

By: Senator(s) Blackwell

To: Public Health and Welfare

SENATE BILL NO. 2072

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 MAKE CERTAIN TECHNICAL
 6 NONSUBSTANTIVE CHANGES TO MODERNIZE LANGUAGE; TO AMEND SECTION
 7 73-23-59, MISSISSIPPI CODE OF 1972, TO CONFORM THE GROUNDS FOR
 8 DISCIPLINARY ACTION AGAINST A PHYSICAL THERAPIST FOR IMPLEMENTING
 9 PHYSICAL THERAPY TREATMENT WITHOUT A REFERRAL; AND FOR RELATED
 10 PURPOSES.

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

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

14 73-23-35. (1) A person, corporation, association or
 15 business entity shall not use in connection with that person's or
 16 party's name or the name or activity of the business the words
 17 "physical therapy," "physical therapist," "physiotherapy,"
 18 "physiotherapist," "registered physical therapist," "doctor of
 19 physical therapy," "physical therapist assistant," the letters
 20 "PT," "DPT," "LPT," "RPT," "PTA," "LPTA," and/or any other words,
 21 abbreviations, or insignia indicating or implying directly or
 22 indirectly that physical therapy is provided or supplied unless



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

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

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



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

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

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

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

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

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



73 for physical therapy services having been rendered with reasonable
74 care.

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

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

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

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

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

92 (c) If the patient has not made measurable or
93 functional improvement after thirty (30) calendar days of
94 implementing physical therapy treatment under the authority of
95 this subsection (4), the physical therapist shall refer the
96 patient to an appropriate health care provider. The board shall
97 take appropriate disciplinary action against any physical



98 therapist who fails to refer a patient as required by this
99 paragraph (c).

100 (d) No physical therapist shall render a medical
101 diagnosis of a disease.

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

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

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

119 73-23-41. (1) There is established a State Board of
120 Physical Therapy that shall consist of seven (7) members appointed
121 by the Governor, with the advice and consent of the Senate. Four
122 (4) members shall be physical therapists, one (1) member shall be



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



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

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



171 73-23-59. (1) Licensees subject to this chapter shall
172 conduct their activities, services and practice in accordance with
173 this chapter and any rules promulgated pursuant hereto. The
174 board, upon satisfactory proof and in accordance with the
175 provisions of this chapter and the regulations of the board, may
176 suspend, revoke, or refuse to issue or renew any license
177 hereunder, or revoke or suspend any privilege to practice,
178 censure or reprimand any licensee, restrict or limit a license,
179 and take any other action in relation to a license or privilege to
180 practice as the board may deem proper under the circumstances upon
181 any of the following grounds:

182 (a) Negligence in the practice or performance of
183 professional services or activities;

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

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

191 (d) Being convicted of any crime which has a
192 substantial relationship to the licensee's activities and services
193 or an essential element of which is misstatement, fraud or
194 dishonesty;



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

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

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

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



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

221 (j) Engaging in lewd conduct in connection with
222 professional services or activities;

223 (k) Engaging in false or misleading advertising;

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

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

230 (n) Revealing confidential information except as may be
231 required by law;

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

235 (p) Charging excessive or unreasonable fees or engaging
236 in unreasonable collection practices;

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

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



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

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

253 (t) Failing to complete continuing competence
254 requirements as established by board rule;

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

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

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

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



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

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

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

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

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

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

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



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

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

