SENATE BILL NO. 2140

To: Public Health and Welfare

MISSISSIPPI LEGISLATURE REGULAR SESSION 2001

By: Senator(s) Dearing

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

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

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

SECTION 2. This chapter is enacted for the purposes of protecting the public health, safety and welfare, and of providing for state administrative control, supervision, licensure and regulation of the practice of physical therapy. It is the Legislature's intent that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy as authorized by this chapter. This chapter shall be liberally construed to promote the public interest and to accomplish the purposes stated in this section.
SECTION 3. As used in this chapter, the following terms shall have the following meanings, unless the context otherwise requires:

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

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

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

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

(e) "Practice of physical therapy" means:

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

(ii) Alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include, but are not limited to, therapeutic exercise; functional training in self-care and in home, community or work reintegration; manual therapy including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive and adaptive orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction;
(iii) Reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations; and

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

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

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

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

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

(j) "Continuous on-site supervision" means the supervising physical therapist, or when delegated a physical therapist assistant, is continuously on-site and present in the department or facility where services are provided, is immediately available to the person being supervised and maintains continued involvement in appropriate aspects of each treatment session in which physical therapy aides are involved in components of care as determined by the supervising physical therapist.
(k) "Testing" means standardized methods and techniques used to gather data about the patient, including electrodiagnostic and electrophysiologic tests and measures.

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

(m) "Jurisdiction of the United States" means any state, territory or the District of Columbia that licenses physical therapists.

SECTION 4. (1) There is established a State Board of Physical Therapy that shall consist of six (6) members appointed by the Governor, with the advice and consent of the Senate. At least three (3) members shall be appointed from a list of five (5) persons submitted by the Mississippi Physical Therapy Association, all of whom must be residents of Mississippi and must have engaged in the practice of physical therapy within the state for at least four (4) years. Three (3) members shall be physical therapists, one (1) member shall be a physical therapist assistant, one (1) member shall be a physician, and one (1) member shall be a consumer at large who is not associated with or financially interested in the practice or business of physical therapy. The initial members of the board shall be appointed for staggered terms, as follows: one (1) member shall be appointed for a term
that ends on June 30, 2002; two (2) members shall be appointed for
terms that end on June 30, 2003; one (1) member shall be appointed
for a term that ends on June 30, 2004; and two (2) members shall
be appointed for terms that end on June 30, 2005. All subsequent
appointments to the board shall be for terms of four (4) years
from the expiration date of the previous term. No person shall be
appointed for more than two (2) consecutive terms. By approval of
the majority of the board, the service of a member may be extended
at the completion of a four-year term until a new member is
appointed or the current member is reappointed.

(2) The board shall annually elect a chairman, secretary and
treasurer. The board shall provide for the timely orientation and
training of new professional and public appointees to the board
regarding board licensing and disciplinary procedures, this
chapter and board rules, regulations, policies and procedures. A
member may be removed by the board only for due cause. Failure to
attend at least half of the board meetings in a fiscal year shall
constitute cause. The board shall meet at least once each
quarter, and those meetings shall be held in compliance with the
Open Meetings Law (Section 25-41-1 et seq.). A majority of board
members shall constitute a quorum for the transaction of business.
The board shall keep an official record of its meetings.

Vacancies on the board shall be filled by board member vote from a
list of nominees submitted by the Mississippi Physical Therapy
Association. Members of the board shall receive the per diem
authorized under Section 25-3-69 for each day spent actually
discharging their official duties, and shall receive reimbursement
for mileage and necessary travel expenses incurred as provided in
Section 25-3-41. A board member who acts within the scope of
board duties, without malice and in the reasonable belief that the
member's action is warranted by law, is immune from civil
liability.
SECTION 5. (1) It shall be the duty of the board to pass
upon the qualifications of applicants for licensure as physical
therapists and physical therapist assistants, to issue licenses
and renewals of licenses to physical therapists and physical
therapist assistants qualifying under this chapter, and with
proper cause to suspend or revoke the license of those persons.
The board may adopt rules and regulations not inconsistent with
law, in accordance with the Administrative Procedures Law (Section
25-43-1 et seq.), as it may deem necessary for the performance of
its duties in regulating the practice of physical therapy in the
State of Mississippi. The board shall maintain a listing of the
names of every living physical therapist and physical therapist
assistant licensed in this state, his or her last known place of
business, last known place of residence and the date and number of
his or her license. The board shall compile a list of physical
therapists and physical therapist assistants licensed to practice
in the State of Mississippi and that list shall be available to
any person upon application to the board and the payment of such
charge as may be fixed by the board. The board shall have the
power to make such expenditures, employ such personnel and enter
into such contracts for services as it may deem necessary for the
administration of the provisions of this chapter. The board shall
make available board rulings, opinions and interpretations of
statutes or regulations in order to guide persons regulated under
this chapter and shall maintain annual performance records. The
board shall provide information to the public regarding the
complaint process. The board shall make available final
disciplinary action taken against a licensee.

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

(3) All fees and other monies collected or received by the
board shall be paid into and credited to a special fund that is
created in the State Treasury, which shall be known as the
"Physical Therapy Fund." Any interest earned on the special fund
shall be credited to the special fund and shall not be paid into
the State General Fund. Any unexpended monies remaining in the
special fund at the end of a fiscal year shall not lapse into the
State General Fund. Monies in the special fund shall be expended,
upon appropriation by the Legislature, for the purposes of
implementing the provisions of this chapter. Disbursement of
monies in the special fund shall be made only upon warrants issued
by the State Fiscal Officer upon requisitions signed by the
treasurer of the board. The financial records of the board shall
be audited annually by the State Auditor.

SECTION 6. (1) An applicant for a license as a physical
therapist or a physical therapist assistant must:
   (a) Be of good moral character;
   (b) Have completed the application process as
prescribed by the board;
   (c) Be a graduate of a physical therapy education
program accredited by a national accreditation agency approved by
the board; and
   (d) Have successfully passed a national examination
approved by the board.

(2) An applicant for a license as a physical therapist who
has been educated outside of the United States shall:
   (a) Be of good moral character;
   (b) Have completed the application process as
prescribed by the board;
   (c) Provide satisfactory evidence that the applicant's
education is substantially equivalent to the requirements of
physical therapists educated in accredited educational programs as
determined by the board. If it is determined that a
foreign-educated applicant's education is not substantially
equivalent, the board may require the person to complete
additional course work before it proceeds with the application
process;

(d) Provide proof of legal authorization to reside and
seek employment in a jurisdiction of the United States;
(e) Have the applicant's educational credentials
evaluated by a board-approved credential evaluation agency;
(f) Have passed the board-approved English proficiency
examinations if the applicant's native language is not English;
and
(g) Have successfully passed the national examination
approved by the board.

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

SECTION 7. (1) An applicant for licensure shall file a
complete application as required by the board. The applicant
shall include application and examination fees as prescribed by
the board. Each application for licensure shall include the
social security number of the applicant in accordance with Section
93-11-64.

(2) The board shall notify an applicant of any deficiencies
in the application. An applicant who disagrees with the
identified deficiencies may request in writing and, upon request,
shall be granted a hearing before the board. The hearing shall be
held in the same manner as prescribed in Section 19 for hearings
on denials of licenses.
SECTION 8. (1) The licensure examination for physical therapists and for physical therapist assistants shall be selected by the board and may also include an oral examination or practical examination, or both, at the discretion of the board.

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

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

SECTION 9. (1) A temporary license to practice as a physical therapist or physical therapist assistant may be granted to those persons meeting the requirements stated in Section 6 of this act who (a) have not taken the approved examination or (b) have taken the approved examination but have not received the results of the examination. The temporary license shall be granted for a period not to exceed ninety (90) days. Any physical therapist granted a temporary license under this subsection shall restrict his or her practice to the State of Mississippi and shall be under the direct supervision of a physical therapist licensed in Mississippi. Any physical therapist assistant granted a temporary license under this subsection shall be under the direct on-site supervision of a Mississippi licensed physical therapist. Documentation verifying that supervision shall be on file with the board before a temporary license is granted.

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

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

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

(5) Any person who has been trained as a physical therapist
or physical therapist assistant in a foreign country and desires
to be temporarily licensed under this subsection shall demonstrate
proficiency in the English language and meet the other
requirements of subsection (2)(a) through (f) of Section 6 of this
act before the temporary license will be issued.

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

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

(2) The following persons are exempt from the licensure
requirements of this chapter when engaged in the following
activities:
(a) A person in an education program approved by the board who is pursuing a course of study leading to a degree as a physical therapist or a physical therapist assistant and who is satisfying supervised clinical education requirements related to the person’s physical therapy education while under on-site supervision of a licensed physical therapist.

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

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

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

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

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

(2) Each licensee is responsible for reporting to the board any name change and any changes in business and home addresses within thirty (30) days after the date of the change.
SECTION 13.  (1) The board may reinstate a lapsed license upon payment of a renewal fee and reinstatement fee.

(2) If a person's license has lapsed for more than three (3) consecutive years, that person shall reapply for a license and pay all applicable fees. The person shall also demonstrate to the board's satisfaction competence to practice physical therapy, or shall serve an internship under a restricted license or take remedial courses as determined by the board, or both, at the board's discretion. The board may also require the applicant to take an examination.

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

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

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

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

(2) A person or business entity, its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business, the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist" or "registered physical therapist," the letters "PT," "LPT," "RPT," or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical
therapy, unless those services are provided by or under the
direction of a physical therapist licensed under this chapter.

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

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

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

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

(a) The initial written evaluation for each patient;
(b) Periodic written reevaluation of each patient;
(c) A written discharge plan for the patient and the
patient's response to treatment at discharge;
(d) A written plan of care; and
(e) A written record of treatment.

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

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

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(4) A physical therapist assistant shall work under a physical therapist's direct on-site supervision. A physical therapist assistant may document care provided without the co-signature of the supervising physical therapist.

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

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

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

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

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

(b) Practicing or offering to practice beyond the scope of the practice of physical therapy;

(c) Obtaining or attempting to obtain a license by fraud or misrepresentation;

(d) Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;
(e) Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected by the supervising physical therapist, regardless of whether actual injury to the patient is established;

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

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

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

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

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

   (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant/patient relationship exists;

   (ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients; and

   (iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
(k) Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. This does not prohibit the members of any regularly and properly organized business entity recognized by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expense;

   (l) Failing to adhere to the recognized standards of ethics of the physical therapy profession;

   (m) Charging unreasonable or fraudulent fees for services performed or not performed;

   (n) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession;

   (o) Having been adjudged mentally incompetent by a court of competent jurisdiction;

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

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

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

   (s) Failing to maintain patient confidentiality without prior written consent of the patient unless otherwise required by law;
(t) Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that contain at a minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, the plan of care, the treatment record and a discharge plan;

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

(v) Providing treatment intervention unwarranted by the condition of the patient, or continuing treatment beyond the point of reasonable benefit; and

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

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

SECTION 18. (1) To enforce this chapter the board is authorized to:

(a) Receive complaints filed against licensees and conduct a timely investigation;
(b) Conduct an investigation at any time and on its own initiative without receipt of a written complaint if a majority of the board has reason to believe that there may be a violation of this chapter;

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

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

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

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

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

(a) Dismiss the complaint if the board believes the information or complaint is without merit; or

(b) Issue a confidential advisory letter to the licensee. An advisory letter is nondisciplinary and notifies a licensee that, while there is insufficient evidence to support disciplinary action, the board believes that the licensee should modify or eliminate certain conduct or practices.

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

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

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

(c) Each licensee whose conduct is the subject of a formal charge that seeks to impose disciplinary action against the licensee shall be served notice of the formal charge at least thirty (30) days before the date of the hearing, which hearing shall be presided over by the board or the board's designee. Service shall be considered to have been given if the notice was personally received by the licensee or if the notice was mailed certified return receipt requested to the licensee at the licensee's last known address as listed with the board.

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

(i) The time, place and date of the hearing;
(ii) That the licensee shall appear personally at the hearing and may be represented by counsel;
(iii) That the licensee shall have the right to produce witnesses and evidence on the licensee's behalf and shall have the right to cross-examine adverse witnesses and evidence;

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

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

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

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

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

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

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

(a) Issue a censure;

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

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

(d) Revoke a license;

(e) Refuse to issue or renew a license;

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

(g) Accept a voluntary surrendering of a license.

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

SECTION 21. Actions of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal in accordance with Mississippi law relating to administrative law and procedure.
SECTION 22. (1) It is unlawful for any person to practice or in any manner to represent, imply or claim to practice physical therapy or use any word or designation that implies that the person is a physical therapist unless that person is licensed under this chapter. A person who engages in an activity requiring a license under this chapter or uses any word, title, letters or any description of services that incorporates one or more of the terms, designations or abbreviations in violation of Section 15 of this act that implies that the person is licensed to engage in the practice of physical therapy is guilty of a misdemeanor.

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

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

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

(5) The board shall deposit all monies it collects from civil penalties under this chapter into the Physical Therapy Fund.
SECTION 23. (1) A person including, but not limited to, a licensee, corporation, insurance company, health care organization or health care facility and state or local governmental agencies shall report to the board any conviction, determination or finding that a licensee has committed an act that constitutes a violation of Section 17 of this act.

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

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

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

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

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

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

(d) As part of the agreement established between the licensee and the board, the licensee signs a waiver allowing the substance abuse program to release information to the board if the
licensee does not comply with the requirements of this section or
is unable to practice or work with reasonable skill or safety.

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

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

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

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

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

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

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

(6) Information relating to the physical therapist/patient
relationship is confidential and shall not be communicated to a
third party who is not involved in that patient's care without the
prior written consent of the patient. A physical therapist shall
divulge to the board information it requires in connection with
any investigation, public hearing or other proceedings. The
physical therapist/patient privilege does not extend to cases in
which the physical therapist has a duty to report information as
required by law.
(7) Any person may submit a complaint regarding any licensee or any other person potentially in violation of this chapter. Confidentiality shall be maintained subject to law.

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

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

SECTION 26. Any person licensed by the State Board of Health under Sections 73-23-31 through 73-23-65 as they existed before July 1, 2001, and holding a valid license to practice physical therapy on July 1, 2001, may be licensed under the provisions of this chapter without examination, provided that the person applies for and obtains a new license certificate from the State Board of Physical Therapy before October 1, 2001, if that time does not coincide with the biennial date for renewal of license. Each physical therapist or physical therapist assistant so licensed will retain the same licensure number as assigned by the State Board of Health.

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


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

SECTION 30. This act shall take effect and be in force from and after July 1, 2001.