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Chapter No. 370
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HOUSE BILL NO. 417

Originated in House  Clerk

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AN ACT TO AMEND SECTIONS 73-23-33, 73-23-35 AND 73-23-59, MISSISSIPPI CODE OF 1972, TO DELETE THE REPEALERS ON THE STATUTES THAT PROVIDE DEFINITIONS FOR THE PHYSICAL THERAPY PRACTICE LAW, REQUIRE THAT PERSONS WHO USE CERTAIN TERMS AND ABBREVIATIONS IMPLYING PHYSICAL THERAPY SERVICES IN CONNECTION WITH THE PERSON'S NAME MUST BE LICENSED, REQUIRE A PRESCRIPTION OR REFERRAL FROM CERTAIN LICENSED HEALTH CARE PROVIDERS IN ORDER TO PERFORM PHYSICAL THERAPY SERVICES, AND PROVIDE GROUNDS FOR DISCIPLINARY ACTIONS AGAINST LICENSEES UNDER THE PHYSICAL THERAPY PRACTICE LAW; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 physician assistant or nurse practitioner, holding a license in good standing; and the instruction therefor may be as detailed or as general as the doctor, physician assistant 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;

(g) "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; however, a licensed physical therapist shall be authorized to have direct supervision over not more than four (4) physical therapist assistants at one time.

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SECTION 2. Section 73-23-35, Mississippi Code of 1972, is amended as follows:

73-23-35. (1) A person, corporation, association or business entity shall not use in connection with that person's or party's name or the name or activity of the business the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "registered physical therapist," "doctor of physical therapy," "physical therapist assistant," the letters "PT," "DPT," "LPT," "RPT," "PTA," "LPTA," and/or any other words, abbreviations, or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied unless such services are provided by or under the direction of a physical therapist or physical therapist assistant, as the case may be, with a valid and current license issued pursuant to this chapter.

It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services.

(2) 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. For purposes of this chapter, the board, in seeking an injunction, need only show that the defendant violated subsection (1) of this section to establish irreparable injury or a likelihood of a continuation of the violation.

(3) A physical therapist licensed under this chapter shall not perform physical therapy services without a prescription or referral from a person licensed as a physician, dentist, osteopath, podiatrist, chiropractor, physician assistant or nurse practitioner. However, a physical therapist licensed under this chapter may perform physical therapy services without a prescription or referral under the following circumstances:

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

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

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

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

(e) (i) To an individual for a previously diagnosed condition or conditions for which physical therapy services are appropriate after informing the health care provider rendering the diagnosis. The diagnosis must have been made within the previous one hundred eighty (180) days. The physical therapist shall

provide the health care provider who rendered the diagnosis with a plan of care for physical therapy services within the first fifteen (15) days of physical therapy intervention.

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

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

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

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

73-23-59. (1) Licensees subject to this chapter shall conduct their activities, services and practice in accordance with

this chapter and any rules promulgated pursuant hereto. The board, upon satisfactory proof and in accordance with the provisions of this chapter and the regulations of the board, may suspend, revoke, or refuse to issue or renew any license hereunder, censure or reprimand any licensee, restrict or limit a license, and take any other action in relation to a license as the board may deem proper under the circumstances upon any of the following grounds:

- (a) Negligence in the practice or performance of professional services or activities;
- (b) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities;
- (c) Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same;
- (d) Being convicted of any crime which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud or dishonesty;
- (e) Having been convicted of or pled guilty to a felony in the courts of this state or any other state, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilty, or a plea of nolo contendere;
- (f) Engaging in or permitting the performance of unacceptable services personally or by others working under the licensee's supervision due to the licensee's deliberate or negligent act or acts or failure to act, regardless of whether actual damage or damages to the public is established;

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

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

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

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

(k) Engaging in false or misleading advertising;

(l) Contracting, assisting or permitting unlicensed persons to perform services for which a license is required under this chapter;

(m) Violation of any probation requirements placed on a license by the board;

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

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

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

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

(r) Except as authorized in Section 73-23-35(3), for applying or offering to apply physical therapy, exclusive of initial evaluation or screening and exclusive of education or consultation for the prevention of physical and mental disability within the scope of physical therapy, other than upon the referral of a licensed physician, dentist, osteopath, podiatrist, chiropractor, physician assistant or nurse practitioner; or for acting as a physical therapist assistant other than under the direct, on-site supervision of a licensed physical therapist;

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

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

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

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

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

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

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

(w) The erroneous issuance of a license to any person;

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

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

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

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

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

(4) 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. 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.

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SECTION 4. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 8, 2012



SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 4, 2012



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



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