

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 639

Short Title: Clinical Exercise Physiologist Licensure. (Public)

Sponsors: Representative M. Alexander (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Health and Human Services, if favorable, Finance.

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE CLINICAL EXERCISE PHYSIOLOGIST LICENSING
3 ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 34A.

8 "Clinical Exercise Physiology.

9 "**§ 90-545. Title.**

10 This Article shall be known and may be cited as the 'North Carolina Clinical Exercise
11 Physiologist Licensing Act.'

12 "**§ 90-546. Purpose.**

13 The North Carolina Clinical Exercise Physiologist Licensing Act is established to safeguard
14 the public health, safety, and welfare, to protect the public from being harmed by unqualified
15 persons, to assure the highest degree of professional services and conduct on the part of clinical
16 exercise physiologists, to provide for the establishment of licensure requirements, and to ensure
17 the availability of clinical exercise physiology services of high quality to persons in need of
18 such services. The role of the exercise physiologist in the clinical setting has expanded over the
19 years to encompass a wide variety of clinical services designed to manage metabolic diseases
20 and maintain healthy populations. As such, it has become vital to specify and differentiate the
21 qualifications necessary to the profession. It is the purpose of this Article to provide for the
22 regulation of persons offering clinical exercise physiology services to the public.

23 "**§ 90-547. Definitions.**

24 The following definitions apply in this Article:

25 (1) Board. – The North Carolina Clinical Exercise Physiologist Licensing
26 Board.

27 (2) Clinical exercise physiologist. – An individual who, under the direction,
28 approval, and supervision of a licensed physician, has (i) had comprehensive
29 education and training in the field of exercise physiology, (ii) obtained an
30 appropriate certification, namely from the American College of Sports
31 Medicine, as a Registered Clinical Exercise Physiologist (RCEP) or
32 Certified Clinical Exercise Specialist (CES), and (iii) does any of the
33 following:

34 a. Formulates, develops, or implements exercise prescriptions,
35 protocols, or programs.



- 1 b. Administers graded exercise tests and provides education regarding
2 the exercise tests.
- 3 c. Provides risk factor modification in a cardiopulmonary rehabilitation
4 or diagnostic setting to individuals with cardiovascular, pulmonary,
5 or metabolic diseases, musculoskeletal, neuromuscular, or
6 oncologic/immunologic or hematologic disorders for which exercise
7 has been shown to be of benefit.
- 8 (3) Exercise protocols or programs. – The intensity, duration, frequency, mode,
9 and rate of progression of activity to improve or maintain an individual's
10 overall health and functional capacity.
- 11 (4) Licensed physician. – A physician licensed under Article 1 of this Chapter to
12 practice medicine in this State.

13 **"§ 90-548. License required; exemptions.**

14 (a) On or after October 1, 2012, no person shall practice or offer to practice clinical
15 exercise physiology as defined in this Article, use the title 'Exercise Physiologist,' 'Clinical
16 Exercise Physiologist,' or 'Licensed Clinical Exercise Physiologist,' use the letters 'EP,' 'CEP,'
17 or 'LCEP,' or any other title or abbreviation that would otherwise indicate or imply that the
18 person is a licensed clinical exercise physiologist unless that person is currently licensed as
19 provided under this Article.

20 (b) The provisions of this Article shall not apply to the following:

- 21 (1) Any person registered, certified, credentialed, or licensed to engage in
22 another profession or occupation or any person working under the
23 supervision of a person registered, certified, credentialed, or licensed to
24 engage in another profession or occupation in this State if the person is
25 performing work incidental to the practice of that profession or occupation
26 and the person does not represent himself or herself as a licensed clinical
27 exercise physiologist.
- 28 (2) A student enrolled in an accredited clinical exercise physiology education
29 program if clinical exercise physiology services performed by the student are
30 an integral part of the student's course of study and are performed under the
31 direct supervision of a professional licensed in this State.
- 32 (3) A clinical exercise physiologist employed by the United States government
33 when performing duties associated with that employment.

34 **"§ 90-549. Scope of practice; limitations.**

35 (a) A clinical exercise physiologist provides service to patients in the context of any
36 rehabilitative or preventive treatment program for which exercise is a medically indicated
37 component. In providing clinical physiology services, a clinical exercise physiologist may do
38 any of the following:

- 39 (1) Administer, interpret, and evaluate tests in order to safely prescribe
40 appropriate exercises for a patient that aid in developing goals upon which a
41 treatment plan is based.
- 42 (2) Instruct a patient in the use of physical measures, activities, and devices for
43 preventive and therapeutic purposes.
- 44 (3) Provide consulting, educational, and other advisory services for the purpose
45 of reducing the incidence and severity of dysfunction due to client disease
46 process or deconditioning.
- 47 (4) Perform tests and measurements on the following:
- 48 a. Noninvasive cardiopulmonary function.
- 49 b. Invasive and pharmacological stress testing.
- 50 c. Muscular strength and endurance.
- 51 d. Range-of-motion or flexibility.

- e. Pulse oximetry.
- f. Body composition.
- g. Blood lipids.
- h. Blood glucose.

(b) A clinical exercise physiologist may administer the following agents as a first-line emergency response to conditions that may arise in the scope of practice:

- (1) Sublingual nitroglycerin for the relief of acute angina.
- (2) Pharmaceutical aerosols for reversal of exercise-induced bronchospasm.
- (3) Oxygen.
- (4) If the clinical exercise physiologist is Advanced Cardiac Life Support (ACLS) certified and allowed by the particular facility where the clinical exercise physiologist is offering clinical exercise physiology services, dispense appropriate ACLS prescription drugs as indicated by protocol and algorithm.

The administration of any prescription drugs by a clinical exercise physiologist shall be only upon the written prescription of a practitioner licensed in this State to prescribe the drug. Nothing in this section shall be construed to authorize a clinical exercise physiologist to possess for dispensing or to dispense a prescription drug, unless authorized by a physician licensed to do so.

"§ 90-550. North Carolina Clinical Exercise Physiologist Licensing Board.

(a) Creation. – The North Carolina Clinical Exercise Physiologist Licensing Board is created.

(b) Composition and Terms. – The Board shall consist of five members who shall serve staggered terms. Four members shall be licensed clinical exercise physiologists and one member shall be a licensed physician.

The initial Board members shall be appointed on or before October 1, 2011, as follows:

- (1) The General Assembly, upon the recommendation of the Speaker of the House of Representatives and pursuant to nominations from persons practicing as clinical exercise physiologists, shall appoint two clinical exercise physiologists, one of whom shall serve for a term of three years and one of whom shall serve for a term of one year.
- (2) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate and pursuant to nominations from persons practicing as clinical exercise physiologists, shall appoint two clinical exercise physiologists, one of whom shall serve for a term of three years and one of whom shall serve for a term of two years.
- (3) The Governor shall appoint one licensed physician with experience and practical knowledge in the area of clinical exercise physiology who shall serve for a term of two years.

Initial Board members do not have to be licensed upon appointment. However, once licensure requirements are established, those initial Board members shall satisfy the applicable requirements for licensure pursuant to this Article.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(c) Qualifications. – The clinical exercise physiologist members shall hold current licenses and shall reside or be employed in North Carolina. They shall have at least five years' experience as clinical exercise physiologists, including the three years immediately preceding appointment to the Board, and shall remain in active practice and in good standing with the Board as a licensee during their terms.

1 (d) Vacancies. – A vacancy shall be filled in the same manner as the original
2 appointment, except that all unexpired terms of Board members appointed by the General
3 Assembly shall be filled in accordance with G.S. 120-122 and shall be filled within 45 days
4 after the vacancy occurs. Appointees to fill vacancies shall serve the remainder of the
5 unexpired term and until their successors have been duly appointed and qualified.

6 (e) Removal. – The Board may remove any of its members for neglect of duty,
7 incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a
8 licensee shall be disqualified from participating in the official business of the Board until the
9 charges have been resolved.

10 (f) Compensation. – Each member of the Board shall receive per diem and
11 reimbursement for travel and subsistence as provided in G.S. 93B-5.

12 (g) Officers. – The officers of the Board shall be a chair, who shall be a licensed clinical
13 exercise physiologist, a vice-chair, and other officers deemed necessary by the Board to carry
14 out the purposes of this Article. All officers shall be elected annually by the Board for one-year
15 terms and shall serve until their successors are elected and qualified.

16 (h) Meetings. – The Board shall hold at least two meetings each year to conduct
17 business and to review the standards and rules for improving clinical exercise physiology
18 services. The Board shall establish the procedures for calling, holding, and conducting regular
19 and special meetings. A majority of Board members constitutes a quorum.

20 **"§ 90-551. Powers of the Board.**

21 The Board shall have the following powers and duties:

- 22 (1) Administer this Article.
- 23 (2) Issue interpretations of this Article.
- 24 (3) Adopt, amend, or repeal rules as may be necessary to carry out the
25 provisions of this Article.
- 26 (4) Employ and fix the compensation of personnel that the Board determines is
27 necessary to carry into effect the provisions of this Article and incur other
28 expenses necessary to effectuate this Article.
- 29 (5) Examine and determine the qualifications and fitness of applicants for
30 licensure, renewal of licensure, and reciprocal licensure.
- 31 (6) Issue, renew, deny, suspend, or revoke licenses and carry out any
32 disciplinary actions authorized by this Article.
- 33 (7) Set fees for licensure, license renewal, and other services deemed necessary
34 to carry out the purposes of this Article.
- 35 (8) Conduct investigations for the purpose of determining whether violations of
36 this Article or grounds for disciplining licensees exist.
- 37 (9) Conduct administrative hearings in accordance with Chapter 150B of the
38 General Statutes when a contested case, as defined in G.S. 150B-2(2), arises
39 under this Article.
- 40 (10) Maintain a record of all proceedings and make available to licensees and
41 other concerned parties an annual report of all Board action.
- 42 (11) Develop standards and adopt rules for the improvement of clinical exercise
43 physiology services in the State.
- 44 (12) Adopt a seal containing the name of the Board for use on all licenses and
45 official reports issued by it.

46 **"§ 90-552. Requirements for licensure.**

47 Upon application to the Board and the payment of the required fees, an applicant may be
48 licensed as a clinical exercise physiologist if the applicant meets all of the following
49 requirements:

- 50 (1) Is 18 years of age or older.
- 51 (2) Is of good moral character as determined by the Board.

(3) Holds a master's degree with a major course of study in clinical exercise physiology, exercise science, kinesiology, or applied exercise physiology from a college or university approved by the Board that includes 600 supervised clinical hours of experience and is currently certified in Basic Cardiac Life Support (BLS).

(4) Has met the educational and clinical experience requirements and successfully passed the American College of Sports Medicine (ACSM) Registered Clinical Exercise Physiologist (RCEP) certification examination or the Clinical Exercise Specialist (CES) certification examination, or an examination functionally equivalent to the RCEP or CES as determined and approved by the Board.

§ 90-553. Reciprocity.

The Board may grant, upon application and payment of proper fees, a license to a person who has been licensed to practice clinical exercise physiology in another state or territory of the United States whose standards of competency are substantially equivalent to the requirements for licensure provided in this Article.

§ 90-554. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation of the Board be charged against the State treasury.

(b) The Board shall establish a schedule of fees that shall not exceed the following:

- (1) Initial license \$ 125.00
- (2) License renewal 375.00 every three years
- (3) Reinstatement of lapsed license 100.00
- (4) Reasonable charges for duplication services and material.

§ 90-555. License renewal.

(a) Every license issued under this Article shall be renewed every three years on or before January 1 at the end of the three-year cycle. The license shall be renewed upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has complied with any continuing education requirements pursuant to rules adopted by the Board.

(b) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. The licensee shall inform the Board of any change of the licensee's address. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(c) The Board may provide for the late renewal of an automatically lapsed license upon the payment of a reinstatement fee. No reinstatement renewal may be granted more than five years after a license expires.

§ 90-556. Disciplinary authority.

(a) The Board may deny, suspend, revoke, or refuse to renew a license or impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

- (1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.
- (2) Engaging in unprofessional conduct pursuant to rules established by the Board.
- (3) Having been convicted of or pleaded guilty or nolo contendere to a crime involving moral turpitude or any crime which indicates that the clinical exercise physiologist is unfit or incompetent to practice clinical exercise

1 physiology or that the clinical exercise physiologist has deceived or
2 defrauded the public.

3 (4) Engaging in any act or practice in violation of any of the provisions of this
4 Article or any rule adopted by the Board or aiding, abetting, or assisting any
5 person in such a violation.

6 (5) Committing an act or acts of malpractice, gross negligence, or incompetence
7 in the practice of clinical exercise physiology.

8 (6) Practicing as a licensed clinical exercise physiologist without a current
9 license.

10 (7) Engaging in conduct that could result in harm or injury to the public.

11 (8) Having a clinical exercise physiologist license revoked or suspended or other
12 disciplinary action taken, whether in this State or another jurisdiction.

13 (9) Being unfit or incompetent to practice clinical exercise physiology by reason
14 of deliberate or negligent acts or omissions, regardless of whether actual
15 injury to a client is established.

16 (b) The denial, refusal to renew, suspension, revocation, or imposition of probationary
17 conditions upon a license may be ordered by the Board after a hearing held in accordance with
18 Article 3A of Chapter 150B of the General Statutes and rules adopted by the Board. An
19 application may be made to the Board for reinstatement of a revoked license if the revocation
20 has been in effect for at least one year.

21 **"§ 90-557. Violation a misdemeanor.**

22 Any person who violates any provision of this Article shall be guilty of a Class 1
23 misdemeanor. Each act of such unlawful practice shall constitute a distinct and separate
24 offense.

25 **"§ 90-558. Injunctive relief.**

26 The Board may make application to any appropriate court for an order enjoining violations
27 of this Article, and upon a showing by the Board that any person has violated or is about to
28 violate this Article, the court may grant an injunction, restraining order, or take other
29 appropriate action.

30 **"§ 90-559. Civil penalties.**

31 (a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in
32 excess of one thousand dollars (\$1,000) for the violation of any section of this Article or the
33 violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed
34 under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
35 G.S. 115C-457.2.

36 (b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board
37 shall consider the following factors:

38 (1) The nature, gravity, and persistence of the particular violation.

39 (2) The appropriateness of the imposition of a civil penalty when considered
40 alone or in combination with other punishment.

41 (3) Whether the violation was willful and malicious.

42 (4) Any other factors that would tend to mitigate or aggravate the violations
43 found to exist.

44 (c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties
45 for violations of this Article and rules adopted by the Board.

46 (d) Costs. – The Board may assess the costs of disciplinary actions against any person
47 found to be in violation of this Article or rules adopted by the Board."

48 **SECTION 2.** Notwithstanding G.S. 90-552, as enacted by Section 1 of this act, an
49 individual who holds a bachelor's degree with a major course of study in clinical exercise
50 physiology, exercise science, kinesiology, or applied exercise physiology from a college or
51 university approved by the North Carolina Clinical Exercise Physiologist Licensing Board and

1 has been practicing as a clinical exercise physiologist for a minimum of 10,000 hours
2 immediately preceding the date of application may become licensed as a clinical exercise
3 physiologist in this State if, upon payment of the applicable fee, the individual achieves
4 American College of Sports Medicine (ACSM), Registered Clinical Exercise Physiologist
5 (RCEP), or Certified Clinical Exercise Specialist (CES) certification within one year from the
6 date this act becomes effective and is currently certified in Basic Cardiac Life Support (BLS).

7 **SECTION 3.** This act is effective when it becomes law.