SENATE BILL NO. 2702

To: Public Health and Welfare; Appropriations

By: Senator(s) Dearing

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002


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

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

73-23-41. (1) There is established a State Board of Physical Therapy that shall consist of seven (7) members appointed by the Governor, with the advice and consent of the Senate. At least four (4) 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. Four (4) 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: Two (2) members shall be appointed for a term
that ends on June 30, 2003; two (2) members shall be appointed for
terms that end on June 30, 2004; one (1) member shall be appointed
for a term that ends on June 30, 2005; and two (2) members shall
be appointed for terms that end on June 30, 2006. 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 2. Section 73-23-33, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

(f) "Direct, on-site supervision" means face-to-face
oversight by a licensed physical therapist at regular intervals,
as prescribed in regulations adopted by the board, of the services
provided to a patient by a licensed physical therapist assistant.
"Direct supervision" means face-to-face oversight at regular intervals of a physical therapist issued a temporary license under Section 73-23-53(1) by a licensed physical therapist. Such direct supervision shall be in accordance with the regulations adopted by the board.

SECTION 3. Section 73-23-35, Mississippi Code of 1972, is amended as follows:

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

The board shall aid the state's attorneys of the various counties in the enforcement of the provisions of this chapter and the prosecution of any violations thereof. 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 provisions of this chapter without proof of actual damages sustained by any person.

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

73-23-43. (1) The board shall have the following general powers and duties:
(a) To examine and determine the qualifications and fitness of applicants for licenses to practice physical therapy and licenses to act as physical therapist assistants in this state and prepare or approve and conduct all examinations of applicants for licensure;

(b) To issue, renew, deny, suspend or revoke licenses to practice physical therapy and licenses to act as physical therapist assistants in this state or otherwise discipline licensed physical therapists and physical therapist assistants;

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

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

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

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

The powers and duties enumerated above are granted for the purpose of enabling the board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners of physical therapy and persons acting as physical therapist assistants, and are to be liberally construed to accomplish this objective;
(2) The board shall maintain a register listing the name of every physical therapist and physical therapist assistant licensed to practice in this state, his last known place of business and last known place of residence, and the date and number of his license. The board shall, at least once a year, compile a list of physical therapists and physical therapist assistants licensed to practice in this state and such a list shall be available to any person upon application to the board and the payment of such charges as may be fixed by it.

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

73-23-45. 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, exclusively 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. Section 73-23-47, Mississippi Code of 1972, is amended as follows:

73-23-47. Any person who desires to be licensed under this chapter and who: (a) is of good moral character; (b) has been graduated from a physical therapy or physical therapist assistant program, as the case may be, accredited by an agency recognized by the United States Department of Education, Office on Postsecondary Education; and (c) has paid an application fee not to exceed
double the price of the examination, no part of which shall be refunded, shall be examined for licensure by the board. 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.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

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

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

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

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

(2) Any person who has been trained as a physical therapist in a foreign country and desires to be licensed under this chapter...
and who: (a) is of good moral character; (b) holds a diploma from
an educational program for physical therapists approved by the
board; (c) submits documentary evidence to the board that he has
completed a course of professional instruction substantially
equivalent to that obtained by an applicant for licensure; and (d)
demonstrates satisfactory proof of proficiency in the English
language, may make application on a form furnished by the board
for examination as a foreign-trained physical therapist. At the
time of making such application, the applicant shall pay the fee
prescribed by the board, no portion of which shall be returned.

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

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

73-23-53. (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 73-23-47 and
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 the provisions of this subsection shall
restrict his practice to the State of Mississippi and shall be
under the direct supervision of a physical therapist licensed in
Mississippi (physical therapy assistants shall be under the direct
on-site supervision of a Mississippi licensed physical therapist).
Documentation verifying the 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 will 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 such 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 Section 73-23-51(2) before such temporary license shall be issued.

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

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

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

SECTION 11. Section 73-23-61, Mississippi Code of 1972, is amended as follows:
73-23-61. (1) Each violation of Section 73-23-35 shall 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.

(2) Any person who shall knowingly make a material, false statement in his application for license under this chapter or in response to any inquiry by *** the board, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or imprisoned for not less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

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

73-23-63. (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. Such 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) licensee's name; (ii) name of the complaining party, if known; (iii) date of complaint; (iv) brief statement of complaint; and (v) disposition.

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

(c) Each licensee whose conduct is the subject of a
formal charge which 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 state agency.

(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 in 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 shall hear
evidence produced in support of the formal charges and contrary
evidence produced by the licensee. At the conclusion of the
hearing, the board shall issue an order; and

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

(3) 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 be a resident of this state, or
the Chancery Court of the First Judicial District of Hinds County,
Mississippi, if he be 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 shall 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
from 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 13. Section 73-23-64, Mississippi Code of 1972, is
amended as follows:

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

(a) Revocation of the license;

(b) Suspension of the license, for any period of time;

(c) Censure the licensee;
(d) Impose a monetary penalty of not more than Two Hundred Dollars ($200.00);

(e) Place a licensee on probationary status and require the licensee to submit to any of the following: (i) report regularly to the board, or its designee, upon matters which are the basis of probation; (ii) continue to renew professional education until a satisfactory degree of skill has been attained in those areas which are the basis of probation; or (iii) such other reasonable requirements or restrictions as are proper;

(f) Refuse to renew a license; or

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

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

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

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

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

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

73-23-65. The * * * Physical Therapy Advisory Council is abolished. All of the powers and duties of the State Board of Health and the State Department 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 and the State Department of Health relating to the licensure and regulation of the profession of physical therapy in the State of Mississippi are transferred to * * * the State Board of Physical Therapy.

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

SECTION 16. This act shall take effect and be in force from and after July 1, 2002.