

By: Representative Currie

To: Public Health and Human Services

HOUSE BILL NO. 76

1 AN ACT TO AMEND SECTION 73-23-35, MISSISSIPPI CODE OF 1972,
 2 TO REVISE THE CIRCUMSTANCES AND CRITERIA UNDER WHICH A PHYSICAL
 3 THERAPIST MAY IMPLEMENT PHYSICAL THERAPY TREATMENT WITHOUT A
 4 REFERRAL FROM ANOTHER HEALTH CARE PROVIDER; TO AMEND SECTION
 5 73-23-41, MISSISSIPPI CODE OF 1972, TO UPDATE THE NAME OF THE
 6 PHYSICAL THERAPY ASSOCIATION THAT SUBMITS LISTS OF NOMINEES FOR
 7 APPOINTMENTS TO THE STATE BOARD OF PHYSICAL THERAPY; TO AMEND
 8 SECTION 73-23-59, MISSISSIPPI CODE OF 1972, TO CONFORM THE GROUNDS
 9 FOR DISCIPLINARY ACTION AGAINST A PHYSICAL THERAPIST FOR
 10 IMPLEMENTING PHYSICAL THERAPY TREATMENT WITHOUT A REFERRAL TO THE
 11 AMENDMENT TO SECTION 73-23-35 IN THIS ACT; AND FOR RELATED
 12 PURPOSES.

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

14 **SECTION 1.** Section 73-23-35, Mississippi Code of 1972, is
 15 amended as follows:

16 73-23-35. (1) A person, corporation, association or
 17 business entity shall not use in connection with that person's or
 18 party's name or the name or activity of the business the words
 19 "physical therapy," "physical therapist," "physiotherapy,"
 20 "physiotherapist," "registered physical therapist," "doctor of
 21 physical therapy," "physical therapist assistant," the letters
 22 "PT," "DPT," "LPT," "RPT," "PTA," "LPTA," and/or any other words,
 23 abbreviations, or insignia indicating or implying directly or



24 indirectly that physical therapy is provided or supplied unless
25 such services are provided by or under the direction of a physical
26 therapist or physical therapist assistant, as the case may be,
27 with a valid and current license issued pursuant to this chapter
28 or with the privilege to practice. It shall be unlawful to employ
29 an unlicensed physical therapist or physical therapist assistant
30 to provide physical therapy services.

31 (2) The board shall aid the state's attorneys of the various
32 counties in the enforcement of the provisions of this chapter and
33 the prosecution of any violations thereof. In addition to the
34 criminal penalties provided by this chapter, the civil remedy of
35 injunction shall be available to restrain and enjoin violations of
36 any provisions of this chapter without proof of actual damages
37 sustained by any person. For purposes of this chapter, the board,
38 in seeking an injunction, need only show that the defendant
39 violated subsection (1) of this section to establish irreparable
40 injury or a likelihood of a continuation of the violation.

41 (3) Except as otherwise provided in this subsection (3) and
42 in subsection (4) of this section, a physical therapist licensed
43 under this chapter or privileged to practice shall not perform
44 physical therapy services without a prescription or referral from
45 a person licensed as a physician, dentist, osteopath, podiatrist,
46 chiropractor, physician assistant or nurse practitioner. However,
47 a physical therapist licensed under this chapter or privileged to



48 practice may perform physical therapy services without a
49 prescription or referral under the following circumstances:

50 (a) To children with a diagnosed developmental
51 disability pursuant to the patient's plan of care.

52 (b) As part of a home health care agency pursuant to
53 the patient's plan of care.

54 (c) To a patient in a nursing home pursuant to the
55 patient's plan of care.

56 (d) Related to conditioning or to providing education
57 or activities in a wellness setting for the purpose of injury
58 prevention, reduction of stress or promotion of fitness.

59 (e) (i) To an individual for a previously diagnosed
60 condition or conditions for which physical therapy services are
61 appropriate after informing the health care provider rendering the
62 diagnosis. The diagnosis must have been made within the previous
63 one hundred eighty (180) days. The physical therapist shall
64 provide the health care provider who rendered the diagnosis with a
65 plan of care for physical therapy services within the first
66 fifteen (15) days of physical therapy intervention.

67 (ii) Nothing in this chapter shall create
68 liability of any kind for the health care provider rendering the
69 diagnosis under this paragraph (e) for a condition, illness or
70 injury that manifested itself after the diagnosis, or for any
71 alleged damages as a result of physical therapy services performed
72 without a prescription or referral from a person licensed as a



73 physician, dentist, osteopath, podiatrist, chiropractor, physician
74 assistant or nurse practitioner, the diagnosis and/or prescription
75 for physical therapy services having been rendered with reasonable
76 care.

77 (4) The provisions of subsection (3) of this section shall
78 not apply in the following circumstances:

79 (a) Without a prescription or referral, a physical
80 therapist licensed or privileged to practice under this chapter
81 may perform an initial evaluation or consultation of a screening
82 nature to determine the need for physical therapy.

83 (b) For the treatment of a condition within the scope
84 of physical therapy, a physical therapist licensed or privileged
85 to practice under this chapter may implement physical therapy
86 treatment with or without a prescription or referral from a person
87 licensed as a physician, dentist, osteopath, podiatrist,
88 chiropractor, physician assistant or nurse practitioner if the
89 physical therapist meets one (1) of the following criteria:

90 (i) The physical therapist has a doctorate degree
91 in physical therapy from an accredited institution; or

92 (ii) The physical therapist has five (5) years of
93 licensed clinical practice experience.

94 (c) If the patient has not made measurable or
95 functional improvement after thirty (30) calendar days of
96 implementing physical therapy treatment under the authority of
97 this subsection (4), the physical therapist shall refer the



98 patient to an appropriate health care provider. The board shall
99 take appropriate disciplinary action against any physical
100 therapist who fails to refer a patient as required by this
101 paragraph (c).

102 (d) No physical therapist shall render a medical
103 diagnosis of a disease.

104 (* * *5) Physical therapy services performed without a
105 prescription or referral from a person licensed as a physician,
106 dentist, osteopath, podiatrist, chiropractor, physician assistant
107 or nurse practitioner shall not be construed to mandate coverage
108 for physical therapy services under any health care plan,
109 insurance policy, or workers' compensation or circumvent any
110 requirement for preauthorization of services in accordance with
111 any health care plan, insurance policy or workers' compensation.

112 (* * *6) Nothing in this section shall restrict the
113 Division of Medicaid from setting rules and regulations regarding
114 the coverage of physical therapy services and nothing in this
115 section shall amend or change the Division of Medicaid's schedule
116 of benefits, exclusions and/or limitations related to physical
117 therapy services as determined by state or federal regulations and
118 state and federal law.

119 **SECTION 2.** Section 73-23-41, Mississippi Code of 1972, is
120 amended as follows:

121 73-23-41. (1) There is established a State Board of
122 Physical Therapy that shall consist of seven (7) members appointed



123 by the Governor, with the advice and consent of the Senate. Four
124 (4) members shall be physical therapists, one (1) member shall be
125 a physical therapist assistant, and one (1) member shall be a
126 physician, each of whom possesses unrestricted licenses to
127 practice in his or her profession. The Governor shall also
128 appoint one (1) member who shall be a consumer at large who is not
129 associated with or financially interested in any health care
130 profession and who has an interest in consumer rights. Each of
131 the four (4) members who are physical therapists shall be
132 appointed from a list of three (3) persons from each of the four
133 (4) Mississippi congressional districts, as such districts
134 currently exist, submitted by the * * * American Physical Therapy
135 Association - Mississippi, all of whom must be residents of
136 Mississippi and must have engaged in the practice of physical
137 therapy within the state for at least four (4) years. The terms
138 of the members of the board shall be staggered, so that the terms
139 of no more than two (2) members shall expire in any year. Members
140 appointed to the board shall serve for four-year terms and until
141 their successors are appointed and confirmed, except that members
142 of the board who are appointed to fill vacancies which occur
143 before the expiration of a former member's full term shall serve
144 the unexpired portion of such term. No person shall be appointed
145 for more than two (2) consecutive four-year terms. However, any
146 board member initially appointed for less than a full four-year



147 term is eligible to serve for two (2) additional consecutive
148 four-year terms.

149 (2) The board shall annually elect a chairman, secretary and
150 treasurer. The board shall provide for the timely orientation and
151 training of new professional and public appointees to the board
152 regarding board licensing and disciplinary procedures, this
153 chapter and board rules, regulations, policies and procedures. A
154 member may be removed by the board only for due cause. Failure to
155 attend at least half of the board meetings in a fiscal year shall
156 constitute cause. The board shall meet at least once each
157 quarter, and those meetings shall be held in compliance with the
158 Open Meetings Law (Section 25-41-1 et seq.). A majority of board
159 members shall constitute a quorum for the transaction of business.
160 The board shall keep an official record of its meetings. Whenever
161 a vacancy occurs in the membership of the board before the
162 expiration of a term of office, the Governor shall appoint a
163 qualified successor to fill the unexpired term. Members of the
164 board shall receive the per diem authorized under Section 25-3-69
165 for each day spent actually discharging their official duties, and
166 shall receive reimbursement for mileage and necessary travel
167 expenses incurred as provided in Section 25-3-41. A board member
168 who acts within the scope of board duties, without malice and in
169 the reasonable belief that the member's action is warranted by law
170 is immune from civil liability.



171 **SECTION 3.** Section 73-23-59, Mississippi Code of 1972, is
172 amended as follows:

173 73-23-59. (1) Licensees subject to this chapter shall
174 conduct their activities, services and practice in accordance with
175 this chapter and any rules promulgated pursuant hereto. The
176 board, upon satisfactory proof and in accordance with the
177 provisions of this chapter and the regulations of the board, may
178 suspend, revoke, or refuse to issue or renew any license
179 hereunder, or revoke or suspend any privilege to practice,
180 censure or reprimand any licensee, restrict or limit a license,
181 and take any other action in relation to a license or privilege to
182 practice as the board may deem proper under the circumstances upon
183 any of the following grounds:

184 (a) Negligence in the practice or performance of
185 professional services or activities;

186 (b) Engaging in dishonorable, unethical or
187 unprofessional conduct of a character likely to deceive, defraud
188 or harm the public in the course of professional services or
189 activities;

190 (c) Perpetrating or cooperating in fraud or material
191 deception in obtaining or renewing a license or attempting the
192 same or obtaining a privilege to practice;

193 (d) Being convicted of any crime which has a
194 substantial relationship to the licensee's activities and services



195 or an essential element of which is misstatement, fraud or
196 dishonesty;

197 (e) Having been convicted of or pled guilty to a felony
198 in the courts of this state or any other state, territory or
199 country. Conviction, as used in this paragraph, shall include a
200 deferred conviction, deferred prosecution, deferred sentence,
201 finding or verdict of guilt, an admission of guilty, or a plea of
202 nolo contendere;

203 (f) Engaging in or permitting the performance of
204 unacceptable services personally or by others working under the
205 licensee's supervision due to the licensee's deliberate or
206 negligent act or acts or failure to act, regardless of whether
207 actual damage or damages to the public is established;

208 (g) Continued practice although the licensee has become
209 unfit to practice as a physical therapist or physical therapist
210 assistant due to: (i) failure to keep abreast of current
211 professional theory or practice; or (ii) physical or mental
212 disability; the entry of an order or judgment by a court of
213 competent jurisdiction that a licensee is in need of mental
214 treatment or is incompetent shall constitute mental disability; or
215 (iii) addiction or severe dependency upon alcohol or other drugs
216 which may endanger the public by impairing the licensee's ability
217 to practice;

218 (h) Having disciplinary action taken against the
219 licensee's license in another state;



220 (i) Making differential, detrimental treatment against
221 any person because of race, color, creed, sex, religion or
222 national origin;

223 (j) Engaging in lewd conduct in connection with
224 professional services or activities;

225 (k) Engaging in false or misleading advertising;

226 (l) Contracting, assisting or permitting unlicensed
227 persons to perform services for which a license is required under
228 this chapter or privilege to practice is required under Section
229 73-23-101;

230 (m) Violation of any probation requirements placed on a
231 license or privilege to practice by the board;

232 (n) Revealing confidential information except as may be
233 required by law;

234 (o) Failing to inform clients of the fact that the
235 client no longer needs the services or professional assistance of
236 the licensee;

237 (p) Charging excessive or unreasonable fees or engaging
238 in unreasonable collection practices;

239 (q) For treating or attempting to treat ailments or
240 other health conditions of human beings other than by physical
241 therapy as authorized by this chapter;

242 (r) Except as authorized in Section 73-23-35(3) and
243 (4), for applying or offering to apply physical therapy, exclusive
244 of initial evaluation or screening and exclusive of education or



245 consultation for the prevention of physical and mental disability
246 within the scope of physical therapy, other than upon the
247 referral * * * from a licensed physician, dentist, osteopath,
248 podiatrist, chiropractor, physician assistant or nurse
249 practitioner; or for acting as a physical therapist assistant
250 other than under the direct, on-site supervision of a licensed
251 physical therapist;

252 (s) Failing to adhere to the recognized standards of
253 ethics of the physical therapy profession as established by rules
254 of the board;

255 (t) Failing to complete continuing competence
256 requirements as established by board rule;

257 (u) Failing to supervise physical therapist assistants
258 in accordance with this chapter and/or board rules;

259 (v) Engaging in sexual misconduct. For the purpose of
260 this paragraph, sexual misconduct includes, but is not necessarily
261 limited to:

262 (i) Engaging in or soliciting sexual
263 relationships, whether consensual or nonconsensual, while a
264 physical therapist or physical therapist assistant/patient
265 relationship exists.

266 (ii) Making sexual advances, requesting sexual
267 favors or engaging in other verbal conduct or physical contact of
268 a sexual nature with patients or clients.



269 (iii) Intentionally viewing a completely or
270 partially disrobed patient in the course of treatment if the
271 viewing is not related to patient diagnosis or treatment under
272 current practice standards;

273 (w) The erroneous issuance of a license or privilege to
274 practice to any person;

275 (x) Violations of any provisions of this chapter, board
276 rules or regulations or a written order or directive of the board;

277 (y) Failing to maintain adequate patient records. For
278 the purposes of this paragraph, "adequate patient records" means
279 legible records that contain at minimum sufficient information to
280 identify the patient, an evaluation of objective findings, a
281 diagnosis, a plan of care, a treatment record and a discharge
282 plan;

283 (z) Failing to report to the board any unprofessional,
284 incompetent or illegal acts that appear to be in violation of this
285 law or any rules established by the board.

286 (2) The board may order a licensee to submit to a reasonable
287 physical or mental examination if the licensee's physical or
288 mental capacity to practice safely is at issue in a disciplinary
289 proceeding.

290 (3) Failure to comply with a board order to submit to a
291 physical or mental examination shall render a licensee subject to
292 the summary suspension procedures described in Section 73-23-64.



293 (4) In addition to the reasons specified in subsection (1)
294 of this section, the board shall be authorized to suspend the
295 license or privilege to practice of any licensee for being out of
296 compliance with an order for support, as defined in Section
297 93-11-153. The procedure for suspension of a license or privilege
298 to practice for being out of compliance with an order for support,
299 and the procedure for the reissuance or reinstatement of a license
300 or privilege to practice suspended for that purpose, and the
301 payment of any fees for the reissuance or reinstatement of a
302 license or privilege to practice suspended for that purpose, shall
303 be governed by Section 93-11-157 or 93-11-163, as the case may be.
304 If there is any conflict between any provision of Section
305 93-11-157 or 93-11-163 and any provision of this chapter, the
306 provisions of Section 93-11-157 or 93-11-163, as the case may be,
307 shall control.

308 **SECTION 4.** This act shall take effect and be in force from
309 and after July 1, 2024.

