

By: Representative Bowles

To: Public Health and
Welfare

HOUSE BILL NO. 1204

1 AN ACT TO AMEND SECTION 73-19-7, MISSISSIPPI CODE OF 1972, TO
2 RECONSTITUTE THE MEMBERSHIP OF THE STATE BOARD OF OPTOMETRY; TO
3 PROVIDE FOR THE APPOINTMENT OF BOARD MEMBERS FROM SUPREME COURT
4 DISTRICTS AND TO PROVIDE FOR AT-LARGE MEMBERS; TO REQUIRE THAT
5 FOUR MEMBERS BE OPTOMETRISTS AND ONE MEMBER BE A CONSUMER
6 REPRESENTATIVE; TO AMEND SECTION 73-19-17, MISSISSIPPI CODE OF
7 1972, TO REQUIRE THAT OPTOMETRY EXAMINATIONS BE IN COMPLIANCE WITH
8 STANDARDS OF THE COUNCIL ON LICENSURE, ENFORCEMENT AND REGULATION,
9 AFFILIATION WITH THE COUNCIL OF STATE GOVERNMENTS; TO AMEND
10 SECTIONS 73-19-39 AND 73-19-41, TO AUTHORIZE INVESTIGATORS OF THE
11 BOARD TO RECOMMEND TEMPORARY SUSPENSION OF AN OPTOMETRIST'S
12 LICENSE WHEN THE PUBLIC HEALTH AND SAFETY REQUIRE SUCH; TO
13 AUTHORIZE THE BOARD TO MAKE THOSE SUSPENSIONS WHEN IT DETERMINES
14 THAT THE PUBLIC HEALTH AND SAFETY REQUIRE SUCH; TO AMEND SECTION
15 73-19-105, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT
16 THAT THE BOARD DEVELOP A TEST MEASURING THE COMPETENCY OF
17 CANDIDATES FOR CERTIFICATION TO USE DIAGNOSTIC PHARMACEUTICAL
18 AGENTS; AND FOR RELATED PURPOSES.

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

20 SECTION 1. Section 73-19-7, Mississippi Code of 1972, is
21 amended as follows:

22 73-19-7. (1) The State Board of Optometry is reconstituted
23 and continued as follows: The Governor with advice and consent of
24 the Senate, shall appoint to the State Board of Optometry four (4)
25 nonmedical persons who have been actively engaged in the practice
26 of optometry immediately preceding their appointment to the board,
27 and one (1) consumer representative. One (1) optometrist member
28 shall be appointed from each of the State Supreme Court Districts,
29 and one (1) optometrist member and one (1) consumer member shall
30 be appointed from the state-at-large. There shall be no more than
31 two (2) members from any one (1) Supreme Court District. The
32 initial terms of the members appointed from the Supreme Court
33 districts shall be as follows: The term of member from the First
34 Supreme Court District shall expire on June 30, 2000; the term of

35 the member from the Second Supreme Court District shall expire on
36 June 30, 2001; the term of the member from the Third Supreme Court
37 District shall expire on June 30, 2002. The optometrist member
38 appointed from the state-at-large shall have an initial term that
39 expires on June 30, 2003. The consumer representative shall have
40 an initial term that expires on June 30, 2004. After the
41 expiration of the initial terms, all members shall have terms of
42 office of five (5) years from the expiration date of the previous
43 term. No member of the board shall be a stockholder in or a
44 faculty member or member of the board of trustees of a school of
45 optometry. No member shall be legible to serve more than two (2)
46 five-year terms.

47 (2) All initial and subsequent appointments of optometrist
48 members shall be selected from a list submitted by the Mississippi
49 Optometric Association. For each appointment there shall be three
50 (3) names submitted by the association. If the association does
51 not submit a list of names, the Governor may appoint any member in
52 good standing of the Mississippi Optometric Association to the
53 board. The consumer member shall be a qualified elector of the
54 state and shall be a good moral character. The board shall insure
55 that the consumer member receives an orientation to the practice
56 of optometry within the first three (3) months of the member's
57 joining the board.

58 SECTION 2. Section 73-19-17, Mississippi Code of 1972, is
59 amended as follows:

60 73-19-17. Any person over the age of twenty-one (21) years,
61 of good moral character, and who has graduated from a high school
62 or preparatory school affiliated with and recognized by a state
63 university, and who has graduated from a reputable school or
64 college of optometry, shall be entitled to stand the examination
65 for license to practice optometry in Mississippi. The examining
66 Board of Optometry shall keep on file a list of schools or
67 colleges of optometry which are recognized by the board.
68 Examinations shall test the professional competency of candidates
69 for licensure. All examinations shall be developed in compliance
70 with the professional testing standards developed by the Council
71 on Licensure, Enforcement and Regulation, affiliated with the

72 Council of State Governments. The State Board of Optometry shall
73 not examine or certify any optometrist in any therapeutic
74 procedures unless the optometrist has successfully completed the
75 proper didactic education and supervised clinical training taught
76 by an institution accredited by a regional or professional
77 accreditation organization that is recognized or approved by the
78 Council on Postsecondary Accreditation of the United States
79 Department of Education, or its successor, and approved by the
80 State Board of Optometry with the advice and consultation of the
81 designated members of the State Board of Medical Licensure and the
82 State Board of Pharmacy.

83 SECTION 3. Section 73-19-39, Mississippi Code of 1972, is
84 amended as follows:

85 73-19-39. After completion of his investigation, the board
86 investigator shall make a report of his findings and
87 recommendations to the member of the board designated to
88 investigate the matter. The investigator may recommend to the
89 board that the license of any optometrist may be suspended before
90 a hearing if the investigator has clear, competent and unequivocal
91 evidence that the optometrist's continuation in practice would
92 constitute a danger to the health and safety of the public. After
93 receipt of the investigator's report, the board member shall take
94 the following action:

95 (a) If upon review of the complaint, board
96 investigator's report and any written response by the accused
97 optometrist, the board member determines that there is not
98 reasonable ground to believe that the accused optometrist has been
99 guilty of unprofessional conduct or conduct evincing unfitness for
100 the practice of optometry, the board member shall present his
101 findings and recommendations to the board at the next regular
102 board meeting. The board may dismiss the complaint or may prepare
103 a formal complaint against the licensee as provided in Section
104 73-19-41. In the event of dismissal, the person filing the

105 complaint and the accused optometrist shall be given written
106 notice of the board's determination.

107 (b) If the board member determines there is reasonable
108 cause to believe the accused optometrist is guilty of such
109 conduct, which, if proven, would warrant suspension for a definite
110 or an indefinite period or license revocation, the board member
111 shall request the board to prepare and file a formal complaint
112 against the accused optometrist. The board may dismiss the
113 complaint or may prepare a formal complaint against the licensee
114 as provided in Section 73-19-41. In the event of a dismissal, the
115 person filing the complaint and the accused optometrist shall be
116 given written notice of the board's determination.

117 SECTION 4. Section 73-19-41, Mississippi Code of 1972, is
118 amended as follows:

119 73-19-41. (1) The board shall fix a time and place for any
120 formal complaint hearing and shall cause a written notice
121 specifying the offense or offenses for which the licensee is
122 charged and notice of the time and place of the hearing to be
123 served upon the licensee at least twenty (20) days prior to the
124 hearing date. Such notice may be served by mailing a copy thereof
125 by certified mail, postage prepaid, to the last known residence or
126 business address of the licensee.

127 (2) The board may temporarily suspend the license of any
128 optometrist without a hearing, simultaneously with the institution
129 of proceedings for a hearing under this section, if it finds that
130 the evidence in support of the investigator's determination of the
131 need for the suspension is clear, competent and unequivocal, and
132 that the optometrist's continuation in practice would constitute
133 an imminent danger to the public health and safety. Any
134 optometrist whose license is suspended before a hearing may be
135 entitled to receive a full hearing before the board on the
136 temporary suspension not more than seven (7) days after the board
137 imposes temporary suspension of the optometrist's license. At the

138 optometrist's request, the hearing may occur after the seven-day
139 period.

140 (3) The board is * * * authorized and empowered to issue
141 subpoenas for the attendance of witnesses and the production of
142 books and papers at such hearing. Process issued by the board
143 shall extend to all parts of the state and shall be served by any
144 person designated by the board for such service.

145 (4) The accused shall have the right to appear either
146 personally or by counsel or both to produce witnesses or evidence
147 in his behalf, to cross-examine witnesses and to have subpoenas
148 issued by the board.

149 (5) At the hearing, the board shall administer oaths as may
150 be necessary for the proper conduct of the hearing. All hearings
151 shall be conducted by the board, with the exception of the
152 investigating board member who shall not participate in the
153 hearing. The board shall not be bound by strict rules of
154 procedure or by the laws of evidence in the conduct of its
155 proceedings, but the determination shall be based upon sufficient
156 evidence to sustain it. All proceedings shall be transcribed by a
157 court reporter.

158 (6) Where, in any proceeding before the board, any witness
159 fails or refuses to attend upon a subpoena issued by the board,
160 refuses to testify, or refuses to produce any books and papers the
161 production of which is called for by a subpoena, the attendance of
162 such witness, the giving of his testimony or the production of the
163 books and papers shall be enforced by any court of competent
164 jurisdiction of this state in the manner provided for the
165 enforcement of attendance and testimony of witnesses in civil
166 cases in the courts of this state.

167 (7) The board shall, within sixty (60) days after conclusion
168 of the hearing, reduce its decision to writing and forward an
169 attested true copy thereof to the last known residence or business
170 address of such licensee by way of United States first class,

171 certified mail, postage prepaid.

172 SECTION 5. Section 73-19-105, Mississippi Code of 1972, is
173 reenacted as follows:

174 73-19-105. (1) Before any optometrist or any applicant for
175 a license to practice optometry may be certified to use diagnostic
176 pharmaceutical agents as authorized in Section 73-19-103, he shall
177 submit satisfactory evidence to the State Board of Optometry that
178 he has successfully completed a course or courses in pharmacology
179 as they apply to optometry, with particular emphasis on the
180 topical application of diagnostic pharmaceutical agents to the
181 eye, and any additional educational requirements prescribed by the
182 State Board of Optometry with the advice and consultation of the
183 designated members of the State Board of Medical Licensure and the
184 State Board of Pharmacy. Such course or courses in pharmacology
185 and any additional educational requirements prescribed shall be
186 completed at an institution accredited by a regional professional
187 accreditation organization that is recognized or approved by the
188 Council on Postsecondary Accreditation or the United States
189 Department of Education or its successors and approved by the
190 State Board of Optometry with the advice and consultation of the
191 designated members of the State Board of Medical Licensure and the
192 State Board of Pharmacy.

193 (2) Upon the successful completion of all specified
194 educational requirements, any optometrist or any applicant for a
195 license to practice optometry who desires certification to use
196 diagnostic pharmaceutical agents as authorized in Section
197 73-19-103 shall satisfactorily pass an examination administered by
198 the State Board of Optometry. * * *

199 (3) The additional educational requirements necessary to
200 become certified to use diagnostic pharmaceutical agents may be
201 completed simultaneously with the educational requirements
202 necessary to become licensed to practice optometry or may be
203 completed after the person is licensed to practice optometry. Any

204 applicant for a license to practice optometry who has met the
205 additional educational requirements for certification to use
206 diagnostic pharmaceutical agents may take the examination to
207 become licensed to practice optometry and the examination to
208 become certified to use diagnostic pharmaceutical agents at the
209 same time.

210 SECTION 6. This act shall take effect and be in force from
211 and after July 1, 1999.