

ORIGINAL

1982 - S.278

p.1

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S.278

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Introduced by Committee on Government Operations

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Subject: Professions and Occupations; licensing boards; review

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Sponsor's statement of purpose: It is the purpose of this bill to

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provide for continuing and thorough review of licensing boards by the

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secretary of state in accordance with statutory guidelines and stan-

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dards and to provide for the presentation of the secretary's conclu-

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sions and recommendations to the general assembly.

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	Own Vote		Legislative Vote						
	Yes	No	Date	Senate	House	Yes	No	Date	Comments
10			1st Reading						
11			Committee Report						
			2nd Reading						
			3rd Reading						
12			Amended - Calendar						
			Amended - Journal						
			Amended - Journal						
13			Committed						
			Recommitted						
14			Ordered to lie						
			Called up						
			Passed						
15			Messaged						
			Com. of Conference						
16			Withdrawn						
			Signed by Governor						

17

18

AN ACT ~~TO AMEND 26 V.S.A. §§ 3101, 3102 AND 3104 AND TO REPEAL 26~~

19

~~V.S.A. § 3103~~ RELATING TO REVIEW OF PROFESSIONAL AND OCCUPATIONAL

20

LICENSING BOARDS

21

It is hereby enacted by the General Assembly of the State of Vermont:

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1 Sec. 1. 26 V.S.A. § 3101 is amended to read:

2 § 3101. POLICY AND PURPOSE

3 The general assembly finds that

4 (1) The reason for regulating professions and occupations is to
5 protect the public health, safety and welfare;

6 (2) The state regulates professions and occupations through
7 boards (which in this chapter include commissions) which issue
8 licenses, certificates or permits, set standards of practice and en-
9 force those standards;

10 (3) Regulation has a significant impact on nearly every citizen
11 because it affects the quality, cost and availability of important
12 services;

13 (4) Problems which require regulation by boards change over
14 time;

15 (5) The legislature needs to know what the boards are doing, en-
16 sure their accountability and determine whether they have adequate
17 resources and authority to carry out the intent of the legislature;

18 (6) Therefore the legislature has a need periodically to review,
19 evaluate and make a decision based on current facts whether and how
20 to regulate a particular profession or occupation;

21 (7) To do this, the legislature needs to examine both the
22 licensing laws and the activities of the boards;

23 (8) The legislature needs to have an orderly procedure to make
24 sure that the review is thorough, the evaluation fair and the deci-
25 sion timely;

1 (9) These results will be properly achieved by a procedure which
2 provides*[:

3 (A) for review and evaluation;
4 (B) for automatic repeal of the existing licensing law; and
5 (C) for enactment if voted by the legislature of new law or
6 the reenactment of the law with or without amendment]* for regular
7 and timely review and evaluation.

8 Sec. 2. 26 V.S.A. § 3102 is amended to read:

9 § 3102. PERIODIC REVIEW REQUIREMENT

10 (a) Each licensing law enumerated below in subsection (b) of this
11 section, each board related thereto, and the activities resulting
12 shall be subject to periodic review in the manner provided in section
13 3104 of this title and on the basis of the criteria established in
14 section 3105 of this title.

15 (b) The following laws are *[repealed automatically by operation
16 of this section on the dates listed. In order for regulation of the
17 occupation or profession to continue, there must be a positive deci-
18 sion by the legislature through the enactment of a new law or the
19 reenactment of the law with or without amendment.]* covered by this
20 chapter:

21 *[(1) July 1, 1981:

22 (A) Chapter 23 of Title 4 on attorneys;

23 (B) Chapter 43 of Title 26 on veterinary science;

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1 (C) Chapter 49 of Title 26 on radio and television techni-
2 cians;

3 (D) Chapter 1 of Title 26 on accountants;

4 (E) Chapter 229 of Title 32 on private detectives;

5 (2) July 1, 1982:

6 (A) Chapter 29 of Title 26 on optometry;

7 (B) Chapter 35 of Title 26 on pharmacy;

8 (C) Chapter 37 of Title 26 on physical therapists;

9 (D) Chapter 51 of Title 26 on radiological technologists;

10 (E) Chapter 55 of Title 26 on psychologists;

11 (F) Chapter 47 of Title 26 on opticians;

12 (3) July 1, 1984:

13 (A) Chapter 3 of Title 26 on architects;

14 (B) Chapter 15 of Title 26 on electricians;

15 (C) Chapter 19 of Title 26 on engineering;

16 (D) Chapter 39 of Title 26 on plumbers and plumbing;

17 (E) Chapter 41 of Title 26 on real estate brokers and
18 salesmen;

19 (F) Chapter 45 of Title 26 on land surveyors;

20 (4) July 1, 1986:

21 (A) Chapter 7 of Title 26 on podiatry;

22 (B) Chapter 13 of Title 26 on dentists and dental hygienists;

23 (C) Chapter 23 of Title 26 on medicine and surgery;

24 (D) Chapter 28 of Title 26 on nursing;

25 (E) Chapter 31 of Title 26 on physicians' assistants;

- 1 (F) Chapter 33 of Title 26 on osteopathy;
2 (G) Chapter 9 of Title 26 on chiropractic;
3 (5) July 1, 1988:
4 (A) Chapter 46 of Title 18 on nursing home administrators;
5 (B) Chapter 5 of Title 26 on barbers;
6 (C) Chapter 11 of Title 26 on cosmeticians and hairdressers;
7 (D) Chapter 17 of Title 26 on embalmers;
8 (E) Chapter 21 of Title 26 on funeral directors.]*
9 (1) Chapter 23 of Title 4 on attorneys;
10 (2) Chapter 46 of Title 18 on nursing home administrators;
11 (3) Chapter 1 of Title 26 on accountants;
12 (4) Chapter 3 of Title 26 on architects;
13 (5) Chapter 5 of Title 26 on barbers;
14 (6) Chapter 7 of Title 26 on podiatry;
15 (7) Chapter 9 of Title 26 on chiropractic;
16 (8) Chapter 11 of Title 26 on cosmeticians and hairdressers;
17 (9) Chapter 13 of Title 26 on dentists and dental hygienists;
18 (10) Chapter 15 of Title 26 on electricians;
19 (11) Chapter 17 of Title 26 on embalmers;
20 (12) Chapter 19 of Title 26 on engineering;
21 (13) Chapter 21 of Title 26 on funeral directors;
22 (14) Chapter 23 of Title 26 on medicine and surgery;
23 (15) Chapter 28 of Title 26 on nursing;
24 (16) Chapter 30 of Title 26 on optometry;
25 (17) Chapter 31 of Title 26 on physicians' assistants;

- 1 (18) Chapter 33 of Title 26 on osteopathy;
- 2 (19) Chapter 36 of Title 26 on pharmacy;
- 3 (20) Chapter 37 of Title 26 on physical therapists;
- 4 (21) Chapter 39 of Title 26 on plumbers;
- 5 (22) Chapter 41 of Title 26 on real estate brokers and salesmen;
- 6 (23) Chapter 44 of Title 26 on veterinary science;
- 7 (24) Chapter 45 of Title 26 on land surveyors;
- 8 (25) Chapter 47 of Title 26 on opticians;
- 9 (26) Chapter 51 of Title 26 on radiological technologists;
- 10 (27) Chapter 55 of Title 26 on psychologists;
- 11 (28) Chapter 59 of Title 26 on private detectives and security
- 12 guards.

13 (c) Any new law to regulate another profession or occupation shall
14 be based on the relevant criteria and standards in section 3105 of
15 this title.

16 *[(d) A law to regulate a profession or occupation, enacted at any
17 time, remains in effect for six years from July 1 of the year in
18 which it is passed unless otherwise specifically provided. At the
19 end of six years, the law is repealed automatically by operation of
20 this section. Before the end of the fifth year, the entire procedure
21 in section 3104 of this title shall be repeated. In order for regu-
22 lation of the occupation or profession to continue for a further six
23 years, a new law must be enacted or the reenactment of the law with
24 or without amendment must take place.]*

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1 *[(e) This section shall not cause the dismissal of any claim or
2 right of a citizen against any board listed above in subsection (b)
3 or any claim or right of a board terminated pursuant to this section
4 which is subject to litigation. Any claim of right of or against a
5 board terminated pursuant to this section shall be assumed by the se-
6 cretary of state.]*

7 ~~Sec. 3. 26 V.S.A. § 3104 is amended to read:~~ (See page 7a)

8 ~~§ 3104. PROCESS FOR REVIEW~~

9 (a) ~~*[It is the intention of the legislature that legislative ac-~~
10 ~~tion resulting from the review of licensing laws and of boards under~~
11 ~~this chapter should be taken at least one year before a licensing law~~
12 ~~is scheduled for automatic repeal.]* Annually, the secretary of~~
13 ~~state shall review the activities of the boards and report his con-~~
14 ~~clusions and recommendations to the speaker of the house and the pre-~~
15 ~~sident of the senate prior to the commencement of the legislative~~
16 ~~session.~~

17 (b) *[(At least twenty-one months before a law is scheduled for
18 repeal under section 3102 of this title, the legislative council
19 staff shall complete a preliminary review of the law and the board
20 created by the law. The staff shall base its review on the criteria
21 and standards in section 3105 of this title.]* In making the review,
22 the secretary of state may seek/~~comments~~ and information from the pu-
23 blic, from members of the profession or occupation and from each
24 board. The secretary shall, upon request, have the assistance of the
25 legislative council, the department of budget and mangement, the au-

Sec. 3. 26 V.S.A. § 3104 is amended to read:

§ 3104. PROCESS FOR REVIEW

(a) Annually, the secretary of state shall review the activities of the boards and report in writing his assessments, conclusions and recommendations with proposals for legislation, if any, to the speaker of the house and the president of the senate prior to the commencement of the legislative session.

1 ditor of accounts, the attorney general, the joint fiscal committee
2 and any other state agency.

See page 8a

3 ~~*(c) *[In each case, the legislative council staff shall give ade-~~
4 ~~quate notice to the public that it is reviewing a particular law and~~
5 ~~board. All information and data reasonably requested for purposes of~~
6 ~~the review shall be provided by the boards. The staff shall seek~~
7 ~~comments and information from the public and from members of the~~
8 ~~profession or occupation. It also shall give the board a chance to~~
9 ~~present its position and to respond to any matters raised in the~~
10 ~~review. The staff, upon its request, shall have assistance from the~~
11 ~~department of budget and management, the auditor of accounts, the at-~~
12 ~~torney general, the secretary of state, the joint fiscal committee or~~
13 ~~any other state agency.]* The secretary of state shall give each~~
14 ~~board an opportunity to present its position, to respond to any mat-~~
15 ~~ters raised in the review and to include its response in the report.~~

16 *[(d) The legislative council staff shall file a separate written
17 report for each profession and occupation with the speaker of the
18 house and president of the senate. It shall file the reports at
19 least two months before the first day of the next regular legislative
20 session. The reports shall contain:

- 21 (1) findings, alternative courses of action, and recommenda-
22 tions,
23 (2) a copy of the board's administrative rules, and
24 (3) appropriate legislative proposals.]*
25

(c) An abbreviated notice of the contents of the report provided for in subsection (a), with especial reference to proposed legislative changes, if any, and explaining where to write or telephone for more information, shall be published by the secretary of state pursuant to 3 V.S.A. § 839(e).

1 *[(e) The speaker of the house and the president of the senate
2 each shall send each report to a standing committee which has juris-
3 diction over the subject matter. The legislative council staff shall
4 send a copy of the report to the board affected, and shall make
5 copies available for public inspection.]*

6 *[(f) After considering a report each standing committee shall
7 send its findings and recommendations to the house or the senate.
8 Where standing committees in each house recommend enactment of a new
9 licensing law, they shall agree in which chamber to initiate a bill.
10 If they cannot agree, each standing committee shall initiate a bill.
11 The proposed licensing law shall be drafted according to a uniform
12 format recommended in the comprehensive plan.]*

13 Sec. 4. REPEAL

14 26 V.S.A. § 3103 is repealed.

15 Sec. 5. This act shall take effect from passage.
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Sec. 1. 26 V.S.A. § 3102 is amended to read:

§ 3102. PERIODIC REVIEW REQUIREMENT

(a) Each licensing law enumerated below in subsection (b) of this section, each board related thereto, and the activities resulting shall be subject to periodic review in the manner provided in section 3104 of this title and on the basis of the criteria established in section 3105 of this title.

(b) The following laws are repealed automatically by operation of this section on the dates listed. In order for regulation of the occupation or profession to continue, there must be a positive decision by the legislature through the enactment of a new law or the reenactment of the law with or without amendment. Beginning in 1996, the schedule for reviews and automatic repeals shall be repeated with appropriate adjustments made in the dates of repeal listed below.

(1) July 1, 1984

- (A) Chapter 23 of title 4 on attorneys;
- (B) Chapter 30 of title 26 on optometry;
- (C) Chapter 35 of title 26 on pharmacy;
- (D) Chapter 51 of title 26 on radiological technologists;
- (E) Chapter 47 of title 26 on opticians;
- (F) Chapter 41 of title 26 on real estate brokers and

salesmen;

- (G) Chapter 19 of title 26 on engineering;

(2) July 1, 1986

- (A) Chapter 3 of title 26 on architects;
- (B) Chapter 45 of title 26 on land surveyors;
- (C) Chapter 31 of title 26 on physicians' assistants;
- (D) Chapter 7 of title 26 on podiatry;

(3) July 1, 1988

- (A) Chapter 15 of title 26 on electricians;
- (B) Chapter 39 of title 26 on plumbers and plumbing;
- (C) Chapter 28 of title 26 on nursing;
- (D) Chapter 9 of title 26 on chiropractic;

(4) July 1, 1990

- (A) Chapter 5 of title 26 on barbers;
- (B) Chapter 11 of title 26 on cosmeticians and hairdressers;
- (C) Chapter 23 of title 26 on medicine and surgery;
- (D) Chapter 33 of title 26 on osteopathy;

(5) July 1, 1992

- (A) Chapter 13 of title 26 on dentists and dental hygienists;
- (B) Chapter 46 of title 18 on nursing home administrators;
- (C) Chapter 17 of title 26 on embalmers;
- (D) Chapter 21 of title 26 on funeral directors;

(6) July 1, 1994

- (A) Chapter 43 of title 26 on veterinary science;
- (B) Chapter 1 of title 26 on accountants;
- (C) Chapter 229 of title 32 on private detectives;
- (D) Chapter 55 of title 26 on psychologists;

(c) Any new law to regulate another profession or occupation shall be based on the relevant criteria and standards in section 3105 of this title.

(d) A law to regulate a profession or occupation, enacted at any time, remains in effect for twelve years from July 1 of the year in which it is passed unless otherwise specifically provided. At the end of twelve years, the law is repealed automatically by operation of this section. Before the end of the eleventh year, the entire procedure in section 3104 of this title shall be repeated. In order for regulation of the occupation or profession to continue for a further twelve years, a new law must be enacted or the reenactment of the law with or without amendment must take place.

(e) This section shall not cause the dismissal of any claim or right of a citizen against any board listed above in subsection (b) or any claim or right of a board terminated pursuant to this section which is subject to litigation. Any claim of right of or against a board terminated pursuant to this section shall be assumed by the secretary of state.

Sec. 2. 26 V.S.A. § 3104 is amended to read:

§ 3104. PROCESS FOR REVIEW

(a) It is the intention of the legislature that legislative action resulting from the review of licensing laws and of boards under this chapter should be taken at least one year before a licensing law is scheduled for automatic repeal.

(b) At least twenty-one months before a law is scheduled for repeal under section 3102 of this title, the legislative council staff shall complete a preliminary review of the law and the board created by the law. The staff shall base its review on the criteria and standards in section 3105 of this title.

(c) In each case, the legislative council staff shall give adequate notice to the public that it is reviewing a particular law and board. All information and data reasonably requested for purposes of the review shall be provided by the boards. The staff shall seek comments and information from the public and from members of the profession or occupation. It also shall give the board a chance to present its position and to respond to any matters raised in the review. The staff, upon its request, shall have assistance from the department of budget and management, the auditor of accounts, the attorney general, the secretary of state, the joint fiscal committee or any other state agency.

(d) The legislative council staff shall file a separate written report for each profession and occupation with the speaker of the house and president of the senate and with the chairman of the house or senate committee on government operations, as provided in subsection (f). It shall file the reports at least two months before the first day of the next regular legislative session. The reports shall contain:

- (1) findings, alternative courses of action, and recommendations,
- (2) a copy of the board's administrative rules, and
- (3) appropriate legislative proposals.

(e) The legislative council staff shall send a copy of the report to the board affected, and shall make copies available for public inspection.

(f) The house and senate committees on government operations shall be responsible for overseeing the preparation of reports by the legislative council staff under this chapter, with allocation of the committee workload to be determined jointly by the committee chairmen and insofar as possible to be divided equally.

(g) After considering a report each committee shall send its findings and recommendations, including proposals for legislation, if any, to the house or to the senate, as appropriate. Any proposed licensing law shall be drafted according to a uniform format recommended in the comprehensive plan.

Sec. 3. 26 V.S.A. § 3106 is added to read:

§ 3106. SECRETARY OF STATE; ANNUAL REPORT

(a) The secretary of state shall prepare an annual report on the activities of all licensing boards under his jurisdiction. The report need not be a thorough review. The secretary shall report in writing his assessments, conclusions and recommendations with proposals for legislation, if any, to the speaker of the house and ^{to} the chairmen of the government operations committees of the house and senate prior to the commencement of the next legislative session.

(b) Each licensing board may prepare an annual report of its activities for the preceding year to be filed on or before January 1 with the secretary of state and with the chairmen of the government operations committees of the house and senate.

Sec. 4. 1 V.S.A. § 317(b)(10) is amended to read:

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

Sec. 5. 26 V.S.A. § 991(a)(1) is amended to read:

(1) graduated from a school of funeral service accredited or approved by the American board of funeral service education in a course of instruction of not less than two academic years, or graduated from a school of funeral service accredited or approved by the American board of funeral service education in a course of instruction of not less than one academic year or its equivalent as determined by the board, with 30 additional credit hours in subjects approved by the board and obtained in a college or university approved by the board, and

Sec. 6. 26 V.S.A. Chapter 38 is added to read:

CHAPTER 38. PHYSICAL THERAPISTS

Subchapter 1. General Provisions

§ 2081. DEFINITIONS

In this chapter, unless the context otherwise requires:

(1) "Physical therapy" means the evaluation and treatment of any person by the employment of effective properties of physical measures and the use of therapeutic exercises and rehabilitative procedures, with or without assistive devices, for the purposes of preventing, correcting or alleviating a physical or mental disability. Physical therapy includes the performance of specialized tests, administration of specialized therapeutic procedures, interpretation of a treatment plan developed in consultation with, and periodically reviewed by, physicians licensed to practice medicine, surgery, or dentistry and establishment and modification of physical therapy programs for patients.

(2) A "physical therapist" is a person who practices physical therapy in some or all aspects of the above and is licensed to practice physical therapy in this state.

(3) "Physical therapist assistant" means any person who assists and works under the direction of a physical therapist by performing such physical therapy-related activities assigned by a licensed physical therapist which are commensurate with the person's education and training, but not the interpretation of a treatment plan developed in consultation with, and periodically reviewed by a physician licensed to practice medicine, surgery, or dentistry, or the determination of a patient's programs.

(4) "Disciplinary action" or "disciplinary cases" includes any action taken by the appeals panel established in 3 V.S.A. § 114a against a licensee or applicant premised upon a finding of wrongdoing or unprofessional conduct by the licensee or applicant. It includes all sanctions of any kind, including obtaining injunctions, suspending or revoking licenses, issuing warnings and other similar sanctions and ordering restitution.

§ 2082. PROHIBITION; OFFENSES

No person shall:

(1) practice or attempt to practice physical therapy or hold himself or herself out as being able to do so in this state without first having obtained a license; or

(2) use in connection with the person's name any letters, words, or insignia indicating or implying that the person is a physical therapist or physical therapist assistant unless the person is licensed in accordance with this chapter; or

(3) practice or attempt to practice physical therapy during license revocation or suspension; or

(4) violate any of the provisions of this chapter.

(b) A person violating any of the provisions of subsection (a) shall be guilty of a misdemeanor and shall be fined not more than \$1,000.00 or imprisoned not more than 30 days, or both, for each occurrence.

§ 2083. EXEMPTIONS FROM LICENSURE

The following persons shall be permitted to practice as a physical therapist or physical therapist assistant in this state without obtaining a license under this chapter upon the following conditions:

(1) students enrolled in accredited physical therapist or physical therapist assistant educational programs, while engaged in completing a clinical requirement for graduation, which must be performed under the supervision and direction of a licensed physical therapist;

(2) physical therapists licensed in other jurisdictions while enrolled in this state in graduate educational programs that include the evaluation and treatment of patients as part of their experience required for credit, as long as the student's practice is limited to the scope of the educational program;

(3) practitioners of physical therapy employed in the United States Armed Services, United States Public Health Service, Veterans Administration or other federal agency;

(4) physical therapists or physical therapist assistants licensed in other jurisdictions who are teaching or participating in special physical therapy education projects, demonstrations or courses in this state, in which their participation in the evaluation and treatment of patients is minimal.

§ 2084. CONSTRUCTION

This chapter shall not be construed to limit or restrict in any manner the right of a practitioner of another occupation which is regulated by this state from carrying on in the usual manner any of the functions of his or her profession.

Subchapter 2. Administration

§ 2091. SECRETARY OF STATE ;DUTIES

The secretary of state shall:

(1) provide general information to applicants for admission to licensure as physical therapists or physical therapist assistants;

(2) explain appeal procedures to licensees and applicants and complaint procedures to the public;

(3) explain sanctions, including license revocation and suspension, which may be imposed in disciplinary cases, the criteria by which sanctions are selected and procedures for reinstatement where appropriate;

(4) administer fees as previously established by law;

(5) receive applications for licensure, administer examinations,

provide licenses to applicants qualified under this chapter, renew, revoke and reinstate licenses as ordered by the appeals panel; and

(6) issue to each person licensed, a certificate of licensure which shall be prima facie evidence of the right of the person to whom it is issued to practice as a licensed physical therapist or to represent himself or herself as a licensed physical therapist assistant, subject to the conditions and limitations of this chapter.

§ 2092. FUNCTIONS OF APPEALS PANEL

(a) The secretary of state shall appoint two physical therapists to serve as members of the appeals panel established under 3 V.S.A.

§ 114a. They shall serve in lieu of the ad hoc members required under that section, in matters relating to physical therapy. They shall be appointed for staggered three year terms, shall serve at the pleasure of the secretary and shall be entitled to full participation in the business of that panel when it is considering matters relating to physical therapy. One of the initial appointments may be for less than a three year term. Appointees shall have not less than three years experience as a physical therapist immediately preceding appointment and shall be actively engaged in the practice of physical therapy in Vermont during incumbency.

(b) The secretary of state shall refer complaints and disciplinary matters to the appeals panel.

(c) The secretary of state shall seek the advice of the physical therapist members of the appeals panel in carrying out the provisions of this chapter.

Subchapter 3. Licensure

§ 2101. ELIGIBILITY

To be eligible for licensure as a physical therapist or physical therapist assistant an applicant must:

(1) be entitled to licensure without examination, or

(2) have been graduated from a physical therapy program which is accredited by an agency recognized by the United States Department of Education or the Council on Post-secondary Accreditation or submit to the board proof of equivalent education as provided in regulations for foreign trained persons, and

(3) pass an examination to the satisfaction of the secretary of state.

§ 2102. APPLICATION

Unless entitled to licensure under section 2104, and according to the procedures outlined in the rules of the secretary of state, a person who desires to be licensed as a physical therapist or physical therapist assistant shall apply to the secretary in writing on a form furnished by the secretary, accompanied by payment of the specified fee.

§ 2103. EXAMINATION

(a) The secretary of state shall examine applicants for licensure as physical therapists or physical therapist assistants at such times and places as he or she may determine. The physical therapy examination shall include the applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics, growth and development; physical therapy applied to

medicine, neurology, orthopedics, pediatrics, psychiatry, geriatrics, community health and surgery and also medical ethics, technical procedures in the practice of physical therapy and such other subjects as the secretary of state may deem necessary, including a practical examination.

(b) The physical therapist assistant examination shall include the following subjects: the applied sciences of anatomy, kinesiology, physics, pathology, physiology, medical ethics; selected physical therapy procedures which include massage, electrotherapy, hydrotherapy, thermotherapy, therapeutic exercise and rehabilitative procedures and such other subjects as the secretary of state deems necessary, including a practical examination.

(c) Examinations administered and procedures followed by the secretary shall be fair and reasonable and shall be designed and implemented to reasonably ensure that an applicant is at least minimally qualified to practice physical therapy. They shall not be designed or implemented for the purpose of limiting the number of licensees.

§ 2104. LICENSURE WITHOUT EXAMINATION

A person who is licensed under the laws of another jurisdiction and who desires licensure as a physical therapist or physical therapist assistant without examination shall apply to the secretary of state in writing on a form furnished by the secretary, accompanied by the specified fee. The secretary shall license those persons if he or she deems that they have met requirements in the other jurisdiction which are substantially equal to those of this state. In all other

cases, the secretary of state may make such regulations as are reasonable and necessary for the protection of the public to assure that the applicant under this section is professionally qualified.

§ 2105. TEMPORARY LICENSURE WITHOUT EXAMINATION

(a) A temporary license without examination for practice under the direction of a physical therapist licensed in Vermont may be issued to a person who applies for the first time to practice physical therapy in this state as a physical therapist or as a physical therapist assistant under section 2103 ^{or} ~~and~~ 2104 and meets all other qualifications thereunder.

(b) A temporary license may be issued only for the purpose of allowing a qualified applicant to practice as a physical therapist or as a physical therapist assistant until:

(1) the applicant takes the next examination provided by the secretary of state under section 2103 and a determination is made of his qualifications to practice in this state, or

(2) the necessary data for licensure without examination under section 2104 is collected and ruled on by the secretary of state.

(c) Temporary licenses shall be issued on payment of the specified fee for a fixed period of time to be determined by the secretary of state and shall not be renewed except by the secretary of state subject to proof of good and an exceptional cause shown by the applicant.

Subchapter 4. Discipline

§ 2121. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct is the conduct prohibited by this section or by the other statutes relating to physical therapy, whether or not taken by a license holder.

(b) Unprofessional conduct shall include:

(1) fraudulent or deceptive procuring or use of a license;

(2) wilfully making or filing false reports or records in the practice of physical therapy, wilfully impeding or obstructing the proper making or filing of reports or records, or wilfully failing to file the proper report or record;

(3) physical therapy advertising which is intended or has a tendency to deceive the public;

(4) exercising undue influence on or taking improper advantage of a person using physical therapy service, or promoting the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner or of a third party;

(5) failure to comply with substantial provisions of federal law or state statute governing the practice of physical therapy;

(6) conviction of a crime related to the practice of physical therapy;

(7) failing to make available, upon request of a person using physical therapy services, copies of documents in the possession or under the control of the practitioner, when those documents have been prepared for and purchased by the user of services;

(8) conduct which evidences moral unfitness to practice physical therapy;

(9) practicing physical therapy when medically unfit to do so;

(10) gross or repeated malpractice;

(11) any of the following except when reasonably undertaken in an emergency situation in order to protect life, health or property:

(A) practicing or offering to practice beyond the scope permitted by law; or

(B) accepting and performing physical therapy responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;

(C) performing physical therapy services which have not been authorized by the consumer or the consumer's legal representative.

(c) After hearing, the appeals panel may take disciplinary action against a licensee or applicant found guilty of unprofessional conduct. Panel sanctions imposed against an applicant shall be limited to denial of a license and notification of relevant state and federal agencies of the unprofessional conduct of an applicant.

Sec. 7. REPEAL

(a) Sec. 3 of Act No. 183 of the 1977 Adjourned Session, as amended by Sec. 3 of Act No. 105 of the 1981 Session, is repealed.

(b) 26 V.S.A. chapter 37 (physical therapists) is repealed.

Sec. 8. EFFECTIVE DATE

This section and Sec.1 shall take effect from passage.

ATTESTED TO:

Robert H. Gibson

Robert H. Gibson
Secretary of the Senate

Franklin M. Turner

PRESIDENT OF THE SENATE

W. A. Morris

SPEAKER OF THE HOUSE OF REPRESENTATIVES

Franklin A. Smith

GOVERNOR, STATE OF VERMONT

5/6/82