

By: Frazier, Dawkins

To: Public Health and
Welfare

SENATE BILL NO. 2688

1 AN ACT TO LIMIT DISCIPLINARY PROCEEDINGS AND CRIMINAL
2 PROSECUTIONS AGAINST PHYSICIANS, NURSES AND PHARMACISTS WHO EXCEED
3 RECOMMENDED DOSAGES OF CONTROLLED SUBSTANCES FOR THE TREATMENT OF
4 PAIN; TO REQUIRE THE STATE BOARD OF MEDICAL LICENSURE TO ADOPT
5 GUIDELINES FOR THE TREATMENT OF PAIN; TO AMEND SECTIONS 73-15-29,
6 73-21-97 AND 73-25-29, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO
7 THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

9 SECTION 1. (1) The Legislature finds that many controlled
10 substances have useful and legitimate medical and scientific
11 purposes and are necessary to maintain the health and general
12 welfare of the people of Mississippi. Principles of quality
13 medical practice dictate that the people of Mississippi have
14 access to appropriate and effective pain relief.

15 (2) The Legislature finds that the appropriate application
16 for up-to-date knowledge and treatment modalities can serve to
17 improve the quality of life for those patients who suffer from
18 pain. The Legislature therefor encourages physicians to view
19 effective pain management as a part of quality medical practice
20 for all patients with pain, acute or chronic, including those
21 patients who experience pain as a result of terminal illness.

22 (3) The Legislature finds that a physician should be able to
23 prescribe, dispense or administer a controlled substance in excess
24 of the recommended dosage for the treatment of pain so long as
25 such dosage is not administered for the purpose of causing or
26 assisting in causing death for any reason, and so long as it
27 conforms to policies and guidelines for the treatment of pain
28 adopted by the State Board of Medical Licensure.

29 (4) The Legislature finds that a health care facility,
30 hospice or third-party payor should not forbid or restrict the use
31 of controlled substances appropriately administered for the
32 treatment of pain.

33 SECTION 2. (1) For the purpose of this section, the term
34 "health care provider" means a physician licensed by the State
35 Board of Medical Licensure, nurse licensed by the Mississippi
36 Board of Nursing or pharmacist licensed by the State Board of
37 Pharmacy.

38 (2) A health care provider who administers or dispenses a
39 controlled substance in excess of the recommended dosage for the
40 treatment of pain is not subject to disciplinary action or
41 criminal prosecution when: (a) in the judgment of the attending
42 physician, appropriate pain management warrants such dosage; (b)
43 the controlled substance is not administered for the purpose of
44 causing or assisting in causing death for any reason; and (c) the
45 administration of the controlled substance conforms to policies
46 and guidelines for the treatment of pain adopted by the State
47 Board of Medical Licensure.

48 SECTION 3. The State Board of Medical Licensure shall adopt
49 policies and guidelines for the treatment of pain to ensure that
50 physicians who are engaged in the appropriate treatment of pain
51 are not subject to disciplinary action, and the board shall
52 consider policies and guidelines developed by national
53 organizations with expertise in pain management for this purpose.

54 SECTION 4. Section 73-15-29, Mississippi Code of 1972, is
55 amended as follows:

56 73-15-29. (1) The board shall have power to revoke, suspend
57 or refuse to renew any license issued by the board, or to deny an
58 application for a license, or to fine, place on probation and/or
59 discipline a licensee, in any manner specified in this chapter,
60 upon proof that such person:

61 (a) Has committed fraud or deceit in securing or

62 attempting to secure such license;

63 (b) Has been convicted of felony, or a crime involving
64 moral turpitude or has had accepted by a court a plea of nolo
65 contendere to a felony or a crime involving moral turpitude (a
66 certified copy of the judgment of the court of competent
67 jurisdiction of such conviction or pleas shall be prima facie
68 evidence of such conviction);

69 (c) Has negligently or willfully acted in a manner
70 inconsistent with the health or safety of the persons under the
71 licensee's care;

72 (d) Has had a license to practice as a registered nurse
73 or a licensed practical nurse suspended or revoked in any
74 jurisdiction, has voluntarily surrendered said license in any
75 jurisdiction, has been placed on probation as a registered nurse
76 or licensed practical nurse in any jurisdiction or has been placed
77 under a disciplinary order(s) in any manner as a registered nurse
78 or licensed practical nurse in any jurisdiction, (a certified copy
79 of the order of suspension, revocation, probation or disciplinary
80 action shall be prima facie evidence of such action);

81 (e) Has negligently or willfully practiced nursing in a
82 manner that fails to meet generally accepted standards of such
83 nursing practice;

84 (f) Has negligently or willfully violated any order,
85 rule or regulation of the board pertaining to nursing practice or
86 licensure;

87 (g) Has falsified or in a repeatedly negligent manner
88 made incorrect entries or failed to make essential entries on
89 records;

90 (h) Is addicted to or dependent on alcohol or other
91 habit-forming drugs or is a habitual user of narcotics,
92 barbiturates, amphetamines, hallucinogens, or other drugs having
93 similar effect, or has misappropriated any medication;

94 (i) Has a physical, mental or emotional disability that

95 renders the licensee unable to perform nursing services or duties
96 with reasonable skill and safety;

97 (j) Has engaged in any other conduct, whether of the
98 same or of a different character from that specified in this
99 chapter, that would constitute a crime as defined in Title 97 of
100 the Mississippi Code of 1972, as now or hereafter amended, and
101 that relates to such person's employment as a registered nurse or
102 licensed practical nurse;

103 (k) Engages in conduct likely to deceive, defraud or
104 harm the public;

105 (l) Engages in any unprofessional conduct as identified
106 by the board in its rules; or

107 (m) Has violated any provision of this chapter.

108 (2) When the board finds any person unqualified because of
109 any of the grounds set forth in subsection (1) of this section, it
110 may enter an order imposing one or more of the following
111 penalties:

112 (a) Denying application for a license or other
113 authorization to practice nursing or practical nursing;

114 (b) Administering a reprimand;

115 (c) Suspending or restricting the license or other
116 authorization to practice as a registered nurse or licensed
117 practical nurse for up to two (2) years without review;

118 (d) Revoking the license or other authorization to
119 practice nursing or practical nursing;

120 (e) Requiring the discipline to submit to care,
121 counseling or treatment by persons and/or agencies approved or
122 designated by the board as a condition for initial, continued or
123 renewed licensure or other authorization to practice nursing or
124 practical nursing;

125 (f) Requiring the discipline to participate in a
126 program of education prescribed by the board as a condition for
127 initial, continued or renewed licensure;

128 (g) Requiring the discipline to practice under the
129 supervision of a registered nurse for a specified period of time;
130 or

131 (h) Imposing a fine not to exceed Five Hundred Dollars
132 (\$500.00).

133 (3) In addition to the grounds specified in subsection (1)
134 of this section, the board shall be authorized to suspend the
135 license of any licensee for being out of compliance with an order
136 for support, as defined in Section 93-11-153. The procedure for
137 suspension of a license for being out of compliance with an order
138 for support, and the procedure for the reissuance or reinstatement
139 of a license suspended for that purpose, and the payment of any
140 fees for the reissuance or reinstatement of a license suspended
141 for that purpose, shall be governed by Section 93-11-157 or
142 93-11-163, as the case may be. If there is any conflict between
143 any provision of Section 93-11-157 or 93-11-163 and any provision
144 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
145 as the case may be, shall control.

146 (4) The board may not bring any disciplinary action against
147 a nurse for administering or dispensing a controlled substance in
148 excess of the recommended dosage for the treatment of pain if the
149 administering or dispensing of that controlled substance is within
150 the scope of practice of the nurse and it is done in accordance
151 with Section 2 of this act.

152 SECTION 5. Section 73-21-97, Mississippi Code of 1972, is
153 amended as follows:

154 73-21-97. (1) The board may refuse to issue or renew, or
155 may suspend, reprimand, revoke or restrict the license,
156 registration or permit of any person upon one or more of the
157 following grounds:

158 (a) Unprofessional conduct as defined by the rules and
159 regulations of the board;

160 (b) Incapacity of a nature that prevents a pharmacist

161 from engaging in the practice of pharmacy with reasonable skill,
162 confidence and safety to the public;

163 (c) Being found guilty by a court of competent
164 jurisdiction of one or more of the following:

165 (i) A felony;

166 (ii) Any act involving moral turpitude or gross
167 immorality; or

168 (iii) Violation of pharmacy or drug laws of this
169 state or rules or regulations pertaining thereto, or of statutes,
170 rules or regulations of any other state or the federal government;

171 (d) Fraud or intentional misrepresentation by a
172 licensee or permit holder in securing the issuance or renewal of a
173 license or permit;

174 (e) Engaging or aiding and abetting an individual to
175 engage in the practice of pharmacy without a license;

176 (f) Violation of any of the provisions of this chapter
177 or rules or regulations adopted pursuant to this chapter;

178 (g) Failure to comply with lawful orders of the board;

179 (h) Negligently or willfully acting in a manner
180 inconsistent with the health or safety of the public;

181 (i) Addiction to or dependence on alcohol or controlled
182 substances or the unauthorized use or possession of controlled
183 substances;

184 (j) Misappropriation of any prescription drug;

185 (k) Being found guilty by the licensing agency in
186 another state of violating the statutes, rules or regulations of
187 that jurisdiction; or

188 (l) The unlawful or unauthorized possession of a
189 controlled substance.

190 (2) In lieu of suspension, revocation or restriction of a
191 license as provided for above, the board may warn or reprimand the
192 offending pharmacist.

193 (3) In addition to the grounds specified in subsection (1)

194 of this section, the board shall be authorized to suspend the
195 license, registration or permit of any person for being out of
196 compliance with an order for support, as defined in Section
197 93-11-153. The procedure for suspension of a license,
198 registration or permit for being out of compliance with an order
199 for support, and the procedure for the reissuance or reinstatement
200 of a license, registration or permit suspended for that purpose,
201 and the payment of any fees for the reissuance or reinstatement of
202 a license, registration or permit suspended for that purpose,
203 shall be governed by Section 93-11-157 or 93-11-163, as the case
204 may be. If there is any conflict between any provision of Section
205 93-11-157 or 93-11-163 and any provision of this chapter, the
206 provisions of Section 93-11-157 or 93-11-163, as the case may be,
207 shall control.

208 (4) The board may not bring any disciplinary action against
209 a pharmacist for administering or dispensing a controlled
210 substance in excess of the recommended dosage for the treatment of
211 pain if the administering or dispensing of that controlled
212 substance is within the scope of practice of the pharmacist and it
213 is done in accordance with Section 2 of this act.

214 SECTION 6. Section 73-25-29, Mississippi Code of 1972, is
215 amended as follows:

216 73-25-29. The grounds for the nonissuance, suspension,
217 revocation or restriction of a license or the denial of
218 reinstatement or renewal of a license are:

219 (1) Habitual personal use of narcotic drugs, or any other
220 drug having addiction-forming or addiction-sustaining liability.

221 (2) Habitual use of intoxicating liquors, or any beverage,
222 to an extent which affects professional competency.

223 (3) Administering, dispensing or prescribing any narcotic
224 drug, or any other drug having addiction-forming or
225 addiction-sustaining liability otherwise than in the course of
226 legitimate professional practice.

227 (4) Conviction of violation of any federal or state law
228 regulating the possession, distribution or use of any narcotic
229 drug or any drug considered a controlled substance under state or
230 federal law, a certified copy of the conviction order or judgment
231 rendered by the trial court being prima facie evidence thereof,
232 notwithstanding the pendency of any appeal.

233 (5) Procuring, or attempting to procure, or aiding in, an
234 abortion that is not medically indicated.

235 (6) Conviction of a felony or misdemeanor involving moral
236 turpitude, a certified copy of the conviction order or judgment
237 rendered by the trial court being prima facie evidence thereof,
238 notwithstanding the pendency of any appeal.

239 (7) Obtaining or attempting to obtain a license by fraud or
240 deception.

241 (8) Unprofessional conduct, which includes, but is not
242 limited to:

243 (a) Practicing medicine under a false or assumed name
244 or impersonating another practitioner, living or dead.

245 (b) Knowingly performing any act which in any way
246 assists an unlicensed person to practice medicine.

247 (c) Making or willfully causing to be made any
248 flamboyant claims concerning the licensee's professional
249 excellence.

250 (d) Being guilty of any dishonorable or unethical
251 conduct likely to deceive, defraud or harm the public.

252 (e) Obtaining a fee as personal compensation or gain
253 from a person on fraudulent representation a disease or injury
254 condition generally considered incurable by competent medical
255 authority in the light of current scientific knowledge and
256 practice can be cured or offering, undertaking, attempting or
257 agreeing to cure or treat the same by a secret method, which he
258 refuses to divulge to the board upon request.

259 (f) Use of any false, fraudulent or forged statement or

260 document, or the use of any fraudulent, deceitful, dishonest or
261 immoral practice in connection with any of the licensing
262 requirements, including the signing in his professional capacity
263 any certificate that is known to be false at the time he makes or
264 signs such certificate.

265 (g) Failing to identify a physician's school of
266 practice in all professional uses of his name by use of his earned
267 degree or a description of his school of practice.

268 (9) The refusal of a licensing authority of another state or
269 jurisdiction to issue or renew a license, permit or certificate to
270 practice medicine in that jurisdiction or the revocation,
271 suspension or other restriction imposed on a license, permit or
272 certificate issued by such licensing authority which prevents or
273 restricts practice in that jurisdiction, a certified copy of the
274 disciplinary order or action taken by the other state or
275 jurisdiction being prima facie evidence thereof, notwithstanding
276 the pendency of any appeal.

277 (10) Surrender of a license or authorization to practice
278 medicine in another state or jurisdiction or surrender of
279 membership on any medical staff or in any medical or professional
280 association or society while under disciplinary investigation by
281 any of those authorities or bodies for acts or conduct similar to
282 acts or conduct which would constitute grounds for action as
283 defined in this section.

284 (11) Final sanctions imposed by the United States Department
285 of Health and Human Services, Office of Inspector General or any
286 successor federal agency or office, based upon a finding of
287 incompetency, gross misconduct or failure to meet professionally
288 recognized standards of health care; a certified copy of the
289 notice of final sanction being prima facie evidence thereof. As
290 used in this paragraph, the term "final sanction" means the
291 written notice to a physician from the United States Department of
292 Health and Human Services, Office of Inspector General or any

293 successor federal agency or office, which implements the
294 exclusion.

295 (12) Failure to furnish the board, its investigators or
296 representatives information legally requested by the board.

297 (13) Violation of any provision(s) of the Medical Practice
298 Act or the rules and regulations of the board or of any order,
299 stipulation or agreement with the board.

300 In addition to the grounds specified above, the board shall
301 be authorized to suspend the license of any licensee for being out
302 of compliance with an order for support, as defined in Section
303 93-11-153. The procedure for suspension of a license for being
304 out of compliance with an order for support, and the procedure for
305 the reissuance or reinstatement of a license suspended for that
306 purpose, and the payment of any fees for the reissuance or
307 reinstatement of a license suspended for that purpose, shall be
308 governed by Section 93-11-157 or 93-11-163, as the case may be.
309 If there is any conflict between any provision of Section
310 93-11-157 or 93-11-163 and any provision of this chapter, the
311 provisions of Section 93-11-157 or 93-11-163, as the case may be,
312 shall control.

313 The board may not bring any disciplinary action against a
314 physician for administering or dispensing a controlled substance
315 in excess of the recommended dosage for the treatment of pain if
316 the administering or dispensing of that controlled substance is
317 within the scope of practice of the physician and it is done in
318 accordance with Section 2 of this act.

319 SECTION 7. This act shall take effect and be in force from
320 and after July 1, 2000.