

By: Fredericks

To: Public Health and
Welfare

HOUSE BILL NO. 1450

1 AN ACT TO AMEND SECTION 73-23-41, MISSISSIPPI CODE OF 1972,
2 TO CREATE THE STATE BOARD OF PHYSICAL THERAPY AND PRESCRIBE ITS
3 POWERS AND DUTIES; TO PROVIDE FOR THE APPOINTMENT OF THE BOARD; TO
4 AMEND SECTION 73-23-45, MISSISSIPPI CODE OF 1972, TO CREATE A
5 SPECIAL FUND IN THE STATE TREASURY TO BE KNOWN AS THE PHYSICAL
6 THERAPY FUND, FOR THE DEPOSIT OF ALL FEES AND OTHER MONIES
7 COLLECTED OR RECEIVED BY THE BOARD; TO AMEND SECTION 73-23-65,
8 MISSISSIPPI CODE OF 1972, TO ABOLISH THE PHYSICAL THERAPY ADVISORY
9 COUNCIL AND TO TRANSFER THE POWERS AND DUTIES OF THE STATE BOARD
10 OF HEALTH AND THE STATE DEPARTMENT OF HEALTH REGARDING THE
11 LICENSURE AND REGULATION OF THE PROFESSION OF PHYSICAL THERAPY TO
12 THE STATE BOARD OF PHYSICAL THERAPY; TO AMEND SECTIONS 73-23-33,
13 73-23-35, 73-23-43, 73-23-47, 73-23-49, 73-23-51, 73-23-53,
14 73-23-57, 73-23-61, 73-23-63 AND 73-23-64, MISSISSIPPI CODE OF
15 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO REPEAL SECTION
16 73-23-55, MISSISSIPPI CODE OF 1972, WHICH PROVIDED FOR THE
17 LICENSING OF PHYSICAL THERAPISTS WHO WERE LICENSED UNDER
18 PREVIOUSLY REPEALED STATUTES; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 SECTION 1. Section 73-23-41, Mississippi Code of 1972, is
21 amended as follows:

22 73-23-41. (1) There is established a State Board of
23 Physical Therapy that shall consist of seven (7) members appointed
24 by the Governor, with the advice and consent of the Senate. At
25 least four (4) members shall be appointed from a list of five (5)
26 persons submitted by the Mississippi Physical Therapy Association,
27 all of whom must be residents of Mississippi and must have engaged
28 in the practice of physical therapy within the state for at least
29 four (4) years. Four (4) members shall be physical therapists,
30 one (1) member shall be a physical therapist assistant, one (1)
31 member shall be a physician, and one (1) member shall be a
32 consumer at large who is not associated with or financially
33 interested in the practice or business of physical therapy. The
34 initial members of the board shall be appointed for staggered

35 terms, as follows: Two (2) members shall be appointed for a term
36 that ends on June 30, 2001; two (2) members shall be appointed for
37 terms that end on June 30, 2002; one (1) member shall be appointed
38 for a term that ends on June 30, 2003; and two (2) members shall
39 be appointed for terms that end on June 30, 2004. All subsequent
40 appointments to the board shall be for terms of four (4) years
41 from the expiration date of the previous term. No person shall be
42 appointed for more than two (2) consecutive terms. By approval of
43 the majority of the board, the service of a member may be extended
44 at the completion of a four-year term until a new member is
45 appointed or the current member is reappointed.

46 (2) The board shall annually elect a chairman, secretary and
47 treasurer. The board shall provide for the timely orientation and
48 training of new professional and public appointees to the board
49 regarding board licensing and disciplinary procedures, this
50 chapter and board rules, regulations, policies and procedures. A
51 member may be removed by the board only for due cause. Failure to
52 attend at least half of the board meetings in a fiscal year shall
53 constitute cause. The board shall meet at least once each
54 quarter, and those meetings shall be held in compliance with the
55 Open Meetings Law (Section 25-41-1 et seq.). A majority of board
56 members shall constitute a quorum for the transaction of business.
57 The board shall keep an official record of its meetings.
58 Vacancies on the board shall be filled by board member vote from a
59 list of nominees submitted by the Mississippi Physical Therapy
60 Association. Members of the board shall receive the per diem
61 authorized under Section 25-3-69 for each day spent actually
62 discharging their official duties, and shall receive reimbursement
63 for mileage and necessary travel expenses incurred as provided in
64 Section 25-3-41. A board member who acts within the scope of
65 board duties, without malice and in the reasonable belief that the
66 member's action is warranted by law is immune from civil
67 liability.

68 SECTION 2. Section 73-23-33, Mississippi Code of 1972, is
69 amended as follows:

70 73-23-33. As used in this chapter unless the context or
71 subject matter otherwise requires:

72 (a) "Physical therapy" or "physiotherapy," which terms
73 are deemed identical and interchangeable, means the art and
74 science of a health specialty concerned with the prevention of
75 disability, and the physical rehabilitation for congenital or
76 acquired physical or mental disabilities, resulting from or
77 secondary to injury or disease. The "practice of physical
78 therapy" means the practice of the health specialty and
79 encompasses physical therapy evaluation, treatment planning,
80 treatment administration, instruction and consultative services,
81 including:

82 (i) Performing and interpreting tests and
83 measurements as an aid to physical therapy treatment, for the
84 purpose of correcting or alleviating any physical condition and to
85 prevent the development of any physical or mental disability
86 within the scope of physical therapy; and the performance of
87 neuromuscular-skeletal tests and measurements as an aid in
88 diagnosis, evaluation or determination of the existence of and the
89 extent of any body malfunction;

90 (ii) Planning initial and subsequent treatment
91 programs, on the basis of test findings; and

92 (iii) Administering treatment by therapeutic
93 exercise, neurodevelopmental procedures, therapeutic massage,
94 mechanical devices and therapeutic agents which employ the
95 physical, chemical and other properties of air, water, heat, cold,
96 electricity, sound and radiant energy for the purpose of
97 correcting or alleviating any physical condition or preventing the
98 development of any physical or mental disability. The use of
99 roentgen rays and radium for any purpose, and the use of
100 electricity for surgical purposes including cauterization, are not
101 part of physical therapy;

102 (b) "Physical therapist" means a person licensed in
103 this state to practice physical therapy as defined in this
104 chapter, and whose license is in good standing;

105 (c) "Physical therapist assistant" means a health care
106 worker who assists a physical therapist in the provision of
107 physical therapy under the direct, on-site supervision of the
108 physical therapist. The physical therapist assistant may perform
109 physical therapy procedures and related tasks that have been
110 selected and delegated by the supervising physical therapist, but
111 shall not perform the following physical therapy activities:
112 interpretation of referrals; physical therapy initial evaluation
113 and reevaluation; identification, determination or modification of
114 plans of care (including goals and treatment programs); final
115 discharge assessment/evaluation or establishment of the discharge
116 plan; or therapeutic techniques beyond the skill and knowledge of
117 the physical therapist assistant;

118 (d) "Referral" means the written or oral designation of
119 physical therapy services by a doctor of medicine, dentistry,
120 osteopathy, podiatry or chiropractic, or by a nurse practitioner,
121 holding a license in good standing; and the instruction therefor
122 may be as detailed or as general as the doctor or nurse
123 practitioner in his or her sound discretion deems necessary in the
124 particular case;

125 (e) "Board" means the State Board of Physical Therapy
126 established in Section 73-23-41;

127 * * *

128 (f) "Direct, on-site supervision" means face-to-face
129 oversight by a licensed physical therapist at regular intervals,
130 as prescribed in regulations adopted by the board, of the services
131 provided to a patient by a licensed physical therapist assistant.

132 (g) "Direct supervision" means face-to-face oversight
133 at regular intervals of a physical therapist issued a temporary
134 license under Section 73-23-53(1) by a licensed physical
135 therapist. Such direct supervision shall be in accordance with
136 the regulations adopted by the board.

137 SECTION 3. Section 73-23-35, Mississippi Code of 1972, is

138 amended as follows:

139 73-23-35. It shall be unlawful for any person, corporation
140 or association to, in any manner, represent himself or itself as a
141 physical therapist, a physical therapist assistant or someone who
142 provides physical therapy services, or use in connection with his
143 or its name the words or letters physiotherapist, registered
144 physical therapist, R.P.T., licensed physical therapist assistant,
145 L.P.T.A., or any other letters, words, abbreviations or insignia,
146 indicating or implying that he or it is a physical therapist, a
147 physical therapist assistant or provides physical therapy
148 services, without a valid existing license as a physical therapist
149 or as a physical therapist assistant, as the case may be, issued
150 to him or it pursuant to this chapter. It shall be unlawful to
151 employ an unlicensed physical therapist or physical therapist
152 assistant to provide physical therapy services.

153 The board shall aid the state's attorneys of the various
154 counties in the enforcement of the provisions of this chapter and
155 the prosecution of any violations thereof. In addition to the
156 criminal penalties provided by this chapter, the civil remedy of
157 injunction shall be available to restrain and enjoin violations of
158 any provisions of this chapter without proof of actual damages
159 sustained by any person.

160 SECTION 4. Section 73-23-43, Mississippi Code of 1972, is
161 amended as follows:

162 73-23-43. (1) The board shall have the following general
163 powers and duties:

164 (a) To examine and determine the qualifications and
165 fitness of applicants for licenses to practice physical therapy
166 and licenses to act as physical therapist assistants in this state
167 and prepare or approve and conduct all examinations of applicants
168 for licensure;

169 (b) To issue, renew, deny, suspend or revoke licenses
170 to practice physical therapy and licenses to act as physical

171 therapist assistants in this state or otherwise discipline
172 licensed physical therapists and physical therapist assistants;

173 (c) To investigate alleged or suspected violations of
174 the provisions of this chapter or other laws of this state
175 pertaining to physical therapy and any rules and regulations
176 adopted by the board; for this purpose, any authorized agents of
177 the board shall have the power and right to enter and make
178 reasonable inspections of any place where physical therapy is
179 practiced, and may inspect and/or copy any records pertaining to
180 clients or the practice of physical therapy under this chapter;

181 (d) To establish reasonable fees for application for
182 examination, certificates of licensure and renewal, and other
183 services provided by the board;

184 (e) To adopt, amend or repeal any rules or regulations
185 necessary to carry out the purposes of this chapter and the duties
186 and responsibilities of the * * * board, in accordance with
187 Section 25-43-1 et seq.;

188 (f) To hire appropriate support personnel to carry out
189 the provisions of this chapter.

190 The powers and duties enumerated above are granted for the
191 purpose of enabling the board to safeguard the public health,
192 safety and welfare against unqualified or incompetent
193 practitioners of physical therapy and persons acting as physical
194 therapist assistants, and are to be liberally construed to
195 accomplish this objective;

196 (2) The board shall maintain a register listing the name of
197 every physical therapist and physical therapist assistant licensed
198 to practice in this state, his last known place of business and
199 last known place of residence, and the date and number of his
200 license. The board shall, at least once a year, compile a list of
201 physical therapists and physical therapist assistants licensed to
202 practice in this state and such a list shall be available to any
203 person upon application to the board and the payment of such

204 charges as may be fixed by it.

205 SECTION 5. Section 73-23-45, Mississippi Code of 1972, is
206 amended as follows:

207 73-23-45. All fees and other monies collected or received by
208 the board shall be paid into and credited to a special fund that
209 is created in the State Treasury, which shall be known as the
210 "Physical Therapy Fund." Any interest earned on the special fund
211 shall be credited to the special fund and shall not be paid into
212 the State General Fund. Any unexpended monies remaining in the
213 special fund at the end of a fiscal year shall not lapse into the
214 State General Fund. Monies in the special fund shall be expended,
215 upon appropriation by the Legislature, exclusively for the
216 purposes of implementing the provisions of this chapter.
217 Disbursement of monies in the special fund shall be made only upon
218 warrants issued by the State Fiscal Officer upon requisitions
219 signed by the treasurer of the board. The financial records of
220 the board shall be audited annually by the State Auditor.

221 SECTION 6. Section 73-23-47, Mississippi Code of 1972, is
222 amended as follows:

223 73-23-47. Any person who desires to be licensed under this
224 chapter and who: (a) is of good moral character; (b) has been
225 graduated from a physical therapy or physical therapist assistant
226 program, as the case may be, accredited by an agency recognized by
227 the United States Department of Education, Office on Postsecondary
228 Education; and (c) has paid an application fee not to exceed
229 double the price of the examination, no part of which shall be
230 refunded, shall be examined for licensure by the board. The
231 licensure examination for physical therapists and for physical
232 therapist assistants shall be selected by the board and may also
233 include an oral examination or practical examination or both at
234 the discretion of the board.

235 Each application or filing made under this section shall
236 include the social security number(s) of the applicant in

237 accordance with Section 93-11-64.

238 SECTION 7. Section 73-23-49, Mississippi Code of 1972, is
239 amended as follows:

240 73-23-49. Any person who desires to be licensed as a
241 physical therapist or as a physical therapist assistant shall
242 apply to the board in writing on a form furnished by the board.
243 He shall provide such documents as required by the application
244 forms provided by the board. He shall pay the board at the time
245 of filing an application fee fixed annually by the board but not
246 to exceed Two Hundred Dollars (\$200.00), no part of which shall be
247 refunded.

248 SECTION 8. Section 73-23-51, Mississippi Code of 1972, is
249 amended as follows:

250 73-23-51. (1) The board may license as a physical therapist
251 or as a physical therapist assistant, and furnish a certificate of
252 licensure without examination to, any applicant who presents
253 evidence, satisfactory to the board, of having passed an
254 examination before a similar lawfully authorized examining agency
255 or board in physical therapy of another state or the District of
256 Columbia, if the standards for registration in physical therapy or
257 for licensure as a physical therapist assistant in such other
258 state or district are determined by the board to be as high as
259 those of this state.

260 (2) Any person who has been trained as a physical therapist
261 in a foreign country and desires to be licensed under this chapter
262 and who: (a) is of good moral character; (b) holds a diploma from
263 an educational program for physical therapists approved by the
264 board; (c) submits documentary evidence to the board that he has
265 completed a course of professional instruction substantially
266 equivalent to that obtained by an applicant for licensure; and (d)
267 demonstrates satisfactory proof of proficiency in the English
268 language, may make application on a form furnished by the board
269 for examination as a foreign-trained physical therapist. At the

270 time of making such application, the applicant shall pay the fee
271 prescribed by the board, no portion of which shall be returned.

272 Any person who desires to be licensed under this subsection
273 shall take an examination approved by the board and shall obtain a
274 permanent license. If this requirement is not met, the license of
275 the foreign-trained therapist may be revoked.

276 SECTION 9. Section 73-23-53, Mississippi Code of 1972, is
277 amended as follows:

278 73-23-53. (1) A temporary license to practice as a physical
279 therapist or physical therapist assistant may be granted to those
280 persons meeting the requirements stated in Section 73-23-47 and
281 who (a) have not taken the approved examination, or (b) have taken
282 the approved examination but have not received the results of the
283 examination. The temporary license shall be granted for a period
284 not to exceed ninety (90) days. Any physical therapist granted a
285 temporary license under the provisions of this subsection shall
286 restrict his practice to the State of Mississippi and shall be
287 under the direct supervision of a physical therapist licensed in
288 Mississippi (physical therapy assistants shall be under the direct
289 on-site supervision of a Mississippi licensed physical therapist).

290 Documentation verifying said supervision shall be on file with
291 the board before a temporary license is granted.

292 (2) A temporary license to practice physical therapy or to
293 act as a physical therapist assistant may be granted to a physical
294 therapist or a physical therapist assistant licensed in another
295 state who is moving into the state, provided the application for
296 Mississippi licensure is pending and the current license is in
297 good standing. This temporary license will be granted for a
298 period not to exceed sixty (60) days.

299 (3) Any person granted a temporary license who is required
300 to take the approved examination and fails to take the exam as
301 required by the board or does not pass the required exam shall
302 have the temporary license revoked and a license of any type shall

303 not be issued until such person has passed an approved
304 examination.

305 (4) Any person who has taken but not passed the required
306 examination in this or another jurisdiction shall not be eligible
307 for a license of any type until an approved examination is passed.

308 (5) Any person who has been trained as a physical therapist
309 or physical therapist assistant in a foreign country and desires
310 to be temporarily licensed under this subsection shall demonstrate
311 proficiency in the English language and meet the other
312 requirements of Section 73-23-51(2) before such temporary license
313 shall be issued.

314 SECTION 10. Section 73-23-57, Mississippi Code of 1972, is
315 amended as follows:

316 73-23-57. (1) Every licensed physical therapist and
317 physical therapist assistant shall apply to the board for a
318 renewal of licensure in a manner prescribed by the rules and
319 regulations of the board, and pay the prescribed fee, not to
320 exceed Seventy-five Dollars (\$75.00) per year, or One Hundred
321 Fifty Dollars (\$150.00) every two (2) years. Licenses that are
322 not so renewed shall automatically lapse.

323 (2) The manner in which lapsed licenses shall be revived or
324 extended shall be established by the board.

325 SECTION 11. Section 73-23-61, Mississippi Code of 1972, is
326 amended as follows:

327 73-23-61. (1) Each violation of Section 73-23-35 shall be
328 punishable by a fine of not less than One Hundred Dollars
329 (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by
330 imprisonment for not less than ten (10) days nor more than sixty
331 (60) days, or both such fine and imprisonment.

332 (2) Any person who shall knowingly make a material, false
333 statement in his application for license under this chapter or in
334 response to any inquiry by * * * the board, shall be fined not
335 less than One Hundred Dollars (\$100.00) nor more than Five Hundred

336 Dollars (\$500.00) or imprisoned for not less than ten (10) days
337 nor more than sixty (60) days, or both such fine and imprisonment.

338 SECTION 12. Section 73-23-63, Mississippi Code of 1972, is
339 amended as follows:

340 73-23-63. (1) Any person whose application for a license is
341 denied shall be entitled to a hearing before the board if he
342 submits a written request to the board. Such hearing shall be
343 conducted at the earliest possible date. * * * The board shall
344 fix a time and place for the hearing and shall cause a written
345 copy of the reason for denial of the license, together with a
346 notice of the time and place fixed for the hearing to be served on
347 the applicant requesting the hearing * * *. Service of and notice
348 of the hearing may be given by certified mail to the last known
349 address of the licensee or applicant. For purposes of the
350 hearing, the board * * * shall have the power to subpoena persons
351 and compel the production of records, papers and other documents.

352 (2) (a) All complaints concerning a licensee's business or
353 professional practice shall be received by the board. Each
354 complaint received shall be logged, recording at a minimum the
355 following information: (i) licensee's name; (ii) name of the
356 complaining party, if known; (iii) date of complaint; (iv) brief
357 statement of complaint; and (v) disposition.

358 (b) Following the investigative process, the board may
359 file formal charges against the licensee. Such formal complaint
360 shall, at a minimum, inform the licensee of the facts which are
361 the basis of the charge and which are specific enough to enable
362 the licensee to defend against the charges.

363 (c) Each licensee whose conduct is the subject of a
364 formal charge which seeks to impose disciplinary action against
365 the licensee shall be served notice of the formal charge at least
366 thirty (30) days before the date of the hearing, which hearing
367 shall be presided over by the board or the board's designee.
368 Service shall be considered to have been given if the notice was

369 personally received by the licensee or if the notice was mailed
370 certified, return receipt requested, to the licensee at the
371 licensee's last known address as listed with the state agency.

372 (d) The notice of the formal charge shall consist at a
373 minimum of the following information:

374 (i) The time, place and date of the hearing;

375 (ii) That the licensee shall appear personally at
376 the hearing and may be represented by counsel;

377 (iii) That the licensee shall have the right to
378 produce witnesses and evidence in the licensee's behalf and shall
379 have the right to cross-examine adverse witnesses and evidence;

380 (iv) That the hearing could result in disciplinary
381 action being taken against the licensee's license;

382 (v) That rules for the conduct of these hearings
383 exist and it may be in the licensee's best interest to obtain a
384 copy;

385 (vi) That the board or its designee shall preside
386 at the hearing and following the conclusion of the hearing shall
387 make findings of facts, conclusions of law and recommendations,
388 separately stated, to the board as to what disciplinary action, if
389 any, should be imposed on the licensee;

390 (vii) The board or its designee shall hear
391 evidence produced in support of the formal charges and contrary
392 evidence produced by the licensee. At the conclusion of the
393 hearing, the board shall issue an order; and

394 (viii) All proceedings pursuant to this section
395 are matters of public record and shall be preserved pursuant to
396 state law.

397 (3) In addition to other remedies provided by law or in
398 equity, any applicant or licensee aggrieved by any action of the
399 board may appeal the action of the board to the chancery court of
400 the county of his residence, if he be a resident of this state, or
401 the Chancery Court of the First Judicial District of Hinds County,

402 Mississippi, if he be a nonresident of this state, and the court
403 after a hearing may modify, affirm or reverse the judgment of the
404 board or may remand the case to the board for further proceedings.
405 An appeal shall be filed within thirty (30) days immediately
406 following the mailing or delivery to the applicant or licensee of
407 a copy of the order of judgment of the board, unless the court,
408 for good cause shown, extends the time. Appeals may be had to the
409 Supreme Court of the State of Mississippi as provided by law from
410 any final judgment of the chancery court. If the board appeals
411 from any judgment of the chancery court, no bond shall be required
412 of it in order to perfect its appeal. Any appeal of a license
413 suspension that is required by Section 93-11-157 or 93-11-163
414 shall be taken in accordance with the appeal procedure specified
415 in Section 93-11-157 or 93-11-163, as the case may be, rather than
416 the procedure specified in this section.

417 SECTION 13. Section 73-23-64, Mississippi Code of 1972, is
418 amended as follows:

419 73-23-64. (1) The board may impose any of the following
420 sanctions, singly or in combination, when it finds that a licensee
421 is guilty of any such offense:

- 422 (a) Revocation of the license;
- 423 (b) Suspension of the license, for any period of time;
- 424 (c) Censure the licensee;
- 425 (d) Impose a monetary penalty of not more than Two
426 Hundred Dollars (\$200.00);
- 427 (e) Place a licensee on probationary status and require
428 the licensee to submit to any of the following: (i) report
429 regularly to the board, or its designee, upon matters which are
430 the basis of probation; (ii) continue to renew professional
431 education until a satisfactory degree of skill has been attained
432 in those areas which are the basis of probation; or (iii) such
433 other reasonable requirements or restrictions as are proper;
- 434 (f) Refuse to renew a license; or

435 (g) Revoke probation which has been granted and impose
436 any other disciplinary action in this subsection when the
437 requirements of probation have not been fulfilled or have been
438 violated.

439 (2) The board may summarily suspend a license under this
440 chapter without a hearing simultaneously with the filing of a
441 formal complaint and notice for a hearing provided under this
442 section if the board finds that the continued practice in the
443 profession would constitute an immediate danger to the public. If
444 the board suspends summarily a license under the provisions of
445 this subsection, a hearing must begin within twenty (20) days
446 after such suspension begins, unless continued at the request of
447 the licensee.

448 (3) Disposition of any formal complaint may be made by
449 consent order or stipulation between the board and the licensee.

450 (4) The board may reinstate any licensee to good standing
451 under this chapter if, after hearing, the board is satisfied that
452 the applicant's renewed practice is in the public interest. The
453 procedure for the reimbursement of a license that is suspended for
454 being out of compliance with an order for support, as defined in
455 Section 93-11-153, shall be governed by Section 93-11-157 or
456 93-11-163, as the case may be.

457 * * *

458 (5) The board shall seek to achieve consistency in the
459 application of the foregoing sanctions, and significant departure
460 from prior decisions involving similar conduct shall be explained
461 by the board.

462 SECTION 14. Section 73-23-65, Mississippi Code of 1972, is
463 amended as follows:

464 73-23-65. The * * * Physical Therapy Advisory Council is
465 abolished. All of the powers and duties of the State Board of
466 Health and the State Department of Health regarding the licensure
467 and regulation of the profession of physical therapy in the State

468 of Mississippi are transferred to the State Board of Physical
469 Therapy. Any property, contractual rights and obligations and
470 unexpended funds of the State Board of Health and the State
471 Department of Health relating to the licensure and regulation of
472 the profession of physical therapy in the State of Mississippi are
473 transferred to * * * the State Board of Physical Therapy.

474 SECTION 15. Section 73-23-55, Mississippi Code of 1972,
475 which provided for the licensing of physical therapists who were
476 licensed under previously repealed statutes, is repealed.

477 SECTION 16. This act shall take effect and be in force from
478 and after July 1, 2000.