

FIRST REGULAR SESSION

SENATE BILL NO. 51

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

0543S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 334.100, 334.506, and 334.613, RSMo, and to enact in lieu thereof three new sections relating to the scope of practice for physical therapists.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 334.100, 334.506, and 334.613, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 334.100, 334.506, and 334.613, to read as
4 follows:

334.100. 1. The board may refuse to issue or renew
2 any certificate of registration or authority, permit or
3 license required pursuant to this chapter for one or any
4 combination of causes stated in subsection 2 of this
5 section. The board shall notify the applicant in writing of
6 the reasons for the refusal and shall advise the applicant
7 of the applicant's right to file a complaint with the
8 administrative hearing commission as provided by chapter
9 621. As an alternative to a refusal to issue or renew any
10 certificate, registration or authority, the board may, at
11 its discretion, issue a license which is subject to
12 probation, restriction or limitation to an applicant for
13 licensure for any one or any combination of causes stated in
14 subsection 2 of this section. The board's order of
15 probation, limitation or restriction shall contain a
16 statement of the discipline imposed, the basis therefor, the
17 date such action shall become effective, and a statement

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 that the applicant has thirty days to request in writing a
19 hearing before the administrative hearing commission. If
20 the board issues a probationary, limited or restricted
21 license to an applicant for licensure, either party may file
22 a written petition with the administrative hearing
23 commission within thirty days of the effective date of the
24 probationary, limited or restricted license seeking review
25 of the board's determination. If no written request for a
26 hearing is received by the administrative hearing commission
27 within the thirty-day period, the right to seek review of
28 the board's decision shall be considered as waived.

29 2. The board may cause a complaint to be filed with
30 the administrative hearing commission as provided by chapter
31 621 against any holder of any certificate of registration or
32 authority, permit or license required by this chapter or any
33 person who has failed to renew or has surrendered the
34 person's certificate of registration or authority, permit or
35 license for any one or any combination of the following
36 causes:

37 (1) Use of any controlled substance, as defined in
38 chapter 195, or alcoholic beverage to an extent that such
39 use impairs a person's ability to perform the work of any
40 profession licensed or regulated by this chapter;

41 (2) The person has been finally adjudicated and found
42 guilty, or entered a plea of guilty or nolo contendere, in a
43 criminal prosecution under the laws of any state or of the
44 United States, for any offense reasonably related to the
45 qualifications, functions or duties of any profession
46 licensed or regulated pursuant to this chapter, for any
47 offense involving fraud, dishonesty or an act of violence,
48 or for any offense involving moral turpitude, whether or not
49 sentence is imposed;

50 (3) Use of fraud, deception, misrepresentation or
51 bribery in securing any certificate of registration or
52 authority, permit or license issued pursuant to this chapter
53 or in obtaining permission to take any examination given or
54 required pursuant to this chapter;

55 (4) Misconduct, fraud, misrepresentation, dishonesty,
56 unethical conduct or unprofessional conduct in the
57 performance of the functions or duties of any profession
58 licensed or regulated by this chapter, including, but not
59 limited to, the following:

60 (a) Obtaining or attempting to obtain any fee, charge,
61 tuition or other compensation by fraud, deception or
62 misrepresentation; willfully and continually overcharging or
63 overtreating patients; or charging for visits to the
64 physician's office which did not occur unless the services
65 were contracted for in advance, or for services which were
66 not rendered or documented in the patient's records;

67 (b) Attempting, directly or indirectly, by way of
68 intimidation, coercion or deception, to obtain or retain a
69 patient or discourage the use of a second opinion or
70 consultation;

71 (c) Willfully and continually performing inappropriate
72 or unnecessary treatment, diagnostic tests or medical or
73 surgical services;

74 (d) Delegating professional responsibilities to a
75 person who is not qualified by training, skill, competency,
76 age, experience or licensure to perform such
77 responsibilities;

78 (e) Misrepresenting that any disease, ailment or
79 infirmity can be cured by a method, procedure, treatment,
80 medicine or device;

81 (f) Performing or prescribing medical services which
82 have been declared by board rule to be of no medical or
83 osteopathic value;

84 (g) Final disciplinary action by any professional
85 medical or osteopathic association or society or licensed
86 hospital or medical staff of such hospital in this or any
87 other state or territory, whether agreed to voluntarily or
88 not, and including, but not limited to, any removal,
89 suspension, limitation, or restriction of the person's
90 license or staff or hospital privileges, failure to renew
91 such privileges or license for cause, or other final
92 disciplinary action, if the action was in any way related to
93 unprofessional conduct, professional incompetence,
94 malpractice or any other violation of any provision of this
95 chapter;

96 (h) Signing a blank prescription form; or dispensing,
97 prescribing, administering or otherwise distributing any
98 drug, controlled substance or other treatment without
99 sufficient examination including failing to establish a
100 valid physician-patient relationship pursuant to section
101 334.108, or for other than medically accepted therapeutic or
102 experimental or investigative purposes duly authorized by a
103 state or federal agency, or not in the course of
104 professional practice, or not in good faith to relieve pain
105 and suffering, or not to cure an ailment, physical infirmity
106 or disease, except as authorized in section 334.104;

107 (i) Exercising influence within a physician-patient
108 relationship for purposes of engaging a patient in sexual
109 activity;

110 (j) Being listed on any state or federal sexual
111 offender registry;

112 (k) Terminating the medical care of a patient without
113 adequate notice or without making other arrangements for the
114 continued care of the patient;

115 (l) Failing to furnish details of a patient's medical
116 records to other treating physicians or hospitals upon
117 proper request; or failing to comply with any other law
118 relating to medical records;

119 (m) Failure of any applicant or licensee to cooperate
120 with the board during any investigation;

121 (n) Failure to comply with any subpoena or subpoena
122 duces tecum from the board or an order of the board;

123 (o) Failure to timely pay license renewal fees
124 specified in this chapter;

125 (p) Violating a probation agreement, order, or other
126 settlement agreement with this board or any other licensing
127 agency;

128 (q) Failing to inform the board of the physician's
129 current residence and business address;

130 (r) Advertising by an applicant or licensee which is
131 false or misleading, or which violates any rule of the
132 board, or which claims without substantiation the positive
133 cure of any disease, or professional superiority to or
134 greater skill than that possessed by any other physician.
135 An applicant or licensee shall also be in violation of this
136 provision if the applicant or licensee has a financial
137 interest in any organization, corporation or association
138 which issues or conducts such advertising;

139 (s) Any other conduct that is unethical or
140 unprofessional involving a minor;

141 (5) Any conduct or practice which is or might be
142 harmful or dangerous to the mental or physical health of a
143 patient or the public; or incompetency, gross negligence or

144 repeated negligence in the performance of the functions or
145 duties of any profession licensed or regulated by this
146 chapter. For the purposes of this subdivision, "repeated
147 negligence" means the failure, on more than one occasion, to
148 use that degree of skill and learning ordinarily used under
149 the same or similar circumstances by the member of the
150 applicant's or licensee's profession;

151 (6) Violation of, or attempting to violate, directly
152 or indirectly, or assisting or enabling any person to
153 violate, any provision of this chapter or chapter 324, or of
154 any lawful rule or regulation adopted pursuant to this
155 chapter or chapter 324;

156 (7) Impersonation of any person holding a certificate
157 of registration or authority, permit or license or allowing
158 any person to use his or her certificate of registration or
159 authority, permit, license or diploma from any school;

160 (8) Revocation, suspension, restriction, modification,
161 limitation, reprimand, warning, censure, probation or other
162 final disciplinary action against the holder of or applicant
163 for a license or other right to practice any profession
164 regulated by this chapter by another state, territory,
165 federal agency or country, whether or not voluntarily agreed
166 to by the licensee or applicant, including, but not limited
167 to, the denial of licensure, surrender of the license,
168 allowing the license to expire or lapse, or discontinuing or
169 limiting the practice of medicine while subject to an
170 investigation or while actually under investigation by any
171 licensing authority, medical facility, branch of the Armed
172 Forces of the United States of America, insurance company,
173 court, agency of the state or federal government, or
174 employer;

175 (9) A person is finally adjudged incapacitated or
176 disabled by a court of competent jurisdiction;

177 (10) Assisting or enabling any person to practice or
178 offer to practice any profession licensed or regulated by
179 this chapter who is not registered and currently eligible to
180 practice pursuant to this chapter; or knowingly performing
181 any act which in any way aids, assists, procures, advises,
182 or encourages any person to practice medicine who is not
183 registered and currently eligible to practice pursuant to
184 this chapter. A physician who works in accordance with
185 standing orders or protocols or in accordance with the
186 provisions of section 334.104 shall not be in violation of
187 this subdivision;

188 (11) Issuance of a certificate of registration or
189 authority, permit or license based upon a material mistake
190 of fact;

191 (12) Failure to display a valid certificate or license
192 if so required by this chapter or any rule promulgated
193 pursuant to this chapter;

194 (13) Violation of the drug laws or rules and
195 regulations of this state, including but not limited to any
196 provision of chapter 195, any other state, or the federal
197 government;

198 (14) Knowingly making, or causing to be made, or
199 aiding, or abetting in the making of, a false statement in
200 any birth, death or other certificate or document executed
201 in connection with the practice of the person's profession;

202 (15) Knowingly making a false statement, orally or in
203 writing to the board;

204 (16) Soliciting patronage in person or by agents or
205 representatives, or by any other means or manner, under the
206 person's own name or under the name of another person or

207 concern, actual or pretended, in such a manner as to
208 confuse, deceive, or mislead the public as to the need or
209 necessity for or appropriateness of health care services for
210 all patients, or the qualifications of an individual person
211 or persons to diagnose, render, or perform health care
212 services;

213 (17) Using, or permitting the use of, the person's
214 name under the designation of "Doctor", "Dr.", "M.D.", or
215 "D.O.", or any similar designation with reference to the
216 commercial exploitation of any goods, wares or merchandise;

217 (18) Knowingly making or causing to be made a false
218 statement or misrepresentation of a material fact, with
219 intent to defraud, for payment pursuant to the provisions of
220 chapter 208 or chapter 630 or for payment from Title XVIII
221 or Title XIX of the Social Security Act;

222 (19) Failure or refusal to properly guard against
223 contagious, infectious or communicable diseases or the
224 spread thereof; maintaining an unsanitary office or
225 performing professional services under unsanitary
226 conditions; or failure to report the existence of an
227 unsanitary condition in the office of a physician or in any
228 health care facility to the board, in writing, within thirty
229 days after the discovery thereof;

230 (20) Any candidate for licensure or person licensed to
231 practice as a physical therapist, paying or offering to pay
232 a referral fee or[, notwithstanding section 334.010 to the
233 contrary, practicing or offering to practice professional
234 physical therapy independent of the prescription and
235 direction of a person licensed and registered as a physician
236 and surgeon pursuant to this chapter, as a dentist pursuant
237 to chapter 332, as a podiatrist pursuant to chapter 330, as
238 an advanced practice registered nurse under chapter 335, or

239 any licensed and registered physician, dentist, podiatrist,
240 or advanced practice registered nurse practicing in another
241 jurisdiction, whose license is in good standing]evaluating
242 or treating a patient in a manner inconsistent with section
243 334.506;

244 (21) Any candidate for licensure or person licensed to
245 practice as a physical therapist, treating or attempting to
246 treat ailments or other health conditions of human beings
247 other than by professional physical therapy and as
248 authorized by sections 334.500 to 334.620;

249 (22) Any person licensed to practice as a physician or
250 surgeon, requiring, as a condition of the physician-patient
251 relationship, that the patient receive prescribed drugs,
252 devices or other professional services directly from
253 facilities of that physician's office or other entities
254 under that physician's ownership or control. A physician
255 shall provide the patient with a prescription which may be
256 taken to the facility selected by the patient and a
257 physician knowingly failing to disclose to a patient on a
258 form approved by the advisory commission for professional
259 physical therapists as established by section 334.625 which
260 is dated and signed by a patient or guardian acknowledging
261 that the patient or guardian has read and understands that
262 the physician has a pecuniary interest in a physical therapy
263 or rehabilitation service providing prescribed treatment and
264 that the prescribed treatment is available on a competitive
265 basis. This subdivision shall not apply to a referral by
266 one physician to another physician within a group of
267 physicians practicing together;

268 (23) A pattern of personal use or consumption of any
269 controlled substance unless it is prescribed, dispensed or

270 administered by another physician who is authorized by law
271 to do so;

272 (24) Habitual intoxication or dependence on alcohol,
273 evidence of which may include more than one alcohol-related
274 enforcement contact as defined by section 302.525;

275 (25) Failure to comply with a treatment program or an
276 aftercare program entered into as part of a board order,
277 settlement agreement or licensee's professional health
278 program;

279 (26) Revocation, suspension, limitation, probation, or
280 restriction of any kind whatsoever of any controlled
281 substance authority, whether agreed to voluntarily or not,
282 or voluntary termination of a controlled substance authority
283 while under investigation;

284 (27) For a physician to operate, conduct, manage, or
285 establish an abortion facility, or for a physician to
286 perform an abortion in an abortion facility, if such
287 facility comes under the definition of an ambulatory
288 surgical center pursuant to sections 197.200 to 197.240, and
289 such facility has failed to obtain or renew a license as an
290 ambulatory surgical center.

291 3. Collaborative practice arrangements, protocols and
292 standing orders shall be in writing and signed and dated by
293 a physician prior to their implementation.

294 4. After the filing of such complaint before the
295 administrative hearing commission, the proceedings shall be
296 conducted in accordance with the provisions of chapter 621.
297 Upon a finding by the administrative hearing commission that
298 the grounds, provided in subsection 2 of this section, for
299 disciplinary action are met, the board may, singly or in
300 combination, warn, censure or place the person named in the
301 complaint on probation on such terms and conditions as the

302 board deems appropriate for a period not to exceed ten
303 years, or may suspend the person's license, certificate or
304 permit for a period not to exceed three years, or restrict
305 or limit the person's license, certificate or permit for an
306 indefinite period of time, or revoke the person's license,
307 certificate, or permit, or administer a public or private
308 reprimand, or deny the person's application for a license,
309 or permanently withhold issuance of a license or require the
310 person to submit to the care, counseling or treatment of
311 physicians designated by the board at the expense of the
312 individual to be examined, or require the person to attend
313 such continuing educational courses and pass such
314 examinations as the board may direct.

315 5. In any order of revocation, the board may provide
316 that the person may not apply for reinstatement of the
317 person's license for a period of time ranging from two to
318 seven years following the date of the order of revocation.
319 All stay orders shall toll this time period.

320 6. Before restoring to good standing a license,
321 certificate or permit issued pursuant to this chapter which
322 has been in a revoked, suspended or inactive state for any
323 cause for more than two years, the board may require the
324 applicant to attend such continuing medical education
325 courses and pass such examinations as the board may direct.

326 7. In any investigation, hearing or other proceeding
327 to determine a licensee's or applicant's fitness to
328 practice, any record relating to any patient of the licensee
329 or applicant shall be discoverable by the board and
330 admissible into evidence, regardless of any statutory or
331 common law privilege which such licensee, applicant, record
332 custodian or patient might otherwise invoke. In addition,
333 no such licensee, applicant, or record custodian may

334 withhold records or testimony bearing upon a licensee's or
335 applicant's fitness to practice on the ground of privilege
336 between such licensee, applicant or record custodian and a
337 patient.

338 8. The act of lawfully dispensing, prescribing,
339 administering, or otherwise distributing ivermectin tablets
340 or hydroxychloroquine sulfate tablets for human use shall
341 not be grounds for denial, suspension, revocation, or other
342 disciplinary action by the board.

334.506. 1. As used in this section, **the following**
2 **terms mean:**

3 (1) "Approved health care provider" [means], a person
4 holding a current and active license as a physician and
5 surgeon under this chapter, a chiropractor under chapter
6 331, a dentist under chapter 332, a podiatrist under chapter
7 330, a physician assistant under this chapter, an advanced
8 practice registered nurse under chapter 335, or any licensed
9 and registered physician, chiropractor, dentist, or
10 podiatrist practicing in another jurisdiction whose license
11 is in good standing;

12 (2) "Consult" or "consultation", communication by
13 telephone, by fax, in writing, or in person with the
14 patient's personally approved licensed health care provider
15 or a licensed health care provider of the patient's
16 designation.

17 2. A physical therapist [shall not]may evaluate and
18 initiate treatment [for a new injury or illness]on a patient
19 without a prescription or referral from an approved health
20 care provider, provided that the physical therapist has a
21 doctorate of physical therapy degree or has five years of
22 clinical practice as a physical therapist.

23 3. A physical therapist may provide educational
24 resources and training, develop fitness or wellness programs
25 ~~[for asymptomatic persons]~~, or provide screening or
26 consultative services within the scope of physical therapy
27 practice without ~~[the]~~a prescription ~~[and direction of]~~**or**
28 **referral from** an approved health care provider.

29 4. ~~[A physical therapist may examine and treat without~~
30 ~~the prescription and direction of an approved health care~~
31 ~~provider any person with a recurring self-limited injury~~
32 ~~within one year of diagnosis by an approved health care~~
33 ~~provider or a chronic illness that has been previously~~
34 ~~diagnosed by an approved health care provider. The physical~~
35 ~~therapist shall:]~~

36 (1) ~~[Contact the patient's current approved health~~
37 ~~care provider within seven days of initiating physical~~
38 ~~therapy services under this subsection;]~~**A physical therapist**
39 **shall refer to an approved health care provider any patient**
40 **whose condition at the time of evaluation or treatment is**
41 **determined to be beyond the scope of practice of physical**
42 **therapy.**

43 (2) ~~[Not change an existing physical therapy referral~~
44 ~~available to the physical therapist without approval of the~~
45 ~~patient's current approved health care provider;]~~**A physical**
46 **therapist shall refer to an approved health care provider**
47 **any patient who does not demonstrate measurable or**
48 **functional improvement after ten visits or twenty-one**
49 **business days, whichever occurs first.**

50 (3) ~~[Refer to an approved health care provider any~~
51 ~~patient whose medical condition at the time of examination~~
52 ~~or treatment is determined to be beyond the scope of~~
53 ~~practice of physical therapy;~~

54 (4) Refer to an approved health care provider any
55 patient whose condition for which physical therapy services
56 are rendered under this subsection has not been documented
57 to be progressing toward documented treatment goals after
58 six visits or fourteen days, whichever first occurs;

59 (5) Notify the patient's current approved health care
60 provider prior to the continuation of treatment if treatment
61 rendered under this subsection is to continue beyond thirty
62 days. The physical therapist shall provide such
63 notification for each successive period of thirty days.

64] (a) A physical therapist shall consult with an approved
65 health care provider if, after ten visits or twenty-one
66 business days, whichever occurs first, the patient has
67 demonstrated measurable or functional improvement from the
68 course of physical therapy services or treatment provided
69 and the physical therapist believes that continuation of the
70 course of physical therapy services or treatment is
71 reasonable and necessary based on the physical therapist's
72 evaluation of the patient. The physical therapist shall not
73 provide further physical therapy services or treatment until
74 the consultation has occurred.

75 (b) The consultation with the approved health care
76 provider shall include information concerning:

77 a. The patient's condition for which physical therapy
78 services or treatments were provided;

79 b. The basis for the course of services or treatment
80 indicated, as determined from the physical therapy
81 evaluation of the patient;

82 c. The physical therapy services or treatment provided
83 before the date of the consultation;

84 d. The patient's demonstrated measurable or functional
85 improvement from the services or treatment provided before
86 the date of the consultation;

87 e. The continuing physical therapy services or
88 treatment proposed to be provided following the
89 consultation; and

90 f. The professional physical therapy basis for the
91 continued physical therapy services or treatment to be
92 provided.

93 (c) Continued physical therapy services or treatment
94 following the consultation with an approved health care
95 provider shall proceed in accordance with any feedback,
96 advice, opinion, or direction of the approved health care
97 provider. The physical therapist shall notify the
98 consulting approved health care provider of continuing
99 physical therapy services or treatment every thirty days
100 after the initial consultation unless the consulting
101 approved health care provider directs otherwise.

102 5. The provision of physical therapy services of
103 evaluation and screening pursuant to this section shall be
104 limited to a physical therapist, and any authority for
105 evaluation and screening granted within this section may not
106 be delegated. Upon each reinitiation of physical therapy
107 services, a physical therapist shall provide a full physical
108 therapy evaluation prior to the reinitiation of physical
109 therapy treatment. [Physical therapy treatment provided
110 pursuant to the provisions of subsection 4 of this section
111 may be delegated by physical therapists to physical
112 therapist assistants only if the patient's current approved
113 health care provider has been so informed as part of the
114 physical therapist's seven-day notification upon
115 reinitiation of physical therapy services as required in

116 subsection 4 of this section.] Nothing in this subsection
117 shall be construed as to limit the ability of physical
118 therapists or physical therapist assistants to provide
119 physical therapy services in accordance with the provisions
120 of this chapter, and upon the referral of an approved health
121 care provider. Nothing in this subsection shall prohibit an
122 approved health care provider from acting within the scope
123 of their practice as defined by the applicable chapters of
124 RSMo.

125 6. No person licensed to practice, or applicant for
126 licensure, as a physical therapist or physical therapist
127 assistant shall make a medical diagnosis.

128 7. A physical therapist shall only delegate physical
129 therapy treatment to a physical therapist assistant or to a
130 person in an entry level of a professional education program
131 approved by the Commission on Accreditation in Physical
132 Therapy Education (CAPTE) who satisfies supervised clinical
133 education requirements related to the person's physical
134 therapist or physical therapist assistant education. The
135 entry-level person shall be under the supervision of a
136 physical therapist.

334.613. 1. The board may refuse to issue or renew a
2 license to practice as a physical therapist or physical
3 therapist assistant for one or any combination of causes
4 stated in subsection 2 of this section. The board shall
5 notify the applicant in writing of the reasons for the
6 refusal and shall advise the applicant of the applicant's
7 right to file a complaint with the administrative hearing
8 commission as provided by chapter 621. As an alternative to
9 a refusal to issue or renew a license to practice as a
10 physical therapist or physical therapist assistant, the
11 board may, at its discretion, issue a license which is

12 subject to probation, restriction, or limitation to an
13 applicant for licensure for any one or any combination of
14 causes stated in subsection 2 of this section. The board's
15 order of probation, limitation, or restriction shall contain
16 a statement of the discipline imposed, the basis therefor,
17 the date such action shall become effective, and a statement
18 that the applicant has thirty days to request in writing a
19 hearing before the administrative hearing commission. If
20 the board issues a probationary, limited, or restricted
21 license to an applicant for licensure, either party may file
22 a written petition with the administrative hearing
23 commission within thirty days of the effective date of the
24 probationary, limited, or restricted license seeking review
25 of the board's determination. If no written request for a
26 hearing is received by the administrative hearing commission
27 within the thirty-day period, the right to seek review of
28 the board's decision shall be considered as waived.

29 2. The board may cause a complaint to be filed with
30 the administrative hearing commission as provided by chapter
31 621 against any holder of a license to practice as a
32 physical therapist or physical therapist assistant who has
33 failed to renew or has surrendered his or her license for
34 any one or any combination of the following causes:

35 (1) Use of any controlled substance, as defined in
36 chapter 195, or alcoholic beverage to an extent that such
37 use impairs a person's ability to perform the work of a
38 physical therapist or physical therapist assistant;

39 (2) The person has been finally adjudicated and found
40 guilty, or entered a plea of guilty or nolo contendere, in a
41 criminal prosecution under the laws of any state, of the
42 United States, or of any country, for any offense directly
43 related to the duties and responsibilities of the

44 occupation, as set forth in section 324.012, regardless of
45 whether or not sentence is imposed;

46 (3) Use of fraud, deception, misrepresentation, or
47 bribery in securing any certificate of registration or
48 authority, permit, or license issued under this chapter or
49 in obtaining permission to take any examination given or
50 required under this chapter;

51 (4) Misconduct, fraud, misrepresentation, dishonesty,
52 unethical conduct, or unprofessional conduct in the
53 performance of the functions or duties of a physical
54 therapist or physical therapist assistant, including but not
55 limited to the following:

56 (a) Obtaining or attempting to obtain any fee, charge,
57 tuition, or other compensation by fraud, deception, or
58 misrepresentation; willfully and continually overcharging or
59 overtreating patients; or charging for sessions of physical
60 therapy which did not occur unless the services were
61 contracted for in advance, or for services which were not
62 rendered or documented in the patient's records;

63 (b) Attempting, directly or indirectly, by way of
64 intimidation, coercion, or deception, to obtain or retain a
65 patient or discourage the use of a second opinion or
66 consultation;

67 (c) Willfully and continually performing inappropriate
68 or unnecessary treatment or services;

69 (d) Delegating professional responsibilities to a
70 person who is not qualified by training, skill, competency,
71 age, experience, or licensure to perform such
72 responsibilities;

73 (e) Misrepresenting that any disease, ailment, or
74 infirmity can be cured by a method, procedure, treatment,
75 medicine, or device;

76 (f) Performing services which have been declared by
77 board rule to be of no physical therapy value;

78 (g) Final disciplinary action by any professional
79 association, professional society, licensed hospital or
80 medical staff of the hospital, or physical therapy facility
81 in this or any other state or territory, whether agreed to
82 voluntarily or not, and including but not limited to any
83 removal, suspension, limitation, or restriction of the
84 person's professional employment, malpractice, or any other
85 violation of any provision of this chapter;

86 (h) Administering treatment without sufficient
87 examination, or for other than medically accepted
88 therapeutic or experimental or investigative purposes duly
89 authorized by a state or federal agency, or not in the
90 course of professional physical therapy practice;

91 (i) Engaging in or soliciting sexual relationships,
92 whether consensual or nonconsensual, while a physical
93 therapist or physical therapist assistant/patient
94 relationship exists; making sexual advances, requesting
95 sexual favors, or engaging in other verbal conduct or
96 physical contact of a sexual nature with patients or clients;

97 (j) Terminating the care of a patient without adequate
98 notice or without making other arrangements for the
99 continued care of the patient;

100 (k) Failing to furnish details of a patient's physical
101 therapy records to treating physicians, other physical
102 therapists, or hospitals upon proper request; or failing to
103 comply with any other law relating to physical therapy
104 records;

105 (l) Failure of any applicant or licensee, other than
106 the licensee subject to the investigation, to cooperate with
107 the board during any investigation;

108 (m) Failure to comply with any subpoena or subpoena
109 duces tecum from the board or an order of the board;

110 (n) Failure to timely pay license renewal fees
111 specified in this chapter;

112 (o) Violating a probation agreement with this board or
113 any other licensing agency;

114 (p) Failing to inform the board of the physical
115 therapist's or physical therapist assistant's current
116 telephone number, residence, and business address;

117 (q) Advertising by an applicant or licensee which is
118 false or misleading, or which violates any rule of the
119 board, or which claims without substantiation the positive
120 cure of any disease, or professional superiority to or
121 greater skill than that possessed by any other physical
122 therapist or physical therapist assistant. An applicant or
123 licensee shall also be in violation of this provision if the
124 applicant or licensee has a financial interest in any
125 organization, corporation, or association which issues or
126 conducts such advertising;

127 (5) Any conduct or practice which is or might be
128 harmful or dangerous to the mental or physical health of a
129 patient or the public; or incompetency, gross negligence, or
130 repeated negligence in the performance of the functions or
131 duties of a physical therapist or physical therapist
132 assistant. For the purposes of this subdivision, "repeated
133 negligence" means the failure, on more than one occasion, to
134 use that degree of skill and learning ordinarily used under
135 the same or similar circumstances by the member of the
136 applicant's or licensee's profession;

137 (6) Violation of, or attempting to violate, directly
138 or indirectly, or assisting or enabling any person to

139 violate, any provision of this chapter, or of any lawful
140 rule adopted under this chapter;

141 (7) Impersonation of any person licensed as a physical
142 therapist or physical therapist assistant or allowing any
143 person to use his or her license or diploma from any school;

144 (8) Revocation, suspension, restriction, modification,
145 limitation, reprimand, warning, censure, probation, or other
146 final disciplinary action against a physical therapist or
147 physical therapist assistant for a license or other right to
148 practice as a physical therapist or physical therapist
149 assistant by another state, territory, federal agency or
150 country, whether or not voluntarily agreed to by the
151 licensee or applicant, including but not limited to the
152 denial of licensure, surrender of the license, allowing the
153 license to expire or lapse, or discontinuing or limiting the
154 practice of physical therapy while subject to an
155 investigation or while actually under investigation by any
156 licensing authority, medical facility, branch of the Armed
157 Forces of the United States of America, insurance company,
158 court, agency of the state or federal government, or
159 employer;

160 (9) A person is finally adjudged incapacitated or
161 disabled by a court of competent jurisdiction;

162 (10) Assisting or enabling any person to practice or
163 offer to practice who is not licensed and currently eligible
164 to practice under this chapter; or knowingly performing any
165 act which in any way aids, assists, procures, advises, or
166 encourages any person to practice physical therapy who is
167 not licensed and currently eligible to practice under this
168 chapter;

169 (11) Issuance of a license to practice as a physical
170 therapist or physical therapist assistant based upon a
171 material mistake of fact;

172 (12) Failure to display a valid license pursuant to
173 practice as a physical therapist or physical therapist
174 assistant;

175 (13) Knowingly making, or causing to be made, or
176 aiding, or abetting in the making of, a false statement in
177 any document executed in connection with the practice of
178 physical therapy;

179 (14) Soliciting patronage in person or by agents or
180 representatives, or by any other means or manner, under the
181 person's own name or under the name of another person or
182 concern, actual or pretended, in such a manner as to
183 confuse, deceive, or mislead the public as to the need or
184 necessity for or appropriateness of physical therapy
185 services for all patients, or the qualifications of an
186 individual person or persons to render, or perform physical
187 therapy services;

188 (15) Using, or permitting the use of, the person's
189 name under the designation of "physical therapist",
190 "physiotherapist", "registered physical therapist", "P.T.",
191 "Ph.T.", "P.T.T.", "D.P.T.", "M.P.T." or "R.P.T.", "physical
192 therapist assistant", "P.T.A.", "L.P.T.A.", "C.P.T.A.", or
193 any similar designation with reference to the commercial
194 exploitation of any goods, wares or merchandise;

195 (16) Knowingly making or causing to be made a false
196 statement or misrepresentation of a material fact, with
197 intent to defraud, for payment under chapter 208 or chapter
198 630 or for payment from Title XVIII or Title XIX of the
199 Social Security Act;

200 (17) Failure or refusal to properly guard against
201 contagious, infectious, or communicable diseases or the
202 spread thereof; maintaining an unsanitary facility or
203 performing professional services under unsanitary
204 conditions; or failure to report the existence of an
205 unsanitary condition in any physical therapy facility to the
206 board, in writing, within thirty days after the discovery
207 thereof;

208 (18) Any candidate for licensure or person licensed to
209 practice as a physical therapist or physical therapist
210 assistant paying or offering to pay a referral fee or[,
211 notwithstanding section 334.010 to the contrary, practicing
212 or offering to practice professional physical therapy
213 independent of the prescription and direction of a person
214 licensed and registered as a physician and surgeon under
215 this chapter, as a physician assistant under this chapter,
216 as a chiropractor under chapter 331, as a dentist under
217 chapter 332, as a podiatrist under chapter 330, as an
218 advanced practice registered nurse under chapter 335, or any
219 licensed and registered physician, chiropractor, dentist,
220 podiatrist, or advanced practice registered nurse practicing
221 in another jurisdiction, whose license is in good
222 standing] **evaluating or treating a patient in a manner**
223 **inconsistent with section 334.506;**

224 (19) Any candidate for licensure or person licensed to
225 practice as a physical therapist or physical therapist
226 assistant treating or attempting to treat ailments or other
227 health conditions of human beings other than by professional
228 physical therapy and as authorized by sections 334.500 to
229 334.685;

230 (20) A pattern of personal use or consumption of any
231 controlled substance unless it is prescribed, dispensed, or

232 administered by a physician who is authorized by law to do
233 so;

234 (21) Failing to maintain adequate patient records
235 under section 334.602;

236 (22) Attempting to engage in conduct that subverts or
237 undermines the integrity of the licensing examination or the
238 licensing examination process, including but not limited to
239 utilizing in any manner recalled or memorized licensing
240 examination questions from or with any person or entity,
241 failing to comply with all test center security procedures,
242 communicating or attempting to communicate with any other
243 examinees during the test, or copying or sharing licensing
244 examination questions or portions of questions;

245 (23) Any candidate for licensure or person licensed to
246 practice as a physical therapist or physical therapist
247 assistant who requests, receives, participates or engages
248 directly or indirectly in the division, transferring,
249 assigning, rebating or refunding of fees received for
250 professional services or profits by means of a credit or
251 other valuable consideration such as wages, an unearned
252 commission, discount or gratuity with any person who
253 referred a patient, or with any relative or business
254 associate of the referring person;

255 (24) Being unable to practice as a physical therapist
256 or physical therapist assistant with reasonable skill and
257 safety to patients by reasons of incompetency, or because of
258 illness, drunkenness, excessive use of drugs, narcotics,
259 chemicals, or as a result of any mental or physical
260 condition. The following shall apply to this subdivision:

261 (a) In enforcing this subdivision the board shall,
262 after a hearing by the board, upon a finding of probable
263 cause, require a physical therapist or physical therapist

264 assistant to submit to a reexamination for the purpose of
265 establishing his or her competency to practice as a physical
266 therapist or physical therapist assistant conducted in
267 accordance with rules adopted for this purpose by the board,
268 including rules to allow the examination of the pattern and
269 practice of such physical therapist's or physical therapist
270 assistant's professional conduct, or to submit to a mental
271 or physical examination or combination thereof by a facility
272 or professional approved by the board;

273 (b) For the purpose of this subdivision, every
274 physical therapist and physical therapist assistant licensed
275 under this chapter is deemed to have consented to submit to
276 a mental or physical examination when directed in writing by
277 the board;

278 (c) In addition to ordering a physical or mental
279 examination to determine competency, the board may,
280 notwithstanding any other law limiting access to medical or
281 other health data, obtain medical data and health records
282 relating to a physical therapist, physical therapist
283 assistant or applicant without the physical therapist's,
284 physical therapist assistant's or applicant's consent;

285 (d) Written notice of the reexamination or the
286 physical or mental examination shall be sent to the physical
287 therapist or physical therapist assistant, by registered
288 mail, addressed to the physical therapist or physical
289 therapist assistant at the physical therapist's or physical
290 therapist assistant's last known address. Failure of a
291 physical therapist or physical therapist assistant to submit
292 to the examination when directed shall constitute an
293 admission of the allegations against the physical therapist
294 or physical therapist assistant, in which case the board may
295 enter a final order without the presentation of evidence,

296 unless the failure was due to circumstances beyond the
297 physical therapist's or physical therapist assistant's
298 control. A physical therapist or physical therapist
299 assistant whose right to practice has been affected under
300 this subdivision shall, at reasonable intervals, be afforded
301 an opportunity to demonstrate that the physical therapist or
302 physical therapist assistant can resume the competent
303 practice as a physical therapist or physical therapist
304 assistant with reasonable skill and safety to patients;

305 (e) In any proceeding under this subdivision neither
306 the record of proceedings nor the orders entered by the
307 board shall be used against a physical therapist or physical
308 therapist assistant in any other proceeding. Proceedings
309 under this subdivision shall be conducted by the board
310 without the filing of a complaint with the administrative
311 hearing commission;

312 (f) When the board finds any person unqualified
313 because of any of the grounds set forth in this subdivision,
314 it may enter an order imposing one or more of the
315 disciplinary measures set forth in subsection 3 of this
316 section.

317 3. After the filing of such complaint before the
318 administrative hearing commission, the proceedings shall be
319 conducted in accordance with the provisions of chapter 621.
320 Upon a finding by the administrative hearing commission that
321 the grounds provided in subsection 2 of this section for
322 disciplinary action are met, the board may, singly or in
323 combination:

324 (1) Warn, censure or place the physical therapist or
325 physical therapist assistant named in the complaint on
326 probation on such terms and conditions as the board deems
327 appropriate for a period not to exceed ten years;

328 (2) Suspend the physical therapist's or physical
329 therapist assistant's license for a period not to exceed
330 three years;

331 (3) Restrict or limit the physical therapist's or
332 physical therapist assistant's license for an indefinite
333 period of time;

334 (4) Revoke the physical therapist's or physical
335 therapist assistant's license;

336 (5) Administer a public or private reprimand;

337 (6) Deny the physical therapist's or physical
338 therapist assistant's application for a license;

339 (7) Permanently withhold issuance of a license;

340 (8) Require the physical therapist or physical
341 therapist assistant to submit to the care, counseling or
342 treatment of physicians designated by the board at the
343 expense of the physical therapist or physical therapist
344 assistant to be examined;

345 (9) Require the physical therapist or physical
346 therapist assistant to attend such continuing educational
347 courses and pass such examinations as the board may direct.

348 4. In any order of revocation, the board may provide
349 that the physical therapist or physical therapist assistant
350 shall not apply for reinstatement of the physical
351 therapist's or physical therapist assistant's license for a
352 period of time ranging from two to seven years following the
353 date of the order of revocation. All stay orders shall toll
354 this time period.

355 5. Before restoring to good standing a license issued
356 under this chapter which has been in a revoked, suspended,
357 or inactive state for any cause for more than two years, the
358 board may require the applicant to attend such continuing

359 medical education courses and pass such examinations as the
360 board may direct.

361 6. In any investigation, hearing or other proceeding
362 to determine a physical therapist's, physical therapist
363 assistant's or applicant's fitness to practice, any record
364 relating to any patient of the physical therapist, physical
365 therapist assistant, or applicant shall be discoverable by
366 the board and admissible into evidence, regardless of any
367 statutory or common law privilege which such physical
368 therapist, physical therapist assistant, applicant, record
369 custodian, or patient might otherwise invoke. In addition,
370 no such physical therapist, physical therapist assistant,
371 applicant, or record custodian may withhold records or
372 testimony bearing upon a physical therapist's, physical
373 therapist assistant's, or applicant's fitness to practice on
374 the grounds of privilege between such physical therapist,
375 physical therapist assistant, applicant, or record custodian
376 and a patient.

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