

By: Representative Guice

To: Public Health and Welfare

HOUSE BILL NO. 978

1 AN ACT TO REENACT SECTIONS 73-19-1 THROUGH 73-19-29 AND  
2 73-19-33 THROUGH 73-19-45, MISSISSIPPI CODE OF 1972, WHICH CREATE  
3 THE OPTOMETRY BOARD AND DESCRIBE ITS POWERS AND DUTIES; TO AMEND  
4 SECTION 73-19-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF  
5 REPEAL ON THE OPTOMETRY LAWS TO JULY 1, 2005; TO AMEND REENACTED  
6 SECTION 73-19-1, MISSISSIPPI CODE OF 1972, TO CLARIFY THE  
7 DEFINITION OF THE PRACTICE OF OPTOMETRY; TO AMEND SECTION  
8 73-19-157, MISSISSIPPI CODE OF 1972, TO AUTHORIZE OPTOMETRISTS WHO  
9 HAVE BEEN CERTIFIED TO PRESCRIBE AND USE THERAPEUTIC  
10 PHARMACEUTICAL AGENTS TO ADMINISTER AND PRESCRIBE ANY  
11 PHARMACEUTICAL AGENTS RATIONAL TO THE EXAMINATION, DIAGNOSIS,  
12 MANAGEMENT OR TREATMENT OF CONDITIONS OR DISEASES OF THE EYE; TO  
13 AUTHORIZE THOSE CERTIFIED OPTOMETRISTS TO PERFORM PRIMARY EYE CARE  
14 PROCEDURES RATIONAL TO THE MANAGEMENT OR TREATMENT OF CONDITIONS  
15 OR DISEASES OF THE EYE; TO AUTHORIZE THOSE CERTIFIED OPTOMETRISTS  
16 TO PERFORM OR ORDER PROCEDURES AND LABORATORY TESTS RATIONAL TO  
17 THE DIAGNOSIS OF CONDITIONS OR DISEASES OF THE EYE; TO AMEND  
18 SECTION 73-19-165, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE  
19 PRECEDING SECTION; TO AMEND SECTION 41-29-105, MISSISSIPPI CODE OF  
20 1972, TO DEFINE THOSE CERTIFIED OPTOMETRISTS AS "PRACTITIONERS"  
21 UNDER THE UNIFORM CONTROLLED SUBSTANCES LAW; TO AMEND SECTION  
22 41-29-137, MISSISSIPPI CODE OF 1972, TO PROHIBIT THOSE CERTIFIED  
23 OPTOMETRISTS FROM PRESCRIBING, ADMINISTERING, DISPENSING OR USING  
24 ANY CONTROLLED SUBSTANCE IN SCHEDULE I OR II; TO AMEND SECTIONS  
25 41-29-109, 41-29-125, 41-29-133, 41-29-157, 41-29-159, 41-29-167  
26 AND 41-29-171, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE STATE  
27 BOARD OF OPTOMETRY SHALL ISSUE REGISTRATIONS TO THOSE CERTIFIED  
28 OPTOMETRISTS WHO DISPENSE CONTROLLED SUBSTANCES; TO PROVIDE THAT  
29 THE STATE BOARD OF OPTOMETRY IS RESPONSIBLE FOR REGULATING AND  
30 CHECKING THE LEGITIMATE DRUG TRAFFIC AMONG OPTOMETRISTS; AND FOR  
31 RELATED PURPOSES.

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

33 SECTION 1. Section 73-19-1, Mississippi Code of 1972, is  
34 reenacted and amended as follows:

35 73-19-1. The practice of optometry is defined to be the  
36 application of optical principles, through technical methods and  
37 devices in the examination of human eyes for the purpose of  
38 ascertaining departures from the normal, measuring their  
39 functional powers and adapting optical accessories for the aid

40 thereof. The practice of optometry shall include the prescribing  
41 and use of therapeutic pharmaceutical agents by optometrists  
42 certified under Sections 73-19-153 through 73-19-165. The  
43 practice of optometry shall not include the performing of  
44 injections into the eyeball, cataract surgery or laser surgery,  
45 but shall not preclude the removal of superficial foreign bodies  
46 from the eye or other noninvasive procedures. Nothing in this  
47 section or any other provision of law shall be construed to  
48 prohibit optometrists who have been certified under Sections  
49 73-19-153 through 73-19-165 from providing postophthalmic surgical  
50 or clinical care and management with the advice and consultation  
51 of the operating or treating physician.

52 SECTION 2. Section 73-19-3, Mississippi Code of 1972, is  
53 reenacted as follows:

54 73-19-3. It shall not be lawful for any person in this state  
55 to engage in the practice of optometry or to hold himself out as a  
56 practitioner of optometry, or attempt to determine by an  
57 examination of the eyes the kind of glasses needed by any person,  
58 or to hold himself out as able to examine the eyes of any person  
59 for the purpose of fitting the same with glasses, excepting those  
60 hereinafter exempted, unless he has first fulfilled the  
61 requirements of this chapter and has received a certificate of  
62 licensure from the State Board of Optometry created by this  
63 chapter, nor shall it be lawful for any person in this state to  
64 represent that he is the lawful holder of a certificate of  
65 licensure such as provided for in this chapter, when in fact he is  
66 not such lawful holder or to impersonate any licensed practitioner  
67 of optometry, or to fail to register the certificate as provided  
68 by law.

69 SECTION 3. Section 73-19-5, Mississippi Code of 1972, is  
70 reenacted as follows:

71 73-19-5. (1) Any person violating the provisions of this  
72 chapter shall be guilty of a misdemeanor and, upon conviction for

73 his first offense shall be fined not more than Five Hundred  
74 Dollars (\$500.00) at the discretion of the court, and upon  
75 conviction for a second or later offense shall be fined not less  
76 than Five Hundred Dollars (\$500.00) nor more than One Thousand  
77 Dollars (\$1,000.00) or imprisoned not less than six (6) months nor  
78 more than one (1) year, at the discretion of the court.

79 (2) Any entity, organization or person, including the board,  
80 any member of the board and its agents or employees, acting in  
81 good faith and without malice, who makes any report or information  
82 available to the board regarding violation of any of the  
83 provisions of Sections 73-19-1 through 73-19-111, or who assists  
84 in the organization, investigation or preparation of any such  
85 report or information or assists the board in carrying out any of  
86 its duties or functions provided by law, shall be immune from  
87 civil or criminal liability for such acts.

88 SECTION 4. Section 73-19-7, Mississippi Code of 1972, is  
89 reenacted as follows:

90 73-19-7. The Governor, with the advice and consent of the  
91 Senate, shall appoint a State Board of Optometry, consisting of  
92 five (5) persons, citizens of Mississippi, each of whom shall be a  
93 nonmedical man or woman actually engaged in the practice of  
94 optometry for five (5) years next preceding his appointment.  
95 Within ninety (90) days after March 25, 1974, the Governor shall  
96 appoint: one (1) member for a term of one (1) year, one (1)  
97 member for a term of two (2) years, one (1) member for a term of  
98 three (3) years, one (1) member for a term of four (4) years, and  
99 one (1) member for a term of five (5) years; and upon the  
100 expiration of all such terms their successors shall be appointed  
101 by the Governor for a term of five (5) years. From and after July  
102 1, 1983, the appointments to the board shall be made with one (1)  
103 member to be appointed from each of the congressional districts as  
104 existing on January 1, 1980; provided that the present members of  
105 the State Board of Optometry whose terms have not expired by July

106 1, 1983, shall continue to serve until their terms of office have  
107 expired. Each member shall remain in office after the expiration  
108 of his term until his successor shall be duly appointed and  
109 qualified.

110 No person so appointed shall be a stockholder in or a member  
111 of the faculty or of the board of trustees of any school of  
112 optometry, or serve to exceed two (2) five-year terms.

113 Vacancies on said board shall be filled by appointment by the  
114 Governor, with the advice and consent of the Senate, from a list  
115 of names submitted by the Mississippi Optometric Association  
116 consisting of three (3) of its members, or by appointment of any  
117 qualified member of the association.

118 SECTION 5. Section 73-19-9, Mississippi Code of 1972, is  
119 reenacted as follows:

120 73-19-9. The State Board of Optometry shall organize by the  
121 election from its members of a president and a secretary, who  
122 shall hold their respective offices for one (1) year.

123 It shall hold regular meetings for examination, beginning on  
124 the second week of January and July of each year, and additional  
125 meetings at such times and places as the board shall determine,  
126 said additional meetings not to exceed ten (10) meeting days  
127 annually, but the July meeting shall be held in the City of  
128 Jackson.

129 A majority of the board shall constitute a quorum, but a less  
130 number may adjourn from time to time.

131 The board shall make such rules and regulations as may be  
132 necessary to carry out the provisions of this chapter; provided,  
133 however, that it shall require the concurrence of a majority of  
134 the members of the board to grant or revoke a license.

135 SECTION 6. Section 73-19-11, Mississippi Code of 1972, is  
136 reenacted as follows:

137 73-19-11. Before entering upon the discharge of the duties  
138 of his office the Secretary of the State Board of Optometry shall

139 give a bond to the state, to be approved by the board, in the sum  
140 of Two Thousand Dollars (\$2,000.00) conditioned for the faithful  
141 discharge of the duties of his office. The premium for such bond  
142 to be paid from the funds paid into the State Treasury by the  
143 secretary of the board.

144 Such bond, with the approval of the board and oath of office  
145 indorsed thereon, shall be deposited with the Secretary of State  
146 and kept in his office. Each month all monies received by the  
147 secretary shall be paid by him into the State Treasury to the  
148 credit of a fund for the use of the State Board of Optometry.

149 SECTION 7. Section 73-19-13, Mississippi Code of 1972, is  
150 reenacted as follows:

151 73-19-13. Each member of the State Board of Optometry shall  
152 be entitled to receive per diem as authorized under Section  
153 25-3-69 in addition to all actual, necessary expenses incurred in  
154 the discharge of official duties, including mileage as authorized  
155 by law for state officials and employees.

156 The secretary shall receive an annual salary, to be fixed by  
157 the board, and his necessary expenses incurred in the discharge of  
158 his official duties. The State Board of Optometry may engage the  
159 services of an attorney to assist it in the discharge of its  
160 duties on terms to be fixed by the board.

161 The compensation and expenses of the secretary, attorney and  
162 members of the board, and the expenses of the board necessary in  
163 carrying out the provisions of this chapter, shall be paid from  
164 the fund in the State Treasury for use of the board on the  
165 requisition signed by the president and secretary of the board and  
166 the warrant of the auditor of the state; provided, however, that  
167 said compensation and expenses shall not exceed the amount paid  
168 into the State Treasury under the provisions of this chapter; and  
169 provided further, that all expenditures from such special fund  
170 shall be authorized by the Legislature and shall be subject to all  
171 applicable provisions of the state budget law.

172 SECTION 8. Section 73-19-15, Mississippi Code of 1972, is  
173 reenacted as follows:

174 73-19-15. The State Board of Optometry shall have an  
175 official seal and shall keep a record of its proceedings, a  
176 register of persons registered as optometrists and register  
177 licenses by it revoked.

178 Its records shall be open to public inspection, and it shall  
179 keep on file all examination papers for a period of ninety (90)  
180 days after each examination. A transcript of an entry in such  
181 records certified by the secretary under the seal of the board,  
182 shall be evidence of the facts therein stated. The board shall  
183 annually on or before January 1 make a report to the Governor of  
184 all its official acts during the preceding year, and of its  
185 receipts and disbursements, and a full and complete report of the  
186 conditions of optometry in this state.

187 SECTION 9. Section 73-19-17, Mississippi Code of 1972, is  
188 reenacted as follows:

189 73-19-17. Any person over the age of twenty-one (21) years,  
190 of good moral character, and who has graduated from a high school  
191 or preparatory school affiliated with and recognized by a state  
192 university, and who has graduated from a reputable school or  
193 college of optometry, shall be entitled to stand the examination  
194 for license to practice optometry in Mississippi. The examining  
195 Board of Optometry shall keep on file a list of schools or  
196 colleges of optometry which are recognized by said board. The  
197 examination to practice optometry shall consist of tests in  
198 practical, theoretical and physiological optics, in theoretical  
199 and practical optometry and in anatomy and physiology of the eye  
200 and in pathology as applied to optometry. The State Board of  
201 Optometry shall not examine or certify any optometrist in any  
202 therapeutic procedures unless the optometrist has successfully  
203 completed the proper didactic education and supervised clinical  
204 training taught by an institution accredited by a regional or

205 professional accreditation organization that is recognized or  
206 approved by the Council on Postsecondary Accreditation of the  
207 United States Department of Education, or its successor, and  
208 approved by the State Board of Optometry with the advice and  
209 consultation of the designated members of the State Board of  
210 Medical Licensure and the State Board of Pharmacy.

211 SECTION 10. Section 73-19-19, Mississippi Code of 1972, is  
212 reenacted as follows:

213 73-19-19. Every person desiring to be licensed as in this  
214 chapter provided, shall file with the secretary an application,  
215 verified by oath, setting forth the facts which entitle the  
216 applicant to examination and licensure under the provisions of  
217 this chapter. The said board shall hold at least two (2)  
218 examinations each year. In case of failure at any examination the  
219 applicant, after the expiration of six (6) months and within two  
220 (2) years, shall have the privilege of a second examination by the  
221 board without the payment of an additional fee. In the case of  
222 any applicant who shall fail the examination twice, said applicant  
223 shall not be permitted to again take the examination until he has  
224 completed a further course of study outlined by the board and paid  
225 the examination fee therefor. Every applicant who shall pass the  
226 examination, and who shall otherwise comply with the provisions of  
227 this chapter, shall receive from the said board under its seal a  
228 certificate of licensure entitling him to practice optometry in  
229 this state, which certificate shall be duly registered in a record  
230 book to be properly kept by the secretary of the board for that  
231 purpose, which shall be open to public inspection, and a duly  
232 certified copy of said record shall be received as evidence in all  
233 courts of this state in the trial of any case.

234 Each application or filing made under this section shall  
235 include the social security number(s) of the applicant in  
236 accordance with Section 93-11-64, Mississippi Code of 1972.

237 SECTION 11. Section 73-19-21, Mississippi Code of 1972, is  
238 reenacted as follows:

239 73-19-21. Said board shall charge the following fees for  
240 examination, registrations and renewals of certificates: The sum  
241 of not more than Two Hundred Dollars (\$200.00) for an examination  
242 of an applicant who is a resident of Mississippi and not more than  
243 Three Hundred Dollars (\$300.00) for a nonresident of Mississippi  
244 to cover the additional expenses of checking references, character  
245 and other statements contained in the application. Every  
246 registered optometrist who desires to continue the practice of  
247 optometry shall, biennially, on or before January 1, pay to the  
248 secretary of the board a renewal registration fee of not more than  
249 Four Hundred Dollars (\$400.00) for which he shall receive a  
250 renewal of his certificate. The board, in its discretion, may set  
251 the renewal registration fee at different amounts for registered  
252 optometrists, for registered optometrists certified to use  
253 diagnostic pharmaceutical agents, and for registered optometrists  
254 certified to use diagnostic and therapeutic pharmaceutical agents,  
255 not to exceed the maximum amount prescribed in this section.

256 In case of neglect to pay the renewal registration fee herein  
257 specified, the board may revoke such certificate and the holder  
258 thereof may be reinstated by complying with the conditions  
259 specified in this chapter. But no certificate or permit shall be  
260 revoked without giving sixty (60) days' notice to the delinquent,  
261 who, within such period shall have the right of renewal of such  
262 certificate on payment of the renewal fee with a penalty of not  
263 more than Fifteen Dollars (\$15.00), provided, that retirement from  
264 practice for a period not exceeding five (5) years shall not  
265 deprive the holder of said certificate of the right to renew his  
266 certificate on the payment of all lapsed fees. The board shall  
267 adopt a seal and certificate of suitable design and shall conduct  
268 its examination at Jackson, in this state. Its permanent records



269 shall be kept in the office of the secretary, which records shall  
270 be open to public inspection.

271 SECTION 12. Section 73-19-23, Mississippi Code of 1972, is  
272 reenacted as follows:

273 73-19-23. (1) The board shall refuse to grant a certificate  
274 of licensure to any applicant and may cancel, revoke or suspend  
275 the operation of any certificate by it granted for any or all of  
276 the following reasons, to-wit: unprofessional and unethical  
277 conduct or the conviction of a crime involving moral turpitude,  
278 habitual intemperance in the use of ardent spirits, or stimulants,  
279 narcotics, or any other substance which impairs the intellect and  
280 judgment to such an extent as to incapacitate one for the  
281 performance of the duties of an optometrist. The certificate of  
282 licensure of any person can be revoked for violating any section  
283 of this chapter.

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

288 (a) Fraud or misrepresentation in applying for or  
289 procuring an optometric license or in connection with applying for  
290 or procuring periodic renewal of an optometric license.

291 (b) Cheating on or attempting to subvert the optometric  
292 licensing examination(s).

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

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

299 (e) Conduct likely to deceive, defraud or harm the  
300 public.

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

305           (g) Willfully or negligently violating the  
306 confidentiality between doctor and patient, except as required by  
307 law.

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

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

312           (j) The use of any false, fraudulent, deceptive or  
313 misleading statement in any document connected with the practice  
314 of optometry.

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

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

319           (m) Being addicted or habituated to a drug or  
320 intoxicant.

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

323           (o) Obtaining any fee by fraud, deceit or  
324 misrepresentation.

325           (p) Disciplinary action of another state or  
326 jurisdiction against a licensee or other authorization to practice  
327 optometry based upon acts or conduct by the licensee similar to  
328 acts or conduct which would constitute grounds for action as  
329 defined in this chapter, a certified copy of the record of the  
330 action taken by the other state or jurisdiction being conclusive  
331 evidence thereof.

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

335           (r) Violation of any provision(s) of the Optometry  
336 Practice Act or the rules and regulations of the board or of an  
337 action, stipulation or agreement of the board.

338           (s) To advertise in a manner that tends to deceive,  
339 mislead or defraud the public.

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

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

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

348           (3) Any person who is holder of a certificate of licensure  
349 or who is an applicant for examination for a certificate of  
350 licensure, against whom is preferred any charges, shall be  
351 furnished by the board with a copy of the complaint and shall have  
352 a hearing in Jackson, Mississippi, before the board, at which  
353 hearing he may be represented by counsel. At such hearing  
354 witnesses may be examined for and against the accused respecting  
355 the said charges, and said hearing orders or appeals will be  
356 conducted according to the procedure now provided in Section  
357 73-25-27. The suspension of a certificate of licensure, by reason  
358 of the use of stimulants or narcotics may be removed when the  
359 holder thereof shall have been adjudged by the said board to be  
360 cured and capable of practicing optometry.

361           (4) In addition to the reasons specified in subsections (1)  
362 and (2) of this section, the board shall be authorized to suspend  
363 the license of any licensee for being out of compliance with an  
364 order for support, as defined in Section 93-11-153. The procedure

365 for suspension of a license for being out of compliance with an  
366 order for support, and the procedure for the reissuance or  
367 reinstatement of a license suspended for that purpose, and the  
368 payment of any fees for the reissuance or reinstatement of a  
369 license suspended for that purpose, shall be governed by Section  
370 93-11-157 or 93-11-163, as the case may be. If there is any  
371 conflict between any provision of Section 93-11-157 or 93-11-163  
372 and any provision of this chapter, the provisions of Section  
373 93-11-157 or 93-11-163, as the case may be, shall control.

374 SECTION 13. Section 73-19-25, Mississippi Code of 1972, is  
375 reenacted as follows:

376 73-19-25. An applicant for a certificate of licensure who  
377 has been examined by the state board of another state which,  
378 through reciprocity, similarly accredits the holder of a  
379 certificate issued by the board of this state to the full  
380 privileges of practice within such state, on the payment of a fee  
381 of not more than Fifty Dollars (\$50.00) to the said board and on  
382 filing in the office of the board a true and attested copy of the  
383 said license, certified by the president or secretary of the state  
384 board issuing the same, and showing also that the standard  
385 requirements adopted and enforced by said board are equal to that  
386 provided by this state, may, without further examination, receive  
387 a certificate of licensure, provided that such applicant has not  
388 previously failed at an examination held by the board of this  
389 state.

390 SECTION 14. Section 73-19-27, Mississippi Code of 1972, is  
391 reenacted as follows:

392 73-19-27. Nothing in this chapter shall be construed as  
393 conferring on the holder of any certificate of licensure issued by  
394 said board the title of oculist, ophthalmologist, or any other  
395 word or abbreviation indicating that he is engaged in the practice  
396 of medicine or surgery, or the treatment or the diagnosis of  
397 diseases of, or injuries to, the human eye, or the right to use

398 drugs or medicines in any forms for the treatment or examination  
399 of the human eye. However, optometrists who have been certified  
400 by the board under the provisions of Sections 73-19-101 through  
401 73-19-109 may use diagnostic pharmaceutical agents in the practice  
402 of optometry in accordance with the requirements of Sections  
403 73-19-101 through 73-19-109, and optometrists who have been  
404 certified by the board under the provisions of Sections 73-19-153  
405 through 73-19-165 may use therapeutic pharmaceutical agents in the  
406 practice of optometry in accordance with the requirements of  
407 Sections 73-19-153 through 73-19-165. Nothing contained in  
408 Chapter 303, Laws of 1991, shall be construed as expanding the  
409 scope of practice of a licensed optometrist beyond that authorized  
410 prior to July 1, 1991.

411 SECTION 15. Section 73-19-29, Mississippi Code of 1972, is  
412 reenacted as follows:

413 73-19-29. The provisions of this chapter shall not apply to  
414 physicians or surgeons practicing under authority of licenses  
415 issued under the laws of this state for the practice of medicine  
416 or surgery. And provided that this chapter shall not prohibit  
417 merchants and druggists who are actually engaged in business in  
418 this state from selling and assisting purchasers in fitting  
419 spectacles and eye glasses in their place of business at time of  
420 sale.

421 SECTION 16. Section 73-19-31, Mississippi Code of 1972, is  
422 amended as follows:

423 73-19-31. Sections 73-19-1 through 73-19-29 and 73-19-33  
424 through 73-19-45, which create the Mississippi Board of Optometry  
425 and prescribe its duties and powers, shall stand repealed as of  
426 July 1, 2005.

427 SECTION 17. Section 73-19-33, Mississippi Code of 1972, is  
428 reenacted as follows:

429 73-19-33. Complaints, irrespective of source, touching upon  
430 the professional conduct or conduct evincing unfitness for the

431 practice of optometry made against optometrists licensed in this  
432 state, that may be received by or that may come to the attention  
433 of any member of the board, shall be referred by the president of  
434 the board to an impartial member of the board for preliminary  
435 investigation and further action as may be appropriate. The  
436 complaint must be in writing and signed by the person making the  
437 complaint or charge and shall contain the street address of the  
438 complaining party and each witness.

439 SECTION 18. Section 73-19-35, Mississippi Code of 1972, is  
440 reenacted as follows:

441 73-19-35. When any complaint or charge touching upon the  
442 professional conduct or conduct evincing unfitness for the  
443 practice of optometry against any optometrist subject to  
444 discipline hereunder is referred to a member of the board for  
445 investigation, the board member shall take the following action:

446 (a) Cause the complaint or charge to be filed and  
447 docketed with the secretary of the board; and

448 (b) Refer the complaint to the board investigator for  
449 further investigation and report.

450 SECTION 19. Section 73-19-37, Mississippi Code of 1972, is  
451 reenacted as follows:

452 73-19-37. The board investigator shall immediately  
453 investigate the complaint; and upon completion of his  
454 investigation he shall inform the accused optometrist that a  
455 complaint has been filed against him and that he is under  
456 investigation, advise the accused optometrist of the general  
457 nature of the charges, furnish him a copy of the complaint and any  
458 evidence supporting it, and afford the accused optometrist an  
459 opportunity to respond. Communications and notices to the accused  
460 optometrist shall be transmitted by registered or certified mail,  
461 postage prepaid, to the last known residence or business address  
462 of the licensee.

463 SECTION 20. Section 73-19-39, Mississippi Code of 1972, is  
464 reenacted as follows:

465 73-19-39. After completion of his investigation, the board  
466 investigator shall make a report of his findings and  
467 recommendations to the member of the board designated to  
468 investigate the matter. After receipt of the investigator's  
469 report, the board member shall take the following action:

470 (a) If upon review of the complaint, board  
471 investigator's report and any written response by the accused  
472 optometrist, the board member determines that there is not  
473 reasonable ground to believe that the accused optometrist has been  
474 guilty of unprofessional conduct or conduct evincing unfitness for  
475 the practice of optometry, the board member shall present his  
476 findings and recommendations to the board at the next regular  
477 board meeting. The board may dismiss the complaint or may prepare  
478 a formal complaint against the licensee as provided in Section  
479 73-19-41, Mississippi Code of 1972. In the event of dismissal,  
480 the person filing the complaint and the accused optometrist shall  
481 be given written notice of the board's determination.

482 (b) If the board member determines there is reasonable  
483 cause to believe the accused optometrist is guilty of such  
484 conduct, which, if proven, would warrant suspension for a definite  
485 or an indefinite period or license revocation, the board member  
486 shall request the board to prepare and file a formal complaint  
487 against the accused optometrist. The board may dismiss the  
488 complaint or may prepare a formal complaint against the licensee  
489 as provided in Section 73-19-41, Mississippi Code of 1972. In the  
490 event of a dismissal, the person filing the complaint and the  
491 accused optometrist shall be given written notice of the board's  
492 determination.

493 SECTION 21. Section 73-19-41, Mississippi Code of 1972, is  
494 reenacted as follows:

495           73-19-41. (1) The board shall fix a time and place for any  
496 formal complaint hearing and shall cause a written notice  
497 specifying the offense or offenses for which the licensee is  
498 charged and notice of the time and place of the hearing to be  
499 served upon the licensee at least twenty (20) days prior to the  
500 hearing date. Such notice may be served by mailing a copy thereof  
501 by certified mail, postage prepaid, to the last known residence or  
502 business address of the licensee.

503           (2) The board is hereby authorized and empowered to issue  
504 subpoenas for the attendance of witnesses and the production of  
505 books and papers at such hearing. Process issued by the board  
506 shall extend to all parts of the state and shall be served by any  
507 person designated by the board for such service.

508           (3) The accused shall have the right to appear either  
509 personally or by counsel or both to produce witnesses or evidence  
510 in his behalf, to cross-examine witnesses and to have subpoenas  
511 issued by the board.

512           (4) At the hearing, the board shall administer oaths as may  
513 be necessary for the proper conduct of the hearing. All hearings  
514 shall be conducted by the board, with the exception of the  
515 investigating board member who shall not participate in the  
516 hearing. The board shall not be bound by strict rules of  
517 procedure or by the laws of evidence in the conduct of its  
518 proceedings, but the determination shall be based upon sufficient  
519 evidence to sustain it. All proceedings shall be transcribed by a  
520 court reporter.

521           (5) Where, in any proceeding before the board, any witness  
522 fails or refuses to attend upon a subpoena issued by the board,  
523 refuses to testify, or refuses to produce any books and papers the  
524 production of which is called for by a subpoena, the attendance of  
525 such witness, the giving of his testimony or the production of the  
526 books and papers shall be enforced by any court of competent  
527 jurisdiction of this state in the manner provided for the



528 enforcement of attendance and testimony of witnesses in civil  
529 cases in the courts of this state.

530 (6) The board shall, within sixty (60) days after conclusion  
531 of the hearing, reduce its decision to writing and forward an  
532 attested true copy thereof to the last known residence or business  
533 address of such licensee by way of United States first class,  
534 certified mail, postage prepaid.

535 SECTION 22. Section 73-19-43, Mississippi Code of 1972, is  
536 reenacted as follows:

537 73-19-43. (1) Upon finding of the existence of grounds for  
538 discipline of any person holding a license, seeking a license, or  
539 seeking to renew a license under the provisions of this chapter,  
540 the board may impose one or more of the following penalties:

541 (a) Suspension of the offender's license for a term to  
542 be determined by the board;

543 (b) Revocation of the offender's license;

544 (c) Restriction of the offender's license to prohibit  
545 the offender from performing certain acts or from engaging in the  
546 practice of optometry in a particular manner for a term to be  
547 determined by the board;

548 (d) Imposition of a monetary penalty as follows:

549 (i) For the first violation, a monetary penalty of  
550 not less than Fifty Dollars (\$50.00) nor more than Five Hundred  
551 Dollars (\$500.00) for each violation;

552 (ii) For the second violation and subsequent  
553 violations, a monetary penalty of not less than One Hundred  
554 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)  
555 for each violation;

556 (e) Refusal to renew offender's license;

557 (f) Placement of the offender on probation and  
558 supervision by the board for a period to be determined by the  
559 board;

560 (g) Public or private reprimand.

561           (2) Any person whose license has been suspended, revoked or  
562 restricted pursuant to this chapter, whether voluntarily or by  
563 action of the board, shall have the right to petition the board at  
564 reasonable intervals for reinstatement of such license. Such  
565 petition shall be made in writing and in the form prescribed by  
566 the board. Upon investigation and hearing, the board may, in its  
567 discretion, grant or deny such petition, or it may modify its  
568 original finding to reflect any circumstances which have changed  
569 sufficiently to warrant such modifications. The procedure for the  
570 reinstatement of a license that is suspended for being out of  
571 compliance with an order for support, as defined in Section  
572 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as  
573 the case may be.

574           (3) Nothing herein shall be construed as barring criminal  
575 prosecutions for violation of this chapter where such violations  
576 are deemed as criminal offenses in other statutes of this state or  
577 of the United States.

578           (4) A monetary penalty assessed and levied under this  
579 section shall be paid to the board by the licensee upon the  
580 expiration of the period allowed for appeal of such penalties  
581 under Section 73-19-45, Mississippi Code of 1972, or may be paid  
582 sooner if the licensee elects. Money collected by the board under  
583 this section shall be deposited to the credit of the General Fund  
584 of the State Treasury.

585           (5) When payment of a monetary penalty assessed and levied  
586 by the board against a licensee in accordance with this section is  
587 not paid by the licensee when due under this section, the board  
588 shall have the power to institute and maintain proceedings in its  
589 name for enforcement of payment in the Chancery Court of the First  
590 Judicial District of Hinds County, Mississippi. When such  
591 proceedings are instituted, the board shall certify its order to  
592 the chancery court and the matter shall thereupon be heard in due  
593 course by the court, which shall review the order and make its

594 determination thereon. The hearing on the matter may, in the  
595 discretion of the chancellor, be tried in vacation. If the  
596 chancellor finds no errors on the face of the board's order, the  
597 board shall have a judgment for the amount due which shall be  
598 enforceable as all other judgments.

599 SECTION 23. Section 73-19-45, Mississippi Code of 1972, is  
600 reenacted as follows:

601 73-19-45. (1) The right to appeal from a final action of  
602 the board is hereby granted. Such appeal shall be to the chancery  
603 court of the county of residence of the licensee and shall be on  
604 the record made, including a verbatim transcript of the testimony  
605 at the hearing. The appeal shall be taken within thirty (30) days  
606 after notice of the action of the board. The appeal shall be  
607 perfected upon filing notice of the appeal with the chancery court  
608 and by the prepayment of all costs, including the cost of the  
609 preparation of the record of the proceedings by the board, and the  
610 filing of a bond in the sum of Two Hundred Dollars (\$200.00),  
611 conditioned that if the action of the board be affirmed by the  
612 chancery court, the licensee will pay the costs of the appeal and  
613 the action in the chancery court. A copy of the Notice of Appeal  
614 shall be served upon board counsel.

615 (2) If there is an appeal, such appeal may, in the  
616 discretion of and on motion to the chancery court, act as a  
617 supersedeas. The chancery court shall dispose of the appeal and  
618 enter its decision promptly. The hearing on the appeal may, in  
619 the discretion of the chancellor, be tried in vacation. The scope  
620 of review of the chancery court shall be limited to a review of  
621 the record made before the board to determine if the action of the  
622 board is unlawful for the reason that it was (a) not supported by  
623 substantial evidence, (b) arbitrary or capricious, (c) beyond the  
624 power of the board to make, or (d) in violation of some statutory  
625 or constitutional right of the appellant. The decision of the

626 chancery court may be appealed to the Supreme Court in the manner  
627 provided by the rules of the Supreme Court.

628 (3) Actions taken by the board in suspending a license when  
629 required by Section 93-11-157 or 93-11-163 are not actions from  
630 which an appeal may be taken under this section. Any appeal of a  
631 license suspension that is required by Section 93-11-157 or  
632 93-11-163 shall be taken in accordance with the appeal procedure  
633 specified in Section 93-11-157 or 93-11-163, as the case may be,  
634 rather than the procedure specified in this section.

635 SECTION 24. Section 73-19-157, Mississippi Code of 1972, is  
636 amended as follows:

637 73-19-157. \* \* \* Any optometrist certified to prescribe and  
638 use therapeutic pharmaceutical agents under Sections 73-19-153  
639 through 73-19-165 is authorized to examine, diagnose, manage and  
640 treat visual defects, abnormal conditions and diseases of the  
641 human eye and adjacent structures including:

642 (a) The administration and prescribing of  
643 pharmaceutical agents by any route of administration rational to  
644 the examination, diagnosis, management or treatment of visual  
645 defects, abnormal conditions or diseases of the \* \* \* eye or  
646 adjacent structures for proper optometric practice;

647 (b) The performance of primary eye care procedures  
648 rational to the management or treatment of visual defects,  
649 abnormal conditions or diseases of the eye or adjacent structures  
650 as determined by the State Board of Optometry;

651 (c) The performance or ordering of procedures and  
652 laboratory tests rational to the diagnosis of visual defects,  
653 abnormal conditions or diseases of the eye or affecting the eye  
654 and adjacent structures; and

655 (d) The authority to administer benadryl, epinephrine  
656 or equivalent medication to counteract anaphylaxis or anaphylactic  
657 reaction.

658 \* \* \*

659 SECTION 25. Section 73-19-165, Mississippi Code of 1972, is  
660 amended as follows:

661 73-19-165. Any pharmacist licensed under the laws of the  
662 State of Mississippi is authorized to fill and dispense \* \* \*  
663 therapeutic pharmaceutical agents to patients for any optometrist  
664 certified by the State Board of Optometry to use such agents.

665 SECTION 26. Section 41-29-105, Mississippi Code of 1972, is  
666 amended as follows:

667 41-29-105. The following words and phrases, as used in this  
668 article, shall have the following meanings, unless the context  
669 otherwise requires:

670 (a) "Administer" means the direct application of a  
671 controlled substance, whether by injection, inhalation, ingestion  
672 or any other means, to the body of a patient or research subject  
673 by:

674 (1) A practitioner (or, in his presence, by his  
675 authorized agent); or

676 (2) The patient or research subject at the  
677 direction and in the presence of the practitioner.

678 (b) "Agent" means an authorized person who acts on  
679 behalf of or at the direction of a manufacturer, distributor or  
680 dispenser. Such word does not include a common or contract  
681 carrier, public warehouseman or employee of the carrier or  
682 warehouseman. This definition shall not be applied to the term  
683 "agent" when such term clearly designates a member or officer of  
684 the Bureau of Narcotics or other law enforcement organization.

685 (c) "Board" means the Mississippi State Board of  
686 Medical Licensure.

687 (d) "Bureau" means the Mississippi Bureau of Narcotics.  
688 However, where the title "Bureau of Drug Enforcement" occurs, that  
689 term shall also refer to the Mississippi Bureau of Narcotics.

690 (e) "Commissioner" means the Commissioner of the  
691 Department of Public Safety.

692 (f) "Controlled substance" means a drug, substance or  
693 immediate precursor in Schedules I through V of Sections 41-29-113  
694 through 41-29-121.

695 (g) "Counterfeit substance" means a controlled  
696 substance which, or the container or labeling of which, without  
697 authorization, bears the trademark, trade name, or other  
698 identifying mark, imprint, number or device, or any likeness  
699 thereof, of a manufacturer, distributor or dispenser other than  
700 the person who in fact manufactured, distributed or dispensed the  
701 substance.

702 (h) "Deliver" or "delivery" means the actual,  
703 constructive, or attempted transfer from one (1) person to another  
704 of a controlled substance, whether or not there is an agency  
705 relationship.

706 (i) "Director" means the Director of the Bureau of  
707 Narcotics.

708 (j) "Dispense" means to deliver a controlled substance  
709 to an ultimate user or research subject by or pursuant to the  
710 lawful order of a practitioner, including the prescribing,  
711 administering, packaging, labeling or compounding necessary to  
712 prepare the substance for that delivery.

713 (k) "Dispenser" means a practitioner who dispenses.

714 (l) "Distribute" means to deliver other than by  
715 administering or dispensing a controlled substance.

716 (m) "Distributor" means a person who distributes.

717 (n) "Drug" means (1) a substance recognized as a drug  
718 in the official United States Pharmacopoeia, official Homeopathic  
719 Pharmacopoeia of the United States, or official National  
720 Formulary, or any supplement to any of them; (2) a substance  
721 intended for use in the diagnosis, cure, mitigation, treatment, or  
722 prevention of disease in man or animals; (3) a substance (other  
723 than food) intended to affect the structure or any function of the  
724 body of man or animals; and (4) a substance intended for use as a

725 component of any article specified in this paragraph. Such word  
726 does not include devices or their components, parts, or  
727 accessories.

728 (o) "Hashish" means the resin extracted from any part  
729 of the plants of the genus Cannabis and all species thereof or any  
730 preparation, mixture or derivative made from or with that resin.

731 (p) "Immediate precursor" means a substance which the  
732 board has found to be and by rule designates as being the  
733 principal compound commonly used or produced primarily for use,  
734 and which is an immediate chemical intermediary used or likely to  
735 be used in the manufacture of a controlled substance, the control  
736 of which is necessary to prevent, curtail, or limit manufacture.

737 (q) "Manufacture" means the production, preparation,  
738 propagation, compounding, conversion or processing of a controlled  
739 substance, either directly or indirectly, by extraction from  
740 substances of natural origin, or independently by means of  
741 chemical synthesis, or by a combination of extraction and chemical  
742 synthesis, and includes any packaging or repackaging of the  
743 substance or labeling or relabeling of its container. The term  
744 "manufacture" does not include the preparation, compounding,  
745 packaging or labeling of a controlled substance in conformity with  
746 applicable state and local law:

747 (1) By a practitioner as an incident to his  
748 administering or dispensing of a controlled substance in the  
749 course of his professional practice; or

750 (2) By a practitioner, or by his authorized agent  
751 under his supervision, for the purpose of, or as an incident to,  
752 research, teaching or chemical analysis and not for sale.

753 (r) "Marihuana" means all parts of the plant of the  
754 genus Cannabis and all species thereof, whether growing or not,  
755 the seeds thereof, and every compound, manufacture, salt,  
756 derivative, mixture or preparation of the plant or its seeds,  
757 excluding hashish.

758 (s) "Narcotic drug" means any of the following, whether  
759 produced directly or indirectly by extraction from substances of  
760 vegetable origin, or independently by means of chemical synthesis,  
761 or by a combination of extraction and chemical synthesis:

762 (1) Opium and opiate, and any salt, compound,  
763 derivative or preparation of opium or opiate;

764 (2) Any salt, compound, isomer, derivative or  
765 preparation thereof which is chemically equivalent or identical  
766 with any of the substances referred to in clause 1, but not  
767 including the isoquinoline alkaloids of opium;

768 (3) Opium poppy and poppy straw; and

769 (4) Cocaine, coca leaves and any salt, compound,  
770 derivative or preparation of cocaine, coca leaves, and any salt,  
771 compound, isomer, derivative or preparation thereof which is  
772 chemically equivalent or identical with any of these substances,  
773 but not including decocainized coca leaves or extractions of coca  
774 leaves which do not contain cocaine or ecgonine.

775 (t) "Opiate" means any substance having an  
776 addiction-forming or addiction-sustaining liability similar to  
777 morphine or being capable of conversion into a drug having  
778 addiction-forming or addiction-sustaining liability. It does not  
779 include, unless specifically designated as controlled under  
780 Section 41-29-111, the dextrorotatory isomer of  
781 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such  
782 word does include its racemic and levorotatory forms.

783 (u) "Opium poppy" means the plant of the species  
784 *Papaver somniferum* L., except its seeds.

785 (v) "Paraphernalia" means all equipment, products and  
786 materials of any kind which are used, intended for use, or  
787 designed for use, in planting, propagating, cultivating, growing,  
788 harvesting, manufacturing, compounding, converting, producing,  
789 processing, preparing, testing, analyzing, packaging, repackaging,  
790 storing, containing, concealing, injecting, ingesting, inhaling or



791 otherwise introducing into the human body a controlled substance  
792 in violation of the Uniform Controlled Substances Law. It  
793 includes, but is not limited to:

794 (i) Kits used, intended for use, or designed for  
795 use in planting, propagating, cultivating, growing or harvesting  
796 of any species of plant which is a controlled substance or from  
797 which a controlled substance can be derived;

798 (ii) Kits used, intended for use, or designed for  
799 use in manufacturing, compounding, converting, producing,  
800 processing or preparing controlled substances;

801 (iii) Isomerization devices used, intended for use  
802 or designed for use in increasing the potency of any species of  
803 plant which is a controlled substance;

804 (iv) Testing equipment used, intended for use, or  
805 designed for use in identifying or in analyzing the strength,  
806 effectiveness or purity of controlled substances;

807 (v) Scales and balances used, intended for use or  
808 designed for use in weighing or measuring controlled substances;

809 (vi) Diluents and adulterants, such as quinine  
810 hydrochloride, mannitol, mannite, dextrose and lactose, used,  
811 intended for use or designed for use in cutting controlled  
812 substances;

813 (vii) Separation gins and sifters used, intended  
814 for use or designed for use in removing twigs and seeds from, or  
815 in otherwise cleaning or refining, marihuana;

816 (viii) Blenders, bowls, containers, spoons and  
817 mixing devices used, intended for use or designed for use in  
818 compounding controlled substances;

819 (ix) Capsules, balloons, envelopes and other  
820 containers used, intended for use or designed for use in packaging  
821 small quantities of controlled substances;

822 (x) Containers and other objects used, intended  
823 for use or designed for use in storing or concealing controlled  
824 substances;

825 (xi) Hypodermic syringes, needles and other  
826 objects used, intended for use or designed for use in parenterally  
827 injecting controlled substances into the human body;

828 (xii) Objects used, intended for use or designed  
829 for use in ingesting, inhaling or otherwise introducing marihuana,  
830 cocaine, hashish or hashish oil into the human body, such as:

- 831 1. Metal, wooden, acrylic, glass, stone,  
832 plastic or ceramic pipes with or without screens, permanent  
833 screens, hashish heads or punctured metal bowls;
- 834 2. Water pipes;
- 835 3. Carburetion tubes and devices;
- 836 4. Smoking and carburetion masks;
- 837 5. Roach clips, meaning objects used to hold  
838 burning material, such as a marihuana cigarette, that has become  
839 too small or too short to be held in the hand;
- 840 6. Miniature cocaine spoons and cocaine  
841 vials;
- 842 7. Chamber pipes;
- 843 8. Carburetor pipes;
- 844 9. Electric pipes;
- 845 10. Air-driven pipes;
- 846 11. Chillums;
- 847 12. Bongs; and
- 848 13. Ice pipes or chillers.

849 In determining whether an object is paraphernalia, a court or  
850 other authority should consider, in addition to all other  
851 logically relevant factors, the following:

852 (i) Statements by an owner or by anyone in control  
853 of the object concerning its use;

854 (ii) Prior convictions, if any, of an owner, or of  
855 anyone in control of the object, under any state or federal law  
856 relating to any controlled substance;

857 (iii) The proximity of the object, in time and  
858 space, to a direct violation of the Uniform Controlled Substances  
859 Law;

860 (iv) The proximity of the object to controlled  
861 substances;

862 (v) The existence of any residue of controlled  
863 substances on the object;

864 (vi) Direct or circumstantial evidence of the  
865 intent of an owner, or of anyone in control of the object, to  
866 deliver it to persons whom he knows, or should reasonably know,  
867 intend to use the object to facilitate a violation of the Uniform  
868 Controlled Substances Law; the innocence of an owner, or of anyone  
869 in control of the object, as to a direct violation of the Uniform  
870 Controlled Substances Law shall not prevent a finding that the  
871 object is intended for use, or designed for use as paraphernalia;

872 (vii) Instructions, oral or written, provided with  
873 the object concerning its use;

874 (viii) Descriptive materials accompanying the  
875 object which explain or depict its use;

876 (ix) National and local advertising concerning its  
877 use;

878 (x) The manner in which the object is displayed  
879 for sale;

880 (xi) Whether the owner or anyone in control of the  
881 object is a legitimate supplier of like or related items to the  
882 community, such as a licensed distributor or dealer of tobacco  
883 products;

884 (xii) Direct or circumstantial evidence of the  
885 ratio of sales of the object(s) to the total sales of the business  
886 enterprise;

887 (xiii) The existence and scope of legitimate uses  
888 for the object in the community;

889 (xiv) Expert testimony concerning its use.

890 (w) "Person" means individual, corporation, government  
891 or governmental subdivision or agency, business trust, estate,  
892 trust, partnership or association, or any other legal entity.

893 (x) "Poppy straw" means all parts, except the seeds, of  
894 the opium poppy, after mowing.

895 (y) "Practitioner" means:

896 (1) A physician, dentist, veterinarian, scientific  
897 investigator, or optometrist certified to prescribe and use  
898 therapeutic pharmaceutical agents under Sections 73-19-153 through  
899 73-19-165, or other person licensed, registered or otherwise  
900 permitted to distribute, dispense, conduct research with respect  
901 to or to administer a controlled substance in the course of  
902 professional practice or research in this state; and

903 (2) A pharmacy, hospital or other institution  
904 licensed, registered, or otherwise permitted to distribute,  
905 dispense, conduct research with respect to or to administer a  
906 controlled substance in the course of professional practice or  
907 research in this state.

908 (z) "Production" includes the manufacture, planting,  
909 cultivation, growing or harvesting of a controlled substance.

910 (aa) "Sale," "sell" or "selling" means the actual,  
911 constructive or attempted transfer or delivery of a controlled  
912 substance for remuneration, whether in money or other  
913 consideration.

914 (bb) "State," when applied to a part of the United  
915 States, includes any state, district, commonwealth, territory,  
916 insular possession thereof, and any area subject to the legal  
917 authority of the United States of America.

918 (cc) "Ultimate user" means a person who lawfully  
919 possesses a controlled substance for his own use or for the use of

920 a member of his household or for administering to an animal owned  
921 by him or by a member of his household.

922 SECTION 27. Section 41-29-137, Mississippi Code of 1972, is  
923 amended as follows:

924 41-29-137. (a) Except when dispensed directly by a  
925 practitioner, other than a pharmacy, to an ultimate user, no  
926 controlled substance in Schedule II, as set out in Section  
927 41-29-115, may be dispensed without the written prescription of a  
928 practitioner. A practitioner shall keep a record of all  
929 controlled substances in Schedule I, II and III administered,  
930 dispensed or professionally used by him otherwise than by  
931 prescription.

932 In emergency situations, as defined by rule of the State  
933 Board of Pharmacy, \* \* \* Schedule II drugs may be dispensed upon  
934 oral prescription of a practitioner, reduced promptly to writing  
935 and filed by the pharmacy. Prescriptions shall be retained in  
936 conformity with the requirements of Section 41-29-133. No  
937 prescription for a Schedule II substance may be refilled unless  
938 renewed by prescription issued by a licensed medical doctor.

939 (b) Except when dispensed directly by a practitioner, other  
940 than a pharmacy, to an ultimate user, a controlled substance  
941 included in Schedule III or IV, as set out in Sections 41-29-117  
942 and 41-29-119, which is a prescription drug as determined under  
943 Federal Control Substance Act, shall not be dispensed without a  
944 written or oral prescription of a practitioner. The prescription  
945 shall not be filled or refilled more than six (6) months after the  
946 date thereof or be refilled more than five (5) times, unless  
947 renewed by the practitioner.

948 (c) A controlled substance included in Schedule V, as set  
949 out in Section 41-29-121, shall not be distributed or dispensed  
950 other than for a medical purpose.

951 (d) An optometrist certified to prescribe and use  
952 therapeutic pharmaceutical agents under Sections 73-19-153 through

953 73-19-165 shall not be authorized to prescribe, administer,  
954 dispense or use any controlled substance in Schedule I or II.

955 SECTION 28. Section 41-29-109, Mississippi Code of 1972, is  
956 amended as follows:

957 41-29-109. The Mississippi Bureau of Narcotics shall have  
958 the full cooperation and use of facilities and personnel of the  
959 State Board of Pharmacy, the State Board of Medical Licensure, the  
960 State Board of Dental Examiners, the State Board of Optometry, the  
961 district and county attorneys, and of the Attorney General's  
962 office.

963 It shall be the duty of all duly sworn peace officers of the  
964 State of Mississippi to enforce the provisions of this article  
965 with reference to illicit narcotic and drug traffic. The  
966 provisions of this article may likewise be enforced by agents of  
967 the United States Drug Enforcement Administration.

968 SECTION 29. Section 41-29-125, Mississippi Code of 1972, is  
969 amended as follows:

970 41-29-125. The State Board of Pharmacy may promulgate rules  
971 and regulations relating to the registration and control of the  
972 manufacture, distribution and dispensing of controlled substances  
973 within this state.

974 (a) Every person who manufactures, distributes or  
975 dispenses any controlled substance within this state, or who  
976 proposes to engage in the manufacture, distribution or dispensing  
977 of any controlled substance within this state, must obtain a  
978 registration issued by the State Board of Pharmacy, State Board of  
979 Medical Licensure, State Board of Dental Examiners or State Board  
980 of Optometry, as appropriate, in accordance with its rules. Such  
981 registration shall be obtained annually or biennially, as  
982 specified by the issuing board, and a reasonable fee may be  
983 charged by the issuing board for such registration.

984 (b) Persons registered by the State Board of Pharmacy,  
985 with the consent of the United States Drug Enforcement

986 Administration and the State Board of Medical Licensure, State  
987 Board of Dental Examiners or State Board of Optometry, to  
988 manufacture, distribute, dispense or conduct research with  
989 controlled substances may possess, manufacture, distribute,  
990 dispense or conduct research with those substances to the extent  
991 authorized by their registration and in conformity with the other  
992 provisions of this article.

993 (c) The following persons need not register and may  
994 lawfully possess controlled substances under this article:

995 (1) An agent or employee of any registered  
996 manufacturer, distributor or dispenser of any controlled substance  
997 if he is acting in the usual course of his business or employment;

998 (2) A common or contract carrier or warehouseman,  
999 or an employee thereof, whose possession of any controlled  
1000 substance is in the usual course of business or employment;

1001 (3) An ultimate user or a person in possession of  
1002 any controlled substance pursuant to a lawful order of a  
1003 practitioner or in lawful possession of a Schedule V substance as  
1004 defined in Section 41-29-121.

1005 (d) The State Board of Pharmacy may waive by rule the  
1006 requirement for registration of certain manufacturers,  
1007 distributors or dispensers if it finds it consistent with the  
1008 public health and safety.

1009 (e) A separate registration is required at each  
1010 principal place of business or professional practice where the  
1011 applicant manufactures, distributes or dispenses controlled  
1012 substances.

1013 (f) The State Board of Pharmacy, Mississippi Bureau of  
1014 Narcotics, the State Board of Medical Licensure, the State Board  
1015 of Dental Examiners and the State Board of Optometry may inspect  
1016 the establishment of a registrant or applicant for registration in  
1017 accordance with the regulations of these agencies as approved by  
1018 the board.

1019 SECTION 30. Section 41-29-133, Mississippi Code of 1972, is  
1020 amended as follows:

1021 41-29-133. Persons registered to manufacture, distribute, or  
1022 dispense controlled substances under this article shall keep  
1023 records and maintain inventories in conformance with the  
1024 record-keeping and inventory requirements of federal law and with  
1025 any additional rules that the State Board of Pharmacy, State Board  
1026 of Medical Licensure, State Board of Dental Examiners or State  
1027 Board of Optometry may issue.

1028 SECTION 31. Section 41-29-157, Mississippi Code of 1972, is  
1029 amended as follows:

1030 41-29-157. (a) Issuance and execution of administrative  
1031 inspection warrants and search warrants shall be as follows,  
1032 except as provided in subsection (c) of this section:

1033 (1) A judge of any state court of record, or any  
1034 justice court judge within his jurisdiction, and upon proper oath  
1035 or affirmation showing probable cause, may issue warrants for the  
1036 purpose of conducting administrative inspections authorized by  
1037 this article or rules thereunder, and seizures of property  
1038 appropriate to the inspections. For purposes of the issuance of  
1039 administrative inspection warrants, probable cause exists upon  
1040 showing a valid public interest in the effective enforcement of  
1041 this article or rules thereunder, sufficient to justify  
1042 administrative inspection of the area, premises, building or  
1043 conveyance in the circumstances specified in the application for  
1044 the warrant. All such warrants shall be served during normal  
1045 business hours;

1046 (2) A search warrant shall issue only upon an affidavit  
1047 of a person having knowledge or information of the facts alleged,  
1048 sworn to before the judge or justice court judge and establishing  
1049 the grounds for issuing the warrant. If the judge or justice  
1050 court judge is satisfied that grounds for the application exist or  
1051 that there is probable cause to believe they exist, he shall issue



1052 a warrant identifying the area, premises, building or conveyance  
1053 to be searched, the purpose of the search, and, if appropriate,  
1054 the type of property to be searched, if any. The warrant shall:

1055 (A) State the grounds for its issuance and the  
1056 name of each person whose affidavit has been taken in support  
1057 thereof;

1058 (B) Be directed to a person authorized by Section  
1059 41-29-159 to execute it;

1060 (C) Command the person to whom it is directed to  
1061 inspect the area, premises, building or conveyance identified for  
1062 the purpose specified, and if appropriate, direct the seizure of  
1063 the property specified;

1064 (D) Identify the item or types of property to be  
1065 seized, if any;

1066 (E) Direct that it be served and designate the  
1067 judge or magistrate to whom it shall be returned;

1068 (3) A warrant issued pursuant to this section must be  
1069 executed and returned within ten (10) days of its date unless,  
1070 upon a showing of a need for additional time, the court orders  
1071 otherwise. If property is seized pursuant to a warrant, a copy  
1072 shall be given to the person from whom or from whose premises the  
1073 property is taken, together with a receipt for the property taken.  
1074 The return of the warrant shall be made promptly, accompanied by a  
1075 written inventory of any property taken. The inventory shall be  
1076 made in the presence of the person executing the warrant and of  
1077 the person from whose possession or premises the property was  
1078 taken, if present, or in the presence of at least one (1) credible  
1079 person other than the person executing the warrant. A copy of the  
1080 inventory shall be delivered to the person from whom or from whose  
1081 premises the property was taken and to the applicant for the  
1082 warrant;

1083 (4) The judge or justice court judge who has issued a  
1084 warrant shall attach thereto a copy of the return and all papers

1085 returnable in connection therewith and file them with the clerk of  
1086 the appropriate state court for the judicial district in which the  
1087 inspection was made.

1088 (b) The bureau, the State Board of Pharmacy, \* \* \* the State  
1089 Board of Medical Licensure, the State Board of Dental Examiners or  
1090 the State Board of Optometry may make administrative inspections  
1091 of controlled premises in accordance with the following  
1092 provisions:

1093 (1) For purposes of this section only, "controlled  
1094 premises" means:

1095 (A) Places where persons registered or exempted  
1096 from registration requirements under this article are required to  
1097 keep records; and

1098 (B) Places including factories, warehouses,  
1099 establishments and conveyances in which persons registered or  
1100 exempted from registration requirements under this article are  
1101 permitted to hold, manufacture, compound, process, sell, deliver,  
1102 or otherwise dispose of any controlled substance.

1103 (2) When authorized by an administrative inspection  
1104 warrant issued in accordance with the conditions imposed in this  
1105 section an officer or employee designated by the bureau, the State  
1106 Board of Pharmacy, the State Board of Medical Licensure, the State  
1107 Board of Dental Examiners or the State Board of Optometry, upon  
1108 presenting the warrant and appropriate credentials to the owner,  
1109 operator or agent in charge, may enter controlled premises for the  
1110 purpose of conducting an administrative inspection.

1111 (3) When authorized by an administrative inspection  
1112 warrant, an officer or employee designated by the bureau, the  
1113 State Board of Pharmacy, the State Board of Medical Licensure, the  
1114 State Board of Dental Examiners or the State Board of Optometry  
1115 may:

1116 (A) Inspect and copy records required by this  
1117 article to be kept;

1118 (B) Inspect, within reasonable limits and in a  
1119 reasonable manner, controlled premises and all pertinent  
1120 equipment, finished and unfinished material, containers and  
1121 labeling found therein, and, except as provided in paragraph (5)  
1122 of this subsection, all other things therein, including records,  
1123 files, papers, processes, controls and facilities bearing on  
1124 violation of this article; and

1125 (C) Inventory any stock of any controlled  
1126 substance therein and obtain samples thereof.

1127 (4) This section does not prevent the inspection  
1128 without a warrant of books and records pursuant to an  
1129 administrative subpoena, nor does it prevent entries and  
1130 administrative inspections, including seizures of property,  
1131 without a warrant:

1132 (A) If the owner, operator or agent in charge of  
1133 the controlled premises consents;

1134 (B) In situations presenting imminent danger to  
1135 health or safety;

1136 (C) In situations involving inspection of  
1137 conveyances if there is reasonable cause to believe that the  
1138 mobility of the conveyance makes it impracticable to obtain a  
1139 warrant;

1140 (D) In any other exceptional or emergency  
1141 circumstance where time or opportunity to apply for a warrant is  
1142 lacking; or

1143 (E) In all other situations in which a warrant is  
1144 not constitutionally required.

1145 (5) An inspection authorized by this section shall not  
1146 extend to financial data, sales data, other than shipment data, or  
1147 pricing data unless the owner, operator or agent in charge of the  
1148 controlled premises consents in writing.

1149 (c) Any agent of the bureau authorized to execute a search  
1150 warrant involving controlled substances, the penalty for which is

1151 imprisonment for more than one (1) year, may, without notice of  
1152 his authority and purpose, break open an outer door or inner door,  
1153 or window of a building, or any part of the building, if the judge  
1154 issuing the warrant:

1155           (1) Is satisfied that there is probable cause to  
1156 believe that:

1157                   (A) The property sought may, and, if such notice  
1158 is given, will be easily and quickly destroyed or disposed of; or

1159                   (B) The giving of such notice will immediately  
1160 endanger the life or safety of the executing officer or another  
1161 person; and

1162           (2) Has included in the warrant a direction that the  
1163 officer executing the warrant shall not be required to give such  
1164 notice.

1165           Any officer acting under such warrant shall, as soon as  
1166 practical, after entering the premises, identify himself and give  
1167 the reasons and authority for his entrance upon the premises.

1168           Search warrants which include the instruction that the  
1169 executing officer shall not be required to give notice of  
1170 authority and purpose as authorized by this subsection shall be  
1171 issued only by the county court or county judge in vacation,  
1172 chancery court or by the chancellor in vacation, by the circuit  
1173 court or circuit judge in vacation, or by a justice of the  
1174 Mississippi Supreme Court.

1175           This subsection shall expire and stand repealed from and  
1176 after July 1, 1974, except that the repeal shall not affect the  
1177 validity or legality of any search authorized under this  
1178 subsection and conducted prior to July 1, 1974.

1179           SECTION 32. Section 41-29-159, Mississippi Code of 1972, is  
1180 amended as follows:

1181           41-29-159. (a) Any officer or employee of the bureau,  
1182 investigative unit of the State Board of Pharmacy, investigative  
1183 unit of the State Board of Medical Licensure, investigative unit

1184 of the State Board of Dental Examiners, investigative unit of the  
1185 State Board of Optometry, any duly sworn peace officer of the  
1186 State of Mississippi, or any highway patrolman, may, while engaged  
1187 in the performance of his statutory duties:

1188 (1) Carry firearms;

1189 (2) Execute and serve search warrants, arrest warrants,  
1190 subpoenas, and summonses issued under the authority of this state;

1191 (3) Make arrests without warrant for any offense under  
1192 this article committed in his presence, or if he has probable  
1193 cause to believe that the person to be arrested has committed or  
1194 is committing a crime; and

1195 (4) Make seizures of property pursuant to this article.

1196 (b) As divided among the Mississippi Bureau of Narcotics,  
1197 the State Board of Pharmacy, the State Board of Medical Licensure,  
1198 the State Board of Dental Examiners and the State Board of  
1199 Optometry, the primary responsibility of the illicit street  
1200 traffic or other illicit traffic of drugs is delegated to agents  
1201 of the Mississippi Bureau of Narcotics. The State Board of  
1202 Pharmacy is delegated the responsibility of regulating and  
1203 checking the legitimate drug traffic among pharmacists,  
1204 pharmacies, hospitals, nursing homes, drug manufacturers, and any  
1205 other related professions and facilities with the exception of the  
1206 medical, dental, optometric and veterinary professions. The State  
1207 Board of Medical Licensure is responsible for regulating and  
1208 checking the legitimate drug traffic among nurses, physicians,  
1209 podiatrists and veterinarians. The Mississippi Board of Dental  
1210 Examiners is responsible for regulating and checking the  
1211 legitimate drug traffic among dentists and dental hygienists. The  
1212 State Board of Optometry is responsible for regulating and  
1213 checking the legitimate drug traffic among optometrists.

1214 (c) The provisions of this section shall not be construed to  
1215 limit or preclude the detection or arrest of persons in violation

1216 of Section 41-29-139 by any local law enforcement officer,  
1217 sheriff, deputy sheriff or peace officer.

1218 (d) Agents of the bureau are hereby authorized to  
1219 investigate the circumstances of deaths which are caused by drug  
1220 overdose or which are believed to be caused by drug overdose.

1221 (e) Any person who shall impersonate in any way the director  
1222 or any agent, or who shall in any manner hold himself out as  
1223 being, or represent himself as being, an officer or agent of the  
1224 Mississippi Bureau of Narcotics shall be guilty of a misdemeanor,  
1225 and upon conviction thereof shall be punished by a fine of not  
1226 less than One Hundred Dollars (\$100.00) nor more than Five Hundred  
1227 Dollars (\$500.00) or by imprisonment for not more than one (1)  
1228 year, or by both such fine and imprisonment.

1229 SECTION 33. Section 41-29-167, Mississippi Code of 1972, is  
1230 amended as follows:

1231 41-29-167. (a) The State Board of Medical Licensure, the  
1232 Mississippi Bureau of Narcotics, the State Board of  
1233 Pharmacy, \* \* \* the State Board of Dental Examiners and the State  
1234 Board of Optometry shall cooperate with federal and other state  
1235 agencies in discharging their responsibilities concerning traffic  
1236 in controlled substances and in suppressing the abuse of  
1237 controlled substances. To this end, they may:

1238 (1) Arrange for the exchange of information among  
1239 governmental officials concerning the use and abuse of controlled  
1240 substances;

1241 (2) Coordinate and cooperate in training programs  
1242 concerning controlled substance law enforcement at local and state  
1243 levels;

1244 (3) Cooperate with the United States Drug Enforcement  
1245 Administration by establishing a centralized unit to accept,  
1246 catalogue, file and collect statistics, including records of drug  
1247 dependent persons and other controlled substance law offenders

1248 within the state, and make the information available for federal,  
1249 state and local law enforcement purposes; and

1250 (4) Conduct programs of eradication aimed at destroying  
1251 wild or illicit growth of plant species from which controlled  
1252 substances may be extracted.

1253 (b) Results, information and evidence received from the  
1254 United States Drug Enforcement Administration relating to the  
1255 regulatory functions of this article, including results of  
1256 inspections conducted by it may be relied and acted upon by the  
1257 Mississippi Bureau of Narcotics, the State Board of Pharmacy, the  
1258 State Board of Medical Licensure, the State Board of Dental  
1259 Examiners and the State Board of Optometry in the exercise of  
1260 their regulatory functions under this article.

1261 SECTION 34. Section 41-29-171, Mississippi Code of 1972, is  
1262 amended as follows:

1263 41-29-171. (a) The Mississippi Bureau of Narcotics, the  
1264 State Board of Pharmacy, the State Board of Medical Licensure, the  
1265 State Board of Dental Examiners and the State Board of Optometry  
1266 shall encourage research on misuse and abuse of controlled  
1267 substances. In connection with the research, and in furtherance  
1268 of the enforcement of this article they may:

1269 (1) Establish methods to assess accurately the effects  
1270 of controlled substances and identify and characterize those with  
1271 potential for abuse;

1272 (2) Make studies and undertake programs of research to:

1273 (A) Develop new or improved approaches,  
1274 techniques, systems, equipment and devices to strengthen the  
1275 enforcement of this article;

1276 (B) Determine patterns of misuse and abuse of  
1277 controlled substances and the social effects thereof; and

1278 (C) Improve methods for preventing, predicting,  
1279 understanding and dealing with the misuse and abuse of controlled  
1280 substances;

1281           (3) Enter into contracts with public agencies,  
1282 institutions of higher education, and private organizations or  
1283 individuals for the purpose of conducting research,  
1284 demonstrations, or special projects which bear directly on misuse  
1285 and abuse of controlled substances.

1286           (b) The Mississippi Bureau of Narcotics and the State Board  
1287 of Education may enter into contracts for educational and research  
1288 activities without performance bonds.

1289           (c) The board may authorize the possession and distribution  
1290 of controlled substances by persons engaged in research. Persons  
1291 who obtain this authorization are exempt from state prosecution  
1292 for possession and distribution of controlled substances to the  
1293 extent of the authorization.

1294           SECTION 35. This act shall take effect and be in force from  
1295 and after July 1, 2001.