

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

FIRST REGULAR SESSION

January 3, 1979 to June 15, 1979

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PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED AT THE
FIRST REGULAR SESSION
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ONE HUNDRED AND NINTH LEGISLATURE
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Be it enacted by the People of the State of Maine, as follows:

32 MRSA § 7003, sub-§ 3, is enacted to read:

3. Employment by a nursing home. The person is employed by a nursing home licensed under Title 22, section 1811 and that person is engaging in the independent practice of social work on behalf of a nursing home. This exemption expires on July 1, 1981.

Effective September 14, 1979

CHAPTER 555

S. P. 593 — L. D. 1664

AN ACT to Revise the Physical Therapist Practice Act.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 32 MRSA c. 45, as amended, is repealed.

Sec. 2. 32 MRSA c. 45-A is enacted to read:

CHAPTER 45-A

PHYSICAL THERAPIST PRACTICE ACT

§ 3111. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings.

1. Board. "Board" means the Board of Examiners in Physical Therapy as created in section 3112.

2. Direction. "Direction" means continuing verbal and written contact by a physical therapist with a physical therapist assistant including periodic on-site supervision adequate to ensure the safety and welfare of the patient.

3. Physical therapist. "Physical therapist" means a person who practices physical therapy.

4. Physical therapist assistant. "Physical therapist assistant" means a person who assists in the practice of physical therapy.

5. **Physical Therapy.** "Physical therapy" means the evaluation, treatment and instruction of human beings to detect, assess, prevent, correct, alleviate and limit physical disability, bodily malfunction and pain from injury, disease and any other bodily condition; the administration, interpretation and evaluation of tests and measurements of bodily functions and structures for the purpose of treatment planning; the planning, administration, evaluation and modification of treatment and instruction; and the use of physical agents and procedures, activities and devices for preventive and therapeutic purposes; and the provision of consultative, educational and other advisory services for the purpose of reducing the incidence and severity of physical disability, bodily malfunction and pain.

6. **Practice of physical therapy.** "Practice of physical therapy" means the rendering or offering to render any service involving physical therapy for a fee, salary or other compensation, monetary or otherwise, paid directly or indirectly.

7. **Referral.** "Referral" means the request of a doctor of medicine, surgery, osteopathy or dentistry to a physical therapist to accept one of his patients for treatment.

§ 3112. **Board created; appointment; powers and duties**

There is created within the Department of Business Regulation the Board of Examiners in Physical Therapy. It shall consist of 2 physical therapists, one physical therapist assistant, 2 physicians from the Board of Registration in Medicine and one public member.

1. **Appointment.** Members of the board shall be appointed by the Governor for a term of 4 years. Members currently serving on the existing board will continue until the expiration of their present appointment. Each member shall serve until his successor is appointed. Vacancies shall be filled within 60 days of expiration.

Any member of the board may be removed from office for cause by the Governor. A member may not serve more than 2 successive terms.

2. **Meetings.** The board shall hold regular meetings in March, July, November and at such other times as deemed necessary by the chairman of the board and shall elect a chairman and a secretary who shall serve for 2 years. Members of the board shall receive \$25 for every day actually spent in the performance of the duties imposed upon them by this chapter and necessary traveling and hotel expenses actually incurred.

3. **Officers.** The chairman shall be empowered to administer oaths in matters connected with the duties of the board. The secretary shall keep accurate minutes of meetings and carry on official correspondence.

4. **Quorum.** A majority of the members of the board shall constitute a quorum for the transaction of business.

5. Powers and duties. The board shall have the following powers and duties:
- A. To review the qualifications of applicants for licensure and to license physical therapists and physical therapist assistants who qualify under this chapter;
 - B. To conduct physical therapist and physical therapist assistant examinations and to establish passing standards;
 - C. To make rules in accordance with this chapter necessary for the enforcement of its authority and performance of its duties consistent with the provisions of Title 5, chapter 375;
 - D. To establish and charge reasonable fees for issuing and renewing licenses, administering examinations and supplying information to applicants, licensees and the general public;
 - E. To order investigation of a complaint on its own motion or on written complaint filed with the board regarding noncompliance with or violation of any section of this chapter or of any rules adopted by the board;
 - F. To conduct hearings in accordance with the provisions of Title 5, chapter 375, subchapter IV;
 - G. After hearing, to censure or proceed as provided in section 3117.
 - H. To authorize issuance of certificates of licensure by the Central Licensing Division of the Department of Business Regulation which shall process and issue initial and renewal certificates of licensure. The licensing division shall maintain a register containing names and addresses of each person licensed and such other information as is deemed necessary by the board and the Commissioner of Business Regulation. This information shall be open for public inspection during regular office hours;
 - I. To submit, no later than August 1st of each year to the Commissioner of Business Regulation for the preceding fiscal year ending June 30th, an annual report of its operations and financial position together with such comments and recommendations as the board deems essential; and
 - J. To furnish advice and consent to the Commissioner of Business Regulation, who shall be empowered to appoint, subject to the Personnel Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the Department of Business Regulation and under the commissioner's supervision.

§ 3113. License required; limitations and exceptions

No person shall practice, or hold himself out as authorized to practice, as a

physical therapist in this State or use the words "physical therapist" or the letters "P. T." or other words or letters to indicate that the persons using the same is a licensed physical therapist unless he is licensed in accordance with the provisions of this chapter.

After one year from the effective date of this chapter, no person shall act, or hold himself out as being able to act, as a physical therapist assistant in this State or use the words "physical therapist assistant" or the letters "P. T. A." or other words or letters to indicate that the person using the same is a licensed physical therapist assistant unless he is licensed in accordance with the provisions of this chapter.

Nothing in this chapter shall be construed as authorizing a physical therapist or physical therapist assistant, licensed or not, to practice medicine, osteopathy, dentistry, chiropractic or any other form of healing. A licensed physical therapist or physical therapist assistant shall not administer drugs or use roentgen rays or radium for diagnostic or therapeutic purposes or electricity for surgical purposes, or treat human beings by use of physical measures, activities or devices except upon the referral of a duly licensed doctor of medicine, surgery, osteopathy or dentistry. A licensed physical therapist assistant shall act only under the direction of a physical therapist licensed to practice in this State.

Nothing in this chapter shall prohibit:

1. Engaging in licensed practice. Any person licensed in this State under any other provision of law from engaging in the practice for which he is licensed;
2. Federal officials. Any person serving in the United States Armed Services or public health service or employed by the Veterans' Administration or other federal agency from performing his official duties, provided the duties are limited to that service or employment;
3. Persons employed by licensed doctors. Any person employed by and under the control of a duly licensed doctor in his office from administering physical therapy modalities, providing that person does not refer to himself as a physical therapist or physical therapist assistant nor other words or letters to indicate that the person using the same is a licensed physical therapist or physical therapist assistant;
4. Graduate physical therapist or assistant. The supervised practice of physical therapy by a graduate physical therapist or graduate physical therapist assistant, who has filed with the board an application for licensure by examination and has met all the qualifications between the date of filing and the publication of the results of the next examination, provided he shall refer to himself as a "graduate" and work in a facility employing at least one physical therapist licensed to practice in this State who assumes responsibility for patient-related activities of the individual;

5. Student physical therapist or assistant. The supervised practice of physical therapy by a student enrolled in a accredited physical therapist or physical therapist assistant program who shall refer to himself as a "student;" or

6. Delegation to aides or assistants. Any physical therapist licensed pursuant to this chapter from delegating to a physical therapy aide or licensed physical therapist assistant treatment procedures or patient-related activities commensurate with the education and training of the person, but not including interpretation of referrals, performance or evaluation procedures or determination and modification of patient treatment programs. The board shall adopt rules governing supervision of physical therapy aides and licensed physical therapist assistants.

§ 3114. Application; qualification; licensure by examination

An applicant for licensure as a physical therapist or physical therapist assistant shall submit to the board a written application on forms provided by the board, together with an application fee which shall not exceed \$50. The applicant shall present evidence satisfactory to the board that he is of good moral character and a graduate of an educational program for the physical therapist or the physical therapist assistant which is accredited by an agency recognized by the United State Commissioner of Education or the Council on Post Secondary Accreditation, or both, and approved by the board.

An applicant for licensure by examination who meets the qualifications in this section shall be required to pass an examination, conducted by the board, to determine the applicant's fitness to practice as a physical therapist or to act as a physical therapist assistant, respectively. The applicant shall, at the time of filing his application, pay to the board the application fee plus an examination fee set by the board to cover the costs of the examination, but not to exceed \$75. In case the application is denied and permission to take the examination refused, the examination fee only shall be returned to the applicant. Any application who fails to pass the examination shall be entitled to a reexamination within 6 months upon repayment of the examination fee only. If an applicant should fail one section of the examination, he shall be reexamined on that particular section only. Should he fail more than one section, he shall repeat the entire examination. No applicant shall be allowed to take any part of the examination more than 3 times, unless he submits evidence of having acquired additional formal education related to the previously failed examination section or sections.

On or before one year from the effective date of this chapter, the board may license as a physical therapist assistant any person not meeting the educational qualification specified under this section, provided the person is a high school graduate, has been employed for 4 years prior to the effective date of this chapter under the supervision of a physical therapist licensed in this State, and successfully passes the examination required for licensure as a physical

therapist assistant. The provisions relating to reexamination in the previous paragraph shall apply.

The board may license as a physical therapist or physical therapist assistant, without examination on payment of the application fee and submission of a written application on forms provided by the board, an applicant who is currently licensed in another state as a physical therapist or physical therapist assistant, respectively, provided the requirements for licensure are substantially equal to those set forth in this chapter. The applicant shall have previously passed a qualifying examination acceptable to the board.

A license to practice as a physical therapist may be issued by the board to an applicant who has been trained in other countries upon payment of the application fee and the examination fee and presentation of satisfactory evidence that he has graduated from a school of physical therapy approved or accredited in the country where the school is located, has educational credentials equivalent to those of the United States trained physical therapist, demonstrates proficiency in written and spoken English, has completed up to one year's experience in employment approved by the board under the supervision of a licensed physical therapist and has successfully passed an examination satisfactory to the board.

§ 3115. Certificate of licensure

Every applicant who satisfactorily meets the qualifications as provided in section 3114 shall be granted a certificate of licensure signed by the chairman and secretary of the board. A certificate of licensure as a physical therapist shall entitle the person to whom it is granted to engage in the practice of physical therapy anywhere in this State and to use the words "physical therapist" or letters "P.T." to indicate that he is licensed in this State. A certificate of licensure as a physical therapist assistant shall entitle the person to whom it is granted to act as a physical therapist assistant and to use the words "physical therapist assistant" or letters "P.T.A." to indicate that he is licensed in this State. Every certificate of licensure and renewal certificate for the current biennium shall be conspicuously displayed at the place of employment of the licensee.

§ 3116. Biennial licensure renewal; fees

All licenses issued shall expire March 31st or at such other times as the Commissioner of Business Regulation may designate. The Central Licensing Division shall notify each licensee, at his last known address, 30 days in advance of the expiration of his license. Renewal certificates will be on forms provided and the fee shall not exceed \$25. Any license not renewed by March 31st will automatically lapse. A license may be reinstated only by a majority vote of the board after the following conditions are met:

1. No grounds for suspension or revocation. There exists no cause as set

forth in section 3117 which may be considered grounds for suspension or revocation of license; and

2. Licensee shows cause. The licensee has shown cause why he failed to apply for licensure renewal and has paid to the board all license renewal fee arrearage plus an additional reinstatement fee which shall not exceed \$20.

§ 3117. Revocation and reissuance

1. Board revocation. The board shall have the power in accordance with the Maine Administrative Procedure Act, Title 5, section 8001 et seq., to revoke the license of a licensed physical therapist or physical therapist assistant for:

A. Conviction of a violation of law by any court of competent jurisdiction which, if committed within this State, would:

(1) Constitute a Class C crime; or

(2) Be punishable by one year or more of imprisonment.

2. Administrative Court revocation. The board shall have the power to proceed in the Administrative Court seeking to revoke the license of a licensed physical therapist or physical therapist assistant for any of the following reasons:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered as a licensed physical therapist or physical therapist assistant;

B. Addiction, as confirmed by medical findings, to the use of alcohol or other drugs, which has resulted in the licensed physical therapist or physical therapist assistant being unable to perform his duties or perform those duties in a manner which would not endanger the health or safety of the patients to be served;

C. A medical finding of mental incompetency;

D. Aiding or abetting a person not duly licensed as a licensed physical therapist or physical therapist assistant in representing himself as a licensed physical therapist or physical therapist assistant; or

E. Any gross negligence, incompetency or misconduct in the practice of physical therapy.

Any person may prefer charges against any licensed physical therapist or physical therapist assistant. Any charges shall be in writing, shall be sworn to by the person making them and shall be filed with the secretary of the board. The board may direct the department to reissue a certificate of licensure as a physical therapist or physical therapist assistant to any person whose license has been

revoked, provided 4 or more members of the board vote in favor of that reissuance. A new certificate of licensure as a physical therapist or physical therapist assistant to replace any certificate revoked, lost, destroyed or mutilated, may be issued, subject to the rules and regulations of the board.

Effective September 14, 1979

CHAPTER 556

H. P. 1126 — L. D. 1396

AN ACT to Make Substantive Changes in the Forestry Statutes.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 12 MRSA § 501, last ¶, as enacted by PL 1977, c. 360, § 3, is repealed and the following enacted in its place:

The director is authorized, with the consent of the commissioner, to sell, grant, lease, transfer or otherwise convey any real or personal property under the jurisdiction of the bureau. This authority shall not apply to the state nursery or lands acquired under the authority of section 512.

Sec. 2. 12 MRSA § 505, as last amended by PL 1973, c. 460, § 18, is repealed and the following enacted in its place:

§ 505. Establishment of nurseries

1. Establishment; purpose. The director may establish within the State one or more forest nurseries, the maintenance of which shall be paid for from the appropriation for that purpose. The object of these nurseries is to furnish at cost forest tree seedlings, transplants and shrub material for use in planting the present and potential forest lands within the State.

2. Surplus. The director is authorized to dispose of surplus materials from the nursery at or below cost to other state or governmental agencies for such uses as erosion control, windbreaks and wildlife habitat.

3. Resale. No person may resell at a profit seedlings, transplants or shrub material with their roots attached received from the nursery or their assigns. Any person who violates this prohibition shall be subject to a civil penalty not to exceed 200% of the value received at resale, payable to the State, to be recovered in a civil action.

Sec. 3. 12 MRSA § 519, as last amended by PL 1973, c. 759, is repealed.