

By: Dearing, Huggins

To: Public Health and
Welfare;
Appropriations

SENATE BILL NO. 2526

1 AN ACT RELATING TO THE LICENSURE OF PHYSICAL THERAPISTS AND
2 PHYSICAL THERAPIST ASSISTANTS; TO CREATE THE STATE BOARD OF
3 PHYSICAL THERAPY AND PRESCRIBE ITS POWERS AND DUTIES; TO PROVIDE
4 FOR THE APPOINTMENT OF THE BOARD; TO PRESCRIBE THE QUALIFICATIONS
5 FOR LICENSURE TO PRACTICE PHYSICAL THERAPY; TO PROVIDE FOR A
6 LICENSURE EXAMINATION; TO PROVIDE FOR A TEMPORARY LICENSE; TO
7 PROVIDE FOR EXEMPTIONS FROM LICENSURE; TO RESTRICT THE USE OF
8 CERTAIN TITLES TO LICENSED PRACTITIONERS OF PHYSICAL THERAPY; TO
9 SPECIFY CERTAIN REQUIREMENTS FOR THE MANAGEMENT OF PATIENT CARE BY
10 PHYSICAL THERAPISTS; TO SPECIFY GROUNDS FOR DISCIPLINARY ACTION
11 AGAINST PHYSICAL THERAPIST LICENSEES; TO AUTHORIZE THE BOARD TO
12 CONDUCT INVESTIGATIONS AND HEARINGS AND TAKE DISCIPLINARY ACTIONS
13 AGAINST LICENSEES; TO ALLOW APPEALS FROM ACTIONS OF THE BOARD; TO
14 SPECIFY CERTAIN UNLAWFUL PRACTICES, AND PROVIDE FOR CIVIL
15 PENALTIES AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THIS ACT; TO
16 PROVIDE CERTAIN RIGHTS FOR CONSUMERS OF PHYSICAL THERAPY SERVICES;
17 TO TRANSFER THE POWERS AND DUTIES OF THE STATE BOARD OF HEALTH
18 REGARDING THE LICENSURE AND REGULATION OF THE PROFESSION OF
19 PHYSICAL THERAPY TO THE STATE BOARD OF PHYSICAL THERAPY; TO REPEAL
20 SECTIONS 73-23-31 THROUGH 73-23-65, MISSISSIPPI CODE OF 1972,
21 WHICH PROVIDE FOR THE LICENSURE AND REGULATION OF THE PRACTICE OF
22 PHYSICAL THERAPY BY THE STATE BOARD OF HEALTH AND PROVIDE FOR THE
23 PHYSICAL THERAPY ADVISORY COUNCIL; AND FOR RELATED PURPOSES.

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

25 SECTION 1. This chapter shall be known and may be cited as
26 the Mississippi Physical Therapy Practice Law.

27 SECTION 2. This chapter is enacted for the purposes of
28 protecting the public health, safety, and welfare, and of
29 providing for state administrative control, supervision, licensure
30 and regulation of the practice of physical therapy. It is the
31 Legislature's intent that only individuals who meet and maintain

32 prescribed standards of competence and conduct may engage in the
33 practice of physical therapy as authorized by this chapter. This
34 chapter shall be liberally construed to promote the public
35 interest and to accomplish the purposes stated in this section.

36 SECTION 3. As used in this chapter, the following terms
37 shall have the following meanings, unless the context otherwise
38 requires:

39 (a) "Board" means the State Board of Physical Therapy.

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41 (b) "Physical therapy" or "physiotherapy," which terms
42 are deemed identical and interchangeable, means the care and
43 services provided by or under the direction and supervision of a
44 physical therapist who is licensed under this chapter.

45 (c) "Physical therapist" means a person who is licensed
46 under this chapter to practice physical therapy.

47 (d) "Physical therapist assistant" means a person who
48 meets the requirements of this chapter for licensure and who
49 assists the physical therapist in selected components of physical
50 therapy interventions.

51 (e) "Practice of physical therapy" means:

52 (i) Examining, evaluating and testing individuals
53 with mechanical, physiological and developmental impairments,
54 functional limitations, and disability or other health and
55 movement-related conditions in order to determine a diagnosis,
56 prognosis and plan of therapeutic intervention, and to assess the
57 ongoing effects of intervention;

58 (ii) Alleviating impairments and functional
59 limitations by designing, implementing, and modifying therapeutic
60 interventions that include, but are not limited to, therapeutic
61 exercise; functional training in self care and in home, community
62 or work reintegration; manual therapy including soft tissue and

63 joint mobilization and manipulation; therapeutic massage;
64 assistive and adaptive orthotic, prosthetic, protective and
65 supportive devices and equipment; airway clearance techniques;
66 debridement and wound care; physical agents or modalities;
67 mechanical and electrotherapeutic modalities; and patient-related
68 instruction;

69 (iii) Reducing the risk of injury, impairment,
70 functional limitation and disability, including the promotion and
71 maintenance of fitness, health and quality of life in all age
72 populations; and

73 (iv) Engaging in administration, consultation,
74 education and research.

75 (f) "Physical therapy aide" means a person trained
76 under the direction of a physical therapist who performs
77 designated and supervised routine tasks related to physical
78 therapy.

79 (g) "Restricted license" means a license on which the
80 board places restrictions or conditions, or both, as to scope of
81 practice, place of practice, supervision of practice, duration of
82 licensed status, or type or condition of patient or client to whom
83 the licensee may provide services.

84 (h) "Direct supervision" means face-to-face oversight
85 by a licensed physical therapist at regular intervals of a
86 physical therapist issued a temporary license under Section 9 of
87 this act. This direct supervision shall be in accordance with the
88 rules and regulations adopted by the board.

89 (i) "Direct on-site supervision" means face-to-face
90 oversight by a licensed physical therapist at regular intervals,

91 as prescribed in rules and regulations adopted by the board, of
92 the services provided to a patient by a licensed physical
93 therapist assistant.

94 (j) "Continuous on-site supervision" means the
95 supervising physical therapist, or when delegated a physical
96 therapist assistant, is continuously on-site and present in the
97 department or facility where services are provided, is immediately
98 available to the person being supervised and maintains continued
99 involvement in appropriate aspects of each treatment session in
100 which physical therapy aides are involved in components of care as
101 determined by the supervising physical therapist.

102 (k) "Testing" means standardized methods and techniques
103 used to gather data about the patient, including electrodiagnostic
104 and electrophysiologic tests and measures.

105 (l) "Consultation by means of telecommunication" means
106 that a physical therapist renders professional or expert opinion
107 or advice to another physical therapist or health care provider
108 via telecommunications or computer technology from a distant
109 location. It includes the transfer of data or exchange of
110 educational or related information by means of audio, video or
111 data communications. The physical therapist may use telehealth
112 technology as a vehicle for providing only services that are
113 legally or professionally authorized. The patient's written or
114 verbal consent must be obtained and documented before this
115 consultation. All records used or resulting from a consultation
116 by means of telecommunications are part of a patient's records and
117 are subject to applicable confidentiality requirements.

118 (m) "Jurisdiction of the United States" means any

119 state, territory or the District of Columbia that licenses
120 physical therapists.

121 SECTION 4. (1) There is established a State Board of
122 Physical Therapy that shall consist of six (6) members appointed
123 by the Governor, with the advice and consent of the Senate. At
124 least three (3) members shall be appointed from a list of five (5)
125 persons submitted by the Mississippi Physical Therapy Association,
126 all of whom must be residents of Mississippi and must have engaged
127 in the practice of physical therapy within the state for at least
128 four (4) years. Three (3) members shall be physical therapists,
129 one (1) member shall be a physical therapist assistant, one (1)
130 member shall be a physician, and one (1) member shall be a
131 consumer at large who is not associated with or financially
132 interested in the practice or business of physical therapy. The
133 initial members of the board shall be appointed for staggered
134 terms, as follows: One (1) member shall be appointed for a term
135 that ends on June 30, 2001; two (2) members shall be appointed for
136 terms that end on June 30, 2002; one (1) member shall be appointed
137 for a term that ends on June 30, 2003; and two (2) members shall
138 be appointed for terms that end on June 30, 2004. All subsequent
139 appointments to the board shall be for terms of four (4) years
140 from the expiration date of the previous term. No person shall be
141 appointed for more than two (2) consecutive terms. By approval of
142 the majority of the board, the service of a member may be extended
143 at the completion of a four (4) year term until a new member is
144 appointed or the current member is reappointed.

145 (2) The board shall annually elect a chairman, secretary and
146 treasurer. The board shall provide for the timely orientation and

147 training of new professional and public appointees to the board
148 regarding board licensing and disciplinary procedures, this
149 chapter and board rules, regulations, policies and procedures. A
150 member may be removed by the board only for due cause. Failure to
151 attend at least half of the board meetings in a fiscal year shall
152 constitute cause. The board shall meet at least once each
153 quarter, and those meetings shall be held in compliance with the
154 Open Meetings Law (Section 25-41-1 et seq.). A majority of board
155 members shall constitute a quorum for the transaction of business.
156 The board shall keep an official record of its meetings.
157 Vacancies on the board shall be filled by board member vote from a
158 list of nominees submitted by the Mississippi Physical Therapy
159 Association. Members of the board shall receive the per diem
160 authorized under Section 25-3-69 for each day spent actually
161 discharging their official duties, and shall receive reimbursement
162 for mileage and necessary travel expenses incurred as provided in
163 Section 25-3-41. A board member who acts within the scope of
164 board duties, without malice and in the reasonable belief that the
165 member's action is warranted by law is immune from civil
166 liability.

167 SECTION 5. (1) It shall be the duty of the board to pass
168 upon the qualifications of applicants for licensure as physical
169 therapists and physical therapist assistants, to issue licenses
170 and renewals of licenses to physical therapists and physical
171 therapist assistants qualifying under this chapter, and with
172 proper cause to suspend or revoke the license of those persons.
173 The board may adopt rules and regulations not inconsistent with
174 law, in accordance with the Administrative Procedures Law (Section

175 25-43-1 et seq.), as it may deem necessary for the performance of
176 its duties in regulating the practice of physical therapy in the
177 State of Mississippi. The board shall maintain a listing of the
178 names of every living physical therapist and physical therapist
179 assistant licensed in this state, his or her last known place of
180 business, last known place of residence and the date and number of
181 his or her license. The board shall compile a list of physical
182 therapists and physical therapist assistants licensed to practice
183 in the State of Mississippi and that list shall be available to
184 any person upon application to the board and the payment of such
185 charge as may be fixed by the board. The board shall have the
186 power to make such expenditures, employ such personnel, and enter
187 into such contracts for services as it may deem necessary for the
188 administration of the provisions of this chapter. The board shall
189 make available board rulings, opinions, and interpretations of
190 statutes or regulations in order to guide persons regulated under
191 this chapter and shall maintain annual performance records. The
192 board shall provide information to the public regarding the
193 complaint process. The board shall make available final
194 disciplinary action taken against a licensee.

195 (2) The board shall coordinate and collect fees for the
196 issuance of licenses on a biennial (twenty-four-month) schedule.
197 The renewal fee for licensure shall be fixed by the board. Any
198 licensed person seeking renewal shall include proof of the
199 completion of twenty-four (24) continuing education hours within
200 the current licensure period and must have completed the
201 appropriate application forms.

202 (3) All fees and other monies collected or received by the

203 board shall be paid into and credited to a special fund that is
204 created in the State Treasury, which shall be known as the
205 "Physical Therapy Fund." Any interest earned on the special fund
206 shall be credited to the special fund and shall not be paid into
207 the State General Fund. Any unexpended monies remaining in the
208 special fund at the end of a fiscal year shall not lapse into the
209 State General Fund. Monies in the special fund shall be expended,
210 upon appropriation by the Legislature, for the purposes of
211 implementing the provisions of this chapter. Disbursement of
212 monies in the special fund shall be made only upon warrants issued
213 by the State Fiscal Officer upon requisitions signed by the
214 treasurer of the board. The financial records of the board shall
215 be audited annually by the State Auditor.

216 SECTION 6. (1) An applicant for a license as a physical
217 therapist or a physical therapist assistant must:

218 (a) Be of good moral character;

219 (b) Have completed the application process as
220 prescribed by the board;

221 (c) Be a graduate of a physical therapy education
222 program accredited by a national accreditation agency approved by
223 the board; and

224 (d) Have successfully passed a national examination
225 approved by the board.

226 (2) An applicant for a license as a physical therapist who
227 has been educated outside of the United States shall:

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229 (a) Be of good moral character;

230 (b) Have completed the application process as

231 prescribed by the board;

232 (c) Provide satisfactory evidence that the applicant's
233 education is substantially equivalent to the requirements of
234 physical therapists educated in accredited educational programs as
235 determined by the board. If it is determined that a
236 foreign-educated applicant's education is not substantially
237 equivalent, the board may require the person to complete
238 additional course work before it proceeds with the application
239 process;

240 (d) Provide proof of legal authorization to reside and
241 seek employment in a jurisdiction of the United States;

242 (e) Have the applicant's educational credentials
243 evaluated by a board-approved credential evaluation agency;

244 (f) Have passed the board-approved English proficiency
245 examinations if the applicant's native language is not English;
246 and

247 (g) Have successfully passed the national examination
248 approved by the board.

249 (3) Notwithstanding the provisions of subsection (2) of this
250 section, if the foreign-educated physical therapist applicant is a
251 graduate of an accredited educational program as approved by the
252 board, the board may waive the requirements of paragraphs (c) and
253 (e) of subsection (2) of this section.

254 SECTION 7. (1) An applicant for licensure shall file a
255 complete application as required by the board. The applicant
256 shall include application and examination fees as prescribed by
257 the board. Each application for licensure shall include the
258 social security number of the applicant in accordance with Section

259 93-11-64.

260 (2) The board shall notify an applicant of any deficiencies
261 in the application. An applicant who disagrees with the
262 identified deficiencies may request in writing and, upon request,
263 shall be granted a hearing before the board. The hearing shall be
264 held in the same manner as prescribed in Section 19 for hearings
265 on denials of licenses.

266 SECTION 8. (1) The licensure examination for physical
267 therapists and for physical therapist assistants shall be selected
268 by the board and may also include an oral examination or practical
269 examination, or both, at the discretion of the board.

270 (2) An applicant may take the examination for licensure
271 after the application process has been completed.

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273 (3) An applicant for licensure who does not pass the
274 examination after the first attempt may retake the examination one
275 (1) additional time without reapplication for licensure within six
276 (6) months of the first failure. Before the board may approve an
277 applicant for subsequent testing beyond two (2) attempts, an
278 applicant shall reapply for licensure and shall demonstrate
279 evidence satisfactory to the board of having successfully
280 completed additional clinical training or course work, or both, as
281 determined by the board.

282 SECTION 9. (1) A temporary license to practice as a
283 physical therapist or physical therapist assistant may be granted
284 to those persons meeting the requirements stated in Section 6 of
285 this act who (a) have not taken the approved examination or (b)
286 have taken the approved examination but have not received the

287 results of the examination. The temporary license shall be
288 granted for a period not to exceed ninety (90) days. Any physical
289 therapist granted a temporary license under this subsection shall
290 restrict his or her practice to the State of Mississippi and shall
291 be under the direct supervision of a physical therapist licensed
292 in Mississippi. Any physical therapist assistant granted a
293 temporary license under this subsection shall be under the direct
294 on-site supervision of a Mississippi licensed physical therapist.
295 Documentation verifying that supervision shall be on file with
296 the board before a temporary license is granted.

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

304 (3) Any person granted a temporary license who is required
305 to take the approved examination and fails to take the exam as
306 required by the board or does not pass the required exam shall
307 have the temporary license revoked and a license of any type shall
308 not be issued until the person has passed an approved examination.

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

312 (5) Any person who has been trained as a physical therapist
313 or physical therapist assistant in a foreign country and desires
314 to be temporarily licensed under this subsection shall demonstrate

315 proficiency in the English language and meet the other
316 requirements of paragraphs (2)(a) through (f) of Section 6 of this
317 act before the temporary license will be issued.

318 SECTION 10. The board shall issue a license to a physical
319 therapist or physical therapist assistant who has a valid
320 unrestricted license from another jurisdiction of the United
321 States if that person, when granted the license, met all
322 requirements prescribed in subsection (1) of Section 6 of this act
323 and any applicable board rules or regulations.

324 SECTION 11. (1) This chapter does not restrict a person
325 licensed under any other law of this state from engaging in the
326 profession or practice for which that person is licensed if that
327 person does not represent, imply or claim that he or she is a
328 physical therapist or physical therapist assistant or a provider
329 of physical therapy.

330 (2) The following persons are exempt from the licensure
331 requirements of this chapter when engaged in the following
332 activities:

333 (a) A person in an education program approved by the
334 board who is pursuing a course of study leading to a degree as a
335 physical therapist or a physical therapist assistant and who is
336 satisfying supervised clinical education requirements related to
337 the person's physical therapy education while under on-site
338 supervision of a licensed physical therapist.

339 (b) A physical therapist who is practicing in the
340 United States Armed Services, United States Public Health Service
341 or Veterans Administration under federal regulations for state
342 licensure of health care providers.

343 (c) A physical therapist who is licensed in another
344 jurisdiction of the United States or a foreign-educated physical
345 therapist credentialed in another country if that person is
346 performing physical therapy in connection with teaching or
347 participating in an educational seminar of no more than sixty (60)
348 days in a calendar year.

349 (d) A physical therapist who is licensed in another
350 jurisdiction of the United States if that person is providing
351 consultation by means of telecommunication to a physical therapist
352 licensed under this chapter.

353 (e) Schools, YMCAs, athletic clubs and similar
354 organizations that furnish services to their players and members,
355 provided that they do not represent themselves as physical
356 therapists or as physical therapist assistants or as providing
357 physical therapy services.

358 SECTION 12. (1) A licensee shall renew the license
359 according to board rules and regulations. A licensee who fails to
360 renew the license on or before the expiration date shall not
361 practice as a physical therapist or work as a physical therapist
362 assistant in this state.

363 (2) Each licensee is responsible for reporting to the board
364 any name change and any changes in business and home addresses
365 within thirty (30) days after the date of the change.

366 SECTION 13. (1) The board may reinstate a lapsed license
367 upon payment of a renewal fee and reinstatement fee.

368 (2) If a person's license has lapsed for more than three (3)
369 consecutive years, that person shall reapply for a license and pay
370 all applicable fees. The person shall also demonstrate to the

371 board's satisfaction competence to practice physical therapy, or
372 shall serve an internship under a restricted license or take
373 remedial courses as determined by the board, or both, at the
374 board's discretion. The board may also require the applicant to
375 take an examination.

376 SECTION 14. (1) A physical therapist licensed under this
377 chapter is fully authorized to practice physical therapy as
378 defined in Section 3 of this act.

379 (2) A physical therapist shall refer a patient or client to
380 appropriate health care practitioners if the physical therapist
381 has reasonable cause to believe that symptoms or conditions are
382 present that require services beyond the scope of practice or when
383 physical therapy is contraindicated.

384 (3) A physical therapist shall adhere to the recognized
385 standards of ethics of the physical therapy profession and as
386 further established by rules and regulations of the board.

387 SECTION 15. (1) A physical therapist shall use the letters
388 "PT" in connection with the physical therapist's name or place of
389 business to denote licensure under this chapter.

390 (2) A person or business entity, its employees, agents or
391 representatives shall not use in connection with that person's
392 name or the name or activity of the business, the words "physical
393 therapy," "physical therapist," "physiotherapy," "physiotherapist"
394 or "registered physical therapist," the letters "PT," "LPT,"
395 "RPT," or any other words, abbreviations or insignia indicating or
396 implying directly or indirectly that physical therapy is provided
397 or supplied, including the billing of services labeled as physical
398 therapy, unless those services are provided by or under the

399 direction of a physical therapist licensed under this chapter.

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402 (3) A physical therapist assistant shall use the letters
403 "PTA" in connection with that person's name to denote licensure
404 hereunder.

405 (4) A person shall not use the title "physical therapist
406 assistant," the letters "PTA," or any other words, abbreviations
407 or insignia in connection with that person's name to indicate or
408 imply, directly or indirectly, that the person is a physical
409 therapist assistant unless that person is licensed as a physical
410 therapist assistant under this chapter.

411 (5) The board shall aid the district attorneys and county
412 prosecuting attorneys in the enforcement of the provisions of this
413 chapter and the prosecution of any violations of this chapter. In
414 addition to the criminal penalties provided by this chapter, the
415 civil remedy of injunction shall be available to restrain and
416 enjoin violations of any provision of this chapter without proof
417 of actual damages sustained by any person.

418 SECTION 16. (1) A physical therapist is responsible for
419 managing all aspects of the physical therapy care of each patient.
420 The physical therapist shall provide:

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422 (a) The initial written evaluation for each patient;

423 (b) Periodic written reevaluation of each patient;

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426 (c) A written discharge plan for the patient and the

427 patient's response to treatment at discharge;

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430 (d) A written plan of care; and

431 (e) A written record of treatment.

432 (2) A physical therapist shall assure the qualifications of
433 all assistive personnel to perform specific designated tasks
434 through written documentation of the assistive personnel's
435 training.

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437 (3) For each date of service, a physical therapist shall
438 provide all therapeutic interventions that require the expertise
439 of a physical therapist and shall determine the components of
440 physical therapy intervention that may be delegated to a physical
441 therapist assistant and the tasks related to physical therapy that
442 may be performed by a physical therapy aide for delivery of
443 service that is safe, effective, and efficient for each patient.

444 (4) A physical therapist assistant shall work under a
445 physical therapist's direct on-site supervision. A physical
446 therapist assistant may document care provided without the
447 cosignature of the supervising physical therapist.

448 (5) A physical therapist may concurrently supervise no more
449 than two (2) physical therapist assistants.

450 (6) A physical therapist may use physical therapy aides for
451 designated routine tasks. A physical therapy aide shall work
452 under the continuous on-site supervision of a physical therapist
453 or physical therapist assistant who is continuously on-site and
454 present in the facility.

455 (7) A physical therapist's responsibility for patient care
456 management shall include oversight of all documentation for
457 services rendered to each patient, including awareness of fees
458 charged.

459 SECTION 17. (1) The following are grounds for disciplinary
460 action:

461 (a) Violating any provision of this chapter, board
462 rules or regulations or a written order of the board.

463 (b) Practicing or offering to practice beyond the scope
464 of the practice of physical therapy.

465 (c) Obtaining or attempting to obtain a license by
466 fraud or misrepresentation.

467 (d) Engaging in the performance of substandard care by
468 a physical therapist due to a deliberate or negligent act or
469 failure to act, regardless of whether actual injury to the patient
470 is established.

471 (e) Engaging in the performance of substandard care by
472 a physical therapist assistant, including exceeding the authority
473 to perform components of intervention selected by the supervising
474 physical therapist, regardless of whether actual injury to the
475 patient is established.

476 (f) Failing to supervise assistive personnel in
477 accordance with this chapter and board rules or regulations.

478 (g) Having been convicted of a felony in the courts of
479 this state or any other state, territory or country. As used in
480 this paragraph, the term "conviction" includes a finding or
481 verdict of guilt, an admission of guilt, or a plea of nolo
482 contendere.

483 (h) Practicing as a physical therapist or working as a
484 physical therapist assistant when physical or mental abilities are
485 impaired by the use of controlled substances or other
486 habit-forming drugs, chemicals or alcohol.

487 (i) Having had a license revoked or suspended, other
488 disciplinary action taken, or an application for licensure
489 refused, revoked or suspended by the proper authorities of another
490 state, territory or country.

491 (j) Engaging in sexual misconduct. For the purposes of
492 this paragraph, "sexual misconduct" includes:

493 (i) Engaging in or soliciting sexual
494 relationships, whether consensual or nonconsensual, while a
495 physical therapist or physical therapist assistant/patient
496 relationship exists.

497 (ii) Making sexual advances, requesting sexual
498 favors or engaging in other verbal conduct or physical contact of
499 a sexual nature with patients or clients.

500 (iii) Intentionally viewing a completely or
501 partially disrobed patient in the course of treatment if the
502 viewing is not related to patient diagnosis or treatment under
503 current practice standards.

504 (k) Directly or indirectly requesting, receiving or
505 participating in the dividing, transferring, assigning, rebating
506 or refunding of an unearned fee, or profiting by means of a credit
507 or other valuable consideration such as an unearned commission,
508 discount, or gratuity in connection with the furnishing of
509 physical therapy services. This does not prohibit the members of
510 any regularly and properly organized business entity recognized by

511 law and comprised of physical therapists from dividing fees
512 received for professional services among themselves as they
513 determine necessary to defray their joint operating expense.

514 (l) Failing to adhere to the recognized standards of
515 ethics of the physical therapy profession.

516 (m) Charging unreasonable or fraudulent fees for
517 services performed or not performed.

518 (n) Making misleading, deceptive, untrue or fraudulent
519 representations in violation of this chapter or in the practice of
520 the profession.

521 (o) Having been adjudged mentally incompetent by a
522 court of competent jurisdiction.

523 (p) Aiding or abetting a person who is not licensed in
524 this state and who directly or indirectly performs activities
525 requiring a license.

526 (q) Failing to report to the board any act or omission
527 of a licensee, applicant or any other person who violates the
528 provisions of this chapter.

529 (r) Interfering with an investigation or disciplinary
530 proceeding by willful misrepresentation of facts or by the use of
531 threats or harassment against any patient or witness to prevent
532 them from providing evidence in a disciplinary proceeding or any
533 legal action.

534 (s) Failing to maintain patient confidentiality without
535 prior written consent of the patient unless otherwise required by
536 law.

537 (t) Failing to maintain adequate patient records. For
538 the purposes of this paragraph, "adequate patient records" means

539 legible records that contain at a minimum sufficient information
540 to identify the patient, an evaluation of objective findings, a
541 diagnosis, the plan of care, the treatment record and a discharge
542 plan.

543 (u) Promoting an unnecessary device, treatment
544 intervention or service for the financial gain of the practitioner
545 or of a third party.

546 (v) Providing treatment intervention unwarranted by the
547 condition of the patient, or continuing treatment beyond the point
548 of reasonable benefit.

549 (w) Participating in underutilization or
550 overutilization of physical therapy services for personal or
551 institutional financial gain, or participation in services that
552 are in any way linked to the financial gain of a referral source.

553 (2) In addition to the grounds specified in subsection (1)
554 of this section, the board shall be authorized to suspend the
555 license of any licensee for being out of compliance with an order
556 for support, as defined in Section 93-11-153. The procedure for
557 suspension of a license for being out of compliance with an order
558 for support, and the procedure for the reissuance or reinstatement
559 of a license suspended for that purpose, and the payment of any
560 fees for the reissuance or reinstatement of a license suspended
561 for that purpose, shall be governed by Section 93-11-157 or
562 93-11-163, as the case may be. If there is any conflict between
563 any provision of Section 93-11-157 or 93-11-163 and any provision
564 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
565 as the case may be, shall control.

566 SECTION 18. (1) To enforce this chapter the board is

567 authorized to:

568 (a) Receive complaints filed against licensees and
569 conduct a timely investigation.

570 (b) Conduct an investigation at any time and on its own
571 initiative without receipt of a written complaint if a majority of
572 the board has reason to believe that there may be a violation of
573 this chapter.

574 (c) Issue subpoenas to compel the attendance of any
575 witness or the production of any documentation relative to a case.

576 (d) Take emergency action ordering the summary
577 suspension of a license or the restriction of the licensee's
578 practice or employment pending proceedings by the board.

579 (e) Appoint hearing officers authorized to conduct
580 hearings. Hearing officers shall prepare and submit to the board
581 findings of fact, conclusions of law and an order that shall be
582 reviewed and voted on by the board.

583 (f) Require a licensee to be examined in order to
584 determine the licensee's mental, physical or professional
585 competence.

586 (2) If the board finds that the information received in a
587 complaint or an investigation is not of sufficient seriousness to
588 merit disciplinary action against a licensee it may take the
589 following actions:

590 (a) Dismiss the complaint if the board believes the
591 information or complaint is without merit.

592 (b) Issue a confidential advisory letter to the
593 licensee. An advisory letter is nondisciplinary and notifies a
594 licensee that, while there is insufficient evidence to support

595 disciplinary action, the board believes that the licensee should
596 modify or eliminate certain conduct or practices.

597 SECTION 19. (1) Any person whose application for a license
598 is denied shall be entitled to a hearing before the board if he
599 submits a written request to the board. The hearing shall be
600 conducted at the earliest possible date. The board shall fix a
601 time and place for the hearing and shall cause a written copy of
602 the reason for denial of the license together with a notice of the
603 time and place fixed for the hearing to be served on the applicant
604 requesting the hearing. Service of and notice of the hearing may
605 be given by certified mail to the last known address of the
606 licensee or applicant. For purposes of the hearing the board
607 shall have the power to subpoena persons and compel the production
608 of records, papers and other documents.

609 (2) (a) All complaints concerning a licensee's business or
610 professional practice shall be received by the board. Each
611 complaint received shall be logged recording at a minimum the
612 following information: (i) the licensee's name; (ii) the name of
613 the complaining party, if known; (iii) the date of the complaint;
614 (iv) a brief statement of the complaint; and (v) the disposition
615 of the complaint.

616 (b) Following the investigative process the board may
617 file formal charges against the licensee. The formal complaint
618 shall at a minimum inform the licensee of the facts that are the
619 basis of the charge and that are specific enough to enable the
620 licensee to defend against the charges.

621 (c) Each licensee whose conduct is the subject of a
622 formal charge that seeks to impose disciplinary action against the

623 licensee shall be served notice of the formal charge at least
624 thirty (30) days before the date of the hearing, which hearing
625 shall be presided over by the board or the board's designee.
626 Service shall be considered to have been given if the notice was
627 personally received by the licensee or if the notice was mailed
628 certified return receipt requested to the licensee at the
629 licensee's last known address as listed with the board.

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

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

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

635 (iii) That the licensee shall have the right to
636 produce witnesses and evidence on the licensee's behalf and shall
637 have the right to cross-examine adverse witnesses and evidence;

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

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

643 (vi) That the board or its designee shall preside
644 at the hearing and following the conclusion of the hearing shall
645 make findings of facts, conclusions of law and recommendations
646 separately stated to the board as to what disciplinary action, if
647 any, should be imposed on the licensee;

648 (vii) The board or its designee will hear evidence
649 produced in support of the formal charges and contrary evidence
650 produced by the licensee, and the board will issue an order at the

651 conclusion of the hearing; and

652 (viii) All proceedings under this section are
653 matters of public record and shall be preserved in accordance with
654 state law.

655 (2) In addition to other remedies provided by law or in
656 equity, any applicant or licensee aggrieved by any action of the
657 board may appeal the action of the board to the chancery court of
658 the county of his residence if he is a resident of this state, or
659 the Chancery Court of the First Judicial District of Hinds County,
660 Mississippi, if he is a nonresident of this state, and the court
661 after a hearing may modify, affirm or reverse the judgment of the
662 board or may remand the case to the board for further proceedings.
663 An appeal must be filed within thirty (30) days immediately
664 following the mailing or delivery to the applicant or licensee of
665 a copy of the order of judgment of the board unless the court for
666 good cause shown extends the time. Appeals may be had to the
667 Supreme Court of the State of Mississippi as provided by law from
668 any final judgment of the chancery court. If the board appeals
669 any judgment of the chancery court no bond shall be required of it
670 in order to perfect its appeal. Any appeal of a license
671 suspension that is required by Section 93-11-157 or 93-11-163
672 shall be taken in accordance with the appeal procedure specified
673 in Section 93-11-157 or 93-11-163, as the case may be, rather than
674 the procedure specified in this section.

675 SECTION 20. (1) Upon proof that any grounds described in
676 Section 17 of this act have been violated, the board may take the
677 following disciplinary actions singly or in combination:

678 (a) Issue a censure;

679 (b) Restrict a license. The board may require a
680 licensee to report regularly to the board on matters related to
681 the grounds for the restricted license;

682 (c) Suspend a license for a period prescribed by the
683 board;

684 (d) Revoke a license;

685 (e) Refuse to issue or renew a license;

686 (f) Fine a licensee. In addition to a fine, the board
687 may assess and collect the reasonable costs incurred in a
688 disciplinary hearing when action is taken against a person's
689 license; or

690 (g) Accept a voluntary surrendering of a license.

691 (2) Each violation of Section 17 of this act shall, upon
692 conviction, be punishable by a fine of not less than One Hundred
693 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or
694 by imprisonment for not less than ten (10) days nor more than
695 sixty (60) days, or both such fine and imprisonment.

696 SECTION 21. Actions of the board shall be taken subject to
697 the right of notice, hearing and adjudication and the right of
698 appeal in accordance with Mississippi law relating to
699 administrative law and procedure.

700 SECTION 22. (1) It is unlawful for any person to practice
701 or in any manner to represent, imply or claim to practice physical
702 therapy or use any word or designation that implies that the
703 person is a physical therapist unless that person is licensed
704 under this chapter. A person who engages in an activity requiring
705 a license under this chapter or uses any word, title, letters, or
706 any description of services that incorporates one or more of the

707 terms, designations or abbreviations in violation of Section 15 of
708 this act that implies that the person is licensed to engage in the
709 practice of physical therapy is guilty of a misdemeanor.

710 (2) The board may investigate any person to the extent
711 necessary to determine if the person is engaged in the unlawful
712 practice of physical therapy. If an investigation indicates that
713 a person may be practicing physical therapy unlawfully, the board
714 shall inform the person of the alleged violation. The board may
715 refer the matter for prosecution regardless of whether the person
716 ceases the unlawful practice of physical therapy.

717 (3) The board, through the Office of the Attorney General,
718 may apply for injunctive relief in any court of competent
719 jurisdiction to enjoin any person from committing any act in
720 violation of this chapter. Injunction proceedings are in addition
721 to, and not in lieu of, all penalties and other remedies
722 prescribed in this chapter.

723 (4) A person who aids or requires another person to directly
724 or indirectly violate this chapter or board rules or regulations,
725 who permits a license to be used by another person, or who acts
726 with the intent to violate or evade this chapter or board rules or
727 regulations is subject to a civil penalty of not more than One
728 Thousand Dollars (\$1,000.00) for the first violation and not more
729 than Five Thousand Dollars (\$5,000.00) for each subsequent
730 violation.

731 (5) The board shall deposit all monies it collects from
732 civil penalties under this chapter into the Physical Therapy Fund.

733 SECTION 23. (1) A person including, but not limited to, a
734 licensee, corporation, insurance company, health care organization

735 or health care facility and state or local governmental agencies
736 shall report to the board any conviction, determination or finding
737 that a licensee has committed an act that constitutes a violation
738 of Section 17 of this act.

739 (2) A person is immune from civil liability, whether direct
740 or derivative, for providing information in good faith to the
741 board in accordance with subsection (1) of this section.

742 (3) The board shall not disclose the identity of a person
743 who provides information unless the information is essential to
744 proceedings conducted under Sections 18 and 19 of this act or
745 unless required by a court of law.

746 SECTION 24. In lieu of a disciplinary proceeding prescribed
747 by this chapter, the board may permit a licensee to actively
748 participate in a board-approved substance abuse recovery program
749 if:

750 (a) The board has evidence that the licensee is
751 impaired;

752 (b) The licensee has not been convicted of a felony
753 relating to a controlled substance in a court of law of the United
754 States or any other territory or country;

755 (c) The licensee enters into a written agreement with
756 the board for a restricted license and complies with all the terms
757 of the agreement, including making satisfactory progress in the
758 program and adhering to any limitations on the licensee's practice
759 or work imposed by the board to protect the public. Failure to
760 enter into such an agreement shall activate an immediate
761 investigation and disciplinary proceeding by the board; and

762 (d) As part of the agreement established between the

763 licensee and the board, the licensee signs a waiver allowing the
764 substance abuse program to release information to the board if the
765 licensee does not comply with the requirements of this section or
766 is unable to practice or work with reasonable skill or safety.

767 SECTION 25. (1) The public shall have access to the
768 following information:

769 (a) A list of licensed physical therapists and physical
770 therapist assistants that includes place of practice, license
771 number, date of license expiration and status of license; and

772 (b) A list of official actions taken by the board.

773 (2) The home address and telephone numbers of physical
774 therapists and physical therapist assistants are not public
775 records and shall be kept confidential by the board unless they
776 are the only addresses and telephone numbers of record.

777 (3) If a referring practitioner is deriving direct or
778 indirect compensation from the referral to physical therapy, the
779 physical therapist shall disclose this information in writing to
780 the patient before the initial evaluation.

781 (4) A physical therapist shall disclose in writing to a
782 patient any financial interest in products that the physical
783 therapist endorses and recommends to the patient at the time of
784 the endorsement or recommendation.

785 (5) A physical therapist shall inform each patient that the
786 patient has freedom of choice in services and products.

787 (6) Information relating to the physical therapist-patient
788 relationship is confidential and shall not be communicated to a
789 third party who is not involved in that patient's care without the
790 prior written consent of the patient. A physical therapist shall

791 divulge to the board information it requires in connection with
792 any investigation, public hearing or other proceedings. The
793 physical therapist-patient privilege does not extend to cases in
794 which the physical therapist has a duty to report information as
795 required by law.

796 (7) Any person may submit a complaint regarding any licensee
797 or any other person potentially in violation of this chapter.
798 Confidentiality shall be maintained subject to law.

799 (8) The board shall keep all information relating to the
800 receiving and investigation of complaints filed against licensees
801 confidential until the information becomes public record or as
802 required by law. Patient records, including clinical records,
803 files, any other report or oral statement relating to diagnostic
804 findings or treatment of patients, any information from which a
805 patient or his family might be identified, or information received
806 and records or reports kept by the board as a result of an
807 investigation made under this chapter shall not be available to
808 the public and shall be kept confidential by the board.

809 (9) Each licensee shall display a copy of the licensee's
810 license with current renewal verification in a location accessible
811 to public view at the licensee's place of practice.

812 SECTION 26. Any person licensed by the State Board of Health
813 under Sections 73-23-31 through 73-23-65 as they existed before
814 July 1, 2000, and holding a valid license to practice physical
815 therapy on July 1, 2000, may be licensed under the provisions of
816 this chapter without examination, provided that the person applies
817 for and obtains a new license certificate from the State Board of
818 Physical Therapy before October 1, 2000, if that time does not

819 coincide with the biennial date for renewal of license. Each
820 physical therapist or physical therapist assistant so licensed
821 will retain the same licensure number as assigned by the State
822 Board of Health.

823 SECTION 27. The Physical Therapy Advisory Council is
824 abolished. All of the powers and duties of the State Board of
825 Health regarding the licensure and regulation of the profession of
826 physical therapy in the State of Mississippi are transferred to
827 the State Board of Physical Therapy. Any property, contractual
828 rights and obligations and unexpended funds of the State Board of
829 Health relating to that board's licensure and regulation of the
830 profession of physical therapy in the State of Mississippi are
831 transferred to the State Board of Physical Therapy.

832 SECTION 28. Sections 73-23-31, 73-23-33, 73-23-35, 73-23-37,
833 73-23-39, 73-23-41, 73-23-43, 73-23-45, 73-23-47, 73-23-49,
834 73-23-51, 73-23-53, 73-23-55, 73-23-57, 73-23-59, 73-23-61,
835 73-23-63, 73-23-64 and 73-23-65, Mississippi Code of 1972, which
836 provide for the licensure and regulation of the practice of
837 physical therapy by the State Board of Health and provide for the
838 Physical Therapy Advisory Council, are repealed.

839 SECTION 29. Sections 1 through 27 of this act shall be
840 codified as new sections in Chapter 23, Title 73 of the
841 Mississippi Code of 1972.

842 SECTION 30. This act shall take effect and be in force from
843 and after July 1, 2000.