

CHAPTER 352

S.B. No. 690

AN ACT

relating to the regulation of the practice of physical therapy and occupational therapy, including the creation of the Executive Council of Physical Therapy and Occupational Therapy Examiners and the continuation and modification of the Texas Board of Physical Therapy Examiners and The Texas Advisory Board of Occupational Therapy.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. EXECUTIVE COUNCIL OF PHYSICAL THERAPY
AND OCCUPATIONAL THERAPY EXAMINERS

SECTION 1.01. Chapter 6D, Title 71, Revised Statutes, is amended by adding Article 4512e-1 to read as follows:

Art. 4512e-1. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

Sec. 1. DEFINITIONS. In this article:

(1) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(2) "Occupational therapy board" means the Texas Board of Occupational Therapy Examiners.

(3) "Physical therapy board" means the Texas Board of Physical Therapy Examiners.

Sec. 2. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS. (a) The Executive Council of Physical Therapy and Occupational Therapy Examiners consists of:

(1) *an occupational therapist member of the occupational therapy board;*

(2) *a public member of the occupational therapy board;*

(3) *a physical therapist member of the physical therapy board;*

(4) *a public member of the physical therapy board; and*

(5) *a public member appointed by the governor.*

(b) The members of the executive council who serve also as members of the occupational therapy board or the physical therapy board are appointed to the executive council by the board on which they serve. The occupational therapy board and the physical therapy board may also designate an alternate to attend any executive council meeting the appointed member cannot attend. The alternate has the same powers and duties and is subject to the same qualifications as the appointed member.

(c) *The member appointed by the governor is the presiding officer of the executive council.*

(d) *Appointments to the executive council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.*

Sec. 3. MEETINGS; COMPENSATION; QUORUM. (a) *The executive council shall hold at least two regular meetings each year. Additional meetings may be held on the call of the presiding officer or at the written request of three members of the executive council.*

(b) *The presiding officer of the executive council is entitled to a per diem as set by the General Appropriations Act for each day that the presiding officer engages in the business of the executive council. Other members of the executive council may not receive compensation for service on the council. A member may not receive any reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses as provided by the General Appropriations Act.*

(c) *A quorum of the executive council exists if both therapist members and one public member are present.*

Sec. 4. TERMS. (a) *A member of the executive council is appointed for a two-year term, with a member's term expiring on February 1 of each odd-numbered year.*

(b) *A member appointed to fill a vacancy shall hold office for the remainder of that term.*

Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. *A person is not eligible for appointment by the governor as a public member of the executive council if the person or the person's spouse:*

(1) *is registered, certified, or licensed by an occupational regulatory agency in the field of health care;*

(2) *is employed by or participates in the management of a business entity or other organization regulated by the executive council, the occupational therapy board, or the physical therapy board or receiving funds from the executive council, the occupational therapy board, or the physical therapy board;*

(3) *owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council, the occupational therapy board, or the physical therapy board or receiving funds from the executive council, the occupational therapy board, or the physical therapy board; or*

(4) *uses or receives a substantial amount of tangible goods, services, or funds from the executive council, the occupational therapy board, or the physical therapy board, other than compensation or reimbursement authorized by law for executive council, occupational therapy board, or physical therapy board membership, attendance, or expenses.*

Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) *An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the executive council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.*

(b) *A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the executive council and may not be an employee of the executive council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.*

(c) *For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

Sec. 7. EFFECT OF LOBBYING ACTIVITY. *A person may not serve as a member of the executive council or act as the general counsel to the executive council if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council, the occupational therapy board, or the physical therapy board.*

Sec. 8. GROUNDS FOR REMOVAL FROM EXECUTIVE COUNCIL. (a) It is a ground for removal from the executive council if a member:

(1) does not have at the time of appointment the qualifications required by Section 2 of this article;

(2) does not maintain during service on the executive council the qualifications required by Section 2 of this article;

(3) violates a prohibition established by Section 6 or 7 of this article;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled executive council meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the executive council.

(b) The validity of an action of the executive council is not affected by the fact that it is taken when a ground for removal of an executive council member exists.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the executive council of the ground. The presiding officer shall then notify the authority that appointed the member that a potential ground for removal exists.

Sec. 9. STAFF. (a) The executive council shall employ a director and administrative and clerical employees as necessary to carry out the functions of the executive council, the occupational therapy board, and the physical therapy board.

(b) The executive council shall develop and implement policies that clearly define the respective responsibilities of the executive council and the staff of the executive council.

(c) The director shall employ a coordinator of occupational therapy programs and a coordinator of physical therapy programs to carry out the respective boards' functions. The coordinators may request the executive council to assign additional employees to carry out the coordinators' duties.

Sec. 10. REGULATORY STATUTES ADMINISTERED. Except as otherwise provided by this article, the executive council shall administer and enforce:

(1) the physical therapy law, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) the Occupational Therapy Practice Act (Article 8851, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 11. ADMINISTRATIVE FUNCTIONS OF EXECUTIVE COUNCIL. (a) The executive council shall perform the following functions for the administration of each regulatory statute administered:

(1) data processing functions; and

(2) the administration of records relating to payroll, personnel files, vacation and other leave records, employee insurance and other benefits records, and employee applications.

(b) Administrative functions relating to the issuance and renewal of licenses, including administration of written examinations and collection of fees, are the responsibility of the executive council. The executive council's responsibilities include the ministerial functions of preparing and delivering licenses, obtaining material and information in connection with the renewal of a license, and receiving and forwarding complaints to the appropriate board. The executive council may not exercise any discretionary authority with respect to the original review of an applicant's qualifications for licensure or the subsequent review of the person's qualifications. The administration of practical examinations and other examinations requiring skill or expertise in a particular area on the part of the person administering the examination is the responsibility of the appropriate board. The selection of standardized national or generally accepted examinations for a profession or the design of individual examinations is the responsibility of the appropriate board.

(c) Rules concerning the qualifications, licensing, regulation, or practice of a profession shall be adopted by the appropriate board except as otherwise provided.

(d) *The executive council shall:*

(1) *develop and prepare a budget for the executive council, the occupational therapy board, and the physical therapy board; and*

(2) *manage all physical property used by the executive council, the occupational therapy board, or the physical therapy board.*

(e) *The executive council shall set all fees for a license issued or service performed by a board represented on the executive council.*

Sec. 12. REVIEW FUNCTIONS OF EXECUTIVE COUNCIL. (a) *The executive council shall examine and evaluate the operations of the boards represented on the executive council. The examination shall be conducted on an ongoing basis.*

(b) *The executive council may structure the examination in a manner that the executive council considers appropriate to produce an efficient and thorough review.*

Sec. 13. REPORT AND RECOMMENDATIONS. *The executive council shall prepare a report of its activities and shall file the report with the presiding officer of each house of the legislature, the governor, and the Legislative Budget Board. The executive council shall file the report before January 1 of each odd-numbered year.*

Sec. 14. COOPERATION. *Each board represented on the executive council shall cooperate with the examination conducted by the executive council under this article.*

Sec. 15. REVIEW OF RULES. (a) *Before submitting a rule for publication in the Texas Register, each board represented on the executive council shall forward the proposed rule to the executive council for review.*

(b) *The executive council may review the rule and shall approve the rule for submission for publication unless the rule exceeds the rule-making authority of the board.*

(c) *If the executive council fails to approve a rule, it shall return the rule to the board with an explanation of the reasons for the denial.*

Sec. 16. EXPENDITURES; AUDIT. (a) *The executive council may authorize, from funds appropriated to it, all necessary disbursements to carry out:*

(1) *this article;*

(2) *the physical therapy law, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(3) *the Occupational Therapy Practice Act (Article 8851, Vernon's Texas Civil Statutes) and its subsequent amendments.*

(b) *The financial transactions of the executive council are subject to audit by the state auditor in accordance with Chapter 321, Government Code, and its subsequent amendments.*

Sec. 17. ANNUAL FINANCIAL REPORT. *The executive council shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the executive council during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.*

Sec. 18. PERSONNEL POLICIES. (a) *The director or the director's designee shall develop an intraagency career ladder program. The program shall require intraagency posting of all non-entry-level positions concurrently with any public posting.*

(b) *The director or the director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for executive council employees must be based on the system established under this subsection.*

Sec. 19. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) *The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:*

(1) *personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the*

Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) *a comprehensive analysis of the executive council work force that meets federal and state guidelines;*

(3) *procedures by which a determination can be made of significant underutilization in the executive council work force of all persons for whom federal or state guidelines encourage a more equitable balance; and*

(4) *reasonable methods to appropriately address those areas of underutilization.*

(b) *A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.*

(c) *The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.*

Sec. 20. PUBLIC INTEREST INFORMATION. (a) *The executive council shall prepare information of public interest describing the functions of the executive council and the procedures by which complaints are filed with and resolved by the executive council, the occupational therapy board, or the physical therapy board. The executive council shall make the information available to the public and appropriate state agencies.*

(b) *The executive council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the executive council for the purpose of directing complaints to the executive council. The executive council may provide for that notification:*

(1) *on each registration form, application, or written contract for services of an individual or entity regulated by the executive council, the occupational therapy board, or the physical therapy board;*

(2) *on a sign prominently displayed in the place of business of each individual or entity regulated by the executive council, the occupational therapy board, or the physical therapy board; or*

(3) *in a bill for service provided by an individual or entity regulated by the executive council, the occupational therapy board, or the physical therapy board.*

(c) *The executive council shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.*

Sec. 21. PUBLIC PARTICIPATION IN EXECUTIVE COUNCIL HEARINGS. *The executive council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive council and to speak on any issue under the jurisdiction of the executive council.*

Sec. 22. PROGRAM ACCESSIBILITY. *The executive council shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the executive council's programs. The executive council shall also comply with federal and state laws for program and facility accessibility.*

Sec. 23. TRAINING; STANDARDS OF CONDUCT INFORMATION. *Each executive council member shall comply with the executive council member training requirements established by any other state agency that is given authority to establish the requirements for the executive council.*

Sec. 24. OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE. *The executive council is subject to:*

(1) *the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(2) *the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.*

Sec. 25. *SUNSET PROVISION.* The Executive Council of Physical Therapy and Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act), and its subsequent amendments. Unless continued in existence as provided by that chapter, the executive council is abolished and the following laws expire September 1, 2005:

- (1) this article;
- (2) the physical therapy law, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), and its subsequent amendments; and
- (3) the Occupational Therapy Practice Act (Article 8851, Vernon's Texas Civil Statutes) and its subsequent amendments.

ARTICLE 2. THE PRACTICE OF PHYSICAL THERAPY

SECTION. 2.01. Section 1, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Physical therapy" means a form of health care that prevents, identifies, corrects, and alleviates acute or prolonged movement dysfunction or pain of anatomic or physiologic origin. Physical therapy includes the testing and measurement of the function of the musculoskeletal, neurological, pulmonary, and cardiovascular systems and rehabilitative treatment concerned with the restoration of function and prevention of disability caused by illness, injury, or birth defect. Physical therapy includes treatment, consultative, educational, and advisory services for the purpose of reducing the incidence and severity of disability and pain to enable, train, or retrain an individual to perform the independent skills and activities of daily living [the examination, treatment, or instruction of human beings to detect, assess, prevent, correct, and alleviate physical disability and pain from injury, disease, disorders, or physical deformities and includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of diagnosis or treatment; the planning, administration, evaluation, and modification of treatment and instruction, including the use of physical measures, activities, and devices for preventive and therapeutic purposes on the basis of approved test findings and the provision of consultative, educational, and advisory services for the purpose of reducing the incidence and severity of physical disability and pain]. Physical therapy also includes [shall also include] the delegation of selective forms of treatment to supportive personnel with retention by a physical therapist [assumption] of the responsibilities for the care of the patient and continuing direction and supervision of the supportive personnel. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used herein, and a license issued hereunder shall not authorize the diagnosis of diseases or the practice of medicine as defined by law.

(2) "Physical therapist" [or "physiotherapist"] means a person who practices physical therapy and is licensed by the Texas Board of Physical Therapy Examiners. "Hydrotherapist," "physiotherapist," ["massage therapist,"] "mechano-therapist," "functional therapist," "physical therapy practitioner," "physical therapist specialist," "physical therapy specialist," "physiotherapy practitioner," "kinesiotherapist," "physical rehabilitation specialist," ["physical therapy technician,"] and "myofunctional therapist" are equivalent terms; any derivation of the above terms or any reference to any one of them in this Act includes the others.

(3) "Physical therapist assistant" means a person licensed by the Texas Board of Physical Therapy Examiners who assists and is supervised by [works under the supervision of] a licensed physical therapist [and assists a physical therapist] in the practice of physical therapy and whose activities require an understanding of physical therapy [but do not require a professional education equivalent for licensing as a physical therapist].

(4) "Physical therapy aide" or "physical therapy technician" means a person who aids in the practice of physical therapy under the on-site supervision of a physical therapist or a physical therapist assistant and whose activities require on-the-job training [and on-site supervision by the physical therapist or a physical therapist assistant].

(5) "Board" means the Texas Board of Physical Therapy Examiners.

(6) "Discipline" means the revocation or suspension of a license, the placing on probation of a licensee, ~~[whose license has been suspended, or]~~ the reprimand of a licensee, ~~the levying of fines, or other actions imposed on the licensee or other person for a violation of [in accordance with]~~ this Act and rules adopted by the board.

(7) "Practice of physical therapy" means:

(A) performing, offering to perform, or attempting to perform health care that prevents, identifies, corrects, and alleviates acute or prolonged movement dysfunction or pain of anatomic or physiologic origin, the proper application of which requires education, training, and experience in physical therapy; or

(B) publicly professing to be or holding oneself out to be a physical therapist or as providing physical therapy.

(8) "Physical therapy facility" is a physical site, such as a building, office, or portable facility, where the practice of physical therapy takes place. A physical therapy facility must be under the direction of a physical therapist licensed by the board and meet any additional requirements as may be established by the board.

(9) "Accredited program" means a physical therapy educational program that is currently accredited by the Commission on Accreditation in Physical Therapy Education and is associated with an institution of higher education.

(10) "Person" means an individual, a partnership, an association of individuals, or a corporation.

SECTION 2.02. Section 2, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. CREATION OF BOARD. (a) There is created a Texas Board of Physical Therapy Examiners. *The board's purpose is to regulate the practice of physical therapy in this state to safeguard the health and welfare of the public.* The board shall consist of nine members appointed by the governor with the advice and consent of the senate for staggered terms of six years~~[, with three members' terms expiring on January 31 of each odd-numbered year]~~. Six members must be licensed physical therapists and three members must be members of the general public. *Two of the physical therapist members' terms and one of the public members' terms end on January 31 of each odd-numbered year.* ~~[A person is not eligible for appointment as a public member if the person or the person's spouse:~~

~~[(1) is licensed by an occupational regulatory agency in the field of health care;~~

~~[(2) is employed by or participates in the management of a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or~~

~~[(3) owns, controls, or has, directly or indirectly, any interest in a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment.]~~

(b) A vacancy on the board shall be filled by appointment by the governor with the advice and consent of the senate for the remainder of the term.

(c) Appointments to the board shall be made without regard to the race, creed, sex, religion, *disability, age,* or national origin of the appointees.

~~(d) [The board may appoint an executive director at an annual salary as determined by legislative appropriation.~~

~~[(e) The executive director shall administer this Act and carry out the instructions of the board, including the employment of investigators and other staff as required to implement the purpose of this Act. The executive director or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.~~

~~[(f)] A member of the board is not liable to civil action for any act performed in good faith in the execution of *the member's* [his] duties in this capacity.~~

~~[(g) The Texas Board of Physical Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 1993.~~

~~[(h) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the health-care industry. A member or employee of the board may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the board or act as the general counsel to the board.~~

~~[(i) It is a ground for removal from the board if a member:~~

~~[(1) does not have at the time of appointment the qualifications required by this section for appointment to the board;~~

~~[(2) does not maintain during the service on the board the qualifications required by this section for appointment to the board;~~

~~[(3) violates a prohibition proscribed by Subsection (h) of this section; or~~

~~[(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.~~

~~[(j) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.]~~

SECTION 2.03. Section 3, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. *EXAMINATIONS [POWERS AND DUTIES OF BOARD]*. (a) The board shall examine applicants for licenses at least once each year at such reasonable places and times as shall be designated by the board in its discretion.

~~(b) [The board may employ additional employees to aid in administering examinations.~~

~~[(e)] The examination shall cover those subjects generally taught by accredited programs and may include the content areas of clinical decision-making and evaluation, treatment program planning and implementation, administration, education, consultation, and research in physical therapy [embrace the following subjects: anatomy; pathology; physiology; psychology; physics; electrotherapy; radiation therapy; hydrotherapy; massage therapy; exercises; physical therapy as applied to medicine; neurology; orthopedics; psychiatry; and procedures in the practice of physical therapy].~~

~~(c) Not later than the 30th day [(d) The board shall revoke or suspend a license, place on probation a licensee whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule adopted by the board.~~

~~[(e) The board may adopt rules consistent with this Act to carry out its duties in administering this Act.~~

~~[(f) Within 30 days] after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination *not later than the 14th day* [within two weeks] after the date the board receives the results from the testing service. If the notice of the examination results *graded or reviewed by a national testing service* will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.~~

~~(d) The board by rule may establish procedures for the administration of the examination, including the conditions under which and the number of times an applicant may retake an examination.~~

~~(e) The board shall have the written portion of the examination, if any, validated by an independent testing entity.~~

(f) If requested in writing by a person who fails a licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

~~[(g) The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.]~~

~~[(h) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall also prepare information relating to and reporting any previous disciplinary action by the board against a physical therapist licensed in this state, the date of the action, and the current status of the action. The board shall make the information available to the general public and appropriate state agencies. The board shall establish a toll-free telephone number to make the information immediately available to any caller during regular business hours.]~~

~~[(i) Each written contract for services in this state of a licensed physical therapist shall contain the name, mailing address, and telephone number of the board.]~~

~~[(j) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).]~~

~~[(k) The board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is mandatory. The board shall adopt rules relating to its continuing education requirements, including rules relating to the approval of continuing education courses and prescribing the number of continuing education hours each licensee must complete to retain eligibility for renewal of the license.]~~

~~[(l) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.]~~

SECTION 2.04. Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended by adding Sections 2A through 2M to read as follows:

Sec. 2A. COMPENSATION. A member of the board is entitled to a per diem as set by the General Appropriations Act for each day that the member engages in the business of the board. A member may not receive any reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses as provided by the General Appropriations Act.

Sec. 2B. PUBLIC MEMBERSHIP RESTRICTION. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the executive council or the board or receiving funds from the executive council or the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council or the board or receiving funds from the executive council or the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council or the board, other than compensation or reimbursement authorized by law for executive council or board membership, attendance, or expenses.

Sec. 2C. CONFLICT OF INTEREST RESTRICTIONS. (a) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a board member.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 2D. EFFECT OF LOBBYING ACTIVITY. A person may not serve as a board member if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 2E. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 2(a) of this Act;

(2) does not maintain during service on the board the qualifications required by Section 2(a) of this Act;

(3) violates a prohibition established by Section 2C or 2D of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the coordinator of physical therapy programs has knowledge that a potential ground for removal exists, the coordinator shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Sec. 2F. STAFF. (a) The board may request the executive council to assign administrative and clerical employees as necessary to carry out the board's functions.

(b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the executive council.

Sec. 2G. REGULATORY STATUTES ADMINISTERED. Except as provided by other statutes, the board shall administer and enforce this Act.

Sec. 2H. PUBLIC INTEREST INFORMATION. The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

Sec. 2I. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 2J. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

Sec. 2K. TRAINING AND GUIDELINES FOR MEMBERS OF THE BOARD. (a) The board shall establish a training program for the members of the board.

(b) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

- (1) the enabling legislation that created the board to which the member is appointed;
- (2) the programs operated by the agency;
- (3) the role and functions of the agency;
- (4) the rules of the agency with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the agency;
- (6) the results of the most recent formal audit of the agency;
- (7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments,

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1975 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

Sec. 2L. OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE. The board is subject to:

(1) the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments and

(2) the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 2M. SUNSET PROVISION. The Texas Board of Physical Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act), and its subsequent amendments. Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005.

SECTION 2.05. Subsections (a) and (b), Section 4, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The members of the board shall, on appointment, elect from their number a *presiding officer* [~~chairman~~], secretary, and other officers required for the conduct of business. Special meetings of the board shall be called by the *presiding officer* [~~chairman~~] and secretary, acting jointly, or on the written request of any two members. The board may adopt bylaws and rules necessary to govern its proceedings and to implement the purposes of this Act

(b) The secretary shall keep a record of each meeting of the board and maintain a register containing the names of all physical therapists licensed under this Act, which shall be at all times open to public inspection. On March 1 of each year, the *coordinator of physical therapy programs* [~~executive director~~] shall transmit an official copy of the list of the licensees to the *executive council* and the secretary of state for permanent record, a certified copy of which shall be admissible as evidence in any court of this state.

SECTION 2.06. Section 6, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. EXEMPTIONS. (a) This Act does not restrict ~~apply to:~~

[(1)] a licensee of another state agency from performing health-care services within the scope of the applicable licensing act if:

(1) *the licensee does not represent to others that the licensee is a physical therapist and does not use the term "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "licensed physical therapist," "registered physical therapist," or assistant thereto, or the letters "PT," "PhT," "LPT," or "RPT" or any derivative of those terms in connection with the licensee's name or practice; and*

(2) *the licensee practices strictly in conformity with applicable laws and regulations relating to the licensure and observes all prohibitions of Section 7 of this Act. [~~an occupational therapist who confines his practice to occupational therapy, a certified corrective therapist who confines his practice to corrective therapy, and a speech pathologist or an audiologist who confines his practice to the treatment of communication disorders;~~]*

(b) *This Act does not apply to:*

(1) [(2)] a physical therapy aide;

(2) [(3)] a physical therapy student or physical therapist [therapy] assistant student participating in an accredited physical therapy or physical therapist assistant educational program if the student is [curriculum and] under the supervision of a licensee under this Act; or a student participating in [of] an accredited allied health science program leading to licensure by another state agency if the student is [curriculum] under the supervision of properly licensed, certified, or registered personnel;

(3) [(4)] a physical therapist doing special projects in patient care while working toward an advanced degree from an accredited college or university; or

(4) [(5)] a physical therapist who does not live in this state and is licensed by the appropriate authorities who comes into this state to attend educational activities. The duration of this exemption shall be no more than six months.

SECTION 2.07. Section 7, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. PROHIBITED ACTS. (a) *A person may not practice physical therapy, offer to practice physical therapy, or in any way hold the person out as being able to practice physical therapy, including practice as a physical therapist or physical therapist assistant, unless the individual holds a valid license issued by the board [A person may not practice or represent himself as able to practice physical therapy, or act or represent himself as being a physical therapist unless he is licensed] under this Act.*

(b) ~~[A person may not act or represent himself as being a physical therapist assistant unless he is licensed under this Act.~~

[(c)] It is unlawful for any person or for any business, its employees, or other agents or representatives to use in connection with its name or business activity the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "licensed physical therapist," "registered physical therapist," or "physical therapist assistant," [assistant thereto,] or the letters "PT," "PhT," "LPT," "RPT," or "PTA" [or "RPT"] or any other words, letters, abbreviations, or insignia indicating or implying orally or in writing, in print or by sign, or in any other way, directly or by implication, that physical therapy is provided or supplied, or to extend or provide physical therapy services unless the services are provided by a physical therapist licensed under this Act.

(c) *It is a violation of this Act to advertise the ability to provide physical therapy unless the individual providing the physical therapy is licensed under this Act.*

(d) *It is a violation of this Act for an individual licensed by the board to violate the provisions of Section 161.091, Health and Safety Code.*

(e) *A violation of any provision of this section will subject the violator to the penalties of Section 18 of this Act.*

SECTION 2.08. Section 8, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) An applicant for a license as a physical therapist must file a written application, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that *the applicant [he] has completed an accredited program or equivalent program [curriculum] in physical therapy education. "Equivalent program" means that the applicant shall provide official documentation from a board-approved educational credentials review agency, certifying completion of a program equivalent to a Commission on Accreditation of Physical Therapy Education accredited program and completion of [that has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures as determined by the board and has completed]* a minimum of 60 academic semester credits or the equivalent from an accredited institution of higher learning *[a recognized college in which semester hour credits are acceptable for transfer to The University of Texas, including courses in biological, social, and physical science].*

(c) *The applicant must meet all other requirements and qualifications set forth by the board.*

SECTION 2.09. Section 9, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) An applicant for a physical therapist assistant license must file a written application with the board, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that *the applicant [he] has completed an accredited physical therapist assistant program or an accredited physical therapy program, including courses in the anatomical, biological, and physical sciences, and clinical procedures as prescribed and approved by the board.*

(c) *The applicant must meet all other requirements and qualifications established by the board.*

(d) *The board may grant licensure as a physical therapist assistant to an individual who has not completed an accredited program for physical therapist assistants if the individual meets all requirements of Section 8 of this Act and has had no disciplinary action in any other state or nation.*

SECTION 2.10. Section 10, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. **PROVISIONAL LICENSE [BY ENDORSEMENT].** (a) *The board may grant a provisional license to an applicant who presents proof of current licensure in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be equivalent to those set forth in this Act. An applicant for a provisional license under this section must:*

(1) *be licensed in good standing as a physical therapist or physical therapist assistant in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;*

(2) *have passed a national or other examination recognized by the board relating to the practice of physical therapy; and*

(3) *be sponsored by a person licensed by the board under this Act with whom the provisional licensee may practice under this section.*

(b) *An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.*

(c) A provisional license is valid until the date the board approves or denies the provisional licensee's application for a license. The board shall issue a license under this Act to the holder of a provisional license under this section if:

- (1) the provisional licensee passes a jurisprudence examination, if required;
- (2) the board verifies that the provisional licensee has the academic and experience requirements for a license under this Act; and
- (3) the provisional licensee satisfies any other license requirements under this Act.

(d) The board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day limit if the results on an examination have not been received by the board [~~A person who is licensed or otherwise registered as a physical therapist or as a physical therapist assistant by another state, the District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by this Act may receive a physical therapist license without examination on submission of an application on a form prescribed by the board and payment of an endorsement license fee prescribed by the board.~~].

SECTION 2.11. Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended by adding Section 10A to read as follows:

Sec. 10A. FOREIGN-TRAINED APPLICANTS. Foreign-trained physical therapists or physical therapist assistants shall satisfy the examination requirements of Section 8 or 9 of this Act. The board shall require foreign-trained applicants to furnish proof of good moral character and completion of requirements substantially equal to those contained in Section 8 or 9 of this Act before taking the examination.

SECTION 2.12. Section 11, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. TEMPORARY LICENSE; INACTIVE STATUS. (a) The board by rule may provide for the issuance of a temporary license. A holder of a temporary license shall practice under the supervision of a licensed physical therapist. Rules adopted under this subsection shall include a time limit for a licensee to remain on temporary status.

(b) The board by rule may provide for a person who holds a license under this Act to be placed on inactive status. Rules adopted under this subsection shall include a time limit for a licensee to remain on inactive status [shall issue a temporary license without examination to a physical therapist or physical therapist assistant who meets the qualifications prescribed by Sections 8 and 9 of this Act on submission of a written application on a form prescribed by the board, proof that the applicant is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project, and payment of a fee prescribed by the board for a physical therapist temporary license or a physical therapist assistant temporary license. This license expires one year from the date of issuance.

[(b) The board shall issue a temporary license to a person who has applied for a license, meets the qualifications prescribed by Sections 8 and 9 of this Act, and has paid a fee prescribed by the board for a physical therapist temporary license or a physical therapist assistant temporary license. This license expires on completion of scoring of the next administered examination whether the applicant passes the examination or not. Issuance of a temporary license following failure of part or all of the examination shall be according to rules adopted by the board].

SECTION 2.13. Section 12, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. TITLE. (a) A licensed physical therapist may use the title "Physical Therapist." No other person may be so designated or permitted to use the term "Physical Therapist." The license as a physical therapist does not authorize the use of [the prefix "Dr.," the word "Doctor," or] any [suffix or] affix indicating or implying that the licensed person is a physician.

(b) A licensed physical therapist assistant may use the title "Physical Therapist Assistant." No other person may be so designated or permitted to use the term "Physical Therapist

Assistant." The license as a physical therapist assistant does not authorize the use of [the prefix "Dr.," the word "Doctor," or] any [suffix or] affix indicating or implying that the licensed person is a physician.

SECTION 2.14. Section 15, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. RENEWAL OF LICENSE. (a) A license issued under this Act~~], except a temporary license,~~ expires *two years after* ~~[one year from]~~ the date of issuance.

(b) A person may renew an [his] unexpired license by *paying to* ~~[filing a renewal application with]~~ the *executive council* ~~[board]~~ before the expiration date of the license~~], accompanied by] the required renewal fee[. The renewal application must include evidence satisfactory to the board that the licensee has fulfilled the continuing education requirements imposed under Subsection (k) of Section 3 of this Act].~~

(c) *If a person's license has been expired for 90 days or less, the person may renew the license by paying to the executive council the required renewal fee and a fee that is one-half of the examination fee for the license.*

(d) *If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the executive council all unpaid renewal fees and a fee that is equal to the examination fee for the license.*

(e) *If a person's license has been expired for one year or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the board may renew without examination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the executive council a fee that is equal to the examination fee for the license.*

(f) *At least 30 days before the expiration of a person's license, the executive council shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the executive council.*

~~[(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.~~

~~[(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.~~

~~[(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.~~

~~[(f) The board shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration date and shall attempt to obtain from the licensee a signed statement confirming receipt of the notice.]~~

SECTION 2.15. Section 16, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. ALTERNATIVE EXPIRATION DATE SYSTEM. ~~[(a)]~~ The board may adopt a system under which licenses expire on various dates during the year.

~~[(b)]~~ For the year in which the license expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee *shall pay* ~~[pays]~~ only that portion of the license fee that is allocable to the number of months during which the license is valid.

~~[(c)]~~ On renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 2.16. Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended by adding Section 16A to read as follows:

Sec. 16A. MANDATORY CONTINUING EDUCATION. (a) *The board by rule shall adopt requirements for mandatory continuing education for licensees under this Act in*

subjects pertaining to the practice of physical therapy. The board by rule shall establish a minimum number of hours of continuing education required to renew a license. The board may assess the continuing education needs of licensees and may require licensees to attend continuing education courses specified by the board. The board by rule shall develop a process to evaluate and approve continuing education courses.

(b) The board shall identify the key factors for the competent performance by a licensee of the licensee's professional duties. The board shall adopt a procedure to assess a licensee's participation and performance in continuing education programs.

SECTION 2.17. Section 17, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. FEES. ~~[(a)]~~ The board may recommend to the executive council ~~[shall establish]~~ reasonable and necessary fees for licenses issued or services performed under this Act so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act. The board may not recommend a fee to the executive council for an amount less than the amount of that fee on September 1, 1993. ~~[for the administration of this Act in amounts not to exceed:~~

[Examination

[1. Physical Therapist	\$100
[2. Physical Therapist Assistant	90

[Application

[1. Physical Therapist	60
[2. Physical Therapist Assistant	60

[License Fee

[Endorsement

[1. Physical Therapist	100
[2. Physical Therapist Assistant	90

[Temporary License

[1. Physical Therapist	40
[2. Physical Therapist Assistant	30

[Renewal

[1. Physical Therapist	75
[2. Physical Therapist Assistant	65

[Issuance Fee

[1. Physical Therapist	65
[2. Physical Therapist Assistant	65

[Duplicate License

[1. Physical Therapist	50
[2. Physical Therapist Assistant	50

[Transfer Fee

[1. Physical Therapist	50
[2. Physical Therapist Assistant	50

~~[(b) The board may not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.]~~

SECTION 2.18. Section 19, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. GROUNDS FOR DENIAL OF A LICENSE OR DISCIPLINE OF A LICENSEE[; COMPETITIVE BIDDING AND ADVERTISING]. (a) (1) A license may be denied, or after hearing, suspended or revoked, or a licensee otherwise disciplined if the applicant or licensee has:

(A) provided physical therapy ~~[treatment]~~ to a person, except as provided by Subdivision (2) of this subsection, without the referral from ~~[of]~~ a physician licensed to practice medicine by a state ~~[the Texas State]~~ Board of Medical Examiners, or by a dentist licensed by a state ~~[the State]~~ Board of Dental Examiners, or a doctor licensed to practice chiropractic by a state ~~[the Texas]~~ Board of Chiropractic Examiners or a podiatrist licensed by a state ~~[the Texas State]~~ Board of Podiatry Examiners, or by any

other qualified, licensed health-care *professional who within the scope of the professional licensure is authorized to refer for health care services. The professional taking an action under this subdivision is a referring practitioner* [~~personnel who are authorized to prescribe treatment of individuals~~];

(B) in the case of a physical therapist assistant, treated a person other than under the direction of a licensed physical therapist;

(C) used drugs or intoxicating liquors to an extent that affects *the licensee's or applicant's* [his] professional competence;

(D) been convicted of a felony in this state or in any other state, territory, or nation; conviction as used in this subdivision includes a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere;

(E) obtained or attempted to obtain a license by fraud or deception;

(F) been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant;

(G) been adjudged mentally incompetent by a court of competent jurisdiction;

(H) practiced physical therapy in a manner detrimental to the public health and welfare; or

(I) had *the licensee's or applicant's* [his] license to practice physical therapy revoked or suspended or had other disciplinary action taken against *the licensee or applicant* [him] or had *the licensee's or applicant's* [his] application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

(2) A licensed physical therapist may treat a patient for an injury or condition that was the subject of a prior referral if all of the following conditions are met:

(A) the physical therapist, within five business days, notifies the referring licensed physician, dentist, chiropractor, podiatrist, or other referring *practitioner* [~~licensed health-care personnel~~] of the commencement of therapy;

(B) for all episodes of physical therapy subsequent to that which was initiated by the referral, the physical therapist treats the patient for not more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first, whereupon the physical therapist must confer with the referring *practitioner* [~~licensed physician, dentist, chiropractor, podiatrist, or other licensed health-care personnel~~] in order to continue the current episode of treatment; and

(C) the physical therapist commences any episode of treatment provided pursuant to this subsection within one year of the referral by the *referring practitioner* [~~licensed physician, dentist, chiropractor, podiatrist, or other licensed health-care personnel~~].

(3) No physical therapist may provide treatment pursuant to Subdivision (2) of this subsection without having been licensed to practice physical therapy for at least one year and without satisfying other requirements set by the board.

(4) A licensed physical therapist may provide physical assessments or instructions to an asymptomatic person without the referral of a *referring practitioner* [~~physician, dentist, chiropractor, podiatrist, or other licensed health-care personnel~~].

(5) In emergency circumstances, including minor emergencies, a licensed physical therapist may provide assistance to a person to the best of the therapist's ability without the referral of a *referring practitioner* [~~physician, dentist, chiropractor, podiatrist, or other licensed health-care personnel~~]. For the purposes of this subsection, "emergency circumstances" means instances where emergency medical care is called for. "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(b) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of his voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

SECTION 2.19. Subsection (a), Section 20, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person whose application for a license is denied is entitled to a hearing before the *State Office of Administrative Hearings* [board] if the applicant [he] submits a written request for a hearing to the board.

SECTION 2.20. Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended by adding Section 20A to read as follows:

Sec. 20A. REVOCATION, SUSPENSION, OR PROBATION OF LICENSE. (a) *The board shall revoke or suspend a license, place on probation a licensee whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule adopted by the board.*

(b) *If a license suspension is probated, the board may require the licensee to:*

- (1) *report regularly to the board on matters that are the basis of the probation;*
- (2) *limit practice to the areas prescribed by the board; or*
- (3) *continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.*

(c) *The schedule of sanctions adopted by the board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.*

SECTION 2.21. Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended by adding Sections 22 through 27 to read as follows:

Sec. 22. COMPLAINT PROCEDURE IN GENERAL. (a) *The board shall keep an information file about each complaint filed with the executive council and referred to the board. The board's information file shall be kept current and contain a record for each complaint of:*

- (1) *all persons contacted in relation to the complaint;*
- (2) *a summary of findings made at each step of the complaint process;*
- (3) *an explanation of the legal basis and reason for a complaint that is dismissed; and*
- (4) *other relevant information.*

(b) *If a written complaint is received by the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.*

(c) *The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint received by the board.*

(d) *The board shall provide reasonable assistance to a person who wishes to file a complaint.*

Sec. 23. COMPLAINT INVESTIGATION AND DISPOSITION. (a) *The board shall adopt rules concerning the investigation of a complaint received by the board. The rules adopted under this subsection shall:*

- (1) *distinguish between categories of complaints;*

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and

(6) require the board to advise the executive council of complaints disposed of.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The coordinator of the physical therapy programs shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Sec. 24. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the office of the attorney general or the board's legal counsel to advise the board or board's employees.

Sec. 25. MONITORING OF LICENSEE. The board by rule shall develop a system for monitoring licensees' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a licensee who is ordered by the board to perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.

Sec. 26. CERTAIN FUNCTIONS TRANSFERRED. Certain functions relating to the administration of this Act are performed in accordance with Article 4512e-1, Revised Statutes. To the extent of a conflict between this Act and Article 4512e-1, Revised Statutes, that article controls.

Sec. 27. REGISTRATION OF FACILITIES. (a) The board by rule shall adopt requirements for the registration and renewal of a registration of a facility in which the practice of physical therapy is conducted. A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from the requirements for registration in this section.

(b) If one or more facilities are owned by an individual, partnership, corporation, or other entity, the board may require only one application for the registration of all facilities.

(c) In accordance with Section 6 of this Act, the rules adopted under this section shall not prohibit a licensed individual from practicing in a facility within the scope of such individual's licensure.

ARTICLE 3. THE PRACTICE OF OCCUPATIONAL THERAPY

SECTION 3.01. Section 1, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. SHORT TITLE. This Act shall be known and may be cited as the "Occupational Therapy Practice [Title] Act."

SECTION 3.02. Section 2, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (4), (7), and (8) and adding Subdivision (9) to read as follows:

(4) "Board" means the Texas [Advisory] Board of Occupational Therapy *Examiners*.

(7) "*Occupational therapy aide*" or "*occupational therapy orderly*" means a person who aids in the practice of occupational therapy and whose activities require on-the-job training and on-site supervision by an occupational therapist or an occupational therapy assistant [~~"Commission" means the Texas Rehabilitation Commission~~].

(8) "*Executive council*" means the *Executive Council of Physical Therapy and Occupational Therapy Examiners* [~~"Commissioner" means the commissioner of the Texas Rehabilitation Commission~~].

(9) "*Coordinator of occupational therapy programs*" means the employee of the executive council employed under Section 9, Article 4512e-1, Revised Statutes, and its subsequent amendments.

SECTION 3.03. Section 3, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. CREATION OF BOARD. (a) A Texas [Advisory] Board of Occupational Therapy *Examiners* [~~is hereby created. The board is created as a part of the commission and shall perform its duties as a board with the commission. The board~~] shall consist of six members appointed by the governor with the advice and consent of the senate for staggered terms of six years[, ~~except for the first board appointed hereunder~~]. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Members of the board are appointed for staggered terms of six years, with two members' terms expiring on February 1 of each odd-numbered year. [~~In making the initial appointments, the governor shall designate two members for terms expiring February 1, 1985, two members for terms expiring February 1, 1987, and two members for terms expiring February 1, 1989. The appointments shall be made within 30 days after this Act becomes effective.~~]

(b) Three members of the board must be occupational therapists, be residents of this state, and have practiced occupational therapy for at least three years immediately preceding appointment. One member of the board must be an occupational therapy assistant, be a resident of this state, and have practiced as an occupational therapy assistant for at least three years immediately preceding appointment. All four of these members of the board must be licensed under this Act[, ~~except for the members of the first board appointed hereunder~~]. Two members of the board must be *public* members [~~of the general public~~] who are not occupational therapists.

(c) [~~A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the field of occupational therapy.~~

[~~(d) A member or employee of the board may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the field of occupational therapy.~~

(e) A vacancy on the board shall be filled by appointment by the governor with the advice and consent of the senate for the remainder of the term.

(d) [(f)] A member of the board is not liable to civil action for any act performed in good faith in the execution of his or her duties in this capacity.

(e) *The members of the board shall, on appointment, elect from their number a presiding officer, a secretary, and other officers required for the conduct of business.*

(f) *The coordinator of occupational therapy programs shall keep a record of each meeting of the board and maintain a register containing the names of all persons licensed under this Act, which shall be at all times open to public inspection. On March 1 of each year, the coordinator of occupational therapy programs shall transmit an official copy of the list of the licensees to the executive council and the secretary of state for permanent record, a certified copy of which shall be admissible as evidence in any court of this state.*

~~[(g) The Texas Advisory Board of Occupational Therapy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 1993.]~~

SECTION 3.04. The Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes) is amended by adding Sections 3A through 3M to read as follows:

Sec. 3A. **MEETINGS; COMPENSATION.** (a) *The board shall hold at least two regular meetings each year at which time an examination for a license under a law administered by the board shall be offered. Additional meetings may be held on the call of the presiding officer or at the written request of three members of the board.*

(b) *A member of the board is entitled to a per diem as set by the General Appropriations Act for each day that the member engages in the business of the board. A member may not receive any reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses as provided by the General Appropriations Act.*

Sec. 3B. **PUBLIC MEMBERSHIP RESTRICTION.** *A person is not eligible for appointment as a public member of the board if the person or the person's spouse:*

(1) *is registered, certified, or licensed by an occupational regulatory agency in the field of health care;*

(2) *is employed by or participates in the management of a business entity or other organization regulated by the executive council or the board or receiving funds from the executive council or the board;*

(3) *owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council or the board or receiving funds from the executive council or the board; or*

(4) *uses or receives a substantial amount of tangible goods, services, or funds from the executive council or the board, other than compensation or reimbursement authorized by law for executive council or board membership, attendance, or expenses.*

Sec. 3C. **CONFLICT OF INTEREST RESTRICTIONS.** (a) *An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a board member.*

(b) *A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member.*

(c) *For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

Sec. 3D. **EFFECT OF LOBBYING ACTIVITY.** *A person may not serve as a board member if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council or the board.*

Sec. 3E. **GROUNDS FOR REMOVAL FROM BOARD.** (a) *It is a ground for removal from the board if a member:*

(1) *does not have at the time of appointment the qualifications required by Section 3 of this Act;*

(2) *does not maintain during service on the board the qualifications required by Section 3 of this Act;*

(3) *violates a prohibition established by Section 3C or 3D of this Act;*

(4) *cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or*

(5) *is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.*

(b) *The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.*

(c) *If the coordinator of occupational therapy programs has knowledge that a potential ground for removal exists, the coordinator shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.*

Sec. 3F. STAFF. (a) The board may request the executive council to assign administrative and clerical employees as necessary to carry out the board's functions.

(b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the executive council.

Sec. 3G. REGULATORY STATUTES ADMINISTERED. Except as provided by other statutes, the board shall administer and enforce this Act.

Sec. 3H. PUBLIC INTEREST INFORMATION. The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

Sec. 3I. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 3J. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

Sec. 3K. TRAINING AND GUIDELINES FOR MEMBERS OF THE BOARD. (a) The board shall establish a training program for the members of the board.

(b) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

- (1) the enabling legislation that created the board to which the member is appointed;*
- (2) the programs operated by the agency;*
- (3) the role and functions of the agency;*
- (4) the rules of the agency with an emphasis on the rules that relate to disciplinary and investigatory authority;*
- (5) the current budget for the agency;*
- (6) the results of the most recent formal audit of the agency;*
- (7) the requirements of the:*

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

Sec. 3L. OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE. The board is subject to:

(1) the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 3M. SUNSET PROVISION. The Texas Board of Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act), and its subsequent amendments. Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005.

SECTION 3.05. Section 5, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. POWERS AND DUTIES OF THE BOARD. (a) The board shall approve applicants for licenses at least once each year at such reasonable times and places as shall be designated by the board in its discretion.

(b) ~~The board may collect fees for licenses, license renewals, examinations, and all other administrative expenses. If the General Appropriations Act does not set the amount of those fees, the board shall set the fees in amounts that will recover the amount appropriated for the operation of the board from the General Revenue Fund.~~

[(e)] The board shall approve the examination as described in Subsection (b) of Section 17 of this Act.

~~(c) [(d)] The board shall adopt rules consistent with this Act to carry out its duties in administering this Act. [may investigate complaints; issue, suspend, deny, and revoke licenses; reprimand licensees and place them on probation; issue subpoenas; and hold hearings. The board shall keep an information file about each complaint that is filed with the board relating to a licensee or an entity regulated by the board. If a written complaint is filed with the board relating to a licensee or entity regulated by the board, the board shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. The board shall notify the parties to the complaint at least as frequently as quarterly until the final disposition of the complaint.~~

~~[(e)] The board shall propose rules consistent with this Act to carry out its duties in administering this Act, shall submit said rules to the office of the Attorney General of Texas for review, and shall then adopt rules consistent with the advice of the attorney general. In adopting its rules, the board shall consider any applicable policies and procedures of the commission.~~

~~[(f)] The commissioner with the advice of the board shall appoint an executive director to implement the purposes of this Act at a salary as determined by legislative appropriation.~~

~~[(g)] The executive director of the board or her/his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.~~

~~[(h)] The executive director of the board or her/his designee shall develop a system of annual performance evaluation based on measurable job tasks. All merit pay for board employees must be based on the system established under this section.~~

~~[(i)] The board shall contract for space, computer services, office materials, employees, and any other needed services, materials, or assistants deemed necessary.~~

~~[(j)] The board shall prepare information of consumer interest describing the regulatory functions of the board and the legal rights of consumers as provided in this Act.~~

~~[(k)] The board shall assist the proper legal authorities in the prosecution of all persons violating any provisions of this Act.~~

~~[(l)] The board shall prepare or approve continuing education programs for licensees and shall require each licensee to participate in an approved continuing education program in order to renew a license issued under this Act.~~

~~[(m) The board shall develop and implement policies that clearly define the respective responsibilities of the governing body of the board and the staff of the board.]~~

SECTION 3.06. The Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes) is amended by adding Sections 5A through 5E to read as follows:

Sec. 5A. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this Act. The board may assess the continuing education needs of licensees and may require licensees to attend continuing education courses specified by the board. The board by rule shall develop a process to evaluate and approve continuing education courses.

(b) The board shall identify the key factors for the competent performance by a licensee of the licensee's professional duties. The board shall adopt a procedure to assess a licensee's participation in continuing education programs.

Sec. 5B. COMPLAINT INFORMATION. (a) The board shall keep an information file about each complaint filed with the executive council and referred to the board. The board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;*
- (2) a summary of findings made at each step of the complaint process;*
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and*
- (4) other relevant information.*

(b) If a written complaint is received by the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint received by the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint.

Sec. 5C. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint received by the board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;*
- (2) ensure that complaints are not dismissed without appropriate consideration;*
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;*

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and

(6) require the board to advise the executive council of complaints disposed of.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a timeline for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The timeline shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the timeline must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The coordinator of occupational therapy programs of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Sec. 5D. *INFORMAL PROCEEDINGS.* (a) *The board by rule shall adopt procedures governing:*

(1) *informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(2) *informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.*

(b) *Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the office of the attorney general or the board's legal counsel to advise the board or board's employees.*

Sec. 5E. *MONITORING OF LICENSEE.* *The board by rule shall develop a system for monitoring licensees' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a licensee who is ordered by the board to perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.*

SECTION 3.07. Section 17, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (e) and adding Subsection (f) to read as follows:

(a) Only a person satisfying the requirements of Section 16, except *Subdivision (3) [Subsection (e)]* of Section 16, may apply for examination in such a manner as the board shall prescribe. The application shall be accompanied by the nonrefundable fee prescribed by the executive council *[Subdivision (1) of Subsection (b) of Section 5 of this Act]*.

(b) Each applicant for licensure shall be examined by written examination to test the applicant's *[his or her]* knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and such other subjects as the board may require to determine the applicant's fitness to practice. The board shall approve an examination for occupational therapists and an examination for occupational therapy assistants and establish standards for acceptable performance. *The board shall have the written portion of an examination validated by an independent testing entity.*

(e) In case of failure of any examination the applicant shall have the privilege of a second examination on payment of the prescribed fees. In case of a second failure, the applicant shall be eligible for a third examination, but shall, in addition to the requirements for previous examinations, have to wait a specific period not to exceed one year before reexamination. Further testing will be at the discretion of the board. *If requested in writing by a person who fails a licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.*

(f) *Not later than the 30th day after the date on which a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date on which the board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.*

SECTION 3.08. Section 18, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. *PROVISIONAL LICENSES [LICENSE BY ENDORSEMENT].* (a) *On application, the board shall grant a provisional license for the practice of occupational therapy. An applicant for a provisional license under this section must:*

(1) *be licensed in good standing as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;*

(2) have passed a national or other examination recognized by the board relating to the practice of occupational therapy; and

(3) be sponsored by a person licensed by the board under this Act with whom the provisional licensee may practice under this section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional licensee's application for a license. The board shall issue a license under this Act to the holder of a provisional license under this section if:

(1) the provisional licensee passes a jurisprudence examination, if required;

(2) the board verifies that the provisional licensee has the academic and experience requirements for a license under this Act; and

(3) the provisional licensee satisfies any other license requirements under this Act.

(d) The board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day limit if the results of an examination have not been received by the board [A person who is licensed or otherwise registered as an occupational therapist or as an occupational therapy assistant by another state, the District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by this Act may receive an occupational therapist license without examination, on submission of an application on a form prescribed by the board and payment of an endorsement license fee prescribed by the board.

~~[(b) The board may also waive examination requirements for a person who is certified by a national association approved by the board and who is currently practicing in a state that does not require a license or other form of registration].~~

SECTION 3.09. Section 20, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. FOREIGN-TRAINED APPLICANTS. Foreign-trained occupational therapists and occupational therapy assistants shall satisfy the examination requirements of *Subdivision (3)* [~~Subsection (e)~~] of Section 16. The board shall require foreign-trained applicants to furnish proof of good moral character and completion of educational and supervised field work requirements substantially equal to those contained in Section 16 before taking the examination.

SECTION 3.10. Section 22, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. TEMPORARY LICENSE. [~~(a)~~] The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to remain on temporary status. A holder of a temporary license shall practice under the supervision of an occupational therapist licensed by the board [~~may issue a temporary license without examination to a person who is a recent graduate of an institution of higher education in the United States if the person has applied for a license, has applied to take the licensing examination, and meets the requirements for license under Section 16 of this Act. A person who holds a temporary license may practice only under the supervision of a person who holds a regular license. A temporary license expires on notification of the results of the licensing examination. Issuance of a temporary license following failure of part or all of the examination shall be according to rules adopted by the board.~~]

~~[(b) The board shall issue a temporary license to a person who has applied for endorsement of her/his license under the provisions of Section 18 of this Act. On approval by the board of the application and payment of fees, the board shall issue a permanent license on the issuance of which the temporary license issued under this provision shall expire].~~

SECTION 3.11. Section 24, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24. RENEWAL OF UNEXPIRED LICENSE. (a) *The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable* ~~[A license issued under this Act, unless otherwise provided in this Act, expires on the licensee's birthday, except for licenses which would thereby expire before January 1, 1985, which licenses shall not expire until the licensee's first birthday after that date].~~

(b) *A person may renew an unexpired license by paying to the executive council before the expiration date of the license the required* ~~[A renewal license shall be issued on submission of an application on a form prescribed by the board and payment of a]~~ renewal fee ~~[before the expiration date of the license].~~

SECTION 3.12. Section 25, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. RENEWAL OF EXPIRED LICENSE. (a) If a person's license has been expired for ~~[not more than]~~ 90 days or less, the person may renew the license by paying to the executive council ~~[board]~~ the required renewal fee plus a ~~[late]~~ fee in an amount that is one-half of the *examination fee for the license* ~~[fee].~~

(b) If a person's license has been expired for more than 90 days but less than *one year* ~~[two years]~~, the person may renew the license by paying to the executive council ~~[board]~~ all unpaid renewal fees and a ~~[late]~~ fee that is equal to the *examination fee for the license* ~~[fee].~~

(c) If a person's license has been expired for *one year* ~~[two years]~~ or more, the person may not renew the license. The person may obtain a new license by ~~[applying for a license,]~~ submitting to reexamination[,] and complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and has been *in practice* ~~[legally practicing]~~ in the other state for the two years preceding ~~[the]~~ application ~~[for renewal]~~. The person *must* ~~[shall]~~ pay to the executive council ~~[board]~~ a renewal fee that is equal to the *examination fee for the license* ~~[fee].~~

(d) *At least 30 days* ~~[Not later than the 30th day]~~ before the expiration ~~[date]~~ of a person's license, the executive council ~~[board]~~ shall send written notice of the impending license expiration to the person at the person's last known address.

SECTION 3.13. Section 25A, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25A. INACTIVE STATUS LIST. *The board by rule may provide for a person who holds a license under this Act to be placed on inactive status. Rules adopted under this section shall include a time limit for a licensee to remain on inactive status* ~~[(a) A person who holds a license under this Act and who is not actively engaged in the practice of occupational therapy may apply to the board in writing to be placed on an inactive status list maintained by the board. The person must apply for inactive status before the expiration of the person's license. A person on inactive status is not required to pay the annual renewal fee.~~

~~[(b) A person on inactive status may not perform any activities regulated under this Act.~~

~~[(c) If a person on inactive status desires to reenter active practice, the person shall notify the board in writing. The board shall remove the person from the inactive status list on payment of an administrative fee and on compliance with educational or other requirements set by the board by rule].~~

SECTION 3.14. Section 26, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. TITLE. A licensed occupational therapist may use the title "Occupational Therapist Registered" and the initials "O.T.R." *No other person may be designated or permitted to use the terms "Occupational Therapist Registered" or "O.T.R."* A licensed occupational therapy assistant may use the title "Certified Occupational Therapy Assistant" and the initials "C.O.T.A." *No other person may be designated or permitted to use the terms*

"Certified Occupational Therapy Assistant" or "C.O.T.A." Neither title authorizes the use of the prefix "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.

SECTION 3.15. Subsections (a), (b), and (c), Section 28, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A person may not *practice* or represent himself or herself as able to practice occupational therapy or *act as* or represent himself or herself as being an occupational therapist unless he or she is licensed under this Act.

(b) A person may not *act as* or represent himself or herself as being an occupational therapy assistant unless he or she is licensed under this Act.

(c) It is unlawful for any person who is not licensed under this Act as an occupational therapist or an occupational therapy assistant or whose registration has been suspended or revoked to:

(1) use in connection with his or her practice or place of business the words "occupational therapy," "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant," or the letters "O.T.," "O.T.R.," "L.O.T.," "O.T.R./L.," "O.T.A.," "L.O.T.A.," or "C.O.T.A.," or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant;

(2) [~~or who~~] in any way, orally, in writing, in print, or by sign directly or by implication represent [~~represents~~] himself or herself as an occupational therapist or an occupational therapy assistant; or

(3) *in any way, orally, in writing, in print, or by sign, or in any other way, directly or indirectly, represent that occupational therapy is provided or supplied, or extend or provide occupational therapy services unless the services are provided by an occupational therapist or an occupational therapy assistant licensed under this Act.*

SECTION 3.16. Section 30, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 30. DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE; DISCIPLINE OF A LICENSEE. (a) If the *State Office of Administrative Hearings* [~~board~~] proposes to deny a license, [~~or~~] to suspend or revoke a license, *or to take other disciplinary action against a licensee* the applicant or licensee is entitled to a hearing before the board [~~or before a hearing officer appointed by the board~~]. All final decisions shall be made by the board.

(b) *After a final decision by the board* [~~hearing~~], a license may be denied, suspended, or revoked or a licensee otherwise disciplined if the applicant or licensee has:

(1) used drugs or intoxicating liquors to an extent that affects his or her professional competence;

(2) been convicted of a crime, other than minor offenses defined as "minor misdemeanors," "violations," or "offenses," in any court if the acts for which he or she was convicted are found by the board to have a direct bearing on whether he or she should be entrusted to service the public in the capacity of an occupational therapist or occupational therapy assistant;

(3) obtained or attempted to obtain a license by fraud or deception;

(4) been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant;

(5) been adjudicated mentally incompetent by a court of competent jurisdiction;

(6) practiced occupational therapy in a manner detrimental to the public health and welfare;

(7) advertised in a manner that in any way tends to deceive or defraud the public; or

(8) had his or her license to practice occupational therapy revoked or suspended or had other disciplinary action taken against him or her or had his or her application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

SECTION 3.17. Section 31, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) The board may deny or refuse to renew a license, may suspend or revoke a license, may reprimand a licensee, or may impose probationary conditions after a hearing by the State Office of Administrative Hearings as provided by Section 30 of this Act. If a license suspension is probated, the board may require the licensee to:

- (1) report regularly to the board on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) The schedule of sanctions adopted by the board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office [in the manner provided by the rules adopted by the board].

(d) [(e)] On application, the board may reissue a license to a person whose license has been denied or who has been disciplined by the board, but the application may not be made before the 180th day after the date the order of denial or discipline became final, and the application must be made in the manner and form required by the board.

SECTION 3.18. The Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes) is amended by adding Sections 31A through 31D to read as follows:

Sec. 31A. **COMPETITIVE BIDDING; ADVERTISING.** (a) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Sec. 31B. **REGISTRATION OF FACILITIES.** (a) The board by rule shall adopt requirements for the registration and renewal of a registration of a facility in which the practice of occupational therapy is conducted. A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from registration requirements under this section. The board by rule may exempt other facilities as appropriate.

(b) If one or more facilities are owned by an individual, partnership, corporation, or other entity, the board may require only one application for the registration of all facilities.

(c) The board by rule shall adopt a procedure whereby a facility in which the practice of occupational therapy is conducted may apply for exemption from any fees for registration under this section.

Sec. 31C. **FEES.** The board may recommend to the executive council the reasonable and necessary fees for licenses issued or services performed under this Act so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act. The board may not recommend a fee to the executive council for an amount less than the amount of that fee on September 1, 1993.

Sec. 31D. **CERTAIN FUNCTIONS TRANSFERRED.** Certain functions relating to the administration of this Act are performed in accordance with Article 4512e-1, Revised Statutes. To the extent of a conflict between this Act and Article 4512e-1, Revised Statutes, that article controls.

ARTICLE 4. TRANSITION; REPEALER; EFFECTIVE DATE; EMERGENCY

SECTION 4.01. (a) As soon as possible after the effective date of this Act, the governor, the Texas Board of Physical Therapy Examiners, and the Texas Board of Occupational

Therapy Examiners shall appoint the initial members of the Executive Council of Physical Therapy and Occupational Therapy Examiners in accordance with Article 4512e-1, Revised Statutes, as added by this Act.

(b) The obligations, rights, contracts, records and other property, and personnel of, and unspent money appropriated to or for, the Texas Board of Physical Therapy Examiners and the Texas Advisory Board of Occupational Therapy are transferred to the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(c) The rules of the Texas Board of Physical Therapy Examiners and the Texas Advisory Board of Occupational Therapy are continued in effect as rules of the Executive Council of Physical Therapy and Occupational Therapy Examiners until superseded by rule of the new council.

(d) The licenses in effect that were issued by the Texas Board of Physical Therapy Examiners and the Texas Advisory Board of Occupational Therapy are continued in effect as licenses of the Executive Council of Physical Therapy and Occupational Therapy Examiners.

SECTION 4.02. The following laws are repealed:

(1) Section 5, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes); and

(2) Sections 4, 6 through 14, 19, and 21, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes).

SECTION 4.03. This Act takes effect September 1, 1993.

SECTION 4.04. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 4, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 19, 1993, by a viva-voce vote; passed the House, with amendments, on May 18, 1993, by a non-record vote.

Approved May 30, 1993.

Effective Sept. 1, 1993.