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Chapter No. 542
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HOUSE BILL NO. 775

Originated in House Don Richardson Clerk

HOUSE BILL NO. 775

AN ACT TO AMEND SECTIONS 73-17-11 AND 73-17-15, MISSISSIPPI CODE OF 1972, TO REVISE THE EDUCATIONAL AND EXPERIENCE REQUIREMENTS IN ORDER TO BE ELIGIBLE FOR A NURSING HOME ADMINISTRATOR'S LICENSE; TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR APPLICANTS; TO PRESCRIBE THE FEES CHARGED BY THE BOARD FOR LICENSURE AND FOR EXAMINATIONS; TO DELETE THE REQUIREMENT THAT A COPY OF ALL DOCUMENTATION PERTAINING TO AN INVESTIGATION BE PROVIDED TO THE LICENSEE BEFORE A HEARING; TO AUTHORIZE THE BOARD TO ASSESS THE REASONABLE COSTS ASSOCIATED WITH THE INVESTIGATION AND DISCIPLINARY PROCEEDING AGAINST A LICENSEE; TO AMEND SECTIONS 73-22-1 AND 73-22-3, MISSISSIPPI CODE OF 1972, TO ALLOW ORTHOTISTS AND PROSTHETISTS WHO HAVE BEEN CERTIFIED BY THE BOARD FOR ORTHOTIST/PROSTHETIST CERTIFICATION TO PRACTICE IN MISSISSIPPI; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 73-17-11, Mississippi Code of 1972, is amended as follows:

73-17-11. (1) From and after July 1, 2011, in order to be eligible to be licensed as a nursing home administrator, an individual must submit evidence satisfactory to the board that he or she:

(a) Is at least twenty-one (21) years of age;

(b) Is of good moral character, including evidence of a criminal background check within the last six (6) months, under Section 43-11-13 and Section G.407.3 of the Minimum Standards for Institutions for the Aged or Infirm;

(c) Is in good health;

(d) Has satisfied at least one (1) of the following requirements for education and experience:

(i) Has sixty-four (64) hours of college work from an accredited institution and has worked in a supervisory capacity in a Mississippi-licensed nursing home for a minimum of two (2)

years immediately before making application for the Administrator-in-Training Program established by board rule;

(ii) Has an associate degree from an accredited institution and has worked in a supervisory capacity in a Mississippi-licensed nursing home for a minimum of two (2) years immediately before making application for the

Administrator-in-Training Program established by board rule;

(iii) Has a bachelor's degree in any other field of study from an accredited institution before making application for the Administrator-in-Training Program established by board rule; or

(iv) Has a bachelor's degree in health care administration or a health care related field or business from an accredited institution before making application for the Administrator-in-Training Program established by board rule;

(e) Has (i) completed a nursing home Administrator-in-Training Program and successfully completed the National Association of Long-Term Care Administrator Board (NAB) examination, or (ii) completed an Administrator-in-Training Program in Long-Term Care Administration from an academic institution during which time the institution held National Association of Long-Term Care Administrator Board (NAB) Program Approval through the Academic Approval process, to the satisfaction of the board; * * *

(f) Has successfully passed the National Association of Long-Term Care Administrator Board (NAB) examination and the Mississippi State Board of Nursing Home Administrators examination to test his or her proficiency and basic knowledge in the area of nursing home administration. The board may establish the frequency of the offering of those examinations and the contents thereof; and

(g) Has met all of the requirements established by federal law.

(2) Reciprocity shall be extended to individuals holding licenses as nursing home administrators in other states, upon proper application and a finding on the part of the board that:

(a) The applicant possesses the basic qualifications listed in this chapter and in the rules and regulations adopted under federal law;

(b) The applicant has met all of the requirements established by federal law; and

(c) * * * The standards for licensure in the other state are at least the substantial equivalent of those in this state, including education and experience, and the applicant has passed both the National Association of Long-Term Care Administrator Board (NAB) and the state exams.

* * *

(3) The board may prescribe appropriate fees for the taking of those examinations and for the issuance of licenses. Those fees shall be not more than the cost of the examinations and Five Hundred Dollars (\$500.00) for the issuance of a license. However, the fee for an initial license may be prorated in proportion to the period of time from the date of issuance and the date of biennial license renewal prescribed in subsection (4). All licenses issued under this chapter shall be for a maximum period of two (2) years.

(4) Except as provided in Section 33-1-39, the board may renew licenses biennially upon the payment of a fee to be established by the board, which shall be not more than Five Hundred Dollars (\$500.00), plus any administrative costs for late payment.

(5) Any person who is not licensed under this chapter on July 1, 2011, who makes application with the board on or before June 30, 2012, may qualify for a license under this chapter provided that on or before January 31, 2014, he or she demonstrates to the satisfaction of the board that he or she (a)

meets the eligibility requirements for a nursing home administrator's license prescribed in this section as those requirements existed on June 30, 2011; (b) has successfully completed the Administrator-in-Training Program requirements existing on June 30, 2011; and (c) has paid all required fees for licensure.

(6) This section shall stand repealed on July 1, 2012.

SECTION 2. Section 73-17-15, Mississippi Code of 1972, is amended as follows:

73-17-15. (1) (a) The board is authorized to investigate, either on the basis of complaints filed with it or on its own initiative, instances of suspected violations of this chapter of any nature, including, but not limited to: performing the duties of a nursing home administrator without a license; the providing of false information to the board either incident to an application for a license, incident to a hearing, or otherwise; maladministration; unethical conduct; incompetence; the conviction of a licensee of a felony; the misappropriation of funds; or of any other matter reflecting unfavorably upon the holder of a license under this chapter or an applicant therefor. On the basis of information developed during such an investigation, the board may (i) revoke, suspend, or refuse to renew any license issued by the board, (ii) deny an application for a license, or (iii) reprimand, place on probation, and/or take any other action in relation to a license, as the board may deem proper under the circumstances. Whenever the results of such an investigation are filed, the executive director of the board shall set a day for a hearing * * * and shall notify the licensee that on the day fixed for hearing he or she may appear and show cause, if any, why his or her license should not be revoked, suspended, or other action taken in relation to his or her license. The notice shall be transmitted to the licensee by certified United States mail to the address of the licensee appearing of record with the board.

(b) In cases where violations of this chapter have been substantiated, the board may assess a monetary penalty for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation, suspension or restriction, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigations.

(2) The board, upon finding and determining that any person represents himself or herself to be a nursing home administrator or performs any or all of the services, acts or duties of a nursing home administrator as defined in this chapter without a license, is authorized to petition the chancery court of the county in which the unauthorized acts have been, are being or may be committed, for writ or writs of injunction prohibiting the unauthorized acts. This provision is supplemental and in addition to the penal provisions set forth in Section 73-17-13.

(3) Any licensee whose license has been revoked or suspended, or who has been placed on probation or reprimanded after a contested hearing, may appeal that action of the board to the chancery court of the county in which the nursing home administrator is practicing, which appeal shall not be a de novo appeal but shall be determined upon an official transcript of the record of the contested hearing. Appeals to the chancery court shall be taken within ten (10) days from the date of the board's order and shall be taken, perfected, heard and determined either in termtime or in vacation, and the appeals shall be heard and disposed of promptly by the court. Appeals from the board shall be taken and perfected by the filing of a bond in the sum of Two Hundred Fifty Dollars (\$250.00) with two (2) sureties, or with a surety company qualified to do business in Mississippi as surety, conditioned to pay the costs of the appeal. The bond shall be payable to the state and shall be approved by the clerk of the chancery court. The bond may be enforced in its name as other

judicial bonds filed in the chancery court, and judgment may be entered upon those bonds and process and execution shall issue upon those judgments as provided by law in other cases. Upon approval of the bond by the clerk of the chancery court, the clerk shall give notice to the board of the appeal from the decision of the board. It thereupon shall be the duty of the board through its duly authorized representative to promptly transmit to the clerk of the chancery court in which the appeal is pending a certified copy of the order of the board and all documents filed relating to the board's action against the licensee, together with a transcript of the testimony, both oral and documentary, introduced for consideration by the board both in support of and in opposition to the action, which appeal shall be docketed by the clerk and shall be determined by the court based upon the record. If there is an appeal, the appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation.

(4) Appeals from the decision of the chancery court may be taken by either the board or the licensee to the Supreme Court as in the case of appeals generally from the chancery court to the Supreme Court.

(5) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in

revoking a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. 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. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 3. Section 73-22-1, Mississippi Code of 1972, is amended as follows:

73-22-1. As used in this chapter:

(a) "Orthotic device" means a brace or support, but does not include fabric and elastic supports, corsets, arch supports, trusses, elastic hose, canes, crutches, cervical collars, dental appliances or other similar devices carried in stock and sold by drug stores, department stores, corset shops or surgical supply facilities.

(b) "Orthotics" means the science or practice of measuring, designing, constructing, assembling, fitting, adjusting or servicing orthotic devices for the support, correction or alleviation of musculoskeletal diseases, injuries, disabilities or deformities as permitted by prescriptions from a licensed doctor of medicine.

(c) "Orthotist" means a person who is certified by the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification as a certified orthotist.

(d) "Person" means any individual, corporation, partnership, association or other organization.

(e) "Prosthetic device" means any artificial device that is not surgically implanted and that is used to replace a

missing limb, appendage or any other external human body part, including devices such as artificial limbs, hands, fingers, feet, toes, but excluding artificial eyes or appliances for the eyes, dental plates, and largely cosmetic devices such as wigs, artificial breasts, eyelashes, ears and noses or other devices which could not by their use have a significantly detrimental impact upon the musculoskeletal functions of the body.

(f) "Prosthetics" means the science or practice of measuring, designing, constructing, assembling, fitting, adjusting or servicing prosthetic devices as permitted by prescriptions from a licensed doctor of medicine.

(g) "Prosthetist" means a person who is certified by the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification as a certified prosthetist.

SECTION 4. Section 73-22-3, Mississippi Code of 1972, is amended as follows:

73-22-3. (1) No person shall practice orthotics or prosthetics in the state unless he or she is certified as an orthotist, prosthetist, or both, by the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification. However, nothing in this chapter shall be construed to prevent any person licensed, registered or certified in this state from engaging in the profession or occupation for which he is licensed, registered or certified, as long as he does not represent himself as an orthotist or prosthetist, and nothing in this chapter shall be construed to prevent any physician licensed in this state from performing any activities included within the definition of orthotics or prosthetics in the normal course of his practice as a physician, as long as he does not represent himself as an orthotist or prosthetist. In addition, nothing in this chapter shall be construed to prevent the practice of orthotics or

prosthetics by any person who has engaged in the practice of orthotics or prosthetics for a period of twenty-five (25) or more consecutive years before July 1, 1991, and is engaged in the practice of orthotics or prosthetics on July 1, 1991.

(2) It is unlawful for any orthotist or prosthetist, or any person on behalf of an orthotist or prosthetist, to solicit the patronage of individual patients for the orthotist or prosthetist by direct contact with a potential customer outside of the place of business of the orthotist or prosthetist.

(3) Whenever any person employs or utilizes the services of an orthotist or prosthetist in connection with the person's business, the measuring, fitting, adjusting and approval of any orthotic or prosthetic device furnished to a patient shall be performed only under the direct supervision of a board certified orthotist, in the case of orthotic patients, or under the direct supervision of a board certified prosthetist, in the case of prosthetic patients. "Direct supervision" means involvement by the certified practitioner in each and every case.

(4) Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Five Hundred Dollars (\$500.00) nor more than Two Thousand Dollars (\$2,000.00), and may be imprisoned in the county jail for not more than six (6) months. In addition, any person sustaining damages as a result of a violation of any provision of this section may recover the amount of those damages, plus a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) per incident, in any court of competent jurisdiction.

SECTION 5. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2011



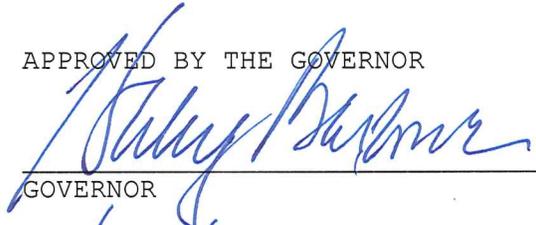
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 27, 2011



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR
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