

By: Representative Moak

To: Public Health and Human Services

HOUSE BILL NO. 268

1 AN ACT TO BE KNOWN AS THE PAIN RELIEF ACT; TO PROVIDE THAT
 2 THE LICENSING BOARDS OF PHYSICIANS, NURSES, DENTISTS, PODIATRISTS
 3 AND PHARMACISTS SHALL NOT BRING ANY DISCIPLINARY ACTION AGAINST A
 4 LICENSEE, AND STATE CRIMINAL PROSECUTIONS SHALL NOT BE BROUGHT
 5 AGAINST THOSE LICENSEES, FOR PRESCRIBING, DISPENSING OR
 6 ADMINISTERING TREATMENT FOR THE THERAPEUTIC PURPOSE OF RELIEVING
 7 INTRACTABLE PAIN, IF THE LICENSEES CAN DEMONSTRATE THAT THEIR
 8 PRACTICE SUBSTANTIALLY COMPLIED WITH AN ACCEPTED GUIDELINE FOR
 9 PAIN MANAGEMENT; TO AMEND SECTIONS 73-9-61, 73-15-29, 73-21-97,
 10 73-25-29 AND 73-27-13, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO
 11 THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Sections 1 through 6 of this act may be cited as
 14 the Pain Relief Act.

15 **SECTION 2.** For the purposes of Sections 1 through 6 of this
 16 act:

17 (a) "Board" means the State Board of Medical Licensure,
 18 the Mississippi Board of Nursing, the State Board of Dental
 19 Examiners or the State Board of Pharmacy.

20 (b) "Physician" means any physician or osteopath
 21 licensed by the State Board of Medical Licensure.

22 (c) "Nurse" means any nurse licensed by the Mississippi
 23 Board of Nursing, including nurse practitioners or advanced
 24 practice nurses.

25 (d) "Dentist" means any dentist licensed by the State
 26 Board of Dental Examiners.

27 (e) "Podiatrist" means any podiatrist licensed by the
 28 State Board of Medical Licensure.

29 (f) "Pharmacist" means any pharmacist licensed by the
 30 State Board of Pharmacy.

31 (g) "Intractable pain" means a state of pain, even if
32 temporary, in which reasonable efforts to remove or remedy the
33 cause of the pain have failed or have proven inadequate.

34 (h) "Clinical expert" means a person who, by reason of
35 specialized education or substantial relevant experience in pain
36 management, has knowledge regarding current standards, practices,
37 and guidelines.

38 (i) "Accepted guideline" means a practice or care
39 guideline for pain management developed by a nationally recognized
40 clinical or professional association or a specialty society or
41 government sponsored agency that has developed practice or care
42 guidelines based on original research or on review of existing
43 research and expert opinion. If no currently accepted guidelines
44 are available, then rules, regulations, policies or guidelines
45 adopted or issued by the board may serve the function of those
46 guidelines for the purposes of Sections 1 through 6 of this act.
47 Any such rules, regulations, policies, guidelines of the board
48 must conform to the intent of Sections 1 through 6 of this act.
49 Guidelines established primarily for the purposes of coverage,
50 payment, or reimbursement do not qualify as accepted practice or
51 care guidelines when offered to limit treatment options otherwise
52 covered by Sections 1 through 6 of this act.

53 (j) "Therapeutic purpose" means the use of
54 pharmaceutical and nonpharmaceutical medical treatment that
55 substantially conforms to accepted guidelines for pain management.

56 (k) "Disciplinary action" includes both informal and
57 formal, and both remedial and punitive actions taken by the board
58 against a health care provider.

59 (l) "Health care provider" means a licensed
60 professional defined in paragraph (b), (c), (d), (e) or (f) of
61 this section.

62 **SECTION 3.** (1) Disciplinary action or state criminal
63 prosecution shall not be brought against a health care provider

64 for prescribing, dispensing or administering medical treatment for
65 the therapeutic purpose of relieving intractable pain, if the
66 health care provider can demonstrate by reference to an accepted
67 guideline that his or her practice substantially complied with
68 that guideline and with the standards of practice identified in
69 Section 4 of this act. The showing of substantial compliance with
70 an accepted guideline may be rebutted only by clinical expert
71 testimony.

72 (2) If a disciplinary action or criminal prosecution is
73 pursued against a health care provider, the board or prosecutor
74 shall produce clinical expert testimony supporting the finding or
75 charge of violation of disciplinary standards or other legal
76 requirements on the part of the health care provider. Evidence of
77 noncompliance with an accepted guideline is not sufficient alone
78 to support disciplinary or criminal action.

79 (3) The provisions of this section shall apply to health
80 care providers in the treatment of all patients for intractable
81 pain regardless of the patient's prior or current chemical
82 dependency or addiction. The board may develop and adopt or issue
83 rules, regulations, policies or guidelines establishing standards
84 and procedures for the application of Sections 1 through 6 of this
85 act to the care and treatment of chemically dependent individuals.

86 **SECTION 4.** Nothing in Sections 1 through 6 of this act shall
87 prohibit discipline or prosecution of a health care provider for:

88 (a) Failing to maintain complete, accurate and current
89 records documenting the physical examination and medical history
90 of the patient, the basis for the clinical diagnosis of the
91 patient, and the treatment plan for the patient;

92 (b) Writing false or fictitious prescriptions for
93 controlled substances scheduled in the federal Comprehensive Drug
94 Abuse Prevention and Control Act of 1970, 21 USCS 801 et seq., or
95 in the Uniform Controlled Substances Law (41-29-101 et seq.);

96 (c) Prescribing, administering or dispensing a
97 pharmaceutical in violation of the provisions of the federal
98 Comprehensive Drug Abuse Prevention and Control Act of 1970, 21
99 USCS 801 et seq., or in the Uniform Controlled Substances Law
100 (41-29-101 et seq.); or

101 (d) Diverting medication prescribed for a patient to
102 the provider's own personal use.

103 **SECTION 5.** The board shall make reasonable efforts to notify
104 health care providers under its jurisdiction of the existence of
105 Sections 1 through 6 of this act. At a minimum, the board shall
106 inform any health care provider investigated in relation to the
107 provider's practices in the management of pain of the existence of
108 Sections 1 through 6 of this act.

109 **SECTION 6.** Nothing in Sections 1 through 6 of this act shall
110 be construed as expanding the authorized scope of practice of any
111 health care provider.

112 **SECTION 7.** Section 73-9-61, Mississippi Code of 1972, is
113 amended as follows:

114 73-9-61. (1) Upon satisfactory proof, and in accordance
115 with statutory provisions elsewhere set out for such hearings and
116 protecting the rights of the accused as well as the public, the
117 State Board of Dental Examiners may deny the issuance or renewal
118 of a license or may revoke or suspend the license of any licensed
119 dentist or dental hygienist practicing in the State of
120 Mississippi, or take any other action in relation to the license
121 as the board may deem proper under the circumstances, for any of
122 the following reasons:

123 (a) Misrepresentation in obtaining a license, or
124 attempting to obtain, obtaining, attempting to renew or renewing a
125 license or professional credential by making any material
126 misrepresentation, including the signing in his or her
127 professional capacity any certificate that is known to be false at
128 the time he or she makes or signs the certificate.

129 (b) Willful violation of any of the rules or
130 regulations duly promulgated by the board, or of any of the rules
131 or regulations duly promulgated by the appropriate dental
132 licensure agency of another state or jurisdiction.

133 (c) Being impaired in the ability to practice dentistry
134 or dental hygiene with reasonable skill and safety to patients by
135 reason of illness or use of alcohol, drugs, narcotics, chemicals,
136 or any other type of material or as a result of any mental or
137 physical condition.

138 (d) Administering, dispensing or prescribing any
139 prescriptive medication or drug outside the course of legitimate
140 professional dental practice.

141 (e) Being convicted or found guilty of or entering a
142 plea of nolo contendere to, regardless of adjudication, a
143 violation of any federal or state law regulating the possession,
144 distribution or use of any narcotic drug or any drug considered a
145 controlled substance under state or federal law, a certified copy
146 of the conviction order or judgment rendered by the trial court
147 being prima facie evidence thereof, notwithstanding the pendency
148 of any appeal.

149 (f) Practicing incompetently or negligently, regardless
150 of whether there is actual harm to the patient.

151 (g) Being convicted or found guilty of or entering a
152 plea of nolo contendere to, regardless of adjudication, a crime in
153 any jurisdiction that relates to the practice of dentistry or
154 dental hygiene, a certified copy of the conviction order or
155 judgment rendered by the trial court being prima facie evidence
156 thereof, notwithstanding the pendency of any appeal.

157 (h) Being convicted or found guilty of or entering a
158 plea of nolo contendere to, regardless of adjudication, a felony
159 in any jurisdiction, a certified copy of the conviction order or
160 judgment rendered by the trial court being prima facie evidence
161 thereof, notwithstanding the pendency of any appeal.

162 (i) Delegating professional responsibilities to a
163 person who is not qualified by training, experience or licensure
164 to perform them.

165 (j) The refusal of a licensing authority of another
166 state or jurisdiction to issue or renew a license, permit or
167 certificate to practice dentistry or dental hygiene in that
168 jurisdiction or the revocation, suspension or other restriction
169 imposed on a license, permit or certificate issued by the
170 licensing authority that prevents or restricts practice in that
171 jurisdiction, a certified copy of the disciplinary order or action
172 taken by the other state or jurisdiction being prima facie
173 evidence thereof, notwithstanding the pendency of any appeal.

174 (k) Surrender of a license or authorization to practice
175 dentistry or dental hygiene in another state or jurisdiction when
176 the board has reasonable cause to believe that the surrender is
177 made to avoid or in anticipation of a disciplinary action.

178 (l) Any unprofessional conduct to be determined by the
179 board on a case-by-case basis, which shall include, but not be
180 restricted to, the following:

181 (i) Committing any crime involving moral
182 turpitude.

183 (ii) Practicing deceit or other fraud upon the
184 public.

185 (iii) Practicing dentistry or dental hygiene under
186 a false or assumed name.

187 (iv) Advertising that is false, deceptive or
188 misleading.

189 (v) Announcing a specialized practice shall be
190 considered advertising that tends to deceive or mislead the public
191 unless the dentist announcing as a specialist conforms to other
192 statutory provisions and the duly promulgated rules or regulations
193 of the board pertaining to practice of dentistry in the State of
194 Mississippi.

195 (m) Failure to provide and maintain reasonable sanitary
196 facilities and conditions or failure to follow board rules
197 regarding infection control.

198 (n) Committing any act which would constitute sexual
199 misconduct upon a patient or upon ancillary staff. For purposes
200 of this subsection, the term sexual misconduct means:

201 (i) Use of the licensee-patient relationship to
202 engage or attempt to engage the patient in sexual activity; or

203 (ii) Conduct of a licensee that is intended to
204 intimidate, coerce, influence or trick any person employed by or
205 for the licensee in a dental practice or educational setting for
206 the purpose of engaging in sexual activity or activity intended
207 for the sexual gratification of the licensee.

208 (o) Violation of a lawful order of the board previously
209 entered in a disciplinary or licensure hearing; failure to
210 cooperate with any lawful request or investigation by the board;
211 or failure to comply with a lawfully issued subpoena of the board.

212 (p) Willful, obstinate and continuing refusal to
213 cooperate with the board in observing its rules and regulations in
214 promptly paying all legal license or other fees required by law.

215 (q) Practicing dentistry or dental hygiene while the
216 person's license is suspended.

217 (2) In lieu of revocation of a license as provided for
218 above, the board may suspend the license of the offending dentist
219 or dental hygienist, suspend the sedation permit of the offending
220 dentist, or take any other action in relation to his or her
221 license as the board may deem proper under the circumstances.

222 (3) When a license to practice dentistry or dental hygiene
223 is revoked or suspended by the board, the board may, in its
224 discretion, stay the revocation or suspension and simultaneously
225 place the licensee on probation upon the condition that the
226 licensee shall not violate the laws of the State of Mississippi
227 pertaining to the practice of dentistry or dental hygiene and

228 shall not violate the rules and regulations of the board and shall
229 not violate any terms in relation to his or her license as may be
230 set by the board.

231 (4) In a proceeding conducted under this section by the
232 board for the denial, revocation or suspension of a license to
233 practice dentistry or dental hygiene, the board shall have the
234 power and authority for the grounds stated for that denial,
235 revocation or suspension, and in addition thereto or in lieu of
236 that denial, revocation or suspension may assess and levy upon any
237 person licensed to practice dentistry or dental hygiene in the
238 State of Mississippi, a monetary penalty, as follows:

239 (a) For the first violation of any of subparagraph (a),
240 (b), (c), (d), (f), (i), (l), (m), (n), (o) or (q) of subsection
241 (1) of this section, a monetary penalty of not less than Fifty
242 Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00).

243 (b) For the second violation of any of subparagraph
244 (a), (b), (c), (d), (f), (i), (l), (m), (n), (o) or (q) of
245 subsection (1) of this section, a monetary penalty of not less
246 than One Hundred Dollars (\$100.00) nor more than One Thousand
247 Dollars (\$1,000.00).

248 (c) For the third and any subsequent violation of any
249 of subparagraph (a), (b), (c), (d), (f), (i), (l), (m), (n), (o)
250 or (q) of subsection (1) of this section, a monetary penalty of
251 not less than Five Hundred Dollars (\$500.00) and not more than
252 Five Thousand Dollars (\$5,000.00).

253 (d) For any violation of any of subparagraphs (a)
254 through (q) of subsection (1) of this section, those reasonable
255 costs that are expended by the board in the investigation and
256 conduct of a proceeding for licensure revocation or suspension,
257 including, but not limited to, the cost of process service, court
258 reporters, expert witnesses and investigators.

259 (5) The power and authority of the board to assess and levy
260 monetary penalties under this section shall not be affected or

261 diminished by any other proceeding, civil or criminal, concerning
262 the same violation or violations except as provided in this
263 section.

264 (6) A licensee shall have the right of appeal from the
265 assessment and levy of a monetary penalty as provided in this
266 section under the same conditions as a right of appeal is provided
267 elsewhere for appeals from an adverse ruling, order or decision of
268 the board.

269 (7) Any monetary penalty assessed and levied under this
270 section shall not take effect until after the time for appeal has
271 expired. In the event of an appeal, the appeal shall act as a
272 supersedeas.

273 (8) A monetary penalty assessed and levied under this
274 section shall be paid to the board by the licensee upon the
275 expiration of the period allowed for appeal of those penalties
276 under this section or may be paid sooner if the licensee elects.
277 With the exception of subsection (4)(d) of this section, monetary
278 penalties collected by the board under this section shall be
279 deposited to the credit of the General Fund of the State Treasury.
280 Any monies collected by the board under subsection (4)(d) of this
281 section shall be deposited into the special fund operating account
282 of the board.

283 (9) When payment of a monetary penalty assessed and levied
284 by the board against a licensee in accordance with this section is
285 not paid by the licensee when due under this section, the board
286 shall have power to institute and maintain proceedings in its name
287 for enforcement of payment in the chancery court of the county and
288 judicial district of residence of the licensee, and if the
289 licensee is a nonresident of the State of Mississippi, the
290 proceedings shall be in the Chancery Court of the First Judicial
291 District of Hinds County, Mississippi.

292 (10) In addition to the reasons specified in subsection (1)
293 of this section, the board shall be authorized to suspend the

294 license of any licensee for being out of compliance with an order
295 for support, as defined in Section 93-11-153. The procedure for
296 suspension of a license for being out of compliance with an order
297 for support, and the procedure for the reissuance or reinstatement
298 of a license suspended for that purpose, and the payment of any
299 fees for the reissuance or reinstatement of a license suspended
300 for that purpose, shall be governed by Section 93-11-157 or
301 93-11-163, as the case may be. If there is any conflict between
302 any provision of Section 93-11-157 or 93-11-163 and any provision
303 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
304 as the case may be, shall control.

305 (11) All grounds for disciplinary action, including
306 imposition of fines and assessment of costs as enumerated above,
307 shall also apply to any other license or permit issued by the
308 board under this chapter or regulations duly adopted by the board.

309 (12) The board shall not bring any disciplinary action
310 against a dentist for prescribing, dispensing or administering
311 treatment for the therapeutic purpose of relieving intractable
312 pain if the prescribing, dispensing or administering of that
313 treatment is within the scope of practice of the dentist and it is
314 done in accordance with Section 3 of this act.

315 **SECTION 8.** Section 73-15-29, Mississippi Code of 1972, is
316 amended as follows:

317 73-15-29. (1) The board shall have power to revoke, suspend
318 or refuse to renew any license issued by the board, or to revoke
319 or suspend any privilege to practice, or to deny an application
320 for a license, or to fine, place on probation and/or discipline a
321 licensee, in any manner specified in this chapter, upon proof that
322 such person:

323 (a) Has committed fraud or deceit in securing or
324 attempting to secure such license;

325 (b) Has been convicted of felony, or a crime involving
326 moral turpitude or has had accepted by a court a plea of nolo

327 contendere to a felony or a crime involving moral turpitude (a
328 certified copy of the judgment of the court of competent
329 jurisdiction of such conviction or pleas shall be prima facie
330 evidence of such conviction);

331 (c) Has negligently or willfully acted in a manner
332 inconsistent with the health or safety of the persons under the
333 licensee's care;

334 (d) Has had a license or privilege to practice as a
335 registered nurse or a licensed practical nurse suspended or
336 revoked in any jurisdiction, has voluntarily surrendered such
337 license or privilege to practice in any jurisdiction, has been
338 placed on probation as a registered nurse or licensed practical
339 nurse in any jurisdiction or has been placed under a disciplinary
340 order(s) in any manner as a registered nurse or licensed practical
341 nurse in any jurisdiction, (a certified copy of the order of
342 suspension, revocation, probation or disciplinary action shall be
343 prima facie evidence of such action);

344 (e) Has negligently or willfully practiced nursing in a
345 manner that fails to meet generally accepted standards of such
346 nursing practice;

347 (f) Has negligently or willfully violated any order,
348 rule or regulation of the board pertaining to nursing practice or
349 licensure;

350 (g) Has falsified or in a repeatedly negligent manner
351 made incorrect entries or failed to make essential entries on
352 records;

353 (h) Is addicted to or dependent on alcohol or other
354 habit-forming drugs or is a habitual user of narcotics,
355 barbiturates, amphetamines, hallucinogens, or other drugs having
356 similar effect, or has misappropriated any medication;

357 (i) Has a physical, mental or emotional disability that
358 renders the licensee unable to perform nursing services or duties
359 with reasonable skill and safety;

360 (j) Has engaged in any other conduct, whether of the
361 same or of a different character from that specified in this
362 chapter, that would constitute a crime as defined in Title 97 of
363 the Mississippi Code of 1972, as now or hereafter amended, and
364 that relates to such person's employment as a registered nurse or
365 licensed practical nurse;

366 (k) Engages in conduct likely to deceive, defraud or
367 harm the public;

368 (l) Engages in any unprofessional conduct as identified
369 by the board in its rules; or

370 (m) Has violated any provision of this chapter.

371 (2) When the board finds any person unqualified because of
372 any of the grounds set forth in subsection (1) of this section, it
373 may enter an order imposing one or more of the following
374 penalties:

375 (a) Denying application for a license or other
376 authorization to practice nursing or practical nursing;

377 (b) Administering a reprimand;

378 (c) Suspending or restricting the license or other
379 authorization to practice as a registered nurse or licensed
380 practical nurse for up to two (2) years without review;

381 (d) Revoking the license or other authorization to
382 practice nursing or practical nursing;

383 (e) Requiring the discipline to submit to care,
384 counseling or treatment by persons and/or agencies approved or
385 designated by the board as a condition for initial, continued or
386 renewed licensure or other authorization to practice nursing or
387 practical nursing;

388 (f) Requiring the discipline to participate in a
389 program of education prescribed by the board as a condition for
390 initial, continued or renewed licensure or other authorization to
391 practice;

392 (g) Requiring the discipline to practice under the
393 supervision of a registered nurse for a specified period of time;
394 or

395 (h) Imposing a fine not to exceed Five Hundred Dollars
396 (\$500.00).

397 (3) In addition to the grounds specified in subsection (1)
398 of this section, the board shall be authorized to suspend the
399 license or privilege to practice of any licensee for being out of
400 compliance with an order for support, as defined in Section
401 93-11-153. The procedure for suspension of a license or privilege
402 to practice for being out of compliance with an order for support,
403 and the procedure for the reissuance or reinstatement of a license
404 or privilege to practice suspended for that purpose, and the
405 payment of any fees for the reissuance or reinstatement of a
406 license or privilege to practice suspended for that purpose, shall
407 be governed by Section 93-11-157 or 93-11-163, as the case may be.
408 If there is any conflict between any provision of Section
409 93-11-157 or 93-11-163 and any provision of this chapter, the
410 provisions of Section 93-11-157 or 93-11-163, as the case may be,
411 shall control.

412 (4) The board shall not bring any disciplinary action
413 against a nurse for prescribing, dispensing or administering
414 treatment for the therapeutic purpose of relieving intractable
415 pain if the prescribing, dispensing or administering of that
416 treatment is within the scope of practice of the nurse and it is
417 done in accordance with Section 3 of this act.

418 **SECTION 9.** Section 73-21-97, Mississippi Code of 1972, is
419 amended as follows:

420 73-21-97. (1) The board may refuse to issue or renew, or
421 may suspend, reprimand, revoke or restrict the license,
422 registration or permit of any person upon one or more of the
423 following grounds:

424 (a) Unprofessional conduct as defined by the rules and
425 regulations of the board;

426 (b) Incapacity of a nature that prevents a pharmacist
427 from engaging in the practice of pharmacy with reasonable skill,
428 confidence and safety to the public;

429 (c) Being found guilty by a court of competent
430 jurisdiction of one or more of the following:

431 (i) A felony;

432 (ii) Any act involving moral turpitude or gross
433 immorality; or

434 (iii) Violation of pharmacy or drug laws of this
435 state or rules or regulations pertaining thereto, or of statutes,
436 rules or regulations of any other state or the federal government;

437 (d) Fraud or intentional misrepresentation by a
438 licensee or permit holder in securing the issuance or renewal of a
439 license or permit;

440 (e) Engaging or aiding and abetting an individual to
441 engage in the practice of pharmacy without a license;

442 (f) Violation of any of the provisions of this chapter
443 or rules or regulations adopted pursuant to this chapter;

444 (g) Failure to comply with lawful orders of the board;

445 (h) Negligently or willfully acting in a manner
446 inconsistent with the health or safety of the public;

447 (i) Addiction to or dependence on alcohol or controlled
448 substances or the unauthorized use or possession of controlled
449 substances;

450 (j) Misappropriation of any prescription drug;

451 (k) Being found guilty by the licensing agency in
452 another state of violating the statutes, rules or regulations of
453 that jurisdiction; or

454 (l) The unlawful or unauthorized possession of a
455 controlled substance.

456 (2) In lieu of suspension, revocation or restriction of a
457 license as provided for above, the board may warn or reprimand the
458 offending pharmacist.

459 (3) In addition to the grounds specified in subsection (1)
460 of this section, the board shall be authorized to suspend the
461 license, registration or permit of any person for being out of
462 compliance with an order for support, as defined in Section
463 93-11-153. The procedure for suspension of a license,
464 registration or permit for being out of compliance with an order
465 for support, and the procedure for the reissuance or reinstatement
466 of a license, registration or permit suspended for that purpose,
467 and the payment of any fees for the reissuance or reinstatement of
468 a license, registration or permit suspended for that purpose,
469 shall be governed by Section 93-11-157 or 93-11-163, as the case
470 may be. If there is any conflict between any provision of Section
471 93-11-157 or 93-11-163 and any provision of this chapter, the
472 provisions of Section 93-11-157 or 93-11-163, as the case may be,
473 shall control.

474 (4) The board shall not bring any disciplinary action
475 against a pharmacist for dispensing or administering treatment for
476 the therapeutic purpose of relieving intractable pain if the
477 dispensing or administering of that treatment is within the scope
478 of practice of the pharmacist and it is done in accordance with
479 Section 3 of this act.

480 **SECTION 10.** Section 73-25-29, Mississippi Code of 1972, is
481 amended as follows:

482 73-25-29. The grounds for the nonissuance, suspension,
483 revocation or restriction of a license or the denial of
484 reinstatement or renewal of a license are:

485 (1) Habitual personal use of narcotic drugs, or any other
486 drug having addiction-forming or addiction-sustaining liability.

487 (2) Habitual use of intoxicating liquors, or any beverage,
488 to an extent which affects professional competency.

489 (3) Administering, dispensing or prescribing any narcotic
490 drug, or any other drug having addiction-forming or
491 addiction-sustaining liability otherwise than in the course of
492 legitimate professional practice.

493 (4) Conviction of violation of any federal or state law
494 regulating the possession, distribution or use of any narcotic
495 drug or any drug considered a controlled substance under state or
496 federal law, a certified copy of the conviction order or judgment
497 rendered by the trial court being prima facie evidence thereof,
498 notwithstanding the pendency of any appeal.

499 (5) Procuring, or attempting to procure, or aiding in, an
500 abortion that is not medically indicated.

501 (6) Conviction of a felony or misdemeanor involving moral
502 turpitude, a certified copy of the conviction order or judgment
503 rendered by the trial court being prima facie evidence thereof,
504 notwithstanding the pendency of any appeal.

505 (7) Obtaining or attempting to obtain a license by fraud or
506 deception.

507 (8) Unprofessional conduct, which includes, but is not
508 limited to:

509 (a) Practicing medicine under a false or assumed name
510 or impersonating another practitioner, living or dead.

511 (b) Knowingly performing any act which in any way
512 assists an unlicensed person to practice medicine.

513 (c) Making or willfully causing to be made any
514 flamboyant claims concerning the licensee's professional
515 excellence.

516 (d) Being guilty of any dishonorable or unethical
517 conduct likely to deceive, defraud or harm the public.

518 (e) Obtaining a fee as personal compensation or gain
519 from a person on fraudulent representation a disease or injury
520 condition generally considered incurable by competent medical
521 authority in the light of current scientific knowledge and

522 practice can be cured or offering, undertaking, attempting or
523 agreeing to cure or treat the same by a secret method, which he
524 refuses to divulge to the board upon request.

525 (f) Use of any false, fraudulent or forged statement or
526 document, or the use of any fraudulent, deceitful, dishonest or
527 immoral practice in connection with any of the licensing
528 requirements, including the signing in his professional capacity
529 any certificate that is known to be false at the time he makes or
530 signs such certificate.

531 (g) Failing to identify a physician's school of
532 practice in all professional uses of his name by use of his earned
533 degree or a description of his school of practice.

534 (9) The refusal of a licensing authority of another state or
535 jurisdiction to issue or renew a license, permit or certificate to
536 practice medicine in that jurisdiction or the revocation,
537 suspension or other restriction imposed on a license, permit or
538 certificate issued by such licensing authority which prevents or
539 restricts practice in that jurisdiction, a certified copy of the
540 disciplinary order or action taken by the other state or
541 jurisdiction being prima facie evidence thereof, notwithstanding
542 the pendency of any appeal.

543 (10) Surrender of a license or authorization to practice
544 medicine in another state or jurisdiction or surrender of
545 membership on any medical staff or in any medical or professional
546 association or society while under disciplinary investigation by
547 any of those authorities or bodies for acts or conduct similar to
548 acts or conduct which would constitute grounds for action as
549 defined in this section.

550 (11) Final sanctions imposed by the United States Department
551 of Health and Human Services, Office of Inspector General or any
552 successor federal agency or office, based upon a finding of
553 incompetency, gross misconduct or failure to meet professionally
554 recognized standards of health care; a certified copy of the

555 notice of final sanction being prima facie evidence thereof. As
556 used in this paragraph, the term "final sanction" means the
557 written notice to a physician from the United States Department of
558 Health and Human Services, Officer of Inspector General or any
559 successor federal agency or office, which implements the
560 exclusion.

561 (12) Failure to furnish the board, its investigators or
562 representatives information legally requested by the board.

563 (13) Violation of any provision(s) of the Medical Practice
564 Act or the rules and regulations of the board or of any order,
565 stipulation or agreement with the board.

566 In addition to the grounds specified above, the board shall
567 be authorized to suspend the license of any licensee for being out
568 of compliance with an order for support, as defined in Section
569 93-11-153. The procedure for suspension of a license for being
570 out of compliance with an order for support, and the procedure for
571 the reissuance or reinstatement of a license suspended for that
572 purpose, and the payment of any fees for the reissuance or
573 reinstatement of a license suspended for that purpose, shall be
574 governed by Section 93-11-157 or 93-11-163, as the case may be.
575 If there is any conflict between any provision of Section
576 93-11-157 or 93-11-163 and any provision of this chapter, the
577 provisions of Section 93-11-157 or 93-11-163, as the case may be,
578 shall control.

579 The board shall not bring any disciplinary action against a
580 physician or osteopath for prescribing, dispensing or
581 administering medical treatment for the therapeutic purpose of
582 relieving intractable pain if the prescribing, dispensing or
583 administering of that treatment is within the scope of practice of
584 the physician or osteopath and it is done in accordance with
585 Section 3 of this act.

586 **SECTION 11.** Section 73-27-13, Mississippi Code of 1972, is
587 amended as follows:

588 73-27-13. (1) The State Board of Medical Licensure may
589 refuse to issue, suspend, revoke or otherwise restrict any license
590 provided for in this chapter, with the advice of the advisory
591 committee, based upon the following grounds:

592 (a) Habitual personal use of narcotic drugs, or any
593 other drug having addiction-forming or addiction-sustaining
594 liability.

595 (b) Habitual use of intoxicating liquors, or any
596 beverage, to an extent which affects professional competency.

597 (c) Administering, dispensing or prescribing any
598 narcotic drug, or any other drug having addiction-forming or
599 addiction-sustaining liability otherwise than in the course of
600 legitimate professional practice.

601 (d) Conviction of violation of any federal or state law
602 regulating the possession, distribution or use of any narcotic
603 drug or any drug considered a controlled substance under state or
604 federal law.

605 (e) Performing any medical diagnosis or treatment
606 outside the scope of podiatry as defined in Section 73-27-1.

607 (f) Conviction of a felony or misdemeanor involving
608 moral turpitude.

609 (g) Obtaining or attempting to obtain a license by
610 fraud or deception.

611 (h) Unprofessional conduct, which includes, but is not
612 limited to:

613 (i) Practicing medicine under a false or assumed
614 name or impersonating another practitioner, living or dead.

615 (ii) Knowingly performing any act which in any way
616 assists an unlicensed person to practice podiatry.

617 (iii) Making or willfully causing to be made any
618 flamboyant claims concerning the licensee's professional
619 excellence.

620 (iv) Being guilty of any dishonorable or unethical
621 conduct likely to deceive, defraud or harm the public.

622 (v) Obtaining a fee as personal compensation or
623 gain from a person on fraudulent representation a disease or
624 injury condition generally considered incurable by competent
625 medical authority in the light of current scientific knowledge and
626 practice can be cured or offering, undertaking, attempting or
627 agreeing to cure or treat the same by a secret method, which he
628 refuses to divulge to the board upon request.

629 (vi) Use of any false, fraudulent or forged
630 statement or document, or the use of any fraudulent, deceitful,
631 dishonest or immoral practice in connection with any of the
632 licensing requirements, including the signing in his professional
633 capacity any certificate that is known to be false at the time he
634 makes or signs such certificate.

635 (vii) Failing to identify a podiatrist's school of
636 practice in all professional uses of his name by use of his earned
637 degree or a description of his school of practice.

638 (i) The refusal of a licensing authority of another
639 state to issue or renew a license, permit or certificate to
640 practice podiatry in that state or the revocation, suspension or
641 other restriction imposed on a license, permit or certificate
642 issued by such licensing authority which prevents or restricts
643 practice in that state.

644 (2) Upon the nonissuance, suspension or revocation of a
645 license to practice podiatry, the board may, in its discretion and
646 with the advice of the advisory committee, reissue a license after
647 a lapse of six (6) months. No advertising shall be permitted
648 except regular professional cards.

649 (3) In its investigation of whether the license of a
650 podiatrist should be suspended, revoked or otherwise restricted,
651 the board may inspect patient records in accordance with the
652 provisions of Section 73-25-28.

653 (4) In addition to the grounds specified in subsection (1)
654 of this section, the board shall be authorized to suspend the
655 license of any licensee for being out of compliance with an order
656 for support, as defined in Section 93-11-153. The procedure for
657 suspension of a license for being out of compliance with an order
658 for support, and the procedure for the reissuance or reinstatement
659 of a license suspended for that purpose, and the payment of any
660 fees for the reissuance or reinstatement of a license suspended
661 for that purpose, shall be governed by Section 93-11-157 or
662 93-11-163, as the case may be. If there is any conflict between
663 any provision of Section 93-11-157 or 93-11-163 and any provision
664 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
665 as the case may be, shall control.

666 (5) The board shall not bring any disciplinary action
667 against a podiatrist for prescribing, dispensing or administering
668 treatment for the therapeutic purpose of relieving intractable
669 pain if the prescribing, dispensing or administering of that
670 treatment is within the scope of practice of the podiatrist and it
671 is done in accordance with Section 3 of this act.

672 **SECTION 12.** This act shall take effect and be in force from
673 and after July 1, 2005.