

CF HB 210

By: Senator Derr

Introduced and read first time: January 31, 1997

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Licensed Physical Therapists and Licensed Physical Therapist Assistants - Scope of**
3 **Practice - Topical Pharmaceutical Agents**

4 FOR the purpose of authorizing, under certain circumstances, licensed physical therapists
5 and licensed physical therapist assistants to personally prepare and dispense certain
6 topical pharmaceutical agents if the therapists or therapist assistants have received
7 written dispensing permits from the Board of Physical Therapy Examiners and meet
8 certain other requirements; authorizing licensed physical therapists and licensed
9 physical therapist assistants to apply to the skin certain topical pharmaceutical
10 agents in the course of treating patients under certain circumstances; providing that
11 a licensed physical therapist or licensed physical therapist assistant who fails to
12 comply with certain provisions of law is subject to the revocation of the dispensing
13 permit and certain disciplinary actions; authorizing a distribution permit holder to
14 distribute prescription drugs to a licensed physical therapist under certain
15 circumstances; authorizing a licensed physical therapist to procure and store certain
16 topical pharmaceutical agents under certain circumstances; authorizing a licensed
17 physical therapist assistant to store certain topical pharmaceutical agents under
18 certain circumstances; requiring the Board of Physical Therapy Examiners to adopt
19 certain regulations; defining certain terms; and generally relating to licensed
20 physical therapists, licensed physical therapist assistants, and topical
21 pharmaceutical agents.

22 BY repealing and reenacting, with amendments,
23 Article - Health Occupations
24 Section 12-102, 12-602, 13-101, and 13-206
25 Annotated Code of Maryland
26 (1994 Replacement Volume and 1996 Supplement)

27 BY adding to
28 Article - Health Occupations
29 Section 13-310.1
30 Annotated Code of Maryland
31 (1994 Replacement Volume and 1996 Supplement)

32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
33 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Health Occupations**

2 12-102.

3 (a) (1) In this section the following terms have the meanings indicated.

4 (2) "In the public interest" means the dispensing of drugs by a licensed
5 dentist, physician, or podiatrist to a patient when a pharmacy is not conveniently available
6 to the patient.

7 (3) "Personally preparing and dispensing" means that the licensed dentist,
8 physician, PHYSICAL THERAPIST, PHYSICAL THERAPIST ASSISTANT, or podiatrist:

9 (i) Is physically present on the premises where the prescription is
10 filled; and

11 (ii) Performs a final check of the prescription before it is provided to
12 the patient.

13 (b) This title does not limit the right of an individual to practice a health
14 occupation that the individual is authorized to practice under this article.

15 (c) This title does not prohibit:

16 (1) A licensed veterinarian from personally preparing and dispensing the
17 veterinarian's prescriptions;

18 (2) A licensed dentist, physician, or podiatrist from personally preparing
19 and dispensing the dentist's, physician's, or podiatrist's prescriptions when:

20 (i) The dentist, physician, or podiatrist:

21 1. Has applied to the board of licensure in this State which
22 licensed the dentist, physician, or podiatrist;

23 2. Has demonstrated to the satisfaction of that board that the
24 dispensing of prescription drugs by the dentist, physician, or podiatrist is in the public
25 interest; and

26 3. Has received a written permit from that board to dispense
27 prescription drugs, except that a written permit is not required in order to dispense
28 starter dosages or samples without charge;

29 (ii) The person for whom the drugs are prescribed is a patient of the
30 prescribing dentist, physician, or podiatrist;

31 (iii) The dentist, physician, or podiatrist does not have a substantial
32 financial interest in a pharmacy; and

33 (iv) The dentist, physician, or podiatrist:

34 1. Complies with the labeling requirements of § 12-509 of this
35 title;

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1 (1) A licensed veterinarian from personally dispensing a drug sample to a
2 patient of the veterinarian; or

3 (2) A licensed dentist, licensed physician, or licensed podiatrist from
4 personally dispensing a drug sample to a patient of the licensed dentist, licensed
5 physician, or licensed podiatrist if:

6 (i) The sample complies with the labeling requirements of § 12-509 of
7 this title;

8 (ii) No charge is made for the sample; and

9 (iii) The authorized prescriber enters an appropriate record in the
10 patient's chart.

11 (e) (1) This title does not prohibit a dentist, physician, or podiatrist from
12 administering a prescription drug in the course of treating a patient.

13 (2) For the purposes of paragraph (1) of this subsection, "administering"
14 means the direct introduction of a single dosage of a drug at a given time, whether by
15 injection or other means, and whether in liquid, tablet, capsule, or other form.

16 (F) THIS TITLE DOES NOT PROHIBIT A LICENSED PHYSICAL THERAPIST OR A
17 LICENSED PHYSICAL THERAPIST ASSISTANT FROM APPLYING TO THE SKIN A
18 TOPICAL PHARMACEUTICAL AGENT IN THE COURSE OF TREATING A PATIENT IN
19 ACCORDANCE WITH TITLE 13 OF THIS ARTICLE.

20 [(f)] (G) (1) This title does not prohibit a dentist, physician, or podiatrist from
21 personally dispensing a starter dosage of a prescription drug to a patient of the dentist,
22 physician, or podiatrist, provided that:

23 (i) The starter dosage complies with the labeling requirements of §
24 12-509 of this title;

25 (ii) No charge is made for the starter dosage; and

26 (iii) The dentist, physician, or podiatrist enters an appropriate record
27 on the patient's chart.

28 (2) For the purposes of paragraph (1) of this subsection, "starter dosage"
29 means an amount of drug sufficient to begin therapy:

30 (i) Of short duration of 72 hours or less; or

31 (ii) Prior to obtaining a larger quantity of the drug to complete the
32 therapy.

33 [(g)] (H) This title does not prohibit a dentist, physician, or podiatrist from
34 dispensing a prescription drug in the course of treating a patient:

35 (1) At a medical facility or clinic that specializes in the treatment of medical
36 cases reimbursable through workers' compensation insurance;

37 (2) At a medical facility or clinic that is operated on a nonprofit basis;

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1 (3) At a health center that operates on a campus of an institution of higher
2 education; or

3 (4) At a public health facility, a medical facility under contract with a State
4 or local health department, or a facility funded with public funds.

5 [(h)] (I) This title does not limit the right of a general merchant to sell:

6 (1) Any nonprescription drug, medicine, or device;

7 (2) Any commonly used household or domestic remedy; or

8 (3) Any farm remedy or ingredient for a spraying solution, in bulk or
9 otherwise.

10 [(i)] (J) A dentist, physician, [or] podiatrist, LICENSED PHYSICAL THERAPIST,
11 OR LICENSED PHYSICAL THERAPIST ASSISTANT who fails to comply with the provisions
12 of this section governing the dispensing of prescription drugs shall:

13 (1) Have the dispensing permit revoked; and

14 (2) Be subject to disciplinary actions by the appropriate licensing board.

15 12-602.

16 (a) (1) In this section, the following words have the meanings indicated.

17 (2) "Distribution permit" means a permit issued by the Board under this
18 section to distribute prescription drugs into, out of, or within the State as a distributor,
19 jobber, manufacturer, or wholesaler, wherever located.

20 (3) "Prescription drugs" means any drug intended for use by man that,
21 because of its toxicity or other potential for harmful effect, the method of its use, or the
22 collateral measures necessary for its use, is required by federal law to bear a cautionary
23 label warning against dispensing without a prescription or is designated by the
24 Department as not safe for use except under the supervision of a practitioner licensed to
25 administer drugs of this nature.

26 (b) This section does not affect any person while distributing:

27 (1) Feed for livestock or poultry;

28 (2) Fertilizers;

29 (3) Fungicides;

30 (4) Insecticide;

31 (5) Land plaster;

32 (6) Lime;

33 (7) Seeds; or

34 (8) Devices, drugs, or supplies of any kind for the treatment, care, or cure of
35 farm animals.

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1 (c) A person shall hold a distribution permit issued by the Board before the
2 person may distribute prescription drugs as a distributor, jobber, manufacturer, or
3 wholesaler.

4 (d) To qualify for a distribution permit, an applicant shall:

5 (1) Satisfy the Board that the applicant will distribute prescription drugs in
6 compliance with the restrictions specified in subsection (e) of this section; and

7 (2) Comply with any pertinent regulations adopted under subsection [(i)]
8 (J) of this section.

9 (e) [A] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, A
10 distribution permit holder may distribute prescription drugs only:

11 (1) To the following persons:

12 (i) An authorized prescriber;

13 (ii) A pharmacy permit holder;

14 (iii) A distribution permit holder; or

15 (iv) Any other person approved by the Board; and

16 (2) In compliance with any rules and regulations adopted under this section.

17 (F) A DISTRIBUTION PERMIT HOLDER MAY DISTRIBUTE PRESCRIPTION
18 DRUGS THAT ARE TOPICAL PHARMACEUTICAL AGENTS TO A LICENSED PHYSICAL
19 THERAPIST IN ACCORDANCE WITH ANY REGULATIONS ADOPTED UNDER THIS
20 SECTION.

21 [(f)] (G) To apply for a distribution permit, an applicant shall:

22 (1) Submit an application to the Board on the form that the Board provides;
23 and

24 (2) Pay to the Board an application fee set by the Board.

25 [(g)] (H) The Board shall issue a distribution permit to any applicant who meets
26 the requirements of this section.

27 [(h)] (I) A distribution permit issued under this section authorizes the
28 distribution permit holder to distribute prescription drugs as a distributor, jobber,
29 manufacturer, or wholesaler while the distribution permit is effective.

30 [(i)] (J) To protect the public health and safety, the Board may adopt rules and
31 regulations regarding the distribution of prescription drugs including regulations
32 regarding:

33 (1) Qualifications and information required from an applicant seeking
34 issuance or renewal of a distribution permit;

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1 (2) Minimum requirements for the receipt, storage, and handling of
2 prescription drugs, security precautions, quality control, recordkeeping, and
3 establishment of written procedures, policy, and responsibilities of personnel;

4 (3) The education and experience of personnel employed in positions
5 responsible for duties referenced in paragraph (2) of this subsection and generally
6 responsible for carrying out those duties that are subject to State licensure requirements
7 under this subtitle; and

8 (4) Disciplinary action to be taken against a permit holder who is convicted
9 of or pleads guilty or nolo contendere to a violation of State, federal, or local drug laws or
10 who violates regulations promulgated by the Board under this section.

11 [(j)] (K) (1) A distribution permit expires on the December 31 after its
12 effective date, unless the distribution permit is renewed for a 1-year term as provided in
13 this subsection.

14 (2) At least 1 month before a distribution permit expires, the Board shall
15 send to the distribution permit holder, by first-class mail to the last known address of the
16 distribution permit holder, a renewal notice that contains a statement of:

17 (i) The date on which the current distribution permit expires;

18 (ii) The date by which the renewal application must be received by the
19 Board for the renewal to be issued and mailed before the distribution permit expires; and

20 (iii) The amount of the renewal fee.

21 (3) Before a distribution permit expires, a distribution permit holder
22 periodically may renew it for an additional 1-year term, if the distribution permit holder:

23 (i) Otherwise is entitled to a distribution permit;

24 (ii) Pays to the Board a renewal fee set by the Board; and

25 (iii) Submits to the Board a renewal application on the form that the
26 Board requires.

27 (4) The Board shall renew the distribution permit of each distribution
28 permit holder who meets the requirements of this section and any regulation adopted
29 under this section.

30 [(k)] (L) Each distribution permit shall be displayed conspicuously in the place
31 for which it is issued.

32 [(l)] (M) A distribution permit is not transferable.

33 [(m)] (N) Subject to any other restriction provided by law, a person may not
34 purchase or obtain any prescription drugs unless the drug is obtained from a distribution
35 permit holder, a licensed pharmacist, or an authorized prescriber.

36 [(n)] (O) A person may not violate any rule or regulation adopted under this
37 section.

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1 [(o)] (P) A distribution permit is void on conviction of the distribution permit
2 holder for any violation of:

3 (1) This section; or

4 (2) Any rule or regulation adopted by the Board under this section.

5 13-101.

6 (a) In this title the following words have the meanings indicated.

7 (b) "Board" means the State Board of Physical Therapy Examiners.

8 (c) "License" means, unless the context requires otherwise, a license issued by the
9 Board to practice:

10 (1) Physical therapy; or

11 (2) Limited physical therapy.

12 (d) "Licensed physical therapist" means, unless the context requires otherwise, a
13 physical therapist who is licensed by the Board to practice physical therapy.

14 (e) "Licensed physical therapist assistant" means, unless the context requires
15 otherwise, a physical therapist assistant who is licensed by the Board to practice limited
16 physical therapy.

17 (f) "Physical therapist" means an individual, licensed by the State Board of
18 Physical Therapy Examiners, who practices physical therapy and who has passed the
19 national physical therapy licensing examination administered or accepted by the Board.

20 (g) "Physical therapist assistant" means an individual who practices limited
21 physical therapy and who has passed the national physical therapy licensing examination
22 administered or accepted by the Board.

23 (h) (1) "Practice limited physical therapy" means to practice the health
24 specialty concerned with:

25 (i) The prevention of disability in individuals; and

26 (ii) The physical rehabilitation of individuals with a congenital or
27 acquired disability.

28 (2) "Practice limited physical therapy" includes, except as provided in
29 paragraph (3) of this subsection[,]:

30 (I) [administering] ADMINISTERING treatment with therapeutic
31 exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the
32 physical, chemical, or other properties of air, water, electricity, sound, or radiant energy;
33 AND

34 (II) STORING AND APPLYING TO THE SKIN TOPICAL
35 PHARMACEUTICAL AGENTS IN ACCORDANCE WITH § 13-310.1 OF THIS TITLE.

36 (3) "Practice limited physical therapy" does not include:

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1 (i) Performing and interpreting tests and measurements of
2 neuromuscular and musculoskeletal functions to aid treatment;

3 (ii) Planning treatment programs that are based on test findings; [or]

4 (III) PROCURING TOPICAL PHARMACEUTICAL AGENTS; OR

5 [(iii)] (IV) Using:

6 1. X rays;

7 2. Radioactive substances; or

8 3. Electricity for cauterization or surgery.

9 (i) (1) "Practice physical therapy" means to practice the health specialty
10 concerned with:

11 (i) The prevention of disability in individuals; and

12 (ii) The physical rehabilitation of individuals with a congenital or
13 acquired disability.

14 (2) "Practice physical therapy" includes:

15 (i) Performing an evaluation of the physical therapy needs of
16 individuals;

17 (ii) Performing and interpreting tests and measurements of
18 neuromuscular and musculoskeletal functions to aid treatment;

19 (iii) Planning treatment programs that are based on test findings;
20 [and]

21 (iv) Except as provided in paragraph (3) of this subsection,
22 administering treatment with therapeutic exercise, therapeutic massage, mechanical
23 devices, or therapeutic agents that use the physical, chemical, or other properties of air,
24 water, electricity, sound, or radiant energy; AND

25 (V) PROCURING, STORING, AND APPLYING TO THE SKIN TOPICAL
26 PHARMACEUTICAL AGENTS IN ACCORDANCE WITH § 13-310.1 OF THIS TITLE.

27 (3) "Practice physical therapy" does not include using:

28 (i) X rays;

29 (ii) Radioactive substances; or

30 (iii) Electricity for cauterization or surgery.

31 (j) "Restricted license" means a license issued by the Board under and as limited
32 by § 13-314 of this title to practice physical therapy.

33 (k) "Temporary license" means a license issued by the Board under and as limited
34 by § 13-313 of this title to practice:

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1 (1) Physical therapy; or

2 (2) Limited physical therapy.

3 13-206.

4 (a) In addition to the powers set forth elsewhere in this title, the Board may:

5 (1) Adopt rules and regulations to carry out the provisions of this title;

6 (2) Adopt standards of practice and a code of ethics for the practice of
7 physical therapy and limited physical therapy; and

8 (3) Pay, in accordance with the State budget, any necessary expense that
9 relates to the referral of an alleged violation of the criminal provisions of this title.

10 (b) In addition to the duties set forth elsewhere in this title, the Board shall:

11 (1) Keep a list of the name and address of each licensed physical therapist
12 and licensed physical therapist assistant;

13 (2) Present evidence of any alleged violation of this title to the State's
14 Attorney of the county where the alleged violation occurred; [and]

15 (3) Adopt rules and regulations that govern the use of a physical therapy
16 aide by a licensed physical therapist; AND

17 (4) AFTER CONSULTING WITH THE BOARD OF PHARMACY, ADOPT
18 REGULATIONS REGARDING THE DISPENSING OF TOPICAL PHARMACEUTICAL
19 AGENTS IN ACCORDANCE WITH THIS TITLE BY LICENSED PHYSICAL THERAPISTS
20 AND LICENSED PHYSICAL THERAPIST ASSISTANTS.

21 13-310.1.

22 (A) IN THIS SECTION, "TOPICAL PHARMACEUTICAL AGENTS" MEANS THE
23 FOLLOWING PRESCRIPTION DRUGS:

24 (1) ANTIBACTERIAL AGENTS;

25 (2) DEBRIDING AGENTS;

26 (3) ANESTHETIC AGENTS; AND

27 (4) ANTI-INFLAMMATORY AGENTS.

28 (B) (1) A LICENSED PHYSICAL THERAPIST OR LICENSED PHYSICAL
29 THERAPIST ASSISTANT MAY APPLY TO THE SKIN TOPICAL PHARMACEUTICAL
30 AGENTS ONLY BY THE FOLLOWING METHODS:

31 (I) DIRECT APPLICATION;

32 (II) IONTOPHORESIS; OR

33 (III) PHONOPHORESIS.

34 (2) A LICENSED PHYSICAL THERAPIST OR LICENSED PHYSICAL
35 THERAPIST ASSISTANT SHALL APPLY TO THE SKIN TOPICAL PHARMACEUTICAL

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1 AGENTS IN ACCORDANCE WITH GENERALLY ACCEPTED PRACTICES AND THE
2 EDUCATIONAL TECHNIQUES IN USE AT SCHOOLS ACCREDITED BY THE COMMISSION
3 ON ACCREDITATION IN PHYSICAL THERAPY EDUCATION.

4 (C) A LICENSED PHYSICAL THERAPIST OR LICENSED PHYSICAL THERAPIST
5 ASSISTANT MAY DISPENSE TOPICAL PHARMACEUTICAL AGENTS ONLY:

6 (1) AFTER OBTAINING A DISPENSING PERMIT FROM THE BOARD; AND

7 (2) IN ACCORDANCE WITH TITLE 12 OF THIS ARTICLE.

8 (D) A LICENSED PHYSICAL THERAPIST OR LICENSED PHYSICAL THERAPIST
9 ASSISTANT SHALL STORE TOPICAL PHARMACEUTICAL AGENTS:

10 (1) PROPERLY AND SAFELY;

11 (2) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD OF
12 PHARMACY UNDER § 12-506 OF THIS ARTICLE; AND

13 (3) IN A MANNER THAT PREVENTS UNAUTHORIZED PERSONS FROM
14 OBTAINING THE TOPICAL PHARMACEUTICAL AGENTS.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 1997.