

By: Senator(s) Turner, Smith

To: Select Senate Cmte on
Civil Justice Syst

SENATE BILL NO. 2007

1 AN ACT TO CREATE THE PHYSICIAN DISCLOSURE ACT OF 2002; TO
2 ENACT SECTION 73-25-101, MISSISSIPPI CODE OF 1972, TO REQUIRE THE
3 MEDICAL LICENSURE BOARD TO ADOPT REGULATIONS TO REQUIRE REPORTING
4 OF UNPROFESSIONAL CONDUCT ON THE PART OF PHYSICIANS; TO ENACT
5 SECTION 73-25-103, MISSISSIPPI CODE OF 1972, TO REQUIRE THE BOARD
6 TO MAINTAIN CONFIDENTIAL FILES; TO ENACT SECTION 73-25-105,
7 MISSISSIPPI CODE OF 1972, TO CREATE PUBLIC PROFILES OF PHYSICIANS;
8 TO ALLOW THE MEDICAL LICENSURE BOARD TO CHARGE A FEE FOR PROVIDING
9 COPIES OF PROFILES; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** This act may be referred to as the Physician
12 Disclosure Act of 2002. It is enacted in the best interest of the
13 public to make available information which may be helpful in the
14 evaluation and selection of physicians licensed to practice
15 medicine in the State of Mississippi, although the physician
16 profiles required by this act are not intended to be the sole
17 basis for an individual's selection of a physician.

18 **SECTION 2.** The following shall be codified as Section
19 73-25-101, Mississippi Code of 1972:

20 **73-25-101.** (1) The Medical Licensure Board shall adopt
21 regulations requiring any person, including, but not limited to,
22 corporations, health care facilities, health maintenance
23 organizations, organizations and federal, state or local
24 governmental agencies, or peer review boards to report to the
25 board any conviction, determination or finding that a licensed
26 physician has engaged in unprofessional conduct, or to report
27 information which indicates that a licensed physician may not be
28 able to practice medicine with reasonable skill and safety to
29 patients as the result of any mental or physical condition. The



30 regulations shall include the reporting requirements of subsection
31 (2) of this section.

32 (2) The following reports in writing shall be filed with the
33 board:

34 (a) Every insurer providing professional liability
35 insurance to a physician licensed under the provisions of this
36 chapter shall send a complete report to the board setting forth
37 any formal notice of any claim, settlement of any claim or cause
38 of actions, or final judgment rendered in any cause of action for
39 damages for death or personal injury caused by such physician's
40 negligence, error or omission in practice or the physician's
41 rendering of unauthorized professional services. The report shall
42 be sent within thirty (30) days after service of any complaint or
43 notice, settlement, judgment or arbitration award on the parties.
44 All such reports shall set forth a detailed factual summary of the
45 claim in question. All reports of final judgments or settlements
46 shall specify the class or category of risk for which the
47 physician is insured identified by Insurance Services Organization
48 (ISO) code and, in the case of joint and several liability, shall
49 specify the portion of the total award paid by or on behalf of the
50 physician.

51 (b) All hospital and licensed health care facilities,
52 including, but not limited to, nursing homes and health
53 maintenance organizations and the State Pharmacy Board, must
54 report to the board within thirty (30) days, any action,
55 disciplinary or otherwise, taken for any reason, which limits,
56 suspends or revokes a physician's privilege to practice or
57 requires supervision of a physician, either through formal action
58 by the institution or facility or through any voluntary agreement
59 with the physician.

60 (c) Within ten (10) days after a judgment by a court of
61 this state that a physician licensed under the provisions of this
62 chapter has been convicted of a crime or is civilly liable for any



63 death or personal injury caused by the physician's negligence,
64 error or omission in the practice of medicine or the rendering of
65 unauthorized professional services, the clerk of the court which
66 rendered the judgment shall report the judgment to the board.

67 (3) The board shall publicly report any change of privilege
68 of which it is aware to the board of trustees or other appropriate
69 body of all licensed hospitals, licensed health care facilities,
70 health maintenance organizations and other parties as the board
71 deems appropriate within thirty (30) days, provided, however that
72 notwithstanding the provisions of this subsection, the board, in
73 instances where the change of privilege is not related to quality
74 of patient care, may elect not to disseminate the report of change
75 in privilege. Such an election may be made in executive session
76 and no decision not to disseminate shall be made except by
77 majority vote of the members present at the meeting and only upon
78 a finding of fact by the board after inquiry that the change of
79 privilege was not related to quality of patient care.

80 (4) The contents of any report file shall be confidential
81 and exempt from public disclosure, except that it may be reviewed:

82 (a) By the licensee involved or the licensee's counsel
83 or authorized representative, who may submit any additional
84 exculpatory or explanatory statements or other information, which
85 statements or other information shall be included in the file; or

86 (b) By the chief administrative officer, a
87 representative of the board, or investigator thereof, who has been
88 assigned to review the activities of a licensed physician.

89 (5) Upon determination that a report is without merit, the
90 board's records may be purged of information relating to the
91 report.

92 (6) If any person refuses to furnish a required report, the
93 board may petition a court of competent jurisdiction in any county
94 in which the person resides or is found, and the court shall issue
95 to that person an order to furnish the required report. Failure



96 to obey the order shall be punishable by the court as a civil
97 contempt may be punished.

98 (7) Every individual, medical association, medical society,
99 hospital, health care facility, health maintenance organization,
100 peer review board, medical service bureau, health insurance
101 carrier or agent, professional standards review organization, and
102 agency of the federal, state or local government shall be immune
103 from civil liability, whether direct or derivative, for providing
104 information in good faith to the board pursuant to this act or the
105 regulations promulgated pursuant to this act.

106 (8) Nondisclosure agreements are prohibited insofar as they
107 forbid parties from making reports regarding competency or
108 unprofessional conduct to the board.

109 **SECTION 3.** The following shall be codified as Section
110 73-25-103, Mississippi Code of 1972:

111 73-25-103. The board shall receive and maintain a
112 confidential file which will be available to the board to
113 precipitate or aid in their investigations. The information shall
114 also be available to licensed health care facilities, including
115 health maintenance organizations, in connection with the granting
116 of staff privileges and to the individual physicians themselves
117 and shall be available for inclusion in physician profiles
118 pursuant to Section 4 of this act. The file shall contain the
119 following physician information:

120 (a) Cases of malpractice suits against a physician as
121 reported to the board by insurers and self-insurers, including
122 those pending as of January 1, 2003;

123 (b) Cases of malpractice suits that result in
124 allegations being dropped, a dismissal, a settlement, or court
125 judgment or arbitration award adverse to the physician;

126 (c) Reports by any hospital or state or local
127 professional medical association or society of disciplinary action
128 taken against any physician. This should also include any



129 resignation of a physician if related to unprofessional conduct as
130 defined in law or any withdrawal of an application for hospital
131 privileges relating to unprofessional conduct;

132 (d) Reports by state and federal courts of physicians
133 found guilty of a felony;

134 (e) Reports by the professional review organization and
135 third-party health insurers of sanctions imposed on a physician;

136 (f) Annual reports by hospitals and health maintenance
137 organizations of current appointments to their medical staffs; and

138 (g) Information supplied to the board by the Federation
139 of State Medical Boards and the American Medical Association.

140 The file may contain such other data as the board by
141 reasonable rule or regulation deems appropriate.

142 **SECTION 4.** The following shall be codified as Section
143 73-25-105, Mississippi Code of 1972:

144 73-25-105. (1) The board shall compile the information
145 listed below to create individual profiles on licensed physicians,
146 in a format created by the board, consistent with the provisions
147 of this act and any regulations promulgated thereunder, that shall
148 be available for dissemination to the public and which shall
149 include a conspicuous statement that "THIS PROFILE CONTAINS
150 CERTAIN INFORMATION WHICH MAY BE USED AS A STARTING POINT IN
151 EVALUATING THE PHYSICIAN; THIS PROFILE SHOULD NOT, HOWEVER, BE
152 YOUR SOLE BASIS FOR SELECTING A PHYSICIAN."

153 (2) (a) The following information is compiled by the board
154 in accordance with state laws and board regulations and procedures
155 and shall be included in physician profiles, subject to the
156 limitations and requirements set forth below:

157 (i) Names of medical schools and dates of
158 graduation;

159 (ii) Graduate medical education;

160 (iii) A description of any final board
161 disciplinary actions within the most recent ten (10) years;



162 (iv) A description of any final disciplinary
163 actions by licensing boards in other states within the most recent
164 ten (10) years;

165 (v) A description of any criminal convictions for
166 felonies within the most recent ten (10) years. For the purposes
167 of this subsection, a person shall be deemed to be convicted of a
168 crime if he pleaded guilty or if he was found or adjudged guilty
169 by a court of competent jurisdiction, or has been convicted of a
170 felony by the entry of a plea of nolo contendere;

171 (vi) A description of revocation or restriction of
172 hospital privileges for reasons related to competence that have
173 been taken by the hospital's governing body or any other official
174 of the hospital after procedural due process has been afforded, or
175 the resignation from or nonrenewal of medical staff membership or
176 the restriction of privileges at a hospital. Only cases which
177 have occurred within the most recent ten (10) years shall be
178 disclosed by the board to the public; and

179 (vii) All medical malpractice court judgments and
180 all medical malpractice arbitration awards in which a payment is
181 awarded to a complaining party during the most recent ten (10)
182 years, and all settlements of medical malpractice claims in which
183 a payment is made to a complaining party within the most recent
184 ten (10) years. Dispositions of paid claims shall be reported in
185 a minimum of three (3) graduated categories indicating the level
186 of significance of the award or settlement. Information
187 concerning paid medical malpractice claims shall be put in context
188 by comparing an individual physician's medical malpractice
189 judgments, awards and settlements to the experience of other
190 physicians licensed in Mississippi who perform procedures and
191 treat patients with a similar degree of risk. All judgment, award
192 and settlement information reported shall be limited to amounts
193 actually paid by or on behalf of the physician.



194 (b) Comparisons of malpractice payment data shall be
195 accompanied by (i) an explanation of the fact that physicians
196 treating certain patients and performing certain procedures are
197 more likely to be the subject of litigation than others and that
198 the comparison given is for physicians who perform procedures and
199 treat patients with a similar degree of risk; (ii) a statement
200 that the report reflects data for the last ten (10) years and the
201 recipient should take into account the number of years the
202 physician has been in practice when considering the data; (iii) an
203 explanation that an incident giving rise to a malpractice claim
204 may have occurred years before any payment was made due to the
205 time lawsuits take to move through the legal system; (iv) an
206 explanation of the effect of treating high-risk patients on a
207 physician's malpractice history; and (v) an explanation that
208 malpractice cases may be settled for reasons other than liability
209 and that settlements are sometimes made by the insurer without the
210 physician's consent. Information concerning all settlements shall
211 be accompanied by the following statement: "Settlement of a claim
212 may occur for a variety of reasons which do not necessarily
213 reflect negatively on the professional competence or conduct of
214 the physician. A payment in settlement of a medical malpractice
215 action or claim should not be construed as creating a presumption
216 that medical malpractice has occurred." Nothing herein shall be
217 construed to limit or prevent the board from providing further
218 explanatory information regarding the significance of categories
219 in which settlements are reported.

220 (c) Pending malpractice claims and actual amounts paid
221 by or on behalf of a physician in connection with a malpractice
222 judgment, award or settlement shall not be disclosed by the board
223 to the public. Nothing herein shall be construed to prevent the
224 board from investigating and disciplining a licensee on the basis
225 of medical malpractice claims that are pending.



226 (3) The following information shall be reported to the board
227 by the physician and shall be included in physician profiles,
228 subject to the limitations and requirements set forth below:

229 (a) Specialty board certification;

230 (b) Number of years in practice;

231 (c) Names of the hospitals where the physician has
232 privileges;

233 (d) Appointments to medical school faculties and
234 indication as to whether a physician has a responsibility for
235 graduate medical education within the most recent ten (10) years;

236 (e) Information regarding publications in peer-reviewed
237 medical literature within the most recent ten (10) years;

238 (f) Information regarding professional or community
239 service activities and awards;

240 (g) The location of the physician's primary practice
241 setting; and

242 (h) The identification of any language translating
243 services that may be available at the physician's primary practice
244 location; a statement shall be included in the profile indicating
245 that such services may be temporary and that the physician's
246 office should first be contacted to confirm the present
247 availability of language translation.

248 (4) (a) A physician may elect to have his profile omit
249 information concerning academic appointments and teaching
250 responsibilities, publication in peer-reviewed journals and
251 professional and community service awards. In collecting
252 information for such profiles and in disseminating the same, the
253 board shall inform physicians that they may choose not to provide
254 such information.

255 (b) The board shall provide individual physicians with
256 a copy of their profiles prior to initial release to the public
257 and each time a physician's profile is modified or amended based
258 on information (i) not supplied to the board personally by the



259 physician, or (ii) not generated by the board itself. Prior to
260 initial release to the public and upon each modification or
261 amendment requiring physician review as provided in this
262 subsection, a physician shall be provided not less than twenty-one
263 (21) calendar days to correct factual inaccuracies that appear in
264 such profile. If a dispute arises between a physician and the
265 board regarding the accuracy of factual information in the
266 physician's profile, the physician shall notify the board in
267 writing of such dispute. If a physician does not notify the board
268 of a dispute during the twenty-one-day review period, the profile
269 shall be released to the public and the physician will be deemed
270 to have approved the profile and all information contained
271 therein. If a physician notifies the board of a dispute in
272 accordance with this subsection, the physician's profile shall be
273 released to the public without the disputed information, but with
274 a statement to the effect that information in the identified
275 category is currently the subject of a dispute and is therefore
276 not available at this time. Within ten (10) calendar days after
277 the board's receipt of notice of a dispute, the physician and the
278 board or its authorized representative shall in good faith enter
279 into discussions, which may continue for up to thirty (30) days,
280 to resolve the dispute. If the dispute is not resolved within
281 thirty (30) days, the disputed information shall be included in
282 the profile with a statement that such information is disputed by
283 the physician.

284 (c) Each profile shall contain a statement specifying
285 the date of its last modification, amendment or update. If a
286 physician has reviewed and approved or been deemed to have
287 approved the profile in accordance with this subsection, such
288 physician shall be responsible for the accuracy of the information
289 contained therein. If a profile is released to the public without
290 physician review as required by this subsection, then
291 notwithstanding any immunity from liability, the board or any



292 state agency supplying physician information to the board shall be
293 solely responsible for the accuracy of the information it
294 generates or supplies and which is contained in physician profiles
295 released to the public.

296 (d) In order to protect against the unauthorized use or
297 disclosure of provider profiles by Department of Health employees
298 with access to the data, the Department of Health shall apply its
299 existing safeguards and procedures for protecting confidential
300 information to physician profile information.

301 (e) For each profile provided to the public by the
302 board, the board may charge no more than Fifty Cents (50¢) per
303 page or Three Dollars (\$3.00) per profile, whichever is greater.

304 **SECTION 5.** This act shall take effect and be in force from
305 and after January 1, 2003.

