
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1528 Session of
2012

INTRODUCED BY GREENLEAF, BROWNE, FERLO AND WAUGH, MAY 23, 2012

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, MAY
23, 2012

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 license 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 of the act is amended by adding a
25 subsection to read:

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

28 * * *

29 (f) A member who fails to attend three meetings in 18 months
30 shall forfeit the member's seat unless the commissioner, upon

1 written request from the member, finds that the member should be
2 excused from a meeting because of illness or death of a family
3 member.

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

5 Section 8. Requirements for licensure.

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

10 (1) Is of good moral character.

11 (2) Has completed the academic requirements of an
12 approved educational program in occupational therapy
13 recognized by the board with the advice and consultation of
14 recognized national accrediting agencies and professional
15 organizations including the American Occupational Therapy
16 Association as follows:

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

19 (ii) For an occupational therapy assistant, a two-
20 year program, or its equivalent as established by the
21 board.

22 (3) Has successfully completed a period of supervised
23 fieldwork experience at a recognized educational institute or
24 a training program approved by the educational institution
25 where the academic requirements met were as follows:

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

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

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

1 (5) Has professional liability insurance in accordance
2 with the following provisions:

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

17 (ii) The board shall accept from an occupational
18 therapist as satisfactory evidence of insurance coverage
19 under this paragraph any or all of the following: self-
20 insurance, personally purchased professional liability
21 insurance, professional liability insurance coverage
22 provided by the occupational therapist's employer or any
23 similar type of coverage acceptable to the board.

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

29 (iv) The applicant for an occupational therapist's
30 license shall provide proof that the applicant has

1 obtained professional liability insurance in accordance
2 with subparagraph (iii). It is sufficient if:

3 (A) the applicant files with the application a
4 copy of a letter from the applicant's professional
5 liability insurance carrier indicating that the
6 applicant will be covered against professional
7 liability in the required amounts effective upon the
8 issuance of the applicant's license to practice
9 occupational therapy in this Commonwealth; or

10 (B) the applicant certifies that the applicant
11 will be covered by an employer against professional
12 liability in required amounts upon the commencement
13 of employment as an occupational therapist, provided
14 that the applicant does not practice occupational
15 therapy prior to the commencement of such employment.

16 (v) Within 30 days after the issuance of a license
17 or within 30 days after the commencement of employment as
18 described in subparagraph (iv), the occupational
19 therapist shall submit to the board the certificate of
20 insurance or a copy of the policy declaration page.

21 (vi) The board shall adopt, by regulation, standards
22 and procedures established by the Insurance Commissioner
23 for self-insurance. In the absence of these standards and
24 procedures, the board, after consultation with the
25 Insurance Commissioner, shall establish standards and
26 procedures by regulation for self-insurance under this
27 paragraph.

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

30 Section 14. Practice and referral.

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

11 (b) This act shall not be construed as authorization for an
12 occupational therapist or occupational therapy assistant to
13 practice a branch of the healing arts except as described in
14 this act.

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

17 Section 15. Renewal of license; effect of license suspension or
18 revocation.

19 (a) A license issued under this act shall be renewed
20 biennially upon payment of the renewal fee prescribed in section
21 17. It shall expire unless renewed in the manner prescribed by
22 the regulations of the board. The board may provide for the late
23 renewal of a license upon the payment of a late fee. A late
24 renewal of a license shall not be granted more than four years
25 after its expiration. A license shall be renewed after the four-
26 year period only by complying with section 11. The board may
27 establish additional requirements for license renewal designed
28 to assure continued competency of the applying occupational
29 therapist or occupational therapy assistant.

30 * * *

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

3 * * *

4 (c) (1) A person who violates a provision of this act is
5 guilty of a misdemeanor and, upon conviction thereof, shall
6 be punished by a fine of not less than \$100 nor more than
7 \$500 or by imprisonment for not less than 30 days nor more
8 than 90 days, or by both such fine and imprisonment and for
9 each additional offense that person shall be subject to
10 either a fine of not less than \$500 or imprisonment of not
11 less than six months, at the discretion of the court.

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

23 (3) Fines and civil penalties collected under the
24 provisions of this act shall be paid into the State Treasury
25 for the use of the Commonwealth.

26 * * *

27 Section 6. The act is amended by adding a section to read:
28 Section 16.1. Impaired professionals program.

29 (a) The board, with the approval of the Commissioner of
30 Professional and Occupational Affairs, shall appoint and fix the

1 compensation of a professional consultant with education and
2 experience in the identification, treatment and rehabilitation
3 of persons with physical or mental impairments. Such consultant
4 shall be accountable to the board and shall act as a liaison
5 between the board and treatment programs, such as alcohol and
6 drug treatment programs licensed by the Department of Health,
7 psychological counseling and impaired professionals support
8 groups approved by the board and which provide services to
9 licensees under this act.

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

22 (2) (i) An approved program provider shall, upon
23 request, disclose to the consultant such information in
24 its possession regarding an impaired professional in
25 treatment which the program provider is not prohibited
26 from disclosing by an act of this Commonwealth, another
27 state or the United States.

28 (ii) The requirement of disclosure by an approved
29 program provider under subparagraph (i) shall apply in
30 the case of an impaired professional who enters an

1 agreement in accordance with this section, an impaired
2 professional who is the subject of a board investigation
3 or disciplinary proceeding and an impaired professional
4 who voluntarily enters a treatment program other than
5 under the provisions of this section but who fails to
6 complete the program successfully or to adhere to an
7 after-care plan developed by the program provider.

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

17 (2) Failure to enter into such an agreement shall
18 disqualify the professional from the impaired professional
19 program and shall activate an immediate investigation and
20 disciplinary proceeding by the board.

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

29 (e) An approved program provider who makes a disclosure
30 pursuant to this section shall not be subject to civil liability

1 for such disclosure or its consequences.

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

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

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

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