

HB

97

SENATE COMMITTEE REPORT

FURTHER FIN

3/13/89

DATE TURNED INTO OFFICE 4/20/89

Mr. President:

HESS Committee considered CSHB 97 (FIN)

physical and occupational therapists; extending the termination date of the state Physical Therapy and Occupational Therapy Board; efd

and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN

new updated previous

same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Lloyd Jones

Lee Adams

John Deane

Paul Fish (Do Pass)
Chairman signature and recommendation

Committee Backup attached

Collateral references. — 61 Am. Jur. 70 C.J.S., Physicians and Surgeons, 2d, Physicians, Surgeons and Other §§ 6, 13. Healers, §§ 11, 86.

Article 1. State Physical Therapy and Occupational Therapy Board.

<p>Section 10. State Physical Therapy and Occupational Therapy Board</p>	<p>Section 20. Applicability of Administrative Procedure Act</p>
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Sec. 08.84.010. State Physical Therapy and Occupational Therapy Board. (a) There is created the State Physical Therapy and Occupational Therapy Board, which consists of seven members. The membership consists of one physician licensed to practice medicine in the state, three physical therapists licensed in the state or two physical therapists and a physical therapy assistant licensed in the state, two occupational therapists licensed in the state or an occupational therapist and occupational therapy assistant licensed in the state, and one lay person with no direct financial interest in the health care industry. Members of the board shall be United States citizens domiciled in the state.

(b) The board shall control all matters pertaining to the licensing of physical therapists, physical therapy assistants, occupational therapists, and occupational therapy assistants and the practice of physical therapy and the practice of occupational therapy. The board shall

- (1) pass upon the qualifications of applicants;
- (2) provide for the examination of applicants;
- (3) issue temporary permits and licenses to persons qualified under this chapter;
- (4) suspend, revoke, or refuse to issue or renew a license under AS 08.84.120;
- (5) keep a current register listing the name, business address, date, and number of the license of each person who is licensed to practice under this chapter;
- (6) keep a record and minutes of its meetings, proceedings, and hearings and submit an annual report of its activities to the governor and other interested parties;

(7) adopt regulations under AS 44.62 necessary to carry out the purposes of this chapter including regulations establishing qualifications for licensure and renewal of licensure under this chapter. (§ 15 ch 74 SLA 1957; am § 8 ch 49 SLA 1969; am § 1 ch 71 SLA 1974; am § 1 ch 208 SLA 1975; am § 2 ch 43 SLA 1977; am § 1 ch 55 SLA 1980; am §§ 40, 41 ch 94 SLA 1987; am § 4 ch 2 FSSLA 1987)

Cross references. — and terms, see AS 08.0 For initial appointments created by § 1987, see § 36, ch. 2, F Temporary and Special Effect of amendment 1987 amendment in sub "appointed by the govern the first sentence and de the end of the subse terms and removal by t in subsection (b) substit "in accordance with" is added "and" at the end (6), designated former present paragraph (7), a mer paragraph (7), whic condition the authority t cal therapy, or discipline accordance with AS 08. The second 1987 amen January 1, 1988, insert tional Therapy" in the c section (a) in the first s "and Occupational Thera

Sec. 08.84.020. A Act. The board shall (AS 44.62). (§ 2 (ch

Section

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Collateral references. 2d, Physicians, Surgeon Healers, §§ 19, 29-31.

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tions chapter. (§ 15
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ended by ch 55 SLA 1980;
and ch 55 SLA 1987)

Cross references. — For appointment and terms, see AS 08.01.035.

For initial appointments to the board positions created by § 4, ch. 2, FSSLA 1987, see § 36, ch. 2, FSSLA 1987 in the Temporary and Special Acts.

Effect of amendments. — The first 1987 amendment in subsection (a) deleted "appointed by the governor" at the end of the first sentence and deleted sentences at the end of the subsection concerning terms and removal by the governor; and in subsection (b) substituted "under" for "in accordance with" in paragraph (4), added "and" at the end of the paragraph (6), designated former paragraph (8) as present paragraph (7), and repealed former paragraph (7), which read "limit or condition the authority to practice physical therapy, or discipline a practitioner, in accordance with AS 08.84.185(a); and."

The second 1987 amendment, effective January 1, 1988, inserted "and Occupational Therapy" in the catchline; in subsection (a) in the first sentence inserted "and Occupational Therapy" and substi-

tuted "seven" for "five," in the second sentence added the language beginning "two occupational therapists" and ending "licensed in the state," and in the last sentence substituted "United States" for "U.S."; in subsection (b) in the first sentence substituted "board" for "Physical Therapy Board," deleted "and" following "physical therapists," and inserted "occupational therapists, and occupational therapy assistants" and "and the practice of occupational therapy," substituted "provide for the examination of applicants" for "conduct examinations" in paragraph (2), substituted "persons" for "physical therapists and physical therapy assistants" in paragraph (3), substituted "under" for "in accordance with" in paragraph (4), in paragraph (5) substituted "person" for "physical therapist and physical therapy assistant" and "under this chapter" for "in this state," and at the end of the subsection substituted "under this chapter" for "as a physical therapist or physical therapy assistant."

Sec. 08.84.020. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 2 (ch 2) ch 143 SLA 1959)

Article 2. Licensing.

Section

- 30. Qualifications for licensing
- 32. Foreign-trained physical therapy or physical therapy assistant applicants
- 40. Application for license
- 50. Fees
- 60. Licensure by acceptance of credentials

Section

- 65. Temporary permit
- 75. Limited permit
- 80. Examinations
- 90. Licensure
- 100. Renewal of license
- 120. Refusal, revocation, and suspension of license

Collateral references. — 61 Am. Jur. 70 C.J.S., Physicians and Surgeons, 2d, Physicians, Surgeons and Other Healers, §§ 11, 12, 23. §§ 19, 29-31.

Sec. 08.84.030. Qualifications for licensing. (a) To be eligible for licensure by the board as a physical therapist or physical therapy assistant, an applicant, unless a graduate of a foreign school of physical therapy located outside the United States, shall

(1) [Repealed by § 2 ch 55 SLA 1980.]

(2) have graduated from a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association, or the American Physical Therapy Association;

(3) pass to the satisfaction of the board an examination prepared by the Professional Examination Service Association or by a national testing service approved by the board to determine the applicant's fitness for practice as a physical therapist or physical therapy assistant, or be entitled to licensure without examination as provided in AS 08.84.060;

(4) meet qualifications for licensure established in regulations adopted by the board under AS 08.84.010(b)(8).

(b) To be eligible for licensure by the board as an occupational therapist or occupational therapy assistant, an applicant, unless a graduate of a foreign school of occupational therapy located outside the United States, shall

(1) have successfully completed a curriculum of occupational therapy approved by the Committee of Allied Health Education and Accreditation of the American Medical Association, and the American Occupational Therapy Association appropriate to the license being sought;

(2) submit proof of successful completion and supervised field work approved by the board

(A) for an occupational therapist, a minimum of six months of supervised field work;

(B) for an occupational therapy assistant, a minimum of two months of supervised field work;

(3) pass, to the satisfaction of the board, an examination prepared by a national testing service approved by the board or an examination recognized by the American Occupational Therapy Association to determine the applicant's fitness for practice as an occupational therapist or an occupational therapy assistant, or be entitled to licensure without examination under AS 08.84.060; and

(4) meet qualifications for licensure established in regulations adopted by the board under AS 08.84.010(b). (§ 3 ch 74 SLA 1957; am §§ 1, 8 ch 49 SLA 1969; am §§ 1, 2 ch 26 SLA 1970; am § 25 ch 245 SLA 1970; am § 2 ch 71 SLA 1974; am § 2 ch 208 SLA 1975; am § 2 ch 55 SLA 1980; am § 5 ch 2 FSSLA 1987)

Cross references. — For authority of Department of Commerce and Economic Development to issue provisional licenses to occupational therapists and occupational therapy assistants from July 2, 1987, until June 30, 1988, see § 32, ch. 2, FSSLA 1987 in the Temporary and Special Acts; for authority of board to issue licenses by credentials to person who apply before January 1, 1989, see § 33,

ch. 2, FSSLA 1987 in the Temporary and Special Acts; for authority of board to issue experience-based licenses as occupational therapists to persons who qualify before July 1, 1988, see § 34, ch. 2, FSSLA 1987 in the Temporary and Special Acts.

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added subsection (b).

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Sec. 08.84.032. Foreign-trained physical therapy or physical therapy assistant applicants. (a) To be eligible for licensure by the board as a physical therapist or physical therapy assistant, an applicant who is a graduate of a school of physical therapy that is located outside of the United States shall

(1) have completed, to the satisfaction of the board, a resident course of study and professional instruction equivalent to that provided by a school approved by the Council on Medical Education and Hospitals of the American Medical Association or the American Physical Therapy Association, and furnish documentary evidence of compliance with this paragraph, translated, if necessary, into the English language by a person verifying the accuracy of the translations;

(2) have completed, to the satisfaction of the board, an internship under the continuous direction and immediate supervision of a physical therapist in an institution that ordinarily provides physical therapy and is approved by the board, for that period of time specified by the board, and furnish documentary evidence of compliance with this paragraph;

(3) pass an oral examination administered by a member of the board;

(4) have met applicable requirements under the federal Immigration and Nationality Act (8 U.S.C. 1101 et seq.), unless a United States citizen;

(5) pass the examination administered by the board under AS 08.84.030(3); and

(6) pay the fee required under AS 08.84.050.

(b) To be eligible for licensure by the board as an occupational therapist or occupational therapy assistant, an applicant who is a graduate of a school of occupational therapy that is located outside of the United States shall

(1) have completed, to the satisfaction of the board, a resident course of study and professional instruction equivalent to that provided by a curriculum approved by the Committee of Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association, and have furnished documentary evidence of compliance with this paragraph, translated, if necessary, into the English language by a person verifying the accuracy of the translations;

(2) have completed, to the satisfaction of the board, supervised field work equivalent to that required under AS 08.84.030(b);

(3) have met applicable requirements under 8 U.S.C. 1101 — 1503 (Immigration and Nationality Act) unless a United States citizen;

(4) pass an examination administered or approved by the board under AS 08.84.030; and

(5) pay the fee required under AS 08.84.050. (§ 3 ch 55 SLA 1980; am § 46 ch 37 SLA 1985; am § 6 ch 2 FSSLA 1987)

Effect of amendments. — The 1985 amendment in the introductory language and in paragraph (2) substituted "that" for "which" and in paragraph (6) substi-

tuted "required" for "prescribed" and "AS 08.84.050" for "AS 08.84.050(2) and (3)." The 1987 amendment, effective January 1, 1988, added subsection (b).

Sec. 08.84.035. Malpractice insurance. [Repealed, § 40 ch 177 SLA 1978.]

Sec. 08.84.040. Application for license. To be licensed under this chapter to practice physical therapy or occupational therapy, an applicant shall apply to the board on a form prescribed by the board. An applicant shall include in the application evidence under oath that the applicant possesses the qualifications required by AS 08.84.030 or 08.84.032. (§ 4 ch 74 SLA 1957; am § 3 ch 71 SLA 1974; am § 4 ch 55 SLA 1980; am § 7 ch 2 FSSLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, substituted "under this chapter to practice physical therapy or occupational therapy" for "as a physical therapist or physical

therapy assistant" in the first sentence and substituted "the" for "his" preceding "application" and "the applicant" for "he" in the last sentence.

Sec. 08.84.050. Fees. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for the following:

- (1) application;
- (2) license by examination;
- (3) license by acceptance of credentials;
- (4) renewal;
- (5) temporary permit;
- (6) limited permit. (§ 4 ch 74 SLA 1957; am § 2 ch 49 SLA 1969; am § 3 ch 26 SLA 1970; am § 5 ch 55 SLA 1980; am § 47 ch 37 SLA 1985; am § 8 ch 2 FSSLA 1987)

Effect of amendments. — The 1985 amendment rewrote this section, which included a fee schedule.

The 1987 amendment, effective January 1, 1988, added paragraph (6).

Sec. 08.84.060. Licensure by acceptance of credentials. The board may license without examination an applicant who is a physical therapist, physical therapy assistant, occupational therapist, or occupational therapy assistant licensed under the laws of another state, if the requirements for licensure in that state, were, at the date of the applicant's licensure, substantially equal to the requirements in this state. (§ 6 ch 74 SLA 1957; am § 4 ch 26 SLA 1970; am § 4 ch 71 SLA 1974; am § 6 ch 55 SLA 1980; am § 9 ch 2 FSSLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, inserted "occupational therapist, or occupational therapy assistant" and made a re-

lated stylistic change and deleted "or territory or the District of Columbia" following "state" in two places.

Sec. 08.84.065. Temporary permit. (a) The board may issue a nonrenewable temporary permit to an applicant for licensure by acceptance of credentials or by examination who meets the requirements of AS 08.84.030(2) and 08.84.032(2) and (4) and pays the required fee.

(b) A temporary permit issued to an applicant for licensure by acceptance of credentials is valid for eight months or until the board considers the applicant's application for acceptance of credentials, whichever occurs first.

(c) A temporary permit issued to an applicant for licensure as a physical therapist or physical therapy assistant by examination is valid for eight months or until the results of the first examination for which the applicant is scheduled are published, whichever occurs first. If the applicant fails to take the first examination for which the applicant is scheduled the applicant's temporary permit lapses on the day of the examination.

(d) A temporary permit issued to an applicant who is a graduate of a foreign school of physical therapy or occupational therapy located outside the United States is valid until the results of the first examination for which the applicant is scheduled are published following completion of the internship required under AS 08.84.032.

(e) A temporary permit issued to an applicant for licensure as an occupational therapist or occupational therapy assistant by examination is valid for eight months or until the results of the examination for which the applicant is scheduled are published, whichever occurs first. If the applicant fails to take an examination for which the applicant is scheduled the applicant's temporary permit lapses on the day of the examination. (§ 5 ch 26 SLA 1970; am § 5 ch 71 SLA 1974; am § 3 ch 208 SLA 1975; am § 7 ch 55 SLA 1980; am §§ 10 — 12 ch 2 FSSLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, inserted "as a physical therapist or physical therapy assistant" in the first sentence of subsection (c), in subsection (d) inserted "or occupational therapy" and "the results

of the first examination for which the applicant is scheduled are published following," and substituted "AS 08.84.032" for "AS 08.84.032(2)," and added subsection (e).

Sec. 08.84.070. Registration fee. [Repealed, § 8 ch 49 SLA 1969.]

Sec. 08.84.075. Limited permit. (a) The board may issue a limited permit to a person to practice occupational therapy in the state as a visiting, nonresident occupational therapist or occupational therapy assistant, if the person

(1) applies on the form provided by the board;
 (2) has not previously been denied occupational therapy licensure in the state;

(3) is licensed to practice occupational therapy in another state or satisfies the requirements for certification by the American Occupational Therapy Association;

(4) provides proof satisfactory to the board that the person will not practice in the state for more than 120 days in the calendar year for which the permit is issued; and

(5) pays the fee required under AS 08.84.050.

(b) The board may issue a limited permit to a person to practice physical therapy in the state as a visiting, nonresident physical therapist or physical therapy assistant, if the person

(1) applies on the form provided by the board;

(2) has not previously been denied physical therapy licensure in the state;

(3) is licensed to practice physical therapy in another state;

(4) provides proof satisfactory to the board that the person will not practice in the state for more than 120 days in the calendar year for which the permit is issued; and

(5) pays the fee required under AS 08.84.050.

(c) A limited permit is valid for a period not exceeding 120 days in a calendar year.

(d) A person may not receive more than three limited permits to practice occupational therapy or physical therapy during the person's lifetime. (§ 13 ch 2 FSSLA 1987)

Sec. 08.84.080. Examinations. The board shall examine applicants for licensure under this chapter at the times and places it determines. (§ 7 ch 74 SLA 1957; am § 3 ch 49 SLA 1969; am § 6 ch 26 SLA 1970; am § 6 ch 71 SLA 1974; am § 8 ch 55 SLA 1980; am § 14 ch 2 FSSLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, substituted "under this chapter" for "as physical therapists or physical therapy assistants."

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Sec. 08.84.090. Licensure. The board shall license an applicant who meets the qualifications for licensure under this chapter. It shall issue a license certificate to each person licensed. A license certificate is prima facie evidence of the right of the person to hold out as a licensed physical therapist, licensed physical therapy assistant, occupational therapist, or occupational therapy assistant. (§ 8 ch 74 SLA 1957; am § 7 ch 71 SLA 1974; am § 9 ch 55 SLA 1980; am § 15 ch 2 FSSLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added "occupational therapist, or occupational therapy assistant" at the end of the section and made a related stylistic change.

Sec. 08.84.100. Renewal of license. (a) [Repealed, § 49 ch 94 SLA 1987.]

(b) If a license remains lapsed for more than three years, the board may require the applicant to submit proof, satisfactory to the board, of continued competency.

(c) A license may not be renewed unless the applicant demonstrates competence to practice physical therapy or occupational therapy in a manner established by the board in regulations adopted under AS 08.84.010(b). (§ 9 ch 74 SLA 1957; am § 4 ch 49 SLA 1969; am § 8 ch 71 SLA 1974; am § 4 ch 208 SLA 1975; am § 54 ch 218 SLA 1976; am § 10 ch 55 SLA 1980; am § 48 ch 37 SLA 1985; am §§ 42, 49 ch 94 SLA 1987; am § 16 ch 2 FSSLA 1987)

Cross references. — For license duration and further provisions relating to renewal, see AS 08.01.100.

Effect of amendments. — The 1985 amendment in subsection (b) in the first sentence substituted "Before" for "A penalty of \$10 shall be charged in addition to all delinquent renewal fees for" and "that" for "which" and added "the applicant must pay all delinquent renewal fees and any penalty established under AS 08.01.100(b)" at the end of the sentence and substituted "a" for "the" preceding "license" in the second sentence.

The first 1987 amendment repealed subsection (a), concerning license renewal; and in subsection (b) deleted the first sentence, which read "Before reinstatement of a license that remains lapsed for more than 60 days, the applicant must pay all delinquent renewal fees and any penalty established under AS

08.01.100(b)" so that until January 1, 1988, subsection (b) will read: "If a license remains lapsed for more than three years, the board may require the applicant to take and pass the examination given under AS 08.84.030(3).

The second 1987 amendment, effective January 1, 1988, in subsection (a) in the first sentence inserted "person" and substituted "under this chapter" for "physical therapist or physical therapy assistant," "the" for "a" following "renew," and "two" for "four" and deleted "issued under this chapter" following "license,"; in subsection (b) substituted "submit proof, satisfactory to the board, of continued competency" for "take and pass the examination given under AS 08.84.030(3)"; and in subsection (c) substituted "to practice" for "as a physical therapist or," "or occupational therapy" for "assistant," and "AS 08.84.010(b)" for "AS 08.84.010(b)(8)."

*Sec. 08.84.110. Renewal fee. [Repealed, § 8 ch 49 SLA 1969.]***Sec. 08.84.120. Refusal, revocation, and suspension of license.**

(a) The board may refuse to license an applicant, may refuse to renew the license of a person, and may suspend or revoke the license of a person who

(1) has obtained or attempted to obtain a license by fraud or material misrepresentation;

(2) uses drugs or alcohol in a manner that affects the person's ability to practice physical therapy or occupational therapy competently and safely;

(3) has been convicted of a state or federal felony or other crime that effects the person's ability to practice competently and safely;

(4) is guilty, in the judgment of the board, of gross negligence or malpractice or has engaged in conduct contrary to the recognized standards of ethics of the physical therapy profession or the occupational therapy profession;

(5) has continued to practice physical therapy or occupational therapy after becoming unfit due to physical or mental disability;

(6) has failed to refer a patient to another qualified professional when the patient's condition is beyond the training or ability of the person;

(7) as a physical therapy assistant, has attempted to practice physical therapy that has not been initiated, supervised, and terminated by a licensed physical therapist; or

(8) as an occupational therapy assistant, has attempted to practice occupational therapy that has not been supervised by a licensed occupational therapist.

(b) The refusal or suspension of a license may be modified or rescinded if the person has been rehabilitated to the satisfaction of the board. (§ 10 ch 74 SLA 1957; am § 5 ch 49 SLA 1969; am § 9 ch 71 SLA 1974; am § 11 ch 55 SLA 1980; am § 2 ch 46 SLA 1986; am § 17 ch 2 FSSLA 1987)

Effect of amendments. — The 1986 amendment rewrote this section.

The 1987 amendment, effective January 1, 1988, in subsection (a) inserted "or occupational therapy" in paragraph (2), added "or the occupational therapy profes-

sion" at the end of paragraph (4), inserted "or occupational therapy" in paragraph (5), substituted "person" for "physical therapist" at the end of paragraph (6), and added paragraph (8) and made related stylistic changes.

NOTES TO DECISIONS

Cited in *Leege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

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Article 3. Unlawful Acts.

Section

130. False claim of license forbidden
140. Penalty for fraud in obtaining li-
cense
150. Licensure of physical therapists

Section

160. Practice of licensed physical thera-
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180. Investigation

Sec. 08.84.130. False claim of license forbidden. (a) A person not licensed as a physical therapist, or whose license is suspended or revoked, or whose license is lapsed, who uses in connection with the person's name the words or letters "L.P.T.", "Licensed Physical Therapist," or other letters, words, or insignia indicating or implying that the person is a licensed physical therapist, or who in any way, orally, or in writing, directly or by implication, holds out as a licensed physical therapist is guilty of a class B misdemeanor.

(b) A person not licensed as a physical therapy assistant, or whose license is suspended or revoked, or whose license is lapsed, who in any way, orally, or in writing, directly or by implication, holds out as a licensed physical therapy assistant is guilty of a class B misdemeanor.

(c) A person not licensed as an occupational therapist, or whose license is suspended or revoked, or whose license is lapsed, who uses in connection with the person's name the words "Licensed Occupational Therapist," or other letters, words, or insignia indicating or implying that the person is a licensed occupational therapist, or who orally or in writing, directly or by implication, holds out as a licensed occupational therapist is guilty of a class B misdemeanor.

(d) A person not licensed as an occupational therapy assistant, or whose license is suspended or revoked, or whose license is lapsed, who orally or in writing, directly or by implication, holds out as a licensed occupational therapy assistant is guilty of a class B misdemeanor. (§ 11 ch 74 SLA 1957; am § 10 ch 71 SLA 1974; am § 12 ch 55 SLA 1980; am § 3 ch 46 SLA 1986; am § 18 ch 2 FSSLA 1987)

Effect of amendments. — The 1986 amendment inserted "class B" preceding "misdemeanor" at the end of subsections (a) and (b). The 1987 amendment, effective January 1, 1988, added subsections (c) and (d).

Sec. 08.84.140. Penalty for fraud in obtaining license. A person who wilfully makes a false oath or affirmation or who obtains or attempts to obtain a license by a fraudulent representation is guilty of a class B misdemeanor. (§ 12 ch 74 SLA 1957; am § 13 ch 55 SLA 1980; am § 4 ch 46 SLA 1986)

Effect of amendments. — The 1986 amendment inserted "class B" preceding "misdemeanor."

Sec. 08.84.150. Licensure of physical therapists. (a) It is unlawful for a person to practice physical therapy without being licensed under this chapter unless the person is

- (1) a student in an accredited physical therapy program;
- (2) a graduate of a foreign school of physical therapy fulfilling the internship requirement of AS 08.84.032(2), and then only unless under the continuous direction and immediate supervision of a physical therapist; or
- (3) issued a limited permit under AS 08.84.075.

(b) A person may not practice occupational therapy without being licensed unless the person is

- (1) a student in an accredited occupational therapy program or in a supervised field work program;
- (2) a graduate of a foreign school of occupational therapy fulfilling the internship requirement of AS 08.84.032, and then only unless under the continuous direction and immediate supervision of an occupational therapist;
- (3) an occupational therapist or occupational therapy assistant employed by the United States Government while in the discharge of official duties; or

(4) granted a limited permit under AS 08.84.075. (§ 14 ch 74 SLA 1957; am § 6 ch 49 SLA 1969; am § 14 ch 55 SLA 1980; am §§ 19, 20 ch 2 FSSLA 1987)

Cross references. — For professional designation requirements for registered physical therapists, see AS 08.02.010.

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in subsection (a) in the introductory language substituted "a person" for "anyone"

and "under" for "in accordance with" and added "the person is," designated part of the existing language as paragraphs (1) and (2), added paragraph (3) and made related stylistic changes; and added subsection (b).

Sec. 08.84.160. Practice of licensed physical therapist or licensed occupational therapist. This chapter does not authorize a person to practice medicine, osteopathy, chiropractic, or other method of healing, but only to practice physical therapy or occupational therapy. (§ 13 ch 74 SLA 1957; am § 7 ch 49 SLA 1969; am § 15 ch 55 SLA 1980; am § 5 ch 46 SLA 1986; am § 21 ch 2 FSSLA 1987)

Effect of amendments. — The 1986 amendment rewrote this section.

The 1987 amendment, effective January 1, 1988, added "or licensed occupational therapist" at the end of the catchline and substituted "a" for "any" preced-

ing "person," deleted "as defined in AS 08.20.220" following "chiropractic" and "as defined in AS 08.84.190(3)" following "physical therapy," and added "or occupational therapy" at the end of the section.

Sec. 08.84.170. Penalty [Repealed, § 7 ch 46 SLA 1986.]

Sec. 08.84.180. Investigation. The board shall request appropriate authorities to conduct investigations of every supposed violation of this chapter coming to its notice and shall report all cases which in the judgment of the board warrant prosecution to the proper law enforcement officials. (§ 17 ch 74 SLA 1957; am § 16 ch 55 SLA 1980)

Sec. 08.84.185. Limits or conditions on license; discipline. [Repealed, § 49 ch 94 SLA 1987. For current law, see AS 08.01.075.]

Article 4. General Provisions.

- Section
- 190. Definitions
- 200. Short title

Sec. 08.84.190. Definitions. In this chapter, unless the context otherwise requires,

(1) "board" means the State Physical Therapy and Occupational Therapy Board;

(2) "occupational therapist" means a person who practices occupational therapy;

(3) "occupational therapy" means the use of purposeful activity, evaluation, treatment, and consultation with human beings whose ability to cope with the tasks of daily living are threatened with, or impaired by developmental deficits, learning disabilities, aging, poverty, cultural differences, physical injury or illness, or psychological and social disabilities to maximize independence, prevent disability, and maintain health; "occupational therapy" includes

(A) developing daily living, play, leisure, social, and developmental skills;

(B) facilitating perceptual-motor and sensory integrative functioning;

(C) enhancing functional performance, prevocational skills, and work capabilities using specifically designed exercises, therapeutic activities and measure, manual intervention, and appliances;

(D) design, fabrication, and application of splints or selective adaptive equipment;

(E) administering and interpreting standardized and nonstandardized assessments, including sensory, manual muscle, and range of motion assessments, necessary for planning effective treatment; and

(F) adapting environments for the disabled;

(4) "occupational therapy assistant" means a person who assists in the practice of occupational therapy under the supervision of an occupational therapist;

(5) "physical therapist" means a person who practices physical therapy;

(6) "physical therapy" means the examination, treatment and instruction of human beings to detect, assess, prevent, correct, alleviate and limit physical disability, bodily malfunction, pain from injury, disease and other bodily or mental conditions and includes the administration, interpretation and evaluation of tests and measurements of bodily functions and structures; the planning, administration, evaluation and modification of treatment and instruction including the use of physical measures, activities and devices for preventive and therapeutic purposes; the provision of consultative, educational and other advisory services for the purpose of reducing the incidence and severity of physical disability, bodily malfunction and pain; "physical therapy" does not include the use of roentgen rays and radioactive materials for diagnosis and therapeutic purposes, the use of electricity for surgical purposes, and the diagnosis of disease;

(7) "physical therapy assistant" means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; a physical therapy assistant's responsibilities do not include testing or evaluation. (§ 2 ch 74 SLA 1957; am § 11 ch 71 SLA 1974; am § 17 ch 55 SLA 1980; am §§ 23, 24 ch 2 FSSLA 1987)

Revisor's notes. — Reorganized in 1987 to alphabetize the defined terms.

Effect of amendments. — The 1987 amendment, effective January 1, 1988,

added "and Occupational Therapy" in paragraph (1) and added paragraphs (2)-(4).

Sec. 08.84.200. Short title. This chapter may be cited as the Physical Therapists and Occupational Therapists Practice Act. (§ 1 ch 74 SLA 1957; am § 25 ch 2 FSSLA 1987)

Effect of amendments. -- The 1987 amendment, effective January 1, 1988, inserted "and Occupational Therapists."

Chapter 86. Psychologists and Psychological Associates.

Article

1. Board of Psychologist and Psychological Associate Examiners (§§ 08.86.010 — 08.86.040)
2. Administration of Board Affairs (§§ 08.86.070 — 08.86.100)
3. Licensing of Psychologists (§§ 08.86.130 -- 08.86.150)
4. Licensing of Psychological Associates (§§ 08.86.160 — 08.86.164)
5. Prohibitions and Penalties (§§ 08.86.170 — 08.86.220)
6. General Provisions (§ 08.86.230)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act extending the termination BRU: Occupational Licensing
date of the State Physical Therapy and Occupational Therapy Board...
 Sponsor: Rules Committee Components: Admin. & Licensing Boards
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		8.7	8.7	8.7	8.7	8.7
TRAVEL		1.1	1.1	1.1	1.1	1.1
CONTRACTUAL		3.1	3.1	3.1	3.1	3.1
SUPPLIES		.1	.1	.1	.1	.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		13.0	13.0	13.0	13.0	13.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE		13.0	13.0	13.0	13.0	13.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		13.0	13.0	13.0	13.0	13.0
TOTAL		13.0	13.0	13.0	13.0	13.0

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

CSHB 205(HESS)AM which added the licensing of occupational therapists (OT) to the State Physical Therapy Board originally passed the State Legislature in FY 87 with a fiscal note of \$13.0 to cover expenses of the new OT licensing program. The bill was vetoed by the Governor on 6/17/87 and over-ruled by the Legislature in special session on 7/1/87. The fiscal note however, did not

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 11/2/88

Approved by Commissioner: Larry Mercurieff Date: 11/3/88
 Agency: Commerce and Economic Development

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

FISCAL NOTE

Accompany the final passage of the bill during the special session.

This meant that the Division of Occupational Licensing had to provide budgetary support for licensing of OTs for the first year. The division's budget cannot continue to absorb this cost. As with CSHB 205 (HESS) AM, this Fiscal Note is based on the following:

1. PERSONAL SERVICES: \$ 8,700

- .40% of administrative support costs (.40% is based on the number of occupational therapists (100) divided by the total number of division licensees (27,049) which includes physical therapists);
- 10% of a licensing examiner; and
- 5% of an investigator.

2. TRAVEL: \$ 1,100

- Costs for two members to attend a board meeting.

3. CONTRACTUAL:

- professional services (exam) costs;
- communication costs; and
- advertising and printing costs, etc.

8700
 1100
 100

 \$ 9900

4. SUPPLIES: \$ 100

TOTAL: \$13,000 \$9900

The occupational therapy profession has expressed willingness to pay licensing fees necessary to cover costs associated with regulating the profession. Therefore, this appropriation is expected to be covered by program receipts generated from licensing fees.


STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 19, 1989

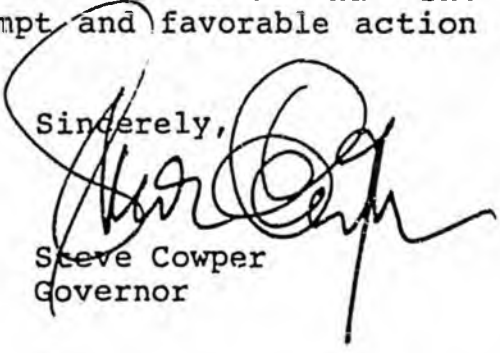
The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills, to extend the Board of Pharmacy, the Board of Veterinary Examiners, and the State Physical Therapy and Occupational Therapy Board, respectively, for the standard four years. These boards are currently scheduled to "sunset" on June 30, 1989.

The boards provide valuable services and should be continued. I urge your prompt and favorable action on all three bills.

Sincerely,


Steve Cowper
Governor



325 East 3rd, 4th Floor
Anchorage, AK 99501-2606
(907) 274-3658 TTD

230 South Franklin
Juneau, AK 99801
(907) 586-1627 TTD

250 Cushman, Suite 3H
Fairbanks, AK 99701
(907) 456-1070 TTD

March 14, 1989

Tom Buckner
Educational Program Support
Department of Education
P.O. Box F
Juneau, Alaska 99811-0500

Dear Tom,

This letter is in preparation for our March 28, 1989 meeting in Juneau concerning OT/PT licensing.

Our view of the problem begins with our understanding of the purpose, function and operation of licensing statutes. It is our understanding that the core purpose of licensing is to protect the public from those who might seek to provide specialized services without requisite skills or background. This purpose is accomplished first by describing the activities or services to be regulated and then by describing the qualifications needed to secure a license to engage in those activities. Then, when an allegation or question regarding possible illegal activities arises, the questioned behavior is compared to the definition of the regulated behavior to determine the applicability of the licensing statute.

Since the problems with each discipline are different, I will address each separately.

PT

As you recall, this issue surfaced as a result of a series of cases we had in the Kenai School District where, due to a lack of licensed PTs on staff, the district was delivering PT services through OTs and aides. Our research revealed that Alaska Statute 08.84.150 (a) establishes that it "is unlawful for a person to practice physical therapy without being licensed...". We subsequently made a complaint to the Division of Occupational Licensing which issued an informal notice of violation (attached). After further negotiations, licensed PTs were hired and appropriate services resumed.

Since that time we have been involved in several additional cases similar to these involving schools. The problem is the structure of licensing for PTs which does not allow schools or other facilities to be flexible in developing a delivery model.

Letter to T. Buckner
March 14, 1989
Page 2 of 5

In the case of physical therapy, the statute is clear that an unlicensed individual may not practice physical therapy or hold out as being a physical therapist. There is provision for the delivery of PT by a licensed physical therapy assistant when the therapy program is initiated and supervised by a licensed physical therapist. The definition of physical therapy includes such activities as "the...instruction of human beings to...prevent, correct, alleviate and limit physical disability" and "instruction including the use of physical measures, activities and devices for preventative and therapeutic purposes". AS 08.84.190(6).

In an educational setting, physical therapy is a related service under special education law and, as such, must be provided when necessary for a child to receive an appropriate program. This is reflected in an Individualized Educational Program by way of long term goals and measurable short term objectives with a specific level of service attached.

As you are aware, the provision of physical therapy by schools to children with handicaps is common and widespread. In this context, the licensing requirements become an extremely costly and burdensome prospect. There is not only a shortage of licensed professionals available or willing to work in rural areas, but the expense and logistics of delivering them to isolated sites, often more than once a week, are extremely formidable. It is our opinion that some alternatives must be explored. Within what would constitute adequate and appropriate therapy services, we should validate and regulate delivery models which enable districts to maximize the efficient use of their resources. In some cases, use of these alternatives may be the only way to provide services at all.

School districts faced with this reality have several options. First, they can allow the appropriate level of therapy service to be written into the I.F.P. and spend whatever it takes to deliver a therapist to the site as required often more than once a week. Second, knowing what fiscal and practical impact the inclusion of such services would have, they can attempt to limit the extent to which this service is included in the I.E.P.. Third, they can avoid the licensing requirement by calling the service something else such as an "exercise program". Fourth, they can flaunt the licensing provisions by providing services through secondary providers such as aides or teachers and hope they don't get caught. Unfortunately for the districts, only the first option is legally permissible.

Letter to T. Buckner
March 14, 1989
Page 3 of 5

Attempts to limit the inclusion or scope of therapy services based on supply problems is currently accomplished in several ways such as denying a need exists or telling the district's therapists that they must make do with what they have for the entire district. We have spoken with many therapists who substantiate that this occurs with disturbing frequency, particularly, in rural areas. This approach obviously violates special education laws and more importantly fails to deliver needed services to the children.

Simply calling the service something else (as suggested by several members of the OT/PT Board and associations) is also unacceptable. First, it ignores the fact that the licensing statute itself defines what is or is not therapy. If the actions of a third party are the ones described in the statute are the same as those a therapist would engage in if on site in an urban setting, and are the same as a therapist would perform in a hospital or private clinic, then it is therapy no matter what someone wants to call it to avoid a licensing requirement. In addition, such a "redefining" of a service as not constituting therapy would remove all regulatory controls over the provision of the service. There would be no requirement that such a program be developed, supervised or evaluated by a therapist. It is inconceivable that physical therapy as a related service could be written out of literally hundreds of I.E.P.s in this manner. It would certainly be a disservice to the clients which the licensing statutes purport to protect.

Districts which attempt to use secondary providers for physical therapy where appropriate, are generally the most responsible and honest, but stand to be the ones most subject to punishment under the current structure. Because this practice is forbidden, there are no guidelines for such crucial elements as program design, secondary provider training, ongoing program supervision and program evaluation. We have spoken with many therapists who believe that this is an appropriate delivery model for some children. It is our belief that this is the option that must be explored in more detail, as it could offer the benefits of a greater ability to use scarce resources, provide structure when services are provided in this manner, and avoid semantic and procedural game playing in order to avoid an onerous licensing requirement.

Letter to T. Buckner
March 14, 1989
Page 4 of 5

OT

In our opinion, the problems with the occupational licensing statute are more numerous and more serious. To begin with, the definition of the regulated activity is so broad as to seem totally useless for licensing purposes. Occupational therapy is defined as including "developing daily living, play, leisure, social, and developmental skills" and "adapting environments for the disabled". AS 08.84.190(3). While appropriate as a general job description, this definition would encompass activities from a day care center program to a janitor putting up a grab bar in a bathroom. The point is not that the Division of Occupational Licensing would pursue such cases, but rather that legitimate cases would be virtually indistinguishable under this formulation.

Even more inexplicable is the description of the regulated behavior. The statute only provides that a person may not "provide services that the person describes as occupational therapy without being licensed". AS 08.84.150(b). It is clear that the statute allows any individual to practice occupational therapy so long as they don't describe it as occupational therapy. If ever there was a clear cut example of an attempt to protect a profession's title without regard to the protection of the public, this has to be it.

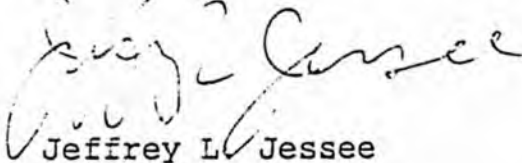
As if this were not enough, the statute effectively exempts school districts from it's "requirements". AS 08.84.150(b)(6). Why is it important to require a license for occupational therapists to work with adults in a hospital or clinic setting, but not to similarly protect our children? This is especially important because hospitals and clinics generally have inherently better supervision of these types of services than schools which provide them only as a related service.

As with PT, we should explore the option of including educational occupational therapy under a rational scheme of licensing which truly serves the public interest.

Letter to T. Buckner
March 14, 1989
Page 5 of 5

I look forward to our meeting, Tom. As an attorney and an advocate, it disturbs me to see a statutory scheme which stands in the way of good public policy instead of promoting it. I am hopeful that we can make progress on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeffrey L. Jessee".

Jeffrey L. Jessee
Supervising Attorney

bc

Enclosure

cc: Senator Fischer, Senate HESS Committee

cation, holds out as a licensed physical therapist is guilty of a Class B Misdemeanor.

AS 08.84.150 states that it is unlawful for anyone to practice physical therapy without being licensed in accordance with this chapter unless a student in an accredited physical therapy program or a graduate of a foreign school of physical therapy fulfilling the internship requirement of AS 08.84.032 (2), and then only under the continuous direction and immediate supervision of a physical therapist.

12 AAC54.910 (a) states that services may not be stated or implied as being physical therapy unless performed by a licensed physical therapist or physical therapy assistant, or under the direction of a licensed physical therapist.

12 AAC54.930 states as follows:

(a) A physical therapy assistant must work under the direction and supervision of a licensed physical therapist.

(b) A licensed physical therapist is responsible for and shall participate in the patient's care.

(c) A physical therapist may supervise and direct a maximum of two physical therapy assistants.

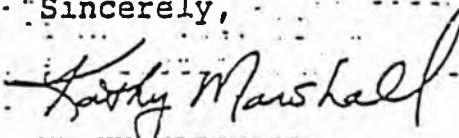
(d) A licensed physical therapy assistant shall have in possession written treatment plans formulated by the licensed physical therapist for each patient under the care of the physical therapy assistant. Treatment plans must be revised following periodic evaluations by the licensed physical therapist.

(e) A physical therapy assistant working in an isolated community must receive periodic supervision on site at least once every two weeks. The physical therapist shall be available for other contacts as needed. Directions may be given by telephone, verbally, or in writing.

A copy of Alaska Statute 08.84, regarding licensing of Physical Therapists and Physical Therapy Assistants, is enclosed for your information.

Your cooperation in this matter will be greatly appreciated, and a written response as to what Kenai Peninsula Borough School District's intentions in this matter are, would also be appreciated. If no reply is received from you, further action will be considered, including a Cease and Desist Order to stop further violations until this matter is resolved.

Sincerely,



KATHY MARSHALL
Director
Division of Occupational Licensing

Enclosures

RLS/rls

cc: Mr. Richard Long, Chief Investigator, Div of Occupational
Licensing; P.O. Box D-Lic, Juneau, AK 99811
Mr. Jeffrey L. Jessee, Supervising Attorney, PADD, 325 E.
3rd, Suite 400, Anchorage, AK 99501
Ms. Betty Ramage, Assist AG, Office of Attorney General, 1031
W. 4th Ave., Suite 200, Anchorage, AK 99501