An occupational therapist may enter a case for the
9 purposes of providing indirect services, consultation,
10 evaluating an individual as to the need for services and other
11 occupational therapy services for conditions such as perceptual,
12 cognitive, sensory integration and similar conditions.
13 Implementation of direct occupational therapy to an individual
14 for a specific medical condition shall be based on a referral
15 from a licensed physician, licensed optometrist [or a], licensed
16 podiatrist[.], licensed certified registered nurse practitioner
17 or licensed physician assistant.

18 (b) This act shall not be construed as authorization for an
19 occupational therapist or occupational therapy assistant to
20 practice a branch of the healing arts except as described in
21 this act.

22 Section 5. Sections 15(a) and 16(c) of the act are amended
23 to read:

24 Section 15. Renewal of license; effect of license suspension or
25 revocation.

26 (a) A license issued under this act shall be renewed
27 biennially upon payment of the renewal fee prescribed in section
28 17. It shall expire unless renewed in the manner prescribed by
29 the regulations of the board. The board may provide for the late
30 renewal of a license upon the payment of a late fee. A late

1 renewal of a license shall not be granted more than four years
2 after its expiration. A license shall be renewed after the four-
3 year period only by complying with section 11. The board may
4 establish additional requirements for license renewal designed
5 to assure continued competency of the applying occupational
6 therapist or occupational therapy assistant.

7 * * *

8 Section 16. Refusal, suspension or revocation of license;
9 refusal to renew; penalties; injunctive relief.

10 * * *

11 (c) (1) A person who violates a provision of this act is
12 guilty of a misdemeanor and, upon conviction thereof, shall
13 be punished by a fine of not less than \$100 nor more than
14 \$500 or by imprisonment for not less than 30 days nor more
15 than 90 days, or by both such fine and imprisonment and for
16 each additional offense that person shall be subject to
17 either a fine of not less than \$500 or imprisonment of not
18 less than six months, at the discretion of the court.

19 (2) In addition to any other civil remedy or criminal
20 penalty provided for in this act, the board may levy a civil
21 penalty on a person who violates a provision of this act in
22 accordance with the act of July 2, 1993 (P.L.345, No.48),
23 entitled "An act empowering the General Counsel or his
24 designee to issue subpoenas for certain licensing board
25 activities; providing for hearing examiners in the Bureau of
26 Professional and Occupational Affairs; providing additional
27 powers to the Commissioner of Professional and Occupational
28 Affairs; and further providing for civil penalties and
29 license suspension."

30 (3) Fines and civil penalties collected under the

1 provisions of this act shall be paid into the State Treasury
2 for the use of the Commonwealth.

3 * * *

4 Section 6. The act is amended by adding a section to read:

5 Section 16.1. Impaired professionals program.

6 (a) The board, with the approval of the Commissioner of
7 Professional and Occupational Affairs, shall appoint and fix the
8 compensation of a professional consultant with education and
9 experience in the identification, treatment and rehabilitation
10 of persons with physical or mental impairments. Such consultant
11 shall be accountable to the board and shall act as a liaison
12 between the board and treatment programs, such as alcohol and
13 drug treatment programs licensed by the Department of Health,
14 psychological counseling and impaired professionals support
15 groups approved by the board and which provide services to
16 licensees under this act.

17 (b) (1) The board may defer and ultimately dismiss any of
18 the types of corrective action set forth in this act for an
19 impaired professional so long as the licensee is progressing
20 satisfactorily in an approved treatment program, provided
21 that the provisions of this subsection shall not apply to a
22 licensee who has been convicted of, pleaded guilty to or
23 entered a plea of nolo contendere to a felonious act
24 prohibited by the act of April 14, 1972 (P.L.233, No.64),
25 known as "The Controlled Substance, Drug, Device and Cosmetic
26 Act," or the conviction of a felony relating to a controlled
27 substance in a court of law of the United States or any other
28 state, territory or country.

29 (2) (i) An approved program provider shall, upon
30 request, disclose to the consultant such information in

1 its possession regarding an impaired professional in
2 treatment which the program provider is not prohibited
3 from disclosing by an act of this Commonwealth, another
4 state or the United States.

5 (ii) The requirement of disclosure by an approved
6 program provider under subparagraph (i) shall apply in
7 the case of an impaired professional who enters an
8 agreement in accordance with this section, an impaired
9 professional who is the subject of a board investigation
10 or disciplinary proceeding and an impaired professional
11 who voluntarily enters a treatment program other than
12 under the provisions of this section but who fails to
13 complete the program successfully or to adhere to an
14 after-care plan developed by the program provider.

15 (c) (1) An impaired professional who enrolls in an approved
16 treatment program shall enter into an agreement with the
17 board under which the professional's license shall be
18 suspended or revoked but enforcement of that suspension or
19 revocation may be stayed for the length of time the
20 professional remains in the program and makes satisfactory
21 progress, complies with the terms of the agreement and
22 adheres to any limitations on his practice imposed by the
23 board to protect the public.

24 (2) Failure to enter into such an agreement shall
25 disqualify the professional from the impaired professional
26 program and shall activate an immediate investigation and
27 disciplinary proceeding by the board.

28 (d) If, in the opinion of such consultant after consultation
29 with the provider, an impaired professional who is enrolled in
30 an approved treatment program has not progressed satisfactorily,

1 the consultant shall disclose to the board all information in
2 his or her possession regarding such professional, and the board
3 shall institute proceedings to determine if the stay of the
4 enforcement of the suspension or revocation of the impaired
5 professional's license shall be vacated.

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

9 (f) (1) Any hospital or health care facility, peer or
10 colleague who has substantial evidence that a professional
11 has an active addictive disease for which the professional is
12 not receiving treatment, is diverting a controlled substance
13 or is mentally or physically incompetent to carry out the
14 duties of his license shall make or cause to be made a report
15 to the board: Provided, That any person or facility who acts
16 in a treatment capacity to impaired professionals in an
17 approved treatment program is exempt from the mandatory
18 reporting requirement of this subsection.

19 (2) Any person or facility who reports pursuant to this
20 section in good faith and without malice shall be immune from
21 any civil or criminal liability arising from such report.
22 Failure to provide such report within a reasonable time from
23 receipt of knowledge of impairment shall subject the person
24 or facility to a fine not to exceed \$1,000.

25 (3) The board shall levy this penalty only after
26 affording the accused party the opportunity for a hearing, as
27 provided in 2 Pa.C.S. (relating to administrative law and
28 procedure).

29 Section 7. This act shall take effect in 60 days.