

By: Representative Smith

To: Judiciary B

## HOUSE BILL NO. 340

1 AN ACT TO CREATE NEW SECTION 73-25-41, MISSISSIPPI CODE OF  
2 1972, TO PROVIDE THAT IT IS A FELONY FOR A LICENSED PHYSICIAN TO  
3 ENGAGE IN SEXUAL ACTIVITY, WHETHER CONSENSUAL OR NONCONSENSUAL,  
4 WITH A PATIENT OF THE PHYSICIAN WHILE A PHYSICIAN-PATIENT  
5 RELATIONSHIP EXISTS WITH THE PATIENT, OR WITHIN TWELVE MONTHS  
6 AFTER THE END OF A PHYSICIAN-PATIENT RELATIONSHIP WITH THE  
7 PATIENT; TO CREATE NEW SECTION 73-25-43, MISSISSIPPI CODE OF 1972,  
8 TO PROHIBIT PHYSICIANS FROM ENGAGING IN SEXUAL MISCONDUCT WITH A  
9 CURRENT PATIENT OR A KEY THIRD PARTY AND CERTAIN FORMER PATIENTS  
10 AND KEY THIRD PARTIES; TO AMEND SECTION 73-25-29, MISSISSIPPI CODE  
11 OF 1972, TO PROVIDE THAT ENGAGING IN PROHIBITED SEXUAL MISCONDUCT  
12 IS GROUNDS FOR DISCIPLINARY ACTION AGAINST A PHYSICIAN BY THE  
13 STATE BOARD OF MEDICAL LICENSURE; TO AMEND SECTION 73-25-30,  
14 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A PHYSICIAN IS  
15 CONVICTED OF VIOLATING SECTION 73-25-41, THE BOARD SHALL  
16 PERMANENTLY REVOKE THE LICENSE OF THE PHYSICIAN AND THE LICENSE  
17 MAY NEVER BE REINSTATED; TO PROVIDE THAT IF THE BOARD FINDS THAT A  
18 PHYSICIAN HAS ENGAGED IN PROHIBITED SEXUAL MISCONDUCT, THE BOARD  
19 SHALL PERMANENTLY REVOKE THE LICENSE OF THE PHYSICIAN AND THE  
20 LICENSE MAY NEVER BE REINSTATED; TO DELETE THE CAP ON THE AMOUNT  
21 OF COSTS OF A DISCIPLINARY HEARING THAT MAY BE ASSESSED TO A  
22 LICENSEE BY THE BOARD; TO AMEND SECTION 73-25-32, MISSISSIPPI CODE  
23 OF 1972, TO PROVIDE THAT ANY PHYSICIAN WHOSE LICENSE HAS BEEN  
24 PERMANENTLY REVOKED UNDER THE PROVISIONS OF THE PRECEDING SECTION  
25 SHALL NOT BE AUTHORIZED TO HAVE HIS OR HER LICENSE REINSTATED; TO  
26 CREATE NEW SECTION 73-26-7, MISSISSIPPI CODE OF 1972, TO PROVIDE  
27 THAT IT IS A FELONY FOR A LICENSED PHYSICIAN ASSISTANT TO ENGAGE  
28 IN SEXUAL RELATIONS, WHETHER CONSENSUAL OR NONCONSENSUAL, WITH A  
29 PATIENT OF THE PHYSICIAN ASSISTANT WHILE A PHYSICIAN  
30 ASSISTANT-PATIENT RELATIONSHIP EXISTS WITH THE PATIENT, OR WITHIN  
31 TWELVE MONTHS AFTER THE END OF A PHYSICIAN ASSISTANT-PATIENT  
32 RELATIONSHIP WITH THE PATIENT; TO CREATE NEW SECTION 73-26-9,  
33 MISSISSIPPI CODE OF 1972, TO PROHIBIT PHYSICIAN ASSISTANTS FROM  
34 ENGAGING IN SEXUAL MISCONDUCT WITH A CURRENT PATIENT OR A KEY



35 THIRD PARTY AND CERTAIN FORMER PATIENTS AND KEY THIRD PARTIES; TO  
36 CREATE NEW SECTION 73-26-11, MISSISSIPPI CODE OF 1972, TO PROVIDE  
37 THAT IF A PHYSICIAN ASSISTANT IS CONVICTED OF VIOLATING SECTION  
38 73-26-7, THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE  
39 PHYSICIAN ASSISTANT AND THE LICENSE MAY NEVER BE REINSTATED; TO  
40 PROVIDE THAT IF THE BOARD FINDS THAT A PHYSICIAN ASSISTANT HAS  
41 ENGAGED IN PROHIBITED SEXUAL MISCONDUCT, THE BOARD SHALL  
42 PERMANENTLY REVOKE THE LICENSE OF THE PHYSICIAN ASSISTANT AND THE  
43 LICENSE MAY NEVER BE REINSTATED; TO CREATE NEW SECTION 73-27-21,  
44 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS A FELONY FOR A  
45 LICENSED PODIATRIST TO ENGAGE IN SEXUAL RELATIONS, WHETHER  
46 CONSENSUAL OR NONCONSENSUAL, WITH A PATIENT OF THE PODIATRIST  
47 WHILE A PODIATRIST-PATIENT RELATIONSHIP EXISTS WITH THE PATIENT,  
48 OR WITHIN TWELVE MONTHS AFTER THE END OF A PODIATRIST-PATIENT  
49 RELATIONSHIP WITH THE PATIENT; TO CREATE NEW SECTION 73-27-23,  
50 MISSISSIPPI CODE OF 1972, TO PROHIBIT PODIATRISTS FROM ENGAGING IN  
51 SEXUAL MISCONDUCT WITH A CURRENT PATIENT OR A KEY THIRD PARTY AND  
52 CERTAIN FORMER PATIENTS AND KEY THIRD PARTIES; TO AMEND SECTION  
53 73-27-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ENGAGING IN  
54 PROHIBITED SEXUAL MISCONDUCT IS GROUNDS FOR DISCIPLINARY ACTION  
55 AGAINST A PODIATRIST BY THE STATE BOARD OF MEDICAL LICENSURE; TO  
56 PROVIDE THAT IF A PODIATRIST IS CONVICTED OF VIOLATING SECTION  
57 73-27-21, THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE  
58 PODIATRIST AND THE LICENSE MAY NEVER BE REINSTATED; TO PROVIDE  
59 THAT IF THE BOARD FINDS THAT A PODIATRIST HAS ENGAGED IN  
60 PROHIBITED SEXUAL MISCONDUCT, THE BOARD SHALL PERMANENTLY REVOKE  
61 THE LICENSE OF THE PODIATRIST AND THE LICENSE MAY NEVER BE  
62 REINSTATED; TO AMEND SECTION 73-27-16, MISSISSIPPI CODE OF 1972,  
63 TO PROVIDE THAT ANY PODIATRIST WHOSE LICENSE HAS BEEN PERMANENTLY  
64 REVOKED UNDER THE PROVISIONS OF THE PRECEDING SECTION SHALL NOT BE  
65 AUTHORIZED TO HAVE HIS OR HER LICENSE REINSTATED; TO CREATE NEW  
66 SECTION 73-71-38, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS  
67 A FELONY FOR A LICENSED ACUPUNCTURE PRACTITIONER TO ENGAGE IN  
68 SEXUAL RELATIONS, WHETHER CONSENSUAL OR NONCONSENSUAL, WITH A  
69 PATIENT OF THE ACUPUNCTURE PRACTITIONER WHILE AN ACUPUNCTURE  
70 PRACTITIONER-PATIENT RELATIONSHIP EXISTS WITH THE PATIENT, OR  
71 WITHIN TWELVE MONTHS AFTER THE END OF AN ACUPUNCTURE  
72 PRACTITIONER-PATIENT RELATIONSHIP WITH THE PATIENT; TO CREATE NEW  
73 SECTION 73-71-38.1, MISSISSIPPI CODE OF 1972, TO PROHIBIT  
74 ACUPUNCTURE PRACTITIONERS FROM ENGAGING IN SEXUAL MISCONDUCT WITH  
75 A CURRENT PATIENT OR A KEY THIRD PARTY AND CERTAIN FORMER PATIENTS  
76 AND KEY THIRD PARTIES; TO AMEND SECTION 73-71-33, MISSISSIPPI CODE  
77 OF 1972, TO PROVIDE THAT ENGAGING IN PROHIBITED SEXUAL MISCONDUCT  
78 IS GROUNDS FOR DISCIPLINARY ACTION AGAINST AN ACUPUNCTURE  
79 PRACTITIONER BY THE STATE BOARD OF MEDICAL LICENSURE; TO AMEND  
80 SECTION 73-71-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF AN  
81 ACUPUNCTURE PRACTITIONER IS CONVICTED OF VIOLATING SECTION  
82 73-71-38, THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE  
83 ACUPUNCTURE PRACTITIONER AND THE LICENSE MAY NEVER BE REINSTATED;  
84 TO PROVIDE THAT IF THE BOARD FINDS THAT AN ACUPUNCTURE  
85 PRACTITIONER HAS ENGAGED IN PROHIBITED SEXUAL MISCONDUCT, THE



86 BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE ACUPUNCTURE  
87 PRACTITIONER AND THE LICENSE MAY NEVER BE REINSTATED; TO AMEND  
88 SECTION 73-71-49, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY  
89 ACUPUNCTURE PRACTITIONER WHOSE LICENSE HAS BEEN PERMANENTLY  
90 REVOKED UNDER THE PROVISIONS OF THE PRECEDING SECTION SHALL NOT BE  
91 AUTHORIZED TO HAVE HIS OR HER LICENSE REINSTATED; TO CREATE NEW  
92 SECTION 41-58-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS A  
93 FELONY FOR A LICENSED RADIOLOGIST ASSISTANT TO ENGAGE IN SEXUAL  
94 ACTIVITY, WHETHER CONSENSUAL OR NONCONSENSUAL, WITH A PATIENT OF  
95 THE RADIOLOGIST ASSISTANT WHILE A RADIOLOGIST ASSISTANT-PATIENT  
96 RELATIONSHIP EXISTS WITH THE PATIENT, OR WITHIN TWELVE MONTHS  
97 AFTER THE END OF A RADIOLOGIST ASSISTANT-PATIENT RELATIONSHIP WITH  
98 THE PATIENT; TO CREATE NEW SECTION 41-58-11, MISSISSIPPI CODE OF  
99 1972, TO PROHIBIT RADIOLOGIST ASSISTANTS FROM ENGAGING IN SEXUAL  
100 MISCONDUCT WITH A CURRENT PATIENT OR A KEY THIRD PARTY AND CERTAIN  
101 FORMER PATIENTS AND KEY THIRD PARTIES; TO CREATE NEW SECTION  
102 41-58-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A  
103 RADIOLOGIST ASSISTANT IS CONVICTED OF VIOLATING SECTION 41-58-9,  
104 THE BOARD SHALL PERMANENTLY REVOKE THE LICENSE OF THE RADIOLOGIST  
105 ASSISTANT AND THE LICENSE MAY NEVER BE REINSTATED; TO PROVIDE THAT  
106 IF THE BOARD FINDS THAT A RADIOLOGIST ASSISTANT HAS ENGAGED IN  
107 PROHIBITED SEXUAL MISCONDUCT, THE BOARD SHALL PERMANENTLY REVOKE  
108 THE LICENSE OF THE RADIOLOGIST ASSISTANT AND THE LICENSE MAY NEVER  
109 BE REINSTATED; AND FOR RELATED PURPOSES.

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

111 **SECTION 1.** The following shall be codified as Section  
112 73-25-41, Mississippi Code of 1972:

113 73-25-41. (1) For the purposes of this section, the term  
114 "sexual activity" means any of the activities described in  
115 subsection (2) (a), (b) or (c) of Section 73-25-43.

116 (2) Any physician licensed under this chapter who engages in  
117 sexual activity, whether consensual or nonconsensual, with a  
118 patient of the physician while a physician-patient relationship  
119 exists with the patient, or within twelve (12) months after the  
120 end of a physician-patient relationship with the patient, is  
121 guilty of a felony and, upon conviction thereof, shall be punished  
122 by a fine of not more than One Hundred Thousand Dollars



123 (\$100,000.00) or by commitment to the Department of Corrections  
124 for not more than five (5) years, or both, and the court shall  
125 permanently revoke the license of the physician.

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

129 **SECTION 2.** The following shall be codified as Section  
130 73-25-43, Mississippi Code of 1972:

131 73-25-43. (1) As used in this section, the following terms  
132 shall be defined as provided in this section unless the context  
133 clearly requires otherwise:

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

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

145 (c) "Key third party" means a person in a close  
146 personal relationship with the patient and includes, but is not



147 limited to, spouses, partners, parents, siblings, children,  
148 guardians and proxies.

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

153 (a) Sexual intercourse or genital to genital contact;

154 (b) Oral to genital contact;

155 (c) Genital to anal contact or oral to anal contact;

156 (d) Kissing in a romantic or sexual manner;

157 (e) Touching breasts, genitals or any sexualized body  
158 part for any purpose other than appropriate examination or  
159 treatment;

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

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

164 (h) Encouraging the patient to masturbate in the  
165 presence of the physician or masturbation by the physician while  
166 the patient is present;

167 (i) Offering to provide practice-related services, such  
168 as medications, in exchange for sexual favors;

169 (j) Soliciting a date;

170 (k) Engaging in a conversation regarding the sexual  
171 history, preferences or fantasies of the physician.



172 (3) A physician shall not engage in any of the conduct  
173 described in subsection (2) of this section with a former patient  
174 or key third party if the physician:

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

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

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

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

187 (a) Documentation of formal termination;

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

190 (c) The length of time that has passed;

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

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

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



196 (g) The degree of emotional dependence and  
197 vulnerability.

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

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

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

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

211 73-25-29. The grounds for the nonissuance, suspension,  
212 revocation or restriction of a license or the denial of  
213 reinstatement or renewal of a license are:

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

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

219 (3) Administering, dispensing or prescribing any  
220 narcotic drug, or any other drug having addiction-forming or



221 addiction-sustaining liability otherwise than in the course of  
222 legitimate professional practice.

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

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

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

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

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

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

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

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





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

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

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

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

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

266 (9) The refusal of a licensing authority of another  
267 state or jurisdiction to issue or renew a license, permit or  
268 certificate to practice medicine in that jurisdiction or the  
269 revocation, suspension or other restriction imposed on a license,  
270 permit or certificate issued by such licensing authority which



271 prevents or restricts practice in that jurisdiction, a certified  
272 copy of the disciplinary order or action taken by the other state  
273 or jurisdiction being prima facie evidence thereof,  
274 notwithstanding the pendency of any appeal.

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

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

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



295 (13) Violation of any provision(s) of the Medical  
296 Practice Act or the rules and regulations of the board or of any  
297 order, stipulation or agreement with the board.

298 (14) Violation(s) of the provisions of Sections  
299 41-121-1 through 41-121-9 relating to deceptive advertisement by  
300 health care practitioners.

301 (15) Performing or inducing an abortion on a woman in  
302 violation of any provision of Sections 41-41-131 through  
303 41-41-145.

304 In addition to the grounds specified above, the board shall  
305 be authorized to suspend the license of any licensee for being out  
306 of compliance with an order for support, as defined in Section  
307 93-11-153. The procedure for suspension of a license for being  
308 out of compliance with an order for support, and the procedure for  
309 the reissuance or reinstatement of a license suspended for that  
310 purpose, and the payment of any fees for the reissuance or  
311 reinstatement of a license suspended for that purpose, shall be  
312 governed by Section 93-11-157 or 93-11-163, as the case may be.  
313 If there is any conflict between any provision of Section  
314 93-11-157 or 93-11-163 and any provision of this chapter, the  
315 provisions of Section 93-11-157 or 93-11-163, as the case may be,  
316 shall control.

317 **SECTION 4.** Section 73-25-30, Mississippi Code of 1972, is  
318 amended as follows:



319 73-25-30. (1) The Mississippi State Board of Medical  
320 Licensure, in exercising its authority under the provisions of  
321 Section 73-25-29, shall have the power to discipline the holder of  
322 a license who has been found by the board in violation of that  
323 statute after notice and a hearing as provided by law, and the  
324 licensee shall be disciplined as follows:

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

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

329 (c) By revoking his license, or

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

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

338 (3) If the board finds that a licensee has engaged in sexual  
339 misconduct that is prohibited under Section 73-25-43, after notice  
340 and a hearing as provided by law, the board shall permanently  
341 revoke the license of the licensee and the license may never be  
342 reinstated.



343 ( \* \* \*4) Upon the execution of a disciplinary order by the  
344 board, either following a hearing or in lieu of a hearing, the  
345 board, in addition to the disciplinary powers specified in  
346 subsection (1) of this section, may assess the licensee for those  
347 reasonable costs that are expended by the board in the  
348 investigation and conduct of a proceeding for licensure  
349 disciplinary action including, but not limited to, the cost of  
350 process service, court reporters, witness fees, expert witnesses,  
351 investigators, and other related expenses. Money collected by the  
352 board under this section shall be deposited to the credit of the  
353 special fund of the board to reimburse the existing current year  
354 appropriated budget.

355 ( \* \* \*5) An assessment of costs under this section shall be  
356 paid to the board by the licensee, upon the expiration of the  
357 period allowed for appeals under Section 73-25-27, or may be paid  
358 sooner if the licensee elects. \* \* \*

359 ( \* \* \*6) When an assessment of costs by the board against a  
360 licensee in accordance with this section is not paid by the  
361 licensee when due under this section, the licensee shall be  
362 prohibited from practicing medicine until the full amount is paid.  
363 In addition, the board may institute and maintain proceedings in  
364 its name for enforcement of payment in the Chancery Court of the  
365 First Judicial District of Hinds County. When those proceedings  
366 are instituted, the board shall certify the record of its  
367 proceedings, together with all documents and evidence, to the



368 chancery court. The matter shall be heard in due course by the  
369 court, which shall review the record and make its determination  
370 thereon. The hearing on the matter, in the discretion of the  
371 chancellor, may be tried in vacation.

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

374 73-25-32. (1) A person whose license to practice medicine  
375 or osteopathy has been revoked or suspended may petition the  
376 Mississippi State Board of Medical Licensure to reinstate this  
377 license after a period of not less than one (1) year has elapsed  
378 from the date of the revocation or suspension. However, any  
379 person whose license has been permanently revoked under the  
380 provisions of Section 73-25-30(2) or (3) shall not be authorized  
381 to have his or her license reinstated. The procedure for the  
382 reinstatement of a license that is suspended for being out of  
383 compliance with an order for support, as defined in Section  
384 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as  
385 the case may be.

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



393           The petition may be heard at the next regular meeting of the  
394 Board of Medical Licensure but not earlier than thirty (30) days  
395 after the petition was filed. No petition shall be considered  
396 while the petitioner is under sentence for any criminal offense,  
397 including any period during which he is under probation or parole.  
398 The hearing may be continued from time to time as the Board of  
399 Medical Licensure finds necessary.

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

409           (4) The investigation shall require the petitioner to  
410 undergo a fingerprint-based criminal history records check of the  
411 Mississippi central criminal database and the Federal Bureau of  
412 Investigation criminal history database. Each petitioner shall  
413 submit a full set of the petitioner's fingerprints in a form and  
414 manner prescribed by the board, which shall be forwarded to the  
415 Mississippi Department of Public Safety (department) and the  
416 Federal Bureau of Investigation Identification Division for this  
417 purpose.



418 Any and all state or national criminal history records  
419 information obtained by the board that is not already a matter of  
420 public record shall be deemed nonpublic and confidential  
421 information restricted to the exclusive use of the board, its  
422 members, officers, investigators, agents and attorneys in  
423 evaluating the applicant's eligibility or disqualification for  
424 licensure, and shall be exempt from the Mississippi Public Records  
425 Act of 1983. Except when introduced into evidence in a hearing  
426 before the board to determine licensure, no such information or  
427 records related thereto shall, except with the written consent of  
428 the applicant or by order of a court of competent jurisdiction, be  
429 released or otherwise disclosed by the board to any other person  
430 or agency.

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

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

441 (5) The Secretary-Treasurer of the Board of Medical  
442 Licensure shall enter into his records of the case all actions of





443 the board in setting aside a disciplinary penalty under this  
444 section and he shall certify notices to the proper court clerk.  
445 The clerk shall make such changes on his records as may be  
446 necessary.

447         **SECTION 6.** The following shall be codified as Section  
448 73-26-7, Mississippi Code of 1972:

449         73-26-7. (1) For the purposes of this section, the term  
450 "sexual activity" means any of the activities described in  
451 subsection (2) (a), (b) or (c) of Section 73-26-9.

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

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



467           **SECTION 7.** The following shall be codified as Section  
468 73-26-9, Mississippi Code of 1972:

469           73-26-9. (1) As used in this section, the following terms  
470 shall be defined as provided in this section unless the context  
471 clearly requires otherwise:

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

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

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

488           (2) A physician assistant shall not engage in sexual  
489 misconduct with a current patient or a key third party. A  
490 physician assistant engages in sexual misconduct when he or she



491 engages in the following behaviors with a patient or key third  
492 party:

493 (a) Sexual intercourse or genital to genital contact;

494 (b) Oral to genital contact;

495 (c) Genital to anal contact or oral to anal contact;

496 (d) Kissing in a romantic or sexual manner;

497 (e) Touching breasts, genitals or any sexualized body  
498 part for any purpose other than appropriate examination or  
499 treatment;

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

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

504 (h) Encouraging the patient to masturbate in the  
505 presence of the physician assistant or masturbation by the  
506 physician assistant while the patient is present;

507 (i) Offering to provide practice-related services, such  
508 as medications, in exchange for sexual favors;

509 (j) Soliciting a date;

510 (k) Engaging in a conversation regarding the sexual  
511 history, preferences or fantasies of the physician assistant.

512 (3) A physician assistant shall not engage in any of the  
513 conduct described in subsection (2) of this section with a former  
514 patient or key third party if the physician assistant:



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

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

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

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

527 (a) Documentation of formal termination;

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

530 (c) The length of time that has passed;

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

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

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

536 (g) The degree of emotional dependence and  
537 vulnerability.

538 (6) This section does not prohibit conduct that is required  
539 for medically recognized diagnostic or treatment purposes if the



540 conduct meets the standard of care appropriate to the diagnostic  
541 or treatment situation.

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

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

550 **SECTION 8.** The following shall be codified as Section  
551 73-26-11, Mississippi Code of 1972:

552 73-26-11. (1) If a licensee under this chapter is convicted  
553 of or enters a plea of guilty or nolo contendere to violating  
554 Section 73-26-7, and all appeals for the conviction have been  
555 finally concluded or the time for an appeal from the conviction  
556 has expired, the board shall permanently revoke the license of the  
557 licensee without a hearing and the license may never be  
558 reinstated.

559 (2) If the board finds that a licensee has engaged in sexual  
560 misconduct that is prohibited under Section 73-26-11, after notice  
561 and a hearing as provided by law, the board shall permanently  
562 revoke the license of the licensee and the license may never be  
563 reinstated.



564           **SECTION 9.** The following shall be codified as Section  
565 73-27-21, Mississippi Code of 1972:

566           73-27-21. (1) For the purposes of this section, the term  
567 "sexual activity" means any of the activities described in  
568 subsection (2) (a), (b) or (c) of Section 73-27-23.

569           (2) Any podiatrist licensed under this chapter who engages  
570 in sexual activity, whether consensual or nonconsensual, with a  
571 patient of the podiatrist while a podiatrist-patient relationship  
572 exists with the patient, or within twelve (12) months after the  
573 end of a podiatrist-patient relationship with the patient, is  
574 guilty of a felony and, upon conviction thereof, shall be punished  
575 by a fine of not more than One Hundred Thousand Dollars  
576 (\$100,000.00) or by commitment to the Department of Corrections  
577 for not more than five (5) years, or both, and the court shall  
578 permanently revoke the license of the podiatrist.

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

582           **SECTION 10.** The following shall be codified as Section  
583 73-27-23, Mississippi Code of 1972:

584           73-27-23. (1) As used in this section, the following terms  
585 shall be defined as provided in this section unless the context  
586 clearly requires otherwise:

587           (a) "Patient" means a person who is receiving health  
588 care or treatment, or has received health care or treatment



589 without a termination of the podiatrist-patient relationship. The  
590 determination of when a person is a patient is made on a  
591 case-by-case basis with consideration given to a number of  
592 factors, including the nature, extent and context of the  
593 professional relationship between the podiatrist and the person.  
594 The fact that a person is not actively receiving treatment or  
595 professional services is not the sole determining factor.

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

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

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

606 (a) Sexual intercourse or genital to genital contact;

607 (b) Oral to genital contact;

608 (c) Genital to anal contact or oral to anal contact;

609 (d) Kissing in a romantic or sexual manner;

610 (e) Touching breasts, genitals or any sexualized body  
611 part for any purpose other than appropriate examination or  
612 treatment;



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

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

617 (h) Encouraging the patient to masturbate in the  
618 presence of the podiatrist or masturbation by the podiatrist while  
619 the patient is present;

620 (i) Offering to provide practice-related services, such  
621 as medications, in exchange for sexual favors;

622 (j) Soliciting a date;

623 (k) Engaging in a conversation regarding the sexual  
624 history, preferences or fantasies of the podiatrist.

625 (3) A podiatrist shall not engage in any of the conduct  
626 described in subsection (2) of this section with a former patient  
627 or key third party if the podiatrist:

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

630 (b) Uses or exploits privileged information or access  
631 to privileged information to meet the podiatrist's personal or  
632 sexual needs.

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

636 (5) To determine whether a patient is a current patient or a  
637 former patient, the board will analyze each case individually, and





638 will consider a number of factors, including, but not limited to,  
639 the following:

640 (a) Documentation of formal termination;

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

643 (c) The length of time that has passed;

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

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

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

649 (g) The degree of emotional dependence and  
650 vulnerability.

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

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

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



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

664           73-27-13. (1) The State Board of Medical Licensure may  
665 refuse to issue, suspend, revoke or otherwise restrict any license  
666 provided for in this chapter, with the advice of the advisory  
667 committee, based upon the following grounds:

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

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

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

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

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

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

685                   (g) Obtaining or attempting to obtain a license by  
686 fraud or deception.



687 (h) Unprofessional conduct, which includes, but is not  
688 limited to:

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

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

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

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

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

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



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

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

720 (j) Violation(s) of the provisions of Sections 41-121-1  
721 through 41-121-9 relating to deceptive advertisement by health  
722 care practitioners. This paragraph shall stand repealed on July  
723 1, 2020.

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

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

732 (3) If the board finds that a licensee has engaged in sexual  
733 misconduct that is prohibited under Section 73-27-23, after notice  
734 and a hearing as provided by law, the board shall permanently



735 revoke the license of the licensee and the license may never be  
736 reinstated.

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

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

749 ( \* \* \*6) In addition to the grounds specified in subsection  
750 (1) of this section, the board shall be authorized to suspend the  
751 license of any licensee for being out of compliance with an order  
752 for support, as defined in Section 93-11-153. The procedure for  
753 suspension of a license for being out of compliance with an order  
754 for support, and the procedure for the reissuance or reinstatement  
755 of a license suspended for that purpose, and the payment of any  
756 fees for the reissuance or reinstatement of a license suspended  
757 for that purpose, shall be governed by Section 93-11-157 or  
758 93-11-163, as the case may be. If there is any conflict between  
759 any provision of Section 93-11-157 or 93-11-163 and any provision



760 of this chapter, the provisions of Section 93-11-157 or 93-11-163,  
761 as the case may be, shall control.

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

764         73-27-16. (1) A person whose license to practice podiatry  
765 has been revoked or suspended may petition the Mississippi State  
766 Board of Medical Licensure to reinstate this license after a  
767 period of not less than one (1) year has elapsed from the date of  
768 the revocation or suspension. However, any person whose license  
769 has been permanently revoked under the provisions of subsection  
770 (2) or (3) of Section 73-27-13 shall not be authorized to have his  
771 or her license reinstated. The procedure for the reinstatement of  
772 a license that is suspended for being out of compliance with an  
773 order for support, as defined in Section 93-11-153, shall be  
774 governed by Section 93-11-157 or 93-11-163, as the case may be.

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

782         The petition may be heard at the next regular meeting of the  
783 Board of Medical Licensure but not earlier than thirty (30) days  
784 after the petition was filed. No petition shall be considered



785 while the petitioner is under sentence for any criminal offense,  
786 including any period during which he is under probation or parole.  
787 The hearing may be continued from time to time as the Board of  
788 Medical Licensure finds necessary. Any final action by the board  
789 on a petition under this section shall be made with the advice of  
790 the advisory committee.

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

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

806 **SECTION 13.** The following shall be codified as Section  
807 73-71-38, Mississippi Code of 1972:



808           73-71-38. (1) For the purposes of this section, the term  
809 "sexual activity" means any of the activities described in  
810 subsection (2) (a), (b) or (c) of Section 73-71-38.1.

811           (2) Any acupuncture practitioner licensed under this chapter  
812 who engages in sexual activity, whether consensual or  
813 nonconsensual, with a patient of the acupuncture practitioner  
814 while an acupuncture practitioner-patient relationship exists with  
815 the patient, or within twelve (12) months after the end of an  
816 acupuncture practitioner-patient relationship with the patient, is  
817 guilty of a felony and, upon conviction thereof, shall be punished  
818 by a fine of not more than One Hundred Thousand Dollars  
819 (\$100,000.00) or by commitment to the Department of Corrections  
820 for not more than five (5) years, or both, and the court shall  
821 permanently revoke the license of the acupuncture practitioner.

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

826           **SECTION 14.** The following shall be codified as Section  
827 73-71-38.1, Mississippi Code of 1972:

828           73-71-38.1. (1) As used in this section, the following  
829 terms shall be defined as provided in this section unless the  
830 context clearly requires otherwise:

831           (a) "Patient" means a person who is receiving health  
832 care or treatment, or has received health care or treatment





833 without a termination of the acupuncture practitioner-patient  
834 relationship. The determination of when a person is a patient is  
835 made on a case-by-case basis with consideration given to a number  
836 of factors, including the nature, extent and context of the  
837 professional relationship between the acupuncture practitioner and  
838 the person. The fact that a person is not actively receiving  
839 treatment or professional services is not the sole determining  
840 factor.

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

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

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

- 852 (a) Sexual intercourse or genital to genital contact;
- 853 (b) Oral to genital contact;
- 854 (c) Genital to anal contact or oral to anal contact;
- 855 (d) Kissing in a romantic or sexual manner;



856 (e) Touching breasts, genitals or any sexualized body  
857 part for any purpose other than appropriate examination or  
858 treatment;

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

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

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

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

868 (j) Soliciting a date;

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

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

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

876 (b) Uses or exploits privileged information or access  
877 to privileged information to meet the acupuncture practitioner's  
878 personal or sexual needs.



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

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

886 (a) Documentation of formal termination;

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

889 (c) The length of time that has passed;

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

892 (e) The extent to which the patient has confided  
893 personal or private information to the acupuncture practitioner;

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

895 (g) The degree of emotional dependence and  
896 vulnerability.

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

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



904 (8) It is not a violation of this section if the acupuncture  
905 practitioner and the patient or the acupuncture practitioner and a  
906 key third party engaged in any of the behaviors described in  
907 subsection (2) of this section before the existence of the  
908 acupuncture practitioner-patient relationship.

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

911 73-71-33. The following acts constitute grounds for which  
912 the board may initiate disciplinary actions:

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

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

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

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

927 (e) The use of advertising or solicitation that is  
928 false or misleading;



929           (f) Aiding, assisting, procuring, employing or  
930 advertising an unlicensed person to practice acupuncture contrary  
931 to this chapter or a rule of the board;

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

934           (h) Making or filing a report that the licensee knows  
935 to be false, intentionally or negligently failing to file a report  
936 required by state or federal law, willfully impeding or  
937 obstructing that filing or inducing another person to do so.  
938 Those reports shall include only those that are signed in the  
939 capacity of an acupuncture practitioner;

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

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

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

952           (l) Failing to keep written medical records justifying  
953 the course of treatment of the patient;



954 (m) Exercising undue influence on the patient to  
955 exploit the patient for financial gain of the licensee or of a  
956 third party;

957 (n) Being unable to practice acupuncture with  
958 reasonable skill and safety to patients by reason of illness or  
959 intemperate use of alcohol, drugs, narcotics, chemicals, or any  
960 other type of material or as a result of any mental or physical  
961 condition;

962 (o) Malpractice or the failure to practice acupuncture  
963 to that level of care, skill and treatment that is recognized by a  
964 reasonably prudent similar practitioner of acupuncture as being  
965 acceptable under similar conditions and circumstances;

966 (p) Practicing or offering to practice beyond the scope  
967 permitted by law or accepting or performing professional  
968 responsibilities that the licensee knows or has reason to know  
969 that he or she is not qualified by training, experience or  
970 certification to perform;

971 (q) Delegating professional responsibilities to a  
972 person when the licensee delegating those responsibilities knows,  
973 or has reason to know, that the person is not qualified by  
974 training, experience or licensure to perform them;

975 (r) Violating any provision of this chapter, a rule of  
976 the board, or a lawful order of the board previously entered in a  
977 disciplinary hearing or failing to comply with a lawfully issued  
978 subpoena of the board;



979           (s)   Conspiring with another to commit an act, or  
980 committing an act, that coerces, intimidates or precludes another  
981 licensee from lawfully advertising or providing his or her  
982 services;

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

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

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

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

994           (x)   Aiding the unlawful practice of acupuncture;

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

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

1000           (aa)  Failure to keep accurate patient records; \* \* \*  
1001           (bb)  Failure to permit the board or its agents to enter  
1002 and inspect acupuncture premises and equipment as set by rules  
1003 promulgated by the board \* \* \*; or



1004            (cc) Engaging in sexual misconduct that is prohibited  
1005 under Section 73-71-38.1.

1006            **SECTION 16.** Section 73-71-35, Mississippi Code of 1972, is  
1007 amended as follows:

1008            73-71-35. (1) Disciplinary proceedings under this chapter  
1009 shall be conducted in the same manner as other disciplinary  
1010 proceedings are conducted by the State Board of Medical Licensure.

1011            (2) When the board finds any person guilty of any of the  
1012 acts set forth in Section 73-71-33, it may then enter an order  
1013 imposing one or more of the following penalties:

1014            (a) Refusal to certify to the board an application for  
1015 licensure;

1016            (b) Revocation or suspension of a license;

1017            (c) Restriction of practice;

1018            (d) Imposition of an administrative fine not to exceed  
1019 One Thousand Dollars (\$1,000.00) for each count or separate  
1020 offense;

1021            (e) Issuance of a reprimand;

1022            (f) Placement of the acupuncture practitioner on  
1023 probation for a period of time and subject to the conditions as  
1024 the board may specify.

1025            (3) If a licensee is convicted of or enters a plea of guilty  
1026 or nolo contendere to violating Section 73-71-38, and all appeals  
1027 for the conviction have been finally concluded or the time for an  
1028 appeal from the conviction has expired, the board shall





1029 permanently revoke the license of the licensee without a hearing  
1030 and the license may never be reinstated.

1031 (4) If the board finds that a licensee has engaged in sexual  
1032 misconduct that is prohibited under Section 73-71-38.1, after  
1033 notice and a hearing as provided by law, the board shall  
1034 permanently revoke the license of the licensee and the license may  
1035 never be reinstated.

1036 ( \* \* \*5) In enforcing this chapter, upon finding of the  
1037 board that probable cause exists to believe that the licensee is  
1038 unable to serve as an acupuncture practitioner because of  
1039 committing any of the acts set forth in Section 73-71-33 or any of  
1040 the crimes set forth in Section 73-71-37, the board shall have to  
1041 issue an order to compel the licensee to submit to a mental or  
1042 physical examination by a physician designated by the board. If  
1043 the licensee refuses to comply with the order, the board's order  
1044 directing the examination may be enforced by filing a petition for  
1045 enforcement in any court of competent jurisdiction. The licensee  
1046 against whom the petition is filed shall not be named or  
1047 identified by initials in any public court record or document, and  
1048 the proceedings shall be closed to the public unless the licensee  
1049 stipulates otherwise. The board shall be entitled to the summary  
1050 procedure provided in applicable state law. An acupuncture  
1051 practitioner affected under this subsection shall at reasonable  
1052 intervals be afforded an opportunity to demonstrate that he or she  
1053 can resume the competent practice of acupuncture with reasonable



1054 skill and safety of the patients. In any proceeding under this  
1055 subsection, neither the record of proceedings nor the orders  
1056 entered by the board shall be used against the acupuncture  
1057 practitioner in any other proceeding.

1058 ( \* \* \*6) The board shall not reinstate the license of an  
1059 acupuncture practitioner, or cause a license to be issued to a  
1060 person it has deemed to be unqualified, until such time as the  
1061 board is satisfied that he or she has complied with all the terms  
1062 and conditions set forth in the final order and that he or she is  
1063 capable of safely engaging in the practice of acupuncture.

1064 **SECTION 17.** Section 73-71-49, Mississippi Code of 1972, is  
1065 amended as follows:

1066 73-71-49. (1) A suspended license is subject to expiration  
1067 and shall be renewed as provided in this act, but while the  
1068 license remains suspended, and until it is reinstated, the renewal  
1069 does not entitle the practice of acupuncture, or any other  
1070 activity or conduct in violation of the order of the board by  
1071 which the license was suspended.

1072 (2) A revoked license is subject to expiration as provided  
1073 in this chapter but it may not be renewed. If it is reinstated  
1074 after its expiration, the former licensee, as a condition of  
1075 reinstatement, shall pay a reinstatement fee in an amount equal to  
1076 the renewal fee in effect on the last regular renewal fee date, if  
1077 any, accrued at the time of its expiration. Any person whose  
1078 license has been permanently revoked under the provisions of



1079 Section 73-71-35(3) or (4) shall not be authorized to have his or  
1080 her license reinstated.

1081 **SECTION 18.** The following shall be codified as Section  
1082 41-58-9, Mississippi Code of 1972:

1083 41-58-9. (1) For the purposes of this section, the term  
1084 "sexual activity" means any of the activities described in  
1085 subsection (2) (a), (b) or (c) of Section 41-58-11.

1086 (2) Any radiologist assistant licensed under Section 41-58-7  
1087 who engages in sexual activity, whether consensual or  
1088 nonconsensual, with a patient of the radiologist assistant while a  
1089 radiologist assistant-patient relationship exists with the  
1090 patient, or within twelve (12) months after the end of a  
1091 radiologist assistant-patient relationship with the patient, is  
1092 guilty of a felony and, upon conviction thereof, shall be punished  
1093 by a fine of not more than One Hundred Thousand Dollars  
1094 (\$100,000.00) or by commitment to the Department of Corrections  
1095 for not more than five (5) years, or both, and the court shall  
1096 permanently revoke the license of the radiologist assistant.

1097 (3) It is not a violation of this section if the radiologist  
1098 assistant and the patient engaged in consensual sexual activity  
1099 before the existence of the radiologist assistant-patient  
1100 relationship.

1101 **SECTION 19.** The following shall be codified as Section  
1102 41-58-11, Mississippi Code of 1972:



1103           41-58-11. (1) As used in this section, the following terms  
1104 shall be defined as provided in this section unless the context  
1105 clearly requires otherwise:

1106           (a) "Patient" means a person who is receiving health  
1107 care or treatment, or has received health care or treatment  
1108 without a termination of the radiologist assistant-patient  
1109 relationship. The determination of when a person is a patient is  
1110 made on a case-by-case basis with consideration given to a number  
1111 of factors, including the nature, extent and context of the  
1112 professional relationship between the radiologist assistant and  
1113 the person. The fact that a person is not actively receiving  
1114 treatment or professional services is not the sole determining  
1115 factor.

1116           (b) "Radiologist assistant" means a person licensed to  
1117 practice as a radiologist assistant under Section 41-58-7.

1118           (c) "Key third party" means a person in a close  
1119 personal relationship with the patient and includes, but is not  
1120 limited to, spouses, partners, parents, siblings, children,  
1121 guardians and proxies.

1122           (2) A radiologist assistant shall not engage in sexual  
1123 misconduct with a current patient or a key third party. A  
1124 radiologist assistant engages in sexual misconduct when he or she  
1125 engages in the following behaviors with a patient or key third  
1126 party:

1127           (a) Sexual intercourse or genital to genital contact;



1128 (b) Oral to genital contact;

1129 (c) Genital to anal contact or oral to anal contact;

1130 (d) Kissing in a romantic or sexual manner;

1131 (e) Touching breasts, genitals or any sexualized body  
1132 part for any purpose other than appropriate examination or  
1133 treatment;

1134 (f) Examination or touching of genitals without using  
1135 gloves;

1136 (g) Not allowing a patient the privacy to dress or  
1137 undress;

1138 (h) Encouraging the patient to masturbate in the  
1139 presence of the radiologist assistant or masturbation by the  
1140 radiologist assistant while the patient is present;

1141 (i) Offering to provide practice-related services in  
1142 exchange for sexual favors;

1143 (j) Soliciting a date;

1144 (k) Engaging in a conversation regarding the sexual  
1145 history, preferences or fantasies of the radiologist assistant.

1146 (3) A radiologist assistant shall not engage in any of the  
1147 conduct described in subsection (2) of this section with a former  
1148 patient or key third party if the radiologist assistant:

1149 (a) Uses or exploits the trust, knowledge, influence,  
1150 or emotions derived from the professional relationship; or



1151 (b) Uses or exploits privileged information or access  
1152 to privileged information to meet the radiologist assistant's  
1153 personal or sexual needs.

1154 (4) Sexual misconduct also includes sexual contact with any  
1155 person involving force, intimidation, or lack of consent; or a  
1156 conviction of a sex offense as defined in Section 45-33-23(h).

1157 (5) To determine whether a patient is a current patient or a  
1158 former patient, the board will analyze each case individually, and  
1159 will consider a number of factors, including, but not limited to,  
1160 the following:

1161 (a) Documentation of formal termination;

1162 (b) Transfer of the patient's care to another health  
1163 care provider;

1164 (c) The length of time that has passed;

1165 (d) The length of time of the professional  
1166 relationship;

1167 (e) The extent to which the patient has confided  
1168 personal or private information to the radiologist assistant;

1169 (f) The nature of the patient's health problem;

1170 (g) The degree of emotional dependence and  
1171 vulnerability.

1172 (6) This section does not prohibit conduct that is required  
1173 for diagnostic or treatment purposes if the conduct meets the  
1174 standard of care appropriate to the diagnostic or treatment  
1175 situation.



1176 (7) It is not a defense that the patient, former patient, or  
1177 key third party initiated or consented to the conduct, or that the  
1178 conduct occurred outside the professional setting.

1179 (8) It is not a violation of this section if the radiologist  
1180 assistant and the patient or the radiologist assistant and a key  
1181 third party engaged in any of the behaviors described in  
1182 subsection (2) of this section before the existence of the  
1183 radiologist assistant-patient relationship.

1184 **SECTION 20.** The following shall be codified as Section  
1185 41-58-13, Mississippi Code of 1972:

1186 41-58-13. (1) If a licensee under Section 41-58-7 is  
1187 convicted of or enters a plea of guilty or nolo contendere to  
1188 violating Section 41-58-9, and all appeals for the conviction have  
1189 been finally concluded or the time for an appeal from the  
1190 conviction has expired, the board shall permanently revoke the  
1191 license of the licensee without a hearing and the license may  
1192 never be reinstated.

1193 (2) If the board finds that a licensee has engaged in sexual  
1194 misconduct that is prohibited under Section 41-58-11, after notice  
1195 and a hearing as provided by law, the board shall permanently  
1196 revoke the license of the licensee and the license may never be  
1197 reinstated.

1198 **SECTION 21.** This act shall take effect and be in force from  
1199 and after July 1, 2017.

