MISSISSIPPI LEGISLATURE
REGULAR SESSION 2017

By: Representative Smith
To: Judiciary B

HOUSE BILL NO. 340

AN ACT TO CREATE NEW SECTION 73-25-41, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS A FELONY FOR A LICENSED PHYSICIAN TO ENGAGE IN SEXUAL ACTIVITY, WHETHER CONSENSUAL OR NONCONSENSUAL, WITH A PATIENT OF THE PHYSICIAN WHILE A PHYSICIAN-PATIENT RELATIONSHIP EXISTS WITH THE PATIENT, OR WITHIN TWELVE MONTHS AFTER THE END OF A PHYSICIAN-PATIENT RELATIONSHIP WITH THE PATIENT; TO CREATE NEW SECTION 73-25-43, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHYSICIANS FROM ENGAGING IN SEXUAL MISCONDUCT WITH A CURRENT PATIENT OR A KEY THIRD PARTY AND CERTAIN FORMER PATIENTS AND KEY THIRD PARTIES; TO AMEND SECTION 73-25-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ENGAGING IN PROHIBITED SEXUAL MISCONDUCT IS GROUNDS FOR DISCIPLINARY ACTION AGAINST A PHYSICIAN BY THE STATE BOARD OF MEDICAL LICENSURE; TO AMEND SECTION 73-25-30, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A PHYSICIAN IS CONVICTED OF VIOLATING SECTION 73-25-41, THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE PHYSICIAN AND THE LICENSE MAY NEVER BE REINSTATED; TO PROVIDE THAT IF THE BOARD FINDS THAT A PHYSICIAN HAS ENGAGED IN PROHIBITED SEXUAL MISCONDUCT, THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE PHYSICIAN AND THE LICENSE MAY NEVER BE REINSTATED; TO DELETE THE CAP ON THE AMOUNT OF COSTS OF A DISCIPLINARY HEARING THAT MAY BE ASSESSED TO A LICENSEE BY THE BOARD; TO AMEND SECTION 73-25-32, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PHYSICIAN WHOSE LICENSE HAS BEEN PERMANENTLY REVOKED UNDER THE PROVISIONS OF THE PRECEDING SECTION SHALL NOT BE AUTHORIZED TO HAVE HIS OR HER LICENSE REINSTATED; TO CREATE NEW SECTION 73-26-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS A FELONY FOR A LICENSED PHYSICIAN ASSISTANT TO ENGAGE IN SEXUAL RELATIONS, WHETHER CONSENSUAL OR NONCONSENSUAL, WITH A PATIENT OF THE PHYSICIAN ASSISTANT WHILE A PHYSICIAN ASSISTANT-PATIENT RELATIONSHIP EXISTS WITH THE PATIENT, OR WITHIN TWELVE MONTHS AFTER THE END OF A PHYSICIAN ASSISTANT-PATIENT RELATIONSHIP WITH THE PATIENT; TO CREATE NEW SECTION 73-26-9, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHYSICIAN ASSISTANTS FROM ENGAGING IN SEXUAL MISCONDUCT WITH A CURRENT PATIENT OR A KEY
THIRD PARTY AND CERTAIN FORMER PATIENTS AND KEY THIRD PARTIES; TO
CREATE NEW SECTION 73-26-11, MISSISSIPPI CODE OF 1972, TO PROVIDE
THAT IF A PHYSICIAN ASSISTANT IS CONVICTED OF VIOLATING SECTION
73-26-7, THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE
PHYSICIAN ASSISTANT AND THE LICENSE MAY NEVER BE REINSTATED; TO
PROVIDE THAT IF THE BOARD FINDS THAT A PHYSICIAN ASSISTANT HAS
ENGAGED IN PROHIBITED SEXUAL MISCONDUCT, THE BOARD SHALL
PERMANENTLY REVOKE THE LICENSE OF THE PHYSICIAN ASSISTANT AND THE
LICENSE MAY NEVER BE REINSTATED; TO CREATE NEW SECTION 73-26-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS A FELONY FOR A
LICENSED PODIATRIST TO ENGAGE IN SEXUAL RELATIONS, WHETHER
CONSENSUAL OR NONCONSENSUAL, WITH A PATIENT OF THE PODIATRIST
WHILE A PODIATRIST-PATIENT RELATIONSHIP EXISTS WITH THE PATIENT,
OR WITHIN TWELVE MONTHS AFTER THE END OF A PODIATRIST-PATIENT
RELATIONSHIP WITH THE PATIENT; TO CREATE NEW SECTION 73-27-23,
MISSISSIPPI CODE OF 1972, TO PROHIBIT PODIATRISTS FROM ENGAGING IN
SEXUAL MISCONDUCT WITH A CURRENT PATIENT OR A KEY THIRD PARTY AND
CERTAIN FORMER PATIENTS AND KEY THIRD PARTIES; TO AMEND SECTION
73-27-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ENGAGING IN
PROHIBITED SEXUAL MISCONDUCT IS GROUNDS FOR DISCIPLINARY ACTION
AGAINST A PODIATRIST BY THE STATE BOARD OF MEDICAL LICENSURE; TO
PROVIDE THAT IF A PODIATRIST IS CONVICTED OF VIOLATING SECTION
PODIATRIST AND THE LICENSE MAY NEVER BE REINSTATED; TO PROVIDE
THAT IF THE BOARD FINDS THAT A PODIATRIST HAS ENGAGED IN
PROHIBITED SEXUAL MISCONDUCT, THE BOARD SHALL PERMANENTLY REVOKE
THE LICENSE OF THE PODIATRIST AND THE LICENSE MAY NEVER BE
REVOKED UNDER THE PROVISIONS OF THE PRECEDING SECTION SHALL NOT BE
AUTHORIZED TO HAVE HIS OR HER LICENSE REINSTATED; TO CREATE NEW
SECTION 73-71-38, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS
A FELONY FOR A LICENSED ACUPUNCTURE PRACTITIONER TO ENGAGE IN
SEXUAL RELATIONS, WHETHER CONSENSUAL OR NONCONSENSUAL, WITH A
PATIENT OF THE ACUPUNCTURE PRACTITIONER WHILE AN ACUPUNCTURE
PRACTITIONER-PATIENT RELATIONSHIP EXISTS WITH THE PATIENT, OR
WITHIN TWELVE MONTHS AFTER THE END OF AN ACUPUNCTURE
PRACTITIONER-PATIENT RELATIONSHIP WITH THE PATIENT; TO CREATE NEW
SECTION 73-71-38.1, MISSISSIPPI CODE OF 1972, TO PROHIBIT
ACUPUNCTURE PRACTITIONERS FROM ENGAGING IN SEXUAL MISCONDUCT WITH
A CURRENT PATIENT OR A KEY THIRD PARTY AND CERTAIN FORMER PATIENTS
AND KEY THIRD PARTIES; TO AMEND SECTION 73-71-33, MISSISSIPPI CODE
OF 1972, TO PROVIDE THAT ENGAGING IN PROHIBITED SEXUAL MISCONDUCT
IS GROUNDS FOR DISCIPLINARY ACTION AGAINST AN ACUPUNCTURE
PRACTITIONER BY THE STATE BOARD OF MEDICAL LICENSURE; TO AMEND
SECTION 73-71-33, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF AN
ACUPUNCTURE PRACTITIONER IS CONVICTED OF VIOLATING SECTION
73-71-38, THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE
ACUPUNCTURE PRACTITIONER AND THE LICENSE MAY NEVER BE REINSTATED;
TO PROVIDE THAT IF THE BOARD FINDS THAT AN ACUPUNCTURE
PRACTITIONER HAS ENGAGED IN PROHIBITED SEXUAL MISCONDUCT, THE

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

SECTION 1. The following shall be codified as Section 73-25-41, Mississippi Code of 1972:

73-25-41. (1) For the purposes of this section, the term "sexual activity" means any of the activities described in subsection (2)(a), (b) or (c) of Section 73-25-43.

(2) Any physician licensed under this chapter who engages in sexual activity, whether consensual or nonconsensual, with a patient of the physician while a physician-patient relationship exists with the patient, or within twelve (12) months after the end of a physician-patient relationship with the patient, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than One Hundred Thousand Dollars.
($100,000.00) or by commitment to the Department of Corrections for not more than five (5) years, or both, and the court shall permanently revoke the license of the physician.

(3) It is not a violation of this section if the physician and the patient engaged in consensual sexual activity before the existence of the physician-patient relationship.

SECTION 2. The following shall be codified as Section 73-25-43, Mississippi Code of 1972:

73-25-43. (1) As used in this section, the following terms shall be defined as provided in this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician" means a person licensed to practice medicine under this chapter.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not
limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician shall not engage in sexual misconduct with a current patient or a key third party. A physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;
(b) Oral to genital contact;
(c) Genital to anal contact or oral to anal contact;
(d) Kissing in a romantic or sexual manner;
(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
(f) Examination or touching of genitals without using gloves;
(g) Not allowing a patient the privacy to dress or undress;
(h) Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;
(i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
(j) Soliciting a date;
(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician.
(3) A physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in Section 45-33-23(h).

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician;

(f) The nature of the patient's health problem;
(g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) It is not a violation of this section if the physician and the patient or the physician and a key third party engaged in any of the behaviors described in subsection (2) of this section before the existence of the physician-patient relationship.

SECTION 3. Section 73-25-29, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

   (c) Making or willfully causing to be made any flamboyant claims concerning the licensee's professional excellence.
(d) Being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.

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

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

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

(h) Engaging in sexual misconduct that is prohibited under Section 73-25-43.

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

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

(11) Final sanctions imposed by the United States
Department of Health and Human Services, Office of Inspector
General or any successor federal agency or office, based upon a
finding of incompetency, gross misconduct or failure to meet
professionally recognized standards of health care; a certified
copy of the notice of final sanction being prima facie evidence
thereof. As used in this paragraph, the term "final sanction"
means the written notice to a physician from the United States
Department of Health and Human Services, Officer of Inspector
General or any successor federal agency or office, which
implements the exclusion.

(12) Failure to furnish the board, its investigators or
representatives information legally requested by the board.
(13) Violation of any provision(s) of the Medical Practice Act or the rules and regulations of the board or of any order, stipulation or agreement with the board.

(14) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners.

(15) Performing or inducing an abortion on a woman in violation of any provision of Sections 41-41-131 through 41-41-145.

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

SECTION 4. Section 73-25-30, Mississippi Code of 1972, is amended as follows:
73-25-30. (1) The Mississippi State Board of Medical Licensure, in exercising its authority under the provisions of Section 73-25-29, shall have the power to discipline the holder of a license who has been found by the board in violation of that statute after notice and a hearing as provided by law, and the licensee shall be disciplined as follows:

(a) By placing him upon probation, the terms of which may be set by the board, or

(b) By suspending his right to practice for a time deemed proper by the board, or

(c) By revoking his license, or

(d) By taking any other action in relation to his license as the board may deem proper under the circumstances.

(2) If a licensee is convicted of or enters a plea of guilty or nolo contendere to violating Section 73-25-41, and all appeals for the conviction have been finally concluded or the time for an appeal from the conviction has expired, the board shall permanently revoke the license of the licensee without a hearing and the license may never be reinstated.

(3) If the board finds that a licensee has engaged in sexual misconduct that is prohibited under Section 73-25-43, after notice and a hearing as provided by law, the board shall permanently revoke the license of the licensee and the license may never be reinstated.
Upon the execution of a disciplinary order by the board, either following a hearing or in lieu of a hearing, the board, in addition to the disciplinary powers specified in subsection (1) of this section, may assess the licensee for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure disciplinary action including, but not limited to, the cost of process service, court reporters, witness fees, expert witnesses, investigators, and other related expenses. Money collected by the board under this section shall be deposited to the credit of the special fund of the board to reimburse the existing current year appropriated budget.

An assessment of costs under this section shall be paid to the board by the licensee, upon the expiration of the period allowed for appeals under Section 73-25-27, or may be paid sooner if the licensee elects.

When an assessment of costs by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the licensee shall be prohibited from practicing medicine until the full amount is paid. In addition, the board may institute and maintain proceedings in its name for enforcement of payment in the Chancery Court of the First Judicial District of Hinds County. When those proceedings are instituted, the board shall certify the record of its proceedings, together with all documents and evidence, to the
chancery court. The matter shall be heard in due course by the
court, which shall review the record and make its determination
thereon. The hearing on the matter, in the discretion of the
chancellor, may be tried in vacation.

SECTION 5. Section 73-25-32, Mississippi Code of 1972, is
amended as follows:

73-25-32. (1) A person whose license to practice medicine
or osteopathy has been revoked or suspended may petition the
Mississippi State Board of Medical Licensure to reinstate this
license after a period of not less than one (1) year has elapsed
from the date of the revocation or suspension. However, any
person whose license has been permanently revoked under the
provisions of Section 73-25-30(2) or (3) shall not be authorized
to have his or her license reinstated. The procedure for the
reinstatement of a license that is suspended for being out of
compliance with an order for support, as defined in Section
93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as
the case may be.

(2) The petition shall be accompanied by two (2) or more
verified recommendations from physicians or osteopaths licensed by
the Board of Medical Licensure to which the petition is addressed
and by two (2) or more recommendations from citizens each having
personal knowledge of the activities of the petitioner since the
disciplinary penalty was imposed and such facts as may be required
by the Board of Medical Licensure.
The petition may be heard at the next regular meeting of the Board of Medical Licensure but not earlier than thirty (30) days after the petition was filed. No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which he is under probation or parole. The hearing may be continued from time to time as the Board of Medical Licensure finds necessary.

(3) In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, that should be imposed if the disciplinary penalty is set aside, the Board of Medical Licensure may investigate and consider all activities of the petitioner since the disciplinary action was taken against him, the offense for which he was disciplined, his activity during the time his certificate was in good standing, his general reputation for truth, professional ability and good character; and it may require the petitioner to pass an oral examination.

(4) The investigation shall require the petitioner to undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each petitioner shall submit a full set of the petitioner's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.
Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the petitioner, any additional information that may be required by the department, and a form signed by the petitioner consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the petitioner, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

(5) The Secretary-Treasurer of the Board of Medical Licensure shall enter into his records of the case all actions of
the board in setting aside a disciplinary penalty under this
section and he shall certify notices to the proper court clerk.
The clerk shall make such changes on his records as may be
necessary.

SECTION 6. The following shall be codified as Section
73-26-7, Mississippi Code of 1972:

73-26-7. (1) For the purposes of this section, the term
"sexual activity" means any of the activities described in
subsection (2)(a), (b) or (c) of Section 73-26-9.

(2) Any physician assistant licensed under this chapter who
engages in sexual activity, whether consensual or nonconsensual,
with a patient of the physician assistant while a physician
assistant-patient relationship exists with the patient, or within
twelve (12) months after the end of a physician assistant-patient
relationship with the patient, is guilty of a felony and, upon
conviction thereof, shall be punished by a fine of not more than
One Hundred Thousand Dollars ($100,000.00) or by commitment to the
Department of Corrections for not more than five (5) years, or
both, and the court shall permanently revoke the license of the
physician assistant.

(3) It is not a violation of this section if the physician
assistant and the patient engaged in consensual sexual activity
before the existence of the physician assistant-patient
relationship.
SECTION 7. The following shall be codified as Section 73-26-9, Mississippi Code of 1972:

73-26-9. (1) As used in this section, the following terms shall be defined as provided in this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed as a physician assistant under this chapter.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when he or she
engages in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;
(b) Oral to genital contact;
(c) Genital to anal contact or oral to anal contact;
(d) Kissing in a romantic or sexual manner;
(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
(f) Examination or touching of genitals without using gloves;
(g) Not allowing a patient the privacy to dress or undress;
(h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;
(i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
(j) Soliciting a date;
(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.

(3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:
(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in Section 45-33-23(h).

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician assistant;

(f) The nature of the patient's health problem;

(g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the
conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) It is not a violation of this section if the physician assistant and the patient or the physician assistant and a key third party engaged in any of the behaviors described in subsection (2) of this section before the existence of the physician assistant-patient relationship.

SECTION 8. The following shall be codified as Section 73-26-11, Mississippi Code of 1972:

73-26-11. (1) If a licensee under this chapter is convicted of or enters a plea of guilty or nolo contendere to violating Section 73-26-7, and all appeals for the conviction have been finally concluded or the time for an appeal from the conviction has expired, the board shall permanently revoke the license of the licensee without a hearing and the license may never be reinstated.

(2) If the board finds that a licensee has engaged in sexual misconduct that is prohibited under Section 73-26-11, after notice and a hearing as provided by law, the board shall permanently revoke the license of the licensee and the license may never be reinstated.
SECTION 9. The following shall be codified as Section 73-27-21, Mississippi Code of 1972:

73-27-21. (1) For the purposes of this section, the term "sexual activity" means any of the activities described in subsection (2)(a), (b) or (c) of Section 73-27-23.

(2) Any podiatrist licensed under this chapter who engages in sexual activity, whether consensual or nonconsensual, with a patient of the podiatrist while a podiatrist-patient relationship exists with the patient, or within twelve (12) months after the end of a podiatrist-patient relationship with the patient, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than One Hundred Thousand Dollars ($100,000.00) or by commitment to the Department of Corrections for not more than five (5) years, or both, and the court shall permanently revoke the license of the podiatrist.

(3) It is not a violation of this section if the podiatrist and the patient engaged in consensual sexual activity before the existence of the podiatrist-patient relationship.

SECTION 10. The following shall be codified as Section 73-27-23, Mississippi Code of 1972:

73-27-23. (1) As used in this section, the following terms shall be defined as provided in this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment
without a termination of the podiatrist-patient relationship. The
determination of when a person is a patient is made on a
case-by-case basis with consideration given to a number of
factors, including the nature, extent and context of the
professional relationship between the podiatrist and the person.
The fact that a person is not actively receiving treatment or
professional services is not the sole determining factor.

(b) "Podiatrist" means a person licensed to practice
podiatric medicine under this chapter.

(c) "Key third party" means a person in a close
personal relationship with the patient and includes, but is not
limited to, spouses, partners, parents, siblings, children,
guardians and proxies.

(2) A podiatrist shall not engage in sexual misconduct with
a current patient or a key third party. A podiatrist engages in
sexual misconduct when he or she engages in the following
behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;
(b) Oral to genital contact;
(c) Genital to anal contact or oral to anal contact;
(d) Kissing in a romantic or sexual manner;
(e) Touching breasts, genitals or any sexualized body
part for any purpose other than appropriate examination or
treatment;
(f) Examination or touching of genitals without using gloves;
(g) Not allowing a patient the privacy to dress or undress;
(h) Encouraging the patient to masturbate in the presence of the podiatrist or masturbation by the podiatrist while the patient is present;
(i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
(j) Soliciting a date;
(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the podiatrist.

(3) A podiatrist shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the podiatrist:
   (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
   (b) Uses or exploits privileged information or access to privileged information to meet the podiatrist's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in Section 45-33-23(h).

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and
will consider a number of factors, including, but not limited to, the following:

(a) Documentation of formal termination;
(b) Transfer of the patient's care to another health care provider;
(c) The length of time that has passed;
(d) The length of time of the professional relationship;
(e) The extent to which the patient has confided personal or private information to the podiatrist;
(f) The nature of the patient's health problem;
(g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) It is not a violation of this section if the podiatrist and the patient or the podiatrist and a key third party engaged in any of the behaviors described in subsection (2) of this section before the existence of the podiatrist-patient relationship.
SECTION 11. Section 73-27-13, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

(g) Obtaining or attempting to obtain a license by fraud or deception.
(h) Unprofessional conduct, which includes, but is not limited to:

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

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

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

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

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

(vi) Use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the licensing requirements, including the signing in his professional capacity any certificate that is known to be false at the time he makes or signs such certificate.
(vii) Failing to identify a podiatrist's school of practice in all professional uses of his name by use of his earned degree or a description of his school of practice.

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

(j) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(k) Engaging in sexual misconduct that is prohibited under Section 73-27-23.

(2) If a licensee is convicted of or enters a plea of guilty or nolo contendere to violating Section 73-27-21, and all appeals for the conviction have been finally concluded or the time for an appeal from the conviction has expired, the board shall permanently revoke the license of the licensee without a hearing and the license may never be reinstated.

(3) If the board finds that a licensee has engaged in sexual misconduct that is prohibited under Section 73-27-23, after notice and a hearing as provided by law, the board shall permanently
revoke the license of the licensee and the license may never be reinstated.

(***4) Upon the nonissuance, suspension or revocation of a license to practice podiatry, the board may, in its discretion and with the advice of the advisory committee, reissue a license after a lapse of six (6) months. However, any person whose license has been permanently revoked under the provisions of subsection (2) or (3) of this section shall not be authorized to have his or her license reinstated. No advertising shall be permitted except regular professional cards.

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

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

SECTION 12. Section 73-27-16, Mississippi Code of 1972, is amended as follows:

73-27-16. (1) A person whose license to practice podiatry has been revoked or suspended may petition the Mississippi State Board of Medical Licensure to reinstate this license after a period of not less than one (1) year has elapsed from the date of the revocation or suspension. However, any person whose license has been permanently revoked under the provisions of subsection (2) or (3) of Section 73-27-13 shall not be authorized to have his or her license reinstated. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(2) The petition shall be accompanied by two (2) or more verified recommendations from podiatrists licensed by the Board of Medical Licensure to which the petition is addressed and by two (2) or more recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed and such facts as may be required by the board.

The petition may be heard at the next regular meeting of the Board of Medical Licensure but not earlier than thirty (30) days after the petition was filed. No petition shall be considered
while the petitioner is under sentence for any criminal offense, including any period during which he is under probation or parole. The hearing may be continued from time to time as the Board of Medical Licensure finds necessary. Any final action by the board on a petition under this section shall be made with the advice of the advisory committee.

(3) In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, which should be imposed if the disciplinary penalty is set aside, the Board of Medical Licensure may investigate and consider all activities of the petitioner since the disciplinary action was taken against him, the offense for which he was disciplined, his activity during the time his certificate was in good standing, his general reputation for truth, professional ability and good character; and it may require the petitioner to pass an oral examination.

(4) The Secretary-Treasurer of the Board of Medical Licensure shall enter into his records of the case all actions of the Board of Medical Licensure in setting aside a disciplinary penalty under this section and he shall certify notices to the proper court clerk. The clerk shall make such changes on his records as may be necessary.

SECTION 13. The following shall be codified as Section 73-71-38, Mississippi Code of 1972:
73-71-38. (1) For the purposes of this section, the term "sexual activity" means any of the activities described in subsection (2)(a), (b) or (c) of Section 73-71-38.1.

(2) Any acupuncture practitioner licensed under this chapter who engages in sexual activity, whether consensual or nonconsensual, with a patient of the acupuncture practitioner while an acupuncture practitioner-patient relationship exists with the patient, or within twelve (12) months after the end of an acupuncture practitioner-patient relationship with the patient, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than One Hundred Thousand Dollars ($100,000.00) or by commitment to the Department of Corrections for not more than five (5) years, or both, and the court shall permanently revoke the license of the acupuncture practitioner.

(3) It is not a violation of this section if the acupuncture practitioner and the patient engaged in consensual sexual activity before the existence of the acupuncture practitioner-patient relationship.

SECTION 14. The following shall be codified as Section 73-71-38.1, Mississippi Code of 1972:

73-71-38.1. (1) As used in this section, the following terms shall be defined as provided in this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment
without a termination of the acupuncture practitioner-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the acupuncture practitioner and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Acupuncture practitioner" means a person licensed to practice acupuncture under this chapter.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An acupuncture practitioner shall not engage in sexual misconduct with a current patient or a key third party. An acupuncture practitioner engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;
(b) Oral to genital contact;
(c) Genital to anal contact or oral to anal contact;
(d) Kissing in a romantic or sexual manner;
(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;

(f) Examination or touching of genitals without using gloves;

(g) Not allowing a patient the privacy to dress or undress;

(h) Encouraging the patient to masturbate in the presence of the acupuncture practitioner or masturbation by the acupuncture practitioner while the patient is present;

(i) Offering to provide practice-related services in exchange for sexual favors;

(j) Soliciting a date;

(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the acupuncture practitioner.

(3) An acupuncture practitioner shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the acupuncture practitioner:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the acupuncture practitioner's personal or sexual needs.
(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in Section 45-33-23(h).

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

(a) Documentation of formal termination;
(b) Transfer of the patient's care to another health care provider;
(c) The length of time that has passed;
(d) The length of time of the professional relationship;
(e) The extent to which the patient has confided personal or private information to the acupuncture practitioner;
(f) The nature of the patient's health problem;
(g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.
(8) It is not a violation of this section if the acupuncture practitioner and the patient or the acupuncture practitioner and a key third party engaged in any of the behaviors described in subsection (2) of this section before the existence of the acupuncture practitioner-patient relationship.

SECTION 15. Section 73-71-33, Mississippi Code of 1972, is amended as follows:

73-71-33. The following acts constitute grounds for which the board may initiate disciplinary actions:

(a) Attempting to obtain, or renewing a license to practice acupuncture by bribery or misinterpretation;

(b) Having a license to practice acupuncture revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state or territory for reasons that would preclude licensure in this state;

(c) Being convicted or found guilty, regardless of adjudication, in any jurisdiction of a felony, or a crime of moral turpitude, or a crime that directly relates to acupuncture. For the purposes of this paragraph, a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(d) Advertising, practicing, or attempting to practice under a name other than one's own;

(e) The use of advertising or solicitation that is false or misleading;
(f) Aiding, assisting, procuring, employing or advertising an unlicensed person to practice acupuncture contrary to this chapter or a rule of the board;

(g) Failing to perform any statutory or legal obligation placed upon an acupuncture practitioner;

(h) Making or filing a report that the licensee knows to be false, intentionally or negligently failing to file a report required by state or federal law, willfully impeding or obstructing that filing or inducing another person to do so.

Those reports shall include only those that are signed in the capacity of an acupuncture practitioner;

(i) Exercising coercion, intimidation or undue influence in entering into sexual relations with a patient, or continuing the patient-practitioner relationship with a patient with whom the licensee has sexual relations, if those sexual relations cause the licensee to perform services incompetently. This paragraph shall not apply to sexual relations between acupuncture practitioners and their spouses;

(j) Making deceptive, untrue or fraudulent misrepresentations in the practice of acupuncture;

(k) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation or undue influence, or a form of overreaching conduct;

(l) Failing to keep written medical records justifying the course of treatment of the patient;
(m) Exercising undue influence on the patient to exploit the patient for financial gain of the licensee or of a third party;
(n) Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or intemperate use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;
(o) Malpractice or the failure to practice acupuncture to that level of care, skill and treatment that is recognized by a reasonably prudent similar practitioner of acupuncture as being acceptable under similar conditions and circumstances;
(p) Practicing or offering to practice beyond the scope permitted by law or accepting or performing professional responsibilities that the licensee knows or has reason to know that he or she is not qualified by training, experience or certification to perform;
(q) Delegating professional responsibilities to a person when the licensee delegating those responsibilities knows, or has reason to know, that the person is not qualified by training, experience or licensure to perform them;
(r) Violating any provision of this chapter, a rule of the board, or a lawful order of the board previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board;
(s) Conspiring with another to commit an act, or committing an act, that coerces, intimidates or precludes another licensee from lawfully advertising or providing his or her services;

(t) Fraud or deceit, or gross negligence, incompetence or misconduct in the operation of a course of study;

(u) Failing to comply with state, county or municipal regulations or reporting requirements relating to public health and the control of contagious and infectious disease;

(v) Failing to comply with any rule of the board relating to health and safety, including, but not limited to, sterilization of equipment and the disposal of potentially infectious materials;

(w) Incompetence, gross negligence or other malpractice in the practice of acupuncture;

(x) Aiding the unlawful practice of acupuncture;

(y) Fraud or dishonesty in the application or reporting of any test for disease;

(z) Failure to report, as required by law, or making false or misleading report of, any contagious or infectious disease;

(aa) Failure to keep accurate patient records; *

(bb) Failure to permit the board or its agents to enter and inspect acupuncture premises and equipment as set by rules promulgated by the board *
Engaging in sexual misconduct that is prohibited under Section 73-71-38.1.

SECTION 16. Section 73-71-35, Mississippi Code of 1972, is amended as follows:

73-71-35. (1) Disciplinary proceedings under this chapter shall be conducted in the same manner as other disciplinary proceedings are conducted by the State Board of Medical Licensure.

(2) When the board finds any person guilty of any of the acts set forth in Section 73-71-33, it may then enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the board an application for licensure;
(b) Revocation or suspension of a license;
(c) Restriction of practice;
(d) Imposition of an administrative fine not to exceed One Thousand Dollars ($1,000.00) for each count or separate offense;
(e) Issuance of a reprimand;
(f) Placement of the acupuncture practitioner on probation for a period of time and subject to the conditions as the board may specify.

(3) If a licensee is convicted of or enters a plea of guilty or nolo contendere to violating Section 73-71-38, and all appeals for the conviction have been finally concluded or the time for an appeal from the conviction has expired, the board shall...
permanently revoke the license of the licensee without a hearing
and the license may never be reinstated.

(4) If the board finds that a licensee has engaged in sexual
misconduct that is prohibited under Section 73-71-38.1, after
notice and a hearing as provided by law, the board shall
permanently revoke the license of the licensee and the license may
never be reinstated.

(* * *) In enforcing this chapter, upon finding of the
board that probable cause exists to believe that the licensee is
unable to serve as an acupuncture practitioner because of
committing any of the acts set forth in Section 73-71-33 or any of
the crimes set forth in Section 73-71-37, the board shall have to
issue an order to compel the licensee to submit to a mental or
physical examination by a physician designated by the board. If
the licensee refuses to comply with the order, the board's order
directing the examination may be enforced by filing a petition for
enforcement in any court of competent jurisdiction. The licensee
against whom the petition is filed shall not be named or
identified by initials in any public court record or document, and
the proceedings shall be closed to the public unless the licensee
stipulates otherwise. The board shall be entitled to the summary
procedure provided in applicable state law. An acupuncture
practitioner affected under this subsection shall at reasonable
intervals be afforded an opportunity to demonstrate that he or she
can resume the competent practice of acupuncture with reasonable
skill and safety of the patients. In any proceeding under this subsection, neither the record of proceedings nor the orders entered by the board shall be used against the acupuncture practitioner in any other proceeding.

( * * * ) The board shall not reinstate the license of an acupuncture practitioner, or cause a license to be issued to a person it has deemed to be unqualified, until such time as the board is satisfied that he or she has complied with all the terms and conditions set forth in the final order and that he or she is capable of safely engaging in the practice of acupuncture.

SECTION 17. Section 73-71-49, Mississippi Code of 1972, is amended as follows:

73-71-49. (1) A suspended license is subject to expiration and shall be renewed as provided in this act, but while the license remains suspended, and until it is reinstated, the renewal does not entitle the practice of acupuncture, or any other activity or conduct in violation of the order of the board by which the license was suspended.

(2) A revoked license is subject to expiration as provided in this chapter but it may not be renewed. If it is reinstated after its expiration, the former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal fee date, if any, accrued at the time of its expiration. Any person whose license has been permanently revoked under the provisions of
Section 73-71-35(3) or (4) shall not be authorized to have his or her license reinstated.

SECTION 18. The following shall be codified as Section 41-58-9, Mississippi Code of 1972:

41-58-9. (1) For the purposes of this section, the term "sexual activity" means any of the activities described in subsection (2)(a), (b) or (c) of Section 41-58-11.

(2) Any radiologist assistant licensed under Section 41-58-7 who engages in sexual activity, whether consensual or nonconsensual, with a patient of the radiologist assistant while a radiologist assistant-patient relationship exists with the patient, or within twelve (12) months after the end of a radiologist assistant-patient relationship with the patient, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than One Hundred Thousand Dollars ($100,000.00) or by commitment to the Department of Corrections for not more than five (5) years, or both, and the court shall permanently revoke the license of the radiologist assistant.

(3) It is not a violation of this section if the radiologist assistant and the patient engaged in consensual sexual activity before the existence of the radiologist assistant-patient relationship.

SECTION 19. The following shall be codified as Section 41-58-11, Mississippi Code of 1972:
41-58-11. (1) As used in this section, the following terms shall be defined as provided in this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the radiologist assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the radiologist assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Radiologist assistant" means a person licensed to practice as a radiologist assistant under Section 41-58-7.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A radiologist assistant shall not engage in sexual misconduct with a current patient or a key third party. A radiologist assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;
(b) Oral to genital contact;
(c) Genital to anal contact or oral to anal contact;
(d) Kissing in a romantic or sexual manner;
(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
(f) Examination or touching of genitals without using gloves;
(g) Not allowing a patient the privacy to dress or undress;
(h) Encouraging the patient to masturbate in the presence of the radiologist assistant or masturbation by the radiologist assistant while the patient is present;
(i) Offering to provide practice-related services in exchange for sexual favors;
(j) Soliciting a date;
(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the radiologist assistant.

(3) A radiologist assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the radiologist assistant:
(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
(b) Uses or exploits privileged information or access to privileged information to meet the radiologist assistant's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in Section 45-33-23(h).

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

   (a) Documentation of formal termination;
   (b) Transfer of the patient's care to another health care provider;
   (c) The length of time that has passed;
   (d) The length of time of the professional relationship;
   (e) The extent to which the patient has confided personal or private information to the radiologist assistant;
   (f) The nature of the patient's health problem;
   (g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) It is not a violation of this section if the radiologist assistant and the patient or the radiologist assistant and a key third party engaged in any of the behaviors described in subsection (2) of this section before the existence of the radiologist assistant-patient relationship.

SECTION 20. The following shall be codified as Section 41-58-13, Mississippi Code of 1972:

41-58-13. (1) If a licensee under Section 41-58-7 is convicted of or enters a plea of guilty or nolo contendere to violating Section 41-58-9, and all appeals for the conviction have been finally concluded or the time for an appeal from the conviction has expired, the board shall permanently revoke the license of the licensee without a hearing and the license may never be reinstated.

(2) If the board finds that a licensee has engaged in sexual misconduct that is prohibited under Section 41-58-11, after notice and a hearing as provided by law, the board shall permanently revoke the license of the licensee and the license may never be reinstated.

SECTION 21. This act shall take effect and be in force from and after July 1, 2017.