

By: Moody

To: Public Health and
Welfare

HOUSE BILL NO. 1055

1 AN ACT TO AMEND SECTION 41-3-15, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE STATE BOARD OF HEALTH TO PROMULGATE RULES AND
3 REGULATIONS AND EXERCISE CONTROL OVER THE ADVERTISING BY AND ON
4 BEHALF OF ANY LICENSED OR REGULATED HEALTH CARE PROFESSIONAL TO
5 ENSURE THAT THE ADVERTISING SPECIFICALLY DESCRIBES THE LICENSE OR
6 QUALIFICATIONS OF THE LICENSED OR REGULATED HEALTH CARE
7 PROFESSIONAL; TO AMEND SECTIONS 73-6-25, 73-9-13, 73-9-61,
8 73-19-23, 73-21-106 AND 73-23-59, MISSISSIPPI CODE OF 1972, TO
9 CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Section 41-3-15, Mississippi Code of 1972, is
12 amended as follows:[RF1]

13 41-3-15. (1) There shall be a State Department of Health
14 which shall be organized into such bureaus and divisions as are
15 considered necessary by the executive officer, and shall be
16 assigned appropriate functions as are required of the State Board
17 of Health by law, subject to the approval of the board.

18 (2) The State Board of Health shall have the authority to
19 establish an Office of Rural Health within the department. The
20 duties and responsibilities of this office shall include the
21 following:

22 (a) To collect and evaluate data on rural health
23 conditions and needs;

24 (b) To engage in policy analysis, policy development
25 and economic impact studies with regard to rural health issues;

26 (c) To develop and implement plans and provide
27 technical assistance to enable community health systems to respond
28 to various changes in their circumstances;

29 (d) To plan and assist in professional recruitment and

30 retention of medical professionals and assistants; and

31 (e) To establish information clearinghouses to improve
32 access to and sharing of rural health care information.

33 (3) The State Board of Health shall have general supervision
34 of the health interests of the people of the state and to exercise
35 the rights, powers and duties of those acts which it is authorized
36 by law to enforce.

37 (4) The State Board of Health shall have authority:

38 (a) To make investigations and inquiries with respect
39 to the causes of disease and death, and to investigate the effect
40 of environment, including conditions of employment and other
41 conditions which may affect health, and to make such other
42 investigations as it may deem necessary for the preservation and
43 improvement of health.

44 (b) To make such sanitary investigations as it may,
45 from time to time, deem necessary for the protection and
46 improvement of health and to investigate nuisance questions which
47 affect the security of life and health within the state.

48 (c) To direct and control sanitary and quarantine
49 measures for dealing with all diseases within the state possible
50 to suppress same and prevent their spread.

51 (d) To obtain, collect and preserve such information
52 relative to mortality, morbidity, disease and health as may be
53 useful in the discharge of its duties or may contribute to the
54 prevention of disease or the promotion of health in this state.

55 (e) To enter into contracts or agreements with any
56 other state or federal agency, or with any private person,
57 organization or group capable of contracting, if it finds such
58 action to be in the public interest.

59 (f) To charge and collect reasonable fees for health
60 services, including immunizations, inspections and related
61 activities, and the board shall charge fees for such services;
62 provided, however, if it is determined that a person receiving

63 services is unable to pay the total fee, the board shall collect
64 any amount such person is able to pay.

65 (g) To accept gifts, trusts, bequests, grants,
66 endowments or transfers of property of any kind.

67 (h) To receive monies coming to it by way of fees for
68 services or by appropriations.

69 (i) (i) To establish standards for, issue permits and
70 exercise control over, any cafes, restaurants, food or drink
71 stands, sandwich manufacturing establishments, and all other
72 establishments, other than churches, church-related and private
73 schools, and other nonprofit or charitable organizations, where
74 food or drink is regularly prepared, handled and served for pay;
75 and

76 (ii) To require that a permit be obtained from the
77 Department of Health before such persons begin operation.

78 (j) To promulgate rules and regulations and exercise
79 control over the production and sale of milk pursuant to the
80 provisions of Sections 75-31-41 through 75-31-49.

81 (k) On presentation of proper authority, to enter into
82 and inspect any public place or building where the State Health
83 Officer or his representative deems it necessary and proper to
84 enter for the discovery and suppression of disease and for the
85 enforcement of any health or sanitary laws and regulations in the
86 state.

87 (l) To conduct investigations, inquiries and hearings,
88 and to issue subpoenas for the attendance of witnesses and the
89 production of books and records at any hearing when authorized and
90 required by statute to be conducted by the State Health Officer or
91 the State Board of Health.

92 (m) To employ, subject to the regulations of the State
93 Personnel Board, qualified professional personnel in the subject
94 matter or fields of each bureau, and such other technical and
95 clerical staff as may be required for the operation of the

96 department. The executive officer shall be the appointing
97 authority for the department, and shall have the power to delegate
98 the authority to appoint or dismiss employees to appropriate
99 subordinates, subject to the rules and regulations of the State
100 Personnel Board.

101 (n) To promulgate rules and regulations, and to collect
102 data and information, on (i) the delivery of services through the
103 practice of telemedicine; and (ii) the use of electronic records
104 for the delivery of telemedicine services.

105 (o) To promulgate rules and regulations and exercise
106 control over the advertising by and on behalf of any licensed or
107 regulated health care professional to ensure that the advertising
108 specifically describes the license or qualifications of the
109 licensed or regulated health care professional.

110 (5) (a) The State Board of Health shall have the authority,
111 in its discretion, to establish programs to promote the public
112 health, to be administered by the State Department of Health.
113 Specifically, such programs may include, but shall not be limited
114 to, programs in the following areas:

- 115 (i) Maternal and child health;
- 116 (ii) Family planning;
- 117 (iii) Pediatric services;
- 118 (iv) Services to crippled and disabled children;
- 119 (v) Control of communicable and noncommunicable
120 disease;
- 121 (vi) Child care licensure;
- 122 (vii) Radiological health;
- 123 (viii) Dental health;
- 124 (ix) Milk sanitation;
- 125 (x) Occupational safety and health;
- 126 (xi) Food, vector control and general sanitation;
- 127 (xii) Protection of drinking water;
- 128 (xiii) Sanitation in food handling establishments

129 open to the public;

130 (xiv) Registration of births and deaths and other
131 vital events;

132 (xv) Such public health programs and services as
133 may be assigned to the State Board of Health by the Legislature or
134 by executive order.

135 (b) The State Board of Health and State Department of
136 Health shall not be authorized to sell, transfer, alienate or
137 otherwise dispose of any of the home health agencies owned and
138 operated by the department on January 1, 1995, and shall not be
139 authorized to sell, transfer, assign, alienate or otherwise
140 dispose of the license of any of those home health agencies,
141 except upon the specific authorization of the Legislature by an
142 amendment to this section. However, this paragraph (b) shall not
143 prevent the board or the department from closing or terminating
144 the operation of any home health agency owned and operated by the
145 department, or closing or terminating any office, branch office or
146 clinic of any such home health agency, or otherwise discontinuing
147 the providing of home health services through any such home health
148 agency, office, branch office or clinic, if the board first
149 demonstrates that there are other providers of home health
150 services in the area being served by the department's home health
151 agency, office, branch office or clinic that will be able to
152 provide adequate home health services to the residents of the area
153 if the department's home health agency, office, branch office or
154 clinic is closed or otherwise discontinues the providing of home
155 health services. This demonstration by the board that there are
156 other providers of adequate home health services in the area shall
157 be spread at length upon the minutes of the board at a regular or
158 special meeting of the board at least thirty (30) days before a
159 home health agency, office, branch office or clinic is proposed to
160 be closed or otherwise discontinue the providing of home health
161 services.

162 (c) The State Department of Health may undertake such
163 technical programs and activities as may be required for the
164 support and operation of such programs, including maintaining
165 physical, chemical, bacteriological and radiological laboratories,
166 and may make such diagnostic tests for diseases and tests for the
167 evaluation of health hazards as may be deemed necessary for the
168 protection of the people of the state.

169 (6) (a) The State Board of Health shall administer the
170 local governments and rural water systems improvements loan
171 program in accordance with the provisions of Section 41-3-16.

172 (b) The State Board of Health shall have authority:

173 (i) To enter into capitalization grant agreements
174 with the United States Environmental Protection Agency, or any
175 successor agency thereto;

176 (ii) To accept capitalization grant awards made
177 under the federal Safe Drinking Water Act, as amended;

178 (iii) To provide annual reports and audits to the
179 United States Environmental Protection Agency, as may be required
180 by federal capitalization grant agreements; and

181 (iv) To establish and collect fees to defray the
182 reasonable costs of administering the revolving fund or emergency
183 fund if the State Board of Health determines that such costs will
184 exceed the limitations established in the federal Safe Drinking
185 Water Act, as amended. The administration fees may be included in
186 loan amounts to loan recipients for the purpose of facilitating
187 payment to the board; however, such fees may not exceed five
188 percent (5%) of the loan amount.

189 SECTION 2. Section 73-6-25, Mississippi Code of 1972, is
190 amended as follows:[RF2]

191 73-6-25. (1) The members of the chiropractic profession,
192 licensed or unlicensed, are * * * prohibited from:

193 (a) Making use of any public statement of a character
194 tending to mislead the public in regard to the health services of

195 the chiropractic profession or of an individual chiropractor, or
196 use of any other professional designation other than the term
197 "chiropractor," "doctor of chiropractic," or "D.C.";

198 (b) Offering discounts or inducements to prospective
199 patients by means of coupons or otherwise to perform professional
200 services during any period of time for a lesser or more attractive
201 price without providing a disclaimer to the public indicating the
202 usual price for other services;

203 (c) Advertising or promising to guarantee any
204 professional service or to perform any operation painlessly. Any
205 advertising by chiropractors shall be subject to the regulation
206 and control of the State Board of Health as authorized under
207 Section 41-3-15(4)(o);

208 (d) Violating any of the provisions of this chapter or
209 any of the rules and regulations of the State Board of Health
210 pursuant to this chapter with regard to the operation and use of
211 X-rays.

212 (2) Nothing herein shall be construed to prohibit a licensed
213 practitioner of chiropractic from allowing or causing his name,
214 address and telephone number to be inserted in the classified
215 section of a telephone directory under a classification denoting
216 the practitioner's profession. Nothing herein shall be construed
217 to prohibit a licensed practitioner from mailing letters to his
218 clients, but such letters shall otherwise be subject to the
219 provisions of this section.

220 SECTION 3. Section 73-9-13, Mississippi Code of 1972, is
221 amended as follows:[RF3]

222 73-9-13. The State Board of Dental Examiners shall each year
223 elect from their number a president and a secretary-treasurer to
224 serve for the coming year and until their successors are
225 qualified. The board shall have a seal with appropriate wording
226 to be kept by the secretary. The secretary shall be required to
227 make bond in such sum and with such surety as the board may

228 determine. It shall be the duty of the secretary to keep a
229 complete record of the acts and proceedings of the board and to
230 preserve all papers, documents and correspondence received by the
231 board relating to its duties and office. The proceedings shall at
232 all reasonable times be open to public inspection.

233 The board shall have the following powers and duties:

234 (a) To carry out the purposes and provisions of the
235 state laws pertaining to dentistry and dental hygiene, and the
236 practice thereof and matters related thereto, particularly
237 Sections 73-9-1 through 73-9-65, together with all amendments and
238 additions thereto.

239 (b) To regulate the practice of dentistry and to
240 promulgate reasonable regulations as are necessary or convenient
241 for the protection of the public.

242 (c) To make rules and regulations by which clinical
243 facilities within institutions, schools, colleges, universities
244 and other agencies may be recognized and approved for the practice
245 of dentistry or of dental hygiene by unlicensed persons therein,
246 as a precondition to their being excepted from the general
247 practice act and authorized in accordance with Section 73-9-3(7)
248 and (8).

249 (d) To provide for the enforcement of and to enforce
250 the laws of the State of Mississippi and the rules and regulations
251 of the State Board of Dental Examiners.

252 (e) To compile at least once each calendar year and to
253 maintain an adequate list of prospective dentist appointees for
254 approval by the Governor as provided for elsewhere by law, such
255 list being based upon a comprehensive poll of all licensed and
256 registered dentists in the state, the names being arranged in
257 order of preference as shown by such poll.

258 (f) To issue licenses to dentists and dental hygienists
259 when found to be qualified.

260 (g) To provide for annual reregistration of dentists

261 and dental hygienists.

262 (h) To maintain an up-to-date list of all registered
263 dentists and dental hygienists in the state, together with their
264 addresses.

265 (i) To examine applicants for the practice of dentistry
266 or dental hygiene at least annually.

267 (j) To issue licenses or duplicates and annual
268 reregistration certificates, to collect and account for fees for
269 same.

270 (k) To maintain an office adequately staffed insofar as
271 funds are available for the purposes of carrying out the powers
272 and duties of the board.

273 (l) To provide by appropriate rules and regulations,
274 within the provisions of the state laws, for revoking or
275 suspending dentists' and dental hygienists' licenses and a system
276 of fines for lesser penalties.

277 (m) To prosecute, investigate or initiate prosecution
278 for violations of the laws of the state pertaining to practice of
279 dentistry or dental hygiene, or matters affecting the rights and
280 duties, or related thereto.

281 (n) To provide by rules for the conduct of as much
282 board business as practicable by mail, which, when so done, shall
283 be and have the same force and effect as if done in a regular
284 meeting duly organized.

285 (o) To adopt rules and regulations providing for the
286 reasonable regulation of advertising by dentists and dental
287 hygienists. Any advertising by dentists and dental hygienists
288 shall be subject to the regulation and control of the State Board
289 of Health as authorized under Section 41-3-15(4)(o).

290 (p) To employ, in its discretion, a duly licensed
291 attorney to represent the board in individual cases.

292 (q) To employ, in its discretion, technical and
293 professional personnel to conduct dental office sedation site

294 visits, monitor state board examinations and carry out the powers
295 and duties of the board.

296 SECTION 4. Section 73-9-61, Mississippi Code of 1972, is
297 amended as follows:[RF4]

298 73-9-61. (1) Upon satisfactory proof, and in accordance
299 with statutory provisions elsewhere set out for such hearings and
300 protecting the rights of accused as well as the public, the State
301 Board of Dental Examiners may revoke or suspend the license of any
302 licensed dentist or dental hygienist practicing in the State of
303 Mississippi, or by taking any other action in relation to his
304 license as the board may deem proper under the circumstances, for
305 any of the following reasons:

306 (a) Misrepresentation in obtaining a license, or a
307 willful violation of any of the provisions of the laws of the
308 State of Mississippi pertaining to the practice of dentistry or
309 dental hygiene.

310 (b) Willful violation of any of the rules or
311 regulations duly promulgated by the board, or of any of the rules
312 or regulations duly promulgated by the appropriate dental
313 licensure agency of another state or jurisdiction.

314 (c) Gross immorality or habitual personal use of
315 intoxicants or drugs rendering such person unfit for the practice
316 of dentistry or dental hygiene.

317 (d) Administering, dispensing or prescribing any
318 narcotic drug, or any other drug having addiction-forming or
319 addiction-sustaining liability otherwise than in the course of
320 legitimate professional practice.

321 (e) Conviction of violation of any federal or state law
322 regulating the possession, distribution or use of any narcotic
323 drug or any drug considered a controlled substance under state or
324 federal law.

325 (f) Malpractice, gross ignorance, incompetency or the
326 employing of unlicensed persons to perform work which under state

327 law can only be done legally by persons holding a license to
328 practice in this state.

329 (g) Any unprofessional conduct to be determined by the
330 board on a case-by-case basis, which shall include but not be
331 restricted to the following:

332 (i) Committing any crime involving moral
333 turpitude.

334 (ii) Practicing deceit or other fraud upon the
335 public.

336 (iii) Practicing dentistry or dental hygiene under
337 a false or assumed name.

338 (iv) Advertising that is false, deceptive or
339 misleading. Any advertising by dentists and dental hygienists
340 shall be subject to the regulation and control of the State Board
341 of Health as authorized under Section 41-3-15(4)(o).

342 (v) Announcing a specialized practice shall be
343 considered advertising that tends to deceive or mislead the public
344 unless the dentist announcing as a specialist conforms to other
345 statutory provisions and the duly promulgated rules or regulations
346 of the board pertaining to practice of dentistry in the State of
347 Mississippi.

348 (vi) Contumacious refusal to abide by the
349 principles of ethics which are approved and published by the
350 American Dental Association, when such principles have been
351 adopted by the Mississippi Board of Dental Examiners and after due
352 notice of such allegation or violation has been given to such
353 person charged and he has had reasonable time, not to exceed
354 fifteen (15) days, to comply therewith.

355 (h) Being guilty of an offense under the laws of a
356 state punishable by death or imprisonment for a term exceeding one
357 (1) year; or being guilty of an offense under the laws of the
358 federal government punishable by death or imprisonment for a term
359 exceeding one (1) year. Conviction in a state or federal court

360 shall constitute prima facie evidence of such guilt in proceedings
361 before the board for the purpose of determining whether the
362 license of any licensed dentist or dental hygienist should be
363 revoked or suspended.

364 (i) Willful, obstinate, contumacious and continuing
365 refusal to cooperate with the board in observing its rules and
366 regulations in promptly paying all legal license or other fees
367 required by law.

368 (j) Practicing dentistry or dental hygiene while such
369 person's license is suspended.

370 (2) In lieu of revocation of a license as provided for
371 above, the board may suspend the license of the offending dentist
372 or dental hygienist, suspend the sedation permit of the offending
373 dentist, or take any other action in relation to his license as
374 the board may deem proper under the circumstances.

375 (3) When a license to practice dentistry or dental hygiene
376 is revoked or suspended by the board, the board may, in its
377 discretion, stay such revocation or suspension and simultaneously
378 place the licensee on probation upon the condition that such
379 licensee shall not violate the laws of the State of Mississippi
380 pertaining to the practice of dentistry or dental hygiene and
381 shall not violate the rules and regulations of the board and shall
382 not violate any terms in relation to his license as may be set by
383 the board.

384 (4) In a proceeding conducted under this section by the
385 board for the revocation or suspension of a license to practice
386 dentistry or dental hygiene, the board shall have the power and
387 authority for the grounds stated for such revocation or
388 suspension, and in addition thereto or in lieu of such revocation
389 or suspension may assess and levy upon any person licensed to
390 practice dentistry or dental hygiene in the State of Mississippi,
391 a monetary penalty, as follows:

392 (a) For the first violation of any of subparagraph (a),

393 (b), (c), (d), (e), (f) or (g) of subsection (1) of this section,
394 a monetary penalty of not less than Fifty Dollars (\$50.00) nor
395 more than Five Hundred Dollars (\$500.00).

396 (b) For the second violation of any of subparagraph
397 (a), (b), (c), (d), (e), (f) or (g) of subsection (1) of this
398 section, a monetary penalty of not less than One Hundred Dollars
399 (\$100.00) nor more than One Thousand Dollars (\$1,000.00).

400 (c) For the third and any subsequent violation of any
401 of subparagraph (a), (b), (c), (d), (e), (f) or (g) of subsection
402 (1) of this section, a monetary penalty of not less than Five
403 Hundred Dollars (\$500.00) and not more than Five Thousand Dollars
404 (\$5,000.00).

405 (d) For any violation of any of subparagraph (a), (b),
406 (c), (d), (e), (f), (g) or (h) of subsection (1) of this section,
407 those reasonable costs that are expended by the board in the
408 investigation and conduct of a proceeding for licensure revocation
409 or suspension, including but not limited to the cost of process
410 service, court reporters, expert witnesses and investigators.

411 (5) The power and authority of the board to assess and levy
412 such monetary penalties hereunder shall not be affected or
413 diminished by any other proceeding, civil or criminal, concerning
414 the same violation or violations except as provided in this
415 section.

416 (6) A licensee shall have the right of appeal from the
417 assessment and levy of a monetary penalty as provided in this
418 section under the same conditions as a right of appeal is provided
419 elsewhere for appeals from an adverse ruling, order or decision of
420 the board.

421 (7) Any monetary penalty assessed and levied under this
422 section shall not take effect until after the time for appeal
423 shall have expired. In the event of an appeal, such appeal shall
424 act as a supersedeas.

425 (8) A monetary penalty assessed and levied under this

426 section shall be paid to the board by the licensee upon the
427 expiration of the period allowed for appeal of such penalties
428 under this section or may be paid sooner if the licensee elects.
429 With the exception of subsection (4)(d) of this section, monetary
430 penalties collected by the board under this section shall be
431 deposited to the credit of the General Fund of the State Treasury.

432 Any monies collected by the board under subsection (4)(d) of this
433 section shall be deposited into the special fund operating account
434 of the board.

435 (9) When payment of a monetary penalty assessed and levied
436 by the board against a licensee in accordance with this section is
437 not paid by the licensee when due under this section, the board
438 shall have power to institute and maintain proceedings in its name
439 for enforcement of payment in the chancery court of the county and
440 judicial district of residence of the licensee, and if the
441 licensee be a nonresident of the State of Mississippi, such
442 proceedings shall be in the Chancery Court of the First Judicial
443 District of Hinds County, Mississippi.

444 (10) In addition to the reasons specified in subsection (1)
445 of this section, the board shall be authorized to suspend the
446 license of any licensee for being out of compliance with an order
447 for support, as defined in Section 93-11-153. The procedure for
448 suspension of a license for being out of compliance with an order
449 for support, and the procedure for the reissuance or reinstatement
450 of a license suspended for that purpose, and the payment of any
451 fees for the reissuance or reinstatement of a license suspended
452 for that purpose, shall be governed by Section 93-11-157 or
453 93-11-163, as the case may be. If there is any conflict between
454 any provision of Section 93-11-157 or 93-11-163 and any provision
455 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
456 as the case may be, shall control.

457 SECTION 5. Section 73-19-23, Mississippi Code of 1972, is
458 amended as follows:[RF5]

459 73-19-23. (1) The board shall refuse to grant a certificate
460 of licensure to any applicant and may cancel, revoke or suspend
461 the operation of any certificate by it granted for any or all of
462 the following reasons, to-wit: unprofessional and unethical
463 conduct or the conviction of a crime involving moral turpitude,
464 habitual intemperance in the use of ardent spirits, or stimulants,
465 narcotics, or any other substance which impairs the intellect and
466 judgment to such an extent as to incapacitate one for the
467 performance of the duties of an optometrist. The certificate of
468 licensure of any person can be revoked for violating any section
469 of this chapter.

470 (2) The board shall further be authorized to take
471 disciplinary action against a licensee for any unlawful acts which
472 shall include violations of regulations promulgated by the board,
473 as well as the following acts:

474 (a) Fraud or misrepresentation in applying for or
475 procuring an optometric license or in connection with applying for
476 or procuring periodic renewal of an optometric license.

477 (b) Cheating on or attempting to subvert the optometric
478 licensing examination(s).

479 (c) The conviction of a felony in this state or any
480 other jurisdiction, or the entry of guilty or nolo contendere plea
481 to a felony charge.

482 (d) The conviction of a felony as defined by federal
483 law, or the entry of a guilty or nolo contendere plea to a felony
484 charge.

485 (e) Conduct likely to deceive, defraud or harm the
486 public.

487 (f) Making a false or misleading statement regarding
488 his or her skill or the efficacy or value of the medicine, device,
489 treatment or remedy prescribed by him or her or used at his or her
490 direction in the treatment of any disease or other condition.

491 (g) Willfully or negligently violating the

492 confidentiality between doctor and patient, except as required by
493 law.

494 (h) Negligence or gross incompetence in the practice of
495 optometry as determined by the board.

496 (i) Being found mentally incompetent or insane by any
497 court of competent jurisdiction.

498 (j) The use of any false, fraudulent, deceptive or
499 misleading statement in any document connected with the practice
500 of optometry.

501 (k) Aiding or abetting the practice of optometry by an
502 unlicensed, incompetent or impaired person.

503 (l) Commission of any act of sexual abuse, misconduct
504 or exploitation related to the licensee's practice of optometry.

505 (m) Being addicted or habituated to a drug or
506 intoxicant.

507 (n) Violating any state or federal law or regulation
508 relating to a drug legally classified as a controlled substance.

509 (o) Obtaining any fee by fraud, deceit or
510 misrepresentation.

511 (p) Disciplinary action of another state or
512 jurisdiction against a licensee or other authorization to practice
513 optometry based upon acts or conduct by the licensee similar to
514 acts or conduct which would constitute grounds for action as
515 defined in this chapter, a certified copy of the record of the
516 action taken by the other state or jurisdiction being conclusive
517 evidence thereof.

518 (q) Failure to report to the board the relocation of
519 his or her office in or out of the jurisdiction, or to furnish
520 floor plans as required by regulation.

521 (r) Violation of any provision(s) of the Optometry
522 Practice Act or the rules and regulations of the board or of an
523 action, stipulation or agreement of the board.

524 (s) To advertise in a manner that tends to deceive,

525 mislead or defraud the public. Any advertising by optometrists
526 shall be subject to the regulation and control of the State Board
527 of Health as authorized under Section 41-3-15(4)(o).

528 (t) The designation of any person licensed under this
529 chapter, other than by the terms "optometrist," "Doctor of
530 Optometry" or "O.D."

531 (u) To knowingly submit or cause to be submitted any
532 misleading, deceptive or fraudulent representation on a claim
533 form, bill or statement.

534 (v) To practice or attempt to practice optometry while
535 his or her license is suspended.

536 (3) Any person who is holder of a certificate of licensure
537 or who is an applicant for examination for a certificate of
538 licensure, against whom is preferred any charges, shall be
539 furnished by the board with a copy of the complaint and shall have
540 a hearing in Jackson, Mississippi, before the board, at which
541 hearing he may be represented by counsel. At such hearing
542 witnesses may be examined for and against the accused respecting
543 the * * * charges, and the hearing orders or appeals will be
544 conducted according to the procedure now provided in Section
545 73-25-27. The suspension of a certificate of licensure, by reason
546 of the use of stimulants or narcotics may be removed when the
547 holder thereof shall have been adjudged by the * * * board to be
548 cured and capable of practicing optometry.

549 (4) In addition to the reasons specified in subsections (1)
550 and (2) of this section, the board shall be authorized to suspend
551 the license of any licensee for being out of compliance with an
552 order for support, as defined in Section 93-11-153. The procedure
553 for suspension of a license for being out of compliance with an
554 order for support, and the procedure for the reissuance or
555 reinstatement of a license suspended for that purpose, and the
556 payment of any fees for the reissuance or reinstatement of a
557 license suspended for that purpose, shall be governed by Section

558 93-11-157 or 93-11-163, as the case may be. If there is any
559 conflict between any provision of Section 93-11-157 or 93-11-163
560 and any provision of this chapter, the provisions of Section
561 93-11-157 or 93-11-163, as the case may be, shall control.

562 SECTION 6. Section 73-21-106, Mississippi Code of 1972, is
563 amended as follows:[RF6]

564 73-21-106. (1) Any pharmacy located outside this state that
565 ships, mails or delivers, in any manner, controlled substances,
566 prescription or legend drugs or devices into this state shall be
567 considered a nonresident pharmacy, shall be registered with the
568 board, and shall disclose to the board all of the following:

569 (a) The location, names, and titles of all principal
570 corporate officers and all pharmacists-in-charge. A report
571 containing this information shall be made on a biennial basis and
572 within thirty (30) days after any change of office, corporate
573 officer or pharmacist-in-charge;

574 (b) That it complies with all lawful directions and
575 requests for information from the regulatory or licensing agency
576 of the state in which it is licensed as well as with all requests
577 for information made by the board pursuant to this section. The
578 nonresident pharmacy shall maintain at all times a valid unexpired
579 license, permit or registration to conduct the pharmacy in
580 compliance with the laws of the state in which it is a resident.
581 As a prerequisite to registering with the board, the nonresident
582 pharmacy shall submit a copy of the most recent inspection report
583 resulting from an inspection conducted by the regulatory or
584 licensing agency of the state in which it is located; and

585 (c) That it maintains its records of controlled
586 substances, or prescription or legend drugs or devices dispensed
587 to patients in this state so that the records are readily
588 retrievable from the records of other drugs dispensed.

589 (2) Any pharmacy subject to this section shall provide
590 during its regular hours of operation, but not less than six (6)

591 days per week and for a minimum of forty (40) hours per week, a
592 toll-free telephone service to facilitate communication between
593 patients in this state and a pharmacist at the pharmacy who has
594 access to the patient's records. This toll-free number shall be
595 disclosed on a label affixed to each container of drugs dispensed
596 to patients in this state.

597 (3) The registration fee for nonresident pharmacies shall be
598 the same as the fee as set by subsection (4) of Section 73-21-105.

599 (4) The registration requirements of this section shall
600 apply only to a nonresident pharmacy that only ships, mails or
601 delivers controlled substances, prescription or legend drugs and
602 devices into this state pursuant to a prescription.

603 (5) The board may deny, revoke or suspend a nonresident
604 pharmacy registration only for:

605 (a) Failure to comply with any requirement of this
606 section; or

607 (b) Conduct that causes serious bodily or serious
608 psychological injury to a resident of this state if the board has
609 referred the matter to the regulatory or licensing agency in the
610 state in which the pharmacy is located and the regulatory or
611 licensing agency fails to initiate an investigation within
612 forty-five (45) days of the referral.

613 (6) It is unlawful for any nonresident pharmacy that is not
614 registered pursuant to this section to advertise its services in
615 this state, or for any person who is a resident of this state to
616 advertise the pharmacy services of a nonresident pharmacy that has
617 not registered with the board, with the knowledge that the
618 advertisement will or is likely to induce members of the public in
619 this state to use the pharmacy to fill prescriptions. Any
620 advertising by pharmacists or pharmacies shall be subject to the
621 regulation and control of the State Board of Health as authorized
622 under Section 41-3-15(4)(o).

623 (7) When requested to do so by the board, each nonresident

624 pharmacy shall supply any inspection reports, controlled
625 substances dispensing records, warning notices, notice of
626 deficiency reports or any other related reports from the state in
627 which it is located concerning the operation of a nonresident
628 pharmacy for review of compliance with state and federal drug
629 laws.

630 SECTION 7. Section 73-23-59, Mississippi Code of 1972, is
631 amended as follows:[RF7]

632 73-23-59. (1) Licensees subject to this chapter shall
633 conduct their activities, services and practice in accordance with
634 this chapter and any rules promulgated pursuant hereto. Licensees
635 may be subject to the exercise of the disciplinary sanction
636 enumerated in Section 73-23-64 if the board finds that a licensee
637 is guilty of any of the following:

638 (a) Negligence in the practice or performance of
639 professional services or activities;

640 (b) Engaging in dishonorable, unethical or
641 unprofessional conduct of a character likely to deceive, defraud
642 or harm the public in the course of professional services or
643 activities;

644 (c) Perpetrating or cooperating in fraud or material
645 deception in obtaining or renewing a license or attempting the
646 same;

647 (d) Being convicted of any crime which has a
648 substantial relationship to the licensee's activities and services
649 or an essential element of which is misstatement, fraud or
650 dishonesty;

651 (e) Being convicted of any crime which is a felony
652 under the laws of this state or the United States;

653 (f) Engaging in or permitting the performance of
654 unacceptable services personally or by others working under the
655 licensee's supervision due to the licensee's deliberate or
656 negligent act or acts or failure to act, regardless of whether

657 actual damage or damages to the public is established;

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

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

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

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

675 (k) Engaging in false or misleading advertising. Any
676 advertising by physical therapists shall be subject to the
677 regulation and control of the State Board of Health as authorized
678 under Section 41-3-15(4)(o);

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

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

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

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

689 (p) Charging excessive or unreasonable fees or engaging

690 in unreasonable collection practices;

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

694 (r) For applying or offering to apply physical therapy,
695 exclusive of initial evaluation or screening and exclusive of
696 education or consultation for the prevention of physical and
697 mental disability within the scope of physical therapy, other than
698 upon the referral of a licensed physician, dentist, osteopath,
699 podiatrist, chiropractor or nurse practitioner; or for acting as a
700 physical therapist assistant other than under the direct, on-site
701 supervision of a licensed physical therapist;

702 (s) Violations of the current codes of conduct for
703 physical therapists and physical therapy assistants adopted by the
704 American Physical Therapy Association;

705 (t) Violations of any rules or regulations promulgated
706 pursuant to this chapter.

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

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

714 (4) In addition to the reasons specified in subsection (1)
715 of this section, the board shall be authorized to suspend the
716 license of any licensee for being out of compliance with an order
717 for support, as defined in Section 93-11-153. The procedure for
718 suspension of a license for being out of compliance with an order
719 for support, and the procedure for the reissuance or reinstatement
720 of a license suspended for that purpose, and the payment of any
721 fees for the reissuance or reinstatement of a license suspended
722 for that purpose, shall be governed by Section 93-11-157 or

723 93-11-163, as the case may be. If there is any conflict between
724 any provision of Section 93-11-157 or 93-11-163 and any provision
725 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
726 as the case may be, shall control.

727 SECTION 8. This act shall take effect and be in force from
728 and after July 1, 2000.