HOUSE BILL NO. 617

AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PHYSICIANS WHO PERFORM ABORTIONS IN ABORTION FACILITIES MUST BE BOARD CERTIFIED IN OBSTETRICS AND GYNECOLOGY; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-75-1, Mississippi Code of 1972, is amended as follows:

41-75-1. (a) "Ambulatory surgical facility" shall mean a publicly or privately owned institution which is primarily organized, constructed, renovated or otherwise established for the purpose of providing elective surgical treatment of "outpatients" whose recovery, under normal and routine circumstances, will not require "inpatient" care. Such facility as herein defined does not include the offices of private physicians or dentists whether practicing individually or in groups, but does include organizations or facilities primarily engaged in such outpatient surgery whether using the name "ambulatory surgical facility" or a similar or different name. Such organization or facility, if in any manner considered to be operated or owned by a hospital or a hospital holding, leasing or management company, either for profit or not for profit, is required to comply with all licensing agency ambulatory surgical licensure standards governing a "hospital affiliated" facility as adopted under Section 41-9-1 et seq.; provided that such organization or facility does not intend to seek federal certification as an ambulatory surgical facility as provided for at 42 CFR, Parts 405 and 416. Further, if such organization or facility is to be operated or owned by a hospital or a hospital holding, leasing or management company and intends
to seek federal certification as an ambulatory facility, then such facility is considered to be "freestanding" and must comply with all licensing agency ambulatory surgical licensure standards governing a "freestanding" facility.

If such organization or facility is to be owned or operated by an entity or person other than a hospital or hospital holding, leasing or management company, then such organization or facility must comply with all licensing agency ambulatory surgical facility standards governing a "freestanding" facility.

(b) "Hospital affiliated" ambulatory surgical facility shall mean a separate and distinct organized unit of a hospital or a building owned, leased, rented or utilized by a hospital and located in the same county in which the hospital is located, for the primary purpose of performing ambulatory surgery procedures. Such facility is not required to be separately licensed under this statute and may operate under the hospital's license in compliance with all applicable requirements of Section 41-9-1 et seq.

(c) "Freestanding" ambulatory surgical facility shall mean a separate and distinct facility or a separate and distinct organized unit of a hospital owned, leased, rented or utilized by a hospital or other persons for the primary purpose of performing ambulatory surgery procedures. Such facility must be separately licensed as herein defined and must comply with all licensing standards promulgated by the licensing agency under this statute regarding a "freestanding" ambulatory surgical facility. Further, such facility must be a separate, identifiable entity and must be physically, administratively and financially independent and distinct from other operations of any other health facility, and shall maintain a separate organized medical and administrative staff. Furthermore, once licensed as a "freestanding" ambulatory surgical facility, such facility shall not become a component of any other health facility without securing a certificate of need to do such.
(d) "Ambulatory surgery" shall mean surgical procedures that are more complex than office procedures performed under local anesthesia, but less complex than major procedures requiring prolonged postoperative monitoring and hospital care to ensure safe recovery and desirable results. General anesthesia is used in most cases. The patient must arrive at the facility and expect to be discharged on the same day. Ambulatory surgery shall only be performed by physicians or dentists licensed to practice in the State of Mississippi.

(e) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substances or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus. Abortion procedures on a fetus aged sixteen (16) weeks or more shall only be performed at an ambulatory surgical facility or hospital licensed to perform such service.

(f) "Abortion facility" means a facility operating substantially for the purpose of performing abortions and is a separate identifiable legal entity from any other health care facility. Abortions shall only be performed by physicians who are board certified in obstetrics and gynecology and are licensed to practice in the State of Mississippi. The term "abortion facility" includes physicians' offices which are used substantially for the purpose of performing abortions. An abortion facility operates substantially for the purpose of performing abortions if any of the following conditions are met:

(i) The abortion facility is a provider for performing ten (10) or more abortion procedures per calendar month during any month of a calendar year, or one hundred (100) or more in a calendar year.

(ii) The abortion facility, if operating less than twenty (20) days per calendar month, is a provider for performing
ten (10) or more abortion procedures, or performing a number of
abortion procedures which would be equivalent to ten (10)
procedures per month, if the facility were operating twenty (20)
or more days per calendar month, in any month of a calendar year.

(iii) The abortion facility holds itself out to the
public as an abortion provider by advertising by any public means,
such as newspaper, telephone directory, magazine or electronic
media, that it performs abortions.

(iv) The facility applies to the licensing agency for
licensure as an abortion facility.

(g) "Licensing agency" shall mean the State Department of
Health.

(h) "Operating" an abortion facility means that the facility
is open for any period of time during a day and has on site at the
facility or on call a physician licensed to practice in the State
of Mississippi available to provide abortions.

Any abortion facility that begins operation after June 30,
1996, shall not be located within fifteen hundred (1500) feet from
the property on which any church, school or kindergarten is
located. An abortion facility shall not be in violation of this
paragraph if it is in compliance with this paragraph on the date
it begins operation and the property on which a church, school or
kindergarten is located is subsequently within fifteen hundred
(1500) feet from the facility.

SECTION 2. This act shall take effect and be in force from
and after July 1, 2002.