

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 3338

(SENATE AUTHORS: **BOLDON, Utke, Hoffman, Pappas and Dibble**)

DATE	D-PG	OFFICIAL STATUS
05/16/2023	8156	Introduction and first reading Referred to Health and Human Services

1.1 A bill for an act

1.2 relating to health occupations; modifying provisions governing the practice or

1.3 provision of physical therapy; providing criminal penalties; amending Minnesota

1.4 Statutes 2022, sections 148.65, subdivisions 1, 5, 6; 148.706; 148.75; 148.76;

1.5 repealing Minnesota Statutes 2022, sections 148.65, subdivision 9; 148.77.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2022, section 148.65, subdivision 1, is amended to read:

1.8 Subdivision 1. **Physical therapy.** As used in sections 148.65 to 148.78 the term "physical

1.9 therapy" means the evaluation or treatment or both of any person by the employment of

1.10 physical measures and the use of therapeutic exercises and rehabilitative procedures, with

1.11 or without assistive devices, for the purpose of preventing, correcting, or alleviating a

1.12 physical or mental disability. Physical measures shall include but shall not be limited to

1.13 heat or cold, air, light, water, electricity, and sound. Physical therapy includes evaluation,

1.14 diagnosis other than medical diagnosis, treatment planning, treatment, documentation,

1.15 performance of appropriate tests and measurement, interpretation of orders or referrals,

1.16 instruction, consultative services, ~~and~~ supervision of supportive personnel, and prevention,

1.17 wellness, fitness, health promotion, and education in populations of all ages. "Physical

1.18 therapy" does not include the practice of medicine as defined in section 147.081, or the

1.19 practice of chiropractic as defined in section 148.01.

1.20 Sec. 2. Minnesota Statutes 2022, section 148.65, subdivision 5, is amended to read:

1.21 Subd. 5. **Student physical therapist.** "Student physical therapist" means a person in a

1.22 professional educational program, approved by the board under section 148.705, who is

1.23 satisfying supervised clinical education requirements by performing physical therapy under

2.1 the on-site supervision of a licensed physical therapist. "On-site supervision" means the
 2.2 physical therapist is easily available for instruction to the student physical therapist. ~~The~~
 2.3 ~~physical therapist shall have direct contact with the patient during at least every second~~
 2.4 ~~treatment session by the student physical therapist.~~ Telecommunications, except within the
 2.5 facility, does not meet the requirement of on-site supervision.

2.6 Sec. 3. Minnesota Statutes 2022, section 148.65, subdivision 6, is amended to read:

2.7 Subd. 6. **Student physical therapist assistant.** "Student physical therapist assistant"
 2.8 means a person in a physical therapist assistant educational program accredited by the
 2.9 Commission on Accreditation in Physical Therapy Education (CAPTE) or a recognized
 2.10 comparable national accrediting agency approved by the board. The student physical therapist
 2.11 assistant, under the ~~direct~~ on-site supervision of the physical therapist, or the ~~direct~~ on-site
 2.12 supervision of the physical therapist and physical therapist assistant team, performs physical
 2.13 therapy interventions and assists with coordination, communication, documentation, and
 2.14 patient-client-related instruction. "~~Direct~~ "On-site supervision" means the physical therapist
 2.15 or physical therapist assistant is physically present and immediately easily available to
 2.16 provide instruction to the student physical therapist assistant. Telecommunications, except
 2.17 within the facility, does not meet the requirement of on-site supervision.

2.18 Sec. 4. Minnesota Statutes 2022, section 148.706, is amended to read:

2.19 **148.706 PHYSICAL THERAPIST ASSISTANTS, AIDES, AND STUDENTS.**

2.20 Subdivision 1. **Supervision.** (a) Every physical therapist who uses the services of a
 2.21 physical therapist assistant or physical therapy aide for the purpose of assisting in the practice
 2.22 of physical therapy is responsible for functions performed by the assistant or aide while
 2.23 engaged in such assistance. The physical therapist shall ~~delegate~~ direct duties to the physical
 2.24 therapist assistant and assign tasks to the physical therapy aide in accordance with subdivision
 2.25 2.

2.26 (b) A licensed physical therapist may supervise no more than two physical therapist
 2.27 assistants at any time. A physical therapist supervising physical therapist assistants is not
 2.28 required to be on site, but must be easily available by telecommunications.

2.29 (c) Physical therapists who instruct student physical therapists and student physical
 2.30 therapist assistants are responsible for the functions performed by the students and shall
 2.31 supervise the students as provided under section 148.65, subdivisions 5 and 6. ~~A licensed~~
 2.32 ~~physical therapist may supervise no more than two physical therapist assistants at any time.~~
 2.33 A physical therapist supervising a student physical therapist shall have direct contact with

3.1 the patient during at least every second treatment session by the student physical therapist.
 3.2 A physical therapist or physical therapist assistant supervising a student physical therapist
 3.3 assistant shall have direct contact with the patient during at least every second treatment
 3.4 session by the student physical therapist assistant.

3.5 Subd. 2. ~~Delegation~~ Direction of duties. The physical therapist ~~may delegate~~ is
 3.6 authorized to direct patient treatment procedures only to a physical therapist assistant who
 3.7 has sufficient didactic and clinical preparation. The physical therapist may not ~~delegate~~
 3.8 direct the following activities to ~~the~~ a physical therapist assistant or to other supportive
 3.9 personnel: initial patient examination and evaluation, treatment planning, initial treatment,
 3.10 change of treatment development and modification of the plan of care, and initial or final
 3.11 documentation.

3.12 Subd. 3. ~~Observation of~~ Collaboration with physical therapist assistants. When a
 3.13 physical therapist directs components of a patient's treatment ~~are delegated~~ to a physical
 3.14 therapist assistant, a physical therapist must ~~provide on-site observation of the treatment~~
 3.15 ~~and documentation of its appropriateness at least every six treatment sessions. The physical~~
 3.16 ~~therapist is not required to be on site, but must be easily available by telecommunications.:~~

3.17 (1) have a real-time collaborative treatment session that takes place in person or remotely
 3.18 via telehealth with the physical therapist assistant; and

3.19 (2) document the continued appropriateness of the plan of care at least every six treatment
 3.20 sessions.

3.21 Subd. 4. **Observation of physical therapy aides.** The physical therapist must observe
 3.22 the patient's status before and after the treatment administered by a physical therapy aide.
 3.23 The physical therapy aide may perform tasks related to preparation of patient and equipment
 3.24 for treatment, housekeeping, transportation, clerical duties, departmental maintenance, and
 3.25 selected treatment procedures. The tasks must be performed under the direct supervision
 3.26 of a physical therapist who is readily available for advice, instruction, or immediate
 3.27 assistance.

3.28 Sec. 5. Minnesota Statutes 2022, section 148.75, is amended to read:

3.29 **148.75 DISCIPLINARY ACTION.**

3.30 (a) The board may impose disciplinary action specified in paragraph (b) against an
 3.31 applicant or licensee whom the board, by a preponderance of the evidence, determines:

3.32 (1) has violated a statute, rule, order, or agreement for corrective action that the board
 3.33 issued or is otherwise authorized or empowered to enforce;

4.1 (2) is unable to practice physical therapy with reasonable skill and safety by reason of
4.2 any mental or physical illness or condition, including deterioration through the aging process
4.3 or loss of motor skills, or use of alcohol, drugs, narcotics, chemicals, or any other type of
4.4 material;

4.5 (3) has been convicted of or has pled guilty or nolo contendere to a felony or other crime,
4.6 an element of which is dishonesty or fraud, or has been shown to have engaged in acts or
4.7 practices tending to show that the applicant or licensee is incompetent or has engaged in
4.8 conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in
4.9 the practice of physical therapy;

4.10 (4) has been convicted of violating any state or federal narcotic law;

4.11 (5) has obtained or attempted to obtain a license or approval of continuing education
4.12 activities, or passed an examination, by fraud or deception;

4.13 (6) has engaged in unprofessional conduct or any other conduct which has the potential
4.14 for causing harm to the public, including any departure from or failure to conform to the
4.15 minimum standards of acceptable and prevailing practice without actual injury having to
4.16 be established;

4.17 (7) has engaged in gross negligence in the practice of physical therapy as a physical
4.18 therapist or in providing physical therapy as a physical therapist assistant;

4.19 ~~(8) has treated human ailments by physical therapy after an initial 90-day period of~~
4.20 ~~patient admittance to treatment has lapsed, except by the order or referral of a person licensed~~
4.21 ~~in this state in the practice of medicine as defined in section 147.081, the practice of~~
4.22 ~~chiropractic as defined in section 148.01, the practice of podiatry as defined in section~~
4.23 ~~153.01, or the practice of dentistry as defined in section 150A.05, or the practice of advance~~
4.24 ~~practice nursing as defined in section 148.171, subdivision 3, when orders or referrals are~~
4.25 ~~made in and whose license is in collaboration with a physician, chiropractor, podiatrist, or~~
4.26 ~~dentist, and whose license is in good standing; or when a previous diagnosis exists indicating~~
4.27 ~~an ongoing condition warranting physical therapy treatment, subject to periodic review~~
4.28 ~~defined by board of physical therapy rule. The 90-day limitation of treatment by a physical~~
4.29 ~~therapist without an order or referral does not apply to prevention, wellness, education, or~~
4.30 ~~exercise;~~

4.31 (9) ~~for a physical therapist licensed less than one year, has treated human ailments,~~
4.32 ~~without referral, by physical therapy treatment without first having practiced one year in~~
4.33 ~~collaboration with a physical therapist with more than one year of experience or under a~~
4.34 ~~physician's orders or referrals as verified by the board's records;~~

5.1 ~~(10) has failed to consult with the patient's licensed health care provider, or licensed~~
5.2 ~~health care professional, who prescribed the physical therapy treatment if the treatment is~~
5.3 ~~altered by the physical therapist from the original written order. The provision does not~~
5.4 ~~include written orders to "evaluate and treat";~~

5.5 ~~(11) (8) has inappropriately delegated~~ directed components of a patient's treatment to a
5.6 physical therapist assistant or inappropriately assigned tasks to an aide, or inadequately
5.7 supervised a student physical therapist, physical therapist assistant, student physical therapist
5.8 assistant, or a physical therapy aide;

5.9 ~~(12) (9) has practiced as a physical therapist performing medical diagnosis, the practice~~
5.10 ~~of medicine as defined in section 147.081, or the practice of chiropractic as defined in~~
5.11 ~~section 148.01;~~

5.12 ~~(13) (10) has failed to comply with a reasonable request to obtain appropriate clearance~~
5.13 ~~for mental or physical conditions that would interfere with the ability to practice physical~~
5.14 ~~therapy, and that may be potentially harmful to patients;~~

5.15 ~~(14) (11) has divided fees with, or is paying or promising to pay a commission or part~~
5.16 ~~of the fee to, any person who contacts the physical therapist for consultation or sends patients~~
5.17 ~~to the physical therapist for treatment;~~

5.18 ~~(15) (12) has engaged in an incentive payment arrangement, other than that prohibited~~
5.19 ~~by clause (14) (11), that tends to promote physical therapy overuse, that allows the referring~~
5.20 ~~person or person who controls the availability of physical therapy services to a client to~~
5.21 ~~profit unreasonably as a result of patient treatment;~~

5.22 ~~(16) has failed to refer to a licensed health care professional a patient whose medical~~
5.23 ~~condition has been determined by the physical therapist to be beyond the scope of practice~~
5.24 ~~of a physical therapist;~~

5.25 ~~(17) (13) has failed to report to the board other licensees who violate this section;~~

5.26 ~~(18) (14) has engaged in the practice of physical therapy under lapsed or nonrenewed~~
5.27 ~~credentials;~~

5.28 ~~(19) (15) has had a license, certificate, charter, registration, privilege to take an~~
5.29 ~~examination, or other similar authority denied, revoked, suspended, canceled, limited,~~
5.30 ~~reprimanded, or otherwise disciplined, or not renewed for cause in any jurisdiction; or has~~
5.31 ~~surrendered or voluntarily terminated a license or certificate during a board investigation~~
5.32 ~~of a complaint, as part of a disciplinary order, or while under a disciplinary order;~~

6.1 ~~(20)~~ (16) has been subject to a corrective action or similar action in another jurisdiction
6.2 or by another regulatory authority; or

6.3 ~~(21)~~ (17) has failed to cooperate with an investigation of the board, including responding
6.4 fully and promptly to any question raised by or on behalf of the board relating to the subject
6.5 of the investigation, executing all releases requested by the board, providing copies of patient
6.6 records, as reasonably requested by the board to assist it in its investigation, and appearing
6.7 at conferences or hearings scheduled by the board or its staff.

6.8 (b) If grounds for disciplinary action exist under paragraph (a), the board may take one
6.9 or more of the following actions:

6.10 (1) deny the application for licensure;

6.11 (2) deny the renewal of the license;

6.12 (3) revoke the license;

6.13 (4) suspend the license;

6.14 (5) impose limitations or conditions on the licensee's practice of physical therapy,
6.15 including the: (i) limitation of scope of practice to designated field specialties; (ii) imposition
6.16 of retraining or rehabilitation requirements; (iii) requirement of practice under supervision;
6.17 or (iv) conditioning of continued practice on demonstration of knowledge or skills by
6.18 appropriate examination, monitoring, or other review of skill and competence;

6.19 (6) impose a civil penalty not to exceed \$10,000 for each separate violation, the amount
6.20 of the civil penalty to be fixed so as to deprive the physical therapist of any economic
6.21 advantage gained by reason of the violation charged, to discourage similar violations, or to
6.22 reimburse the board for the cost of the investigation and proceeding including, but not
6.23 limited to, fees paid for services provided by the Office of Administrative Hearings, legal
6.24 and investigative services provided by the Office of the Attorney General, court reporters,
6.25 witnesses, reproduction of records, board members' per diem compensation, board staff
6.26 time, and travel costs and expenses incurred by board staff and board members;

6.27 (7) order the licensee to provide unremunerated service;

6.28 (8) censure or reprimand the licensee; or

6.29 (9) any other action as allowed by law and justified by the facts of the case.

6.30 (c) A license to practice as a physical therapist or physical therapist assistant is
6.31 automatically suspended if (1) a guardian of the licensee is appointed by order of a court
6.32 pursuant to sections 524.5-101 to 524.5-502, for reasons other than the minority of the

7.1 licensee; or (2) the licensee is committed by order of a court pursuant to chapter 253B. The
 7.2 license remains suspended until the licensee is restored to capacity by a court and, upon
 7.3 petition by the licensee, the suspension is terminated by the Board of Physical Therapy after
 7.4 a hearing.

7.5 Sec. 6. Minnesota Statutes 2022, section 148.76, is amended to read:

7.6 **148.76 PROHIBITED CONDUCT.**

7.7 Subdivision 1. **Licensure required.** (a) No person shall:

7.8 (1) provide physical therapy unless the person is licensed as a physical therapist or
 7.9 physical therapist assistant under sections 148.65 to 148.78;

7.10 (2) use the title of physical therapist ~~without a license as a physical therapist or use the~~
 7.11 ~~title physical therapist assistant without a license as a physical therapist assistant issued~~
 7.12 ~~under sections 148.65 to 148.78;~~

7.13 ~~(3)~~₂ in any manner hold out as a physical therapist or as a provider of physical therapy,
 7.14 or use in connection with the person's name the words or letters Physical Therapist, Doctor
 7.15 of Physical Therapy, Physiotherapist, Physical Therapy Technician, Registered Physical
 7.16 Therapist, Licensed Physical Therapist, PT, DPT, PTT, RPT, LPT, or any letters, words,
 7.17 abbreviations or insignia indicating or implying that the person is a physical therapist,
 7.18 without a license being licensed as a physical therapist ~~issued~~ under sections 148.65 to
 7.19 148.78. ~~To do so is a gross misdemeanor;~~

7.20 ~~(4)~~ (3) use the title of physical therapist assistant, in any manner hold out as a physical
 7.21 therapist assistant, or use in connection with the person's name the words or letters Physical
 7.22 Therapist Assistant, P.T.A., or any letters, words, abbreviations, or insignia indicating or
 7.23 implying that the person is a physical therapist assistant, without a license being licensed
 7.24 as a physical therapist assistant under sections 148.65 to 148.78. ~~To do so is a gross~~
 7.25 ~~misdemeanor;~~ or

7.26 ~~(5)~~ (4) employ fraud or deception in applying for or securing a license as a physical
 7.27 therapist or physical therapist assistant.

7.28 (b) No person, business entity, or employee, agent, or representative of a business entity
 7.29 shall use, in connection with that person's name or with the activity of the business, the
 7.30 words physical therapy or physiotherapy or any other words, abbreviations, or insignia
 7.31 indicating or implying, directly or indirectly, that physical therapy is provided or supplied,
 7.32 unless the services are provided by or under the direction and supervision of a person licensed
 7.33 as a physical therapist under sections 148.65 to 148.78. No person or business entity shall

8.1 advertise or otherwise promote another person as being a physical therapist or physiotherapist
 8.2 unless the person who is advertised or promoted is licensed as a physical therapist under
 8.3 sections 148.65 to 148.78. A person or business entity that offers, provides, or bills any
 8.4 other person for services shall not characterize the services as physical therapy or
 8.5 physiotherapy unless the services are provided by or under the direction and supervision of
 8.6 a person licensed as a physical therapist under sections 148.65 to 148.78.

8.7 (c) Nothing in sections 148.65 to 148.78 prohibits a person licensed or registered in this
 8.8 state under another law from carrying out the therapy or practice for which the person is
 8.9 duly licensed or registered.

8.10 Subd. 2. ~~Prohibitions~~ Prohibition. (a) No physical therapist may:

8.11 ~~(1) treat human ailments by physical therapy after an initial 90-day period of patient~~
 8.12 ~~admittance to treatment has lapsed, except by the order or referral of a person licensed in~~
 8.13 ~~this state to practice medicine as defined in section 147.081, the practice of chiropractic as~~
 8.14 ~~defined in section 148.01, the practice of podiatry as defined in section 153.01, the practice~~
 8.15 ~~of dentistry as defined in section 150A.05, or the practice of advanced practice nursing as~~
 8.16 ~~defined in section 62A.15, subdivision 3a, when orders or referrals are made in collaboration~~
 8.17 ~~with a physician, chiropractor, podiatrist, or dentist, and whose license is in good standing;~~
 8.18 ~~or when a previous diagnosis exists indicating an ongoing condition warranting physical~~
 8.19 ~~therapy treatment, subject to periodic review defined by Board of Physical Therapy rule.~~
 8.20 ~~The 90-day limitation of treatment by a physical therapist without an order or referral does~~
 8.21 ~~not apply to prevention, wellness, education, or exercise;~~

8.22 ~~(2) use any chiropractic manipulative technique whose end is the chiropractic adjustment~~
 8.23 ~~of an abnormal articulation of the body; and~~

8.24 ~~(3) treat human ailments other than by physical therapy unless duly licensed or registered~~
 8.25 ~~to do so under the laws of this state.~~

8.26 ~~(b) No physical therapist licensed less than one year may treat human ailments, without~~
 8.27 ~~referral, by physical therapy treatment without first having practiced one year in collaboration~~
 8.28 ~~with a physical therapist with more than one year of experience or under a physician's orders~~
 8.29 ~~or referrals as verified by the board's records.~~

8.30 Subd. 3. **Violations.** (a) A person or business entity that violates this section is guilty
 8.31 of a gross misdemeanor.

8.32 (b) The board may impose a civil penalty, not to exceed \$10,000 for each separate
 8.33 violation, against any person or business entity that violates subdivision 1. In addition, the

9.1 board may seek an injunction against conduct that violates subdivision 1 in any court of
9.2 competent jurisdiction. For purposes of this paragraph, in seeking an injunction, the board
9.3 need only show that the defendant violated subdivision 1 to establish irreparable injury or
9.4 a likelihood of a continuation of the violation.

9.5 Sec. 7. **REPEALER.**

9.6 Minnesota Statutes 2022, sections 148.65, subdivision 9; and 148.77, are repealed.

APPENDIX
Repealed Minnesota Statutes: 23-02807

148.65 DEFINITIONS.

Subd. 9. **Licensed health care professional or licensed health care provider.** "Licensed health care professional" or "licensed health care provider" means a person licensed in good standing in Minnesota to practice medicine, osteopathic medicine, chiropractic, podiatry, dentistry, or advanced practice nursing.

148.77 VIOLATIONS.

Any person violating the provisions of section 148.76 is guilty of a gross misdemeanor.