

By: Representatives Taylor, Mickens

To: Judiciary B; Public Health and Human Services

HOUSE BILL NO. 1163

1 AN ACT TO AMEND SECTION 99-19-35, MISSISSIPPI CODE OF 1972,
 2 TO ALLOW PERSONS WHO ARE CONVICTED OF CERTAIN CRIMES TO PRACTICE
 3 MEDICINE OR DENTISTRY AGAIN AFTER THE PERSON'S LICENSE HAS BEEN
 4 REINSTATED BY THE STATE BOARD OF MEDICAL LICENSURE OR THE STATE
 5 BOARD OF DENTAL EXAMINERS; TO AMEND SECTION 99-19-71, MISSISSIPPI
 6 CODE OF 1972, TO AUTHORIZE A PERSON WHO IS REINSTATED TO PRACTICE
 7 MEDICINE OR DENTISTRY AFTER CONVICTION OF CERTAIN CRIMES TO
 8 PETITION THE COURT FOR EXPUNGEMENT OF ANY CRIME THAT CAUSED THE
 9 LOSS OF LICENSE TO PRACTICE MEDICINE OR DENTISTRY; TO BRING
 10 FORWARD SECTIONS 73-9-61 AND 73-25-29, MISSISSIPPI CODE OF 1972,
 11 WHICH PROVIDE FOR NONISSUANCE OR DENIAL OF DENTAL AND MEDICAL
 12 LICENSES, FOR THE PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 99-19-35, Mississippi Code of 1972, is
 15 amended as follows:

16 99-19-35. A person convicted of bribery, burglary, theft,
 17 arson, obtaining money or goods under false pretenses, perjury,
 18 forgery, embezzlement, or bigamy, shall not be allowed to practice
 19 medicine or dentistry, or be appointed to hold or perform the
 20 duties of any office of profit, trust, or honor, unless after full
 21 pardon for the same, or, in the case of a person seeking
 22 reinstatement to the practice of medicine or dentistry, after
 23 being reinstated to the practice of medicine by the Board of



24 Medical Licensure under Section 73-25-32 or reinstated to the
25 practice of dentistry by the State Board of Dental Examiners under
26 Section 73-9-115.

27 **SECTION 2.** Section 99-19-71, Mississippi Code of 1972, is
28 amended as follows:

29 99-19-71. (1) Any person who has been convicted of a
30 misdemeanor that is not a traffic violation, and who is a first
31 offender, may petition the justice, county, circuit or municipal
32 court in which the conviction was had for an order to expunge any
33 such conviction from all public records.

34 (2) (a) (i) Except as otherwise provided in this
35 subsection, any person who has been convicted of one (1) of the
36 following felonies may petition the court in which the conviction
37 was had for an order to expunge one (1) conviction from all public
38 records five (5) years after the successful completion of all
39 terms and conditions of the sentence for the conviction: a bad
40 check offense under Section 97-19-55; possession of a controlled
41 substance or paraphernalia under Section 41-29-139(c) or (d);
42 false pretense under Section 97-19-39; larceny under Section
43 97-17-41; malicious mischief under Section 97-17-67; or
44 shoplifting under Section 97-23-93. A person is eligible for only
45 one (1) felony expunction under this paragraph.

46 (ii) Any person who is reinstated to the practice
47 of medicine by the Board of Medical Licensure under Section
48 73-25-32 or reinstated to the practice of dentistry by the State



49 Board of Dental Examiners under Section 73-9-115 after conviction
50 of any crime specified in Sections 73-9-61, 73-25-29 or 99-19-35,
51 may petition the court in which the conviction was had to expunge
52 any conviction that caused the person to lose his or her license
53 to practice medicine or dentistry.

54 (b) Any person who was under the age of twenty-one (21)
55 years when he committed a felony may petition the court in which
56 the conviction was had for an order to expunge one (1) conviction
57 from all public records five (5) years after the successful
58 completion of all terms and conditions of the sentence for the
59 conviction; however, eligibility for expunction shall not apply to
60 a felony classified as a crime of violence under Section 97-3-2
61 and any felony that, in the determination of the circuit court, is
62 related to the distribution of a controlled substance and in the
63 court's discretion it should not be expunged. A person is
64 eligible for only one (1) felony expunction under this paragraph.

65 (c) The petitioner shall give ten (10) days' written
66 notice to the district attorney before any hearing on the
67 petition. In all cases, the court wherein the petition is filed
68 may grant the petition if the court determines, on the record or
69 in writing, that the applicant is rehabilitated from the offense
70 which is the subject of the petition. In those cases where the
71 court denies the petition, the findings of the court in this
72 respect shall be identified specifically and not generally.



73 (3) Upon entering an order of expunction under this section,
74 a nonpublic record thereof shall be retained by the Mississippi
75 Criminal Information Center solely for the purpose of determining
76 whether, in subsequent proceedings, the person is a first
77 offender. The order of expunction shall not preclude a district
78 attorney's office from retaining a nonpublic record thereof for
79 law enforcement purposes only. The existence of an order of
80 expunction shall not preclude an employer from asking a
81 prospective employee if the employee has had an order of
82 expunction entered on his behalf. The effect of the expunction
83 order shall be to restore the person, in the contemplation of the
84 law, to the status he occupied before any arrest or indictment for
85 which convicted. No person as to whom an expunction order has
86 been entered shall be held thereafter under any provision of law
87 to be guilty of perjury or to have otherwise given a false
88 statement by reason of his failure to recite or acknowledge such
89 arrest, indictment or conviction in response to any inquiry made
90 of him for any purpose other than the purpose of determining, in
91 any subsequent proceedings under this section, whether the person
92 is a first offender. A person as to whom an order has been
93 entered, upon request, shall be required to advise the court, in
94 camera, of the previous conviction and expunction in any legal
95 proceeding wherein the person has been called as a prospective
96 juror. The court shall thereafter and before the selection of the



97 jury advise the attorneys representing the parties of the previous
98 conviction and expunction.

99 (4) Upon petition therefor, a justice, county, circuit or
100 municipal court shall expunge the record of any case in which an
101 arrest was made, the person arrested was released and the case was
102 dismissed or the charges were dropped or there was no disposition
103 of such case.

104 (5) No public official is eligible for expunction under this
105 section for any conviction related to his official duties.

106 **SECTION 3.** Section 73-9-61, Mississippi Code of 1972, is
107 brought forward as follows:

108 73-9-61. (1) Upon satisfactory proof, and in accordance
109 with statutory provisions elsewhere set out for such hearings and
110 protecting the rights of the accused as well as the public, the
111 State Board of Dental Examiners may deny the issuance or renewal
112 of a license or may revoke or suspend the license of any licensed
113 dentist or dental hygienist practicing in the State of
114 Mississippi, or take any other action in relation to the license
115 as the board may deem proper under the circumstances, for any of
116 the following reasons:

117 (a) Misrepresentation in obtaining a license, or
118 attempting to obtain, obtaining, attempting to renew or renewing a
119 license or professional credential by making any material
120 misrepresentation, including the signing in his or her



121 professional capacity any certificate that is known to be false at
122 the time he or she makes or signs the certificate.

123 (b) Willful violation of any of the rules or
124 regulations duly promulgated by the board, or of any of the rules
125 or regulations duly promulgated by the appropriate dental
126 licensure agency of another state or jurisdiction.

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

132 (d) Administering, dispensing or prescribing any
133 prescriptive medication or drug outside the course of legitimate
134 professional dental practice.

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

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



145 (g) Being convicted or found guilty of or entering a
146 plea of nolo contendere to, regardless of adjudication, a crime in
147 any jurisdiction that relates to the practice of dentistry or
148 dental hygiene, a certified copy of the conviction order or
149 judgment rendered by the trial court being prima facie evidence
150 thereof, notwithstanding the pendency of any appeal.

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

156 (i) Delegating professional responsibilities to a
157 person who is not qualified by training, experience or licensure
158 to perform them.

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

168 (k) Surrender of a license or authorization to practice
169 dentistry or dental hygiene in another state or jurisdiction when



170 the board has reasonable cause to believe that the surrender is
171 made to avoid or in anticipation of a disciplinary action.

172 (1) Any unprofessional conduct to be determined by the
173 board on a case-by-case basis, which shall include, but not be
174 restricted to, the following:

175 (i) Committing any crime involving moral
176 turpitude.

177 (ii) Practicing deceit or other fraud upon the
178 public.

179 (iii) Practicing dentistry or dental hygiene under
180 a false or assumed name.

181 (iv) Advertising that is false, deceptive or
182 misleading.

183 (v) Announcing a specialized practice shall be
184 considered advertising that tends to deceive or mislead the public
185 unless the dentist announcing as a specialist conforms to other
186 statutory provisions and the duly promulgated rules or regulations
187 of the board pertaining to practice of dentistry in the State of
188 Mississippi.

189 (m) Failure to provide and maintain reasonable sanitary
190 facilities and conditions or failure to follow board rules
191 regarding infection control.

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



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

197 (ii) Conduct of a licensee that is intended to
198 intimidate, coerce, influence or trick any person employed by or
199 for the licensee in a dental practice or educational setting for
200 the purpose of engaging in sexual activity or activity intended
201 for the sexual gratification of the licensee.

202 (o) Violation of a lawful order of the board previously
203 entered in a disciplinary or licensure hearing; failure to
204 cooperate with any lawful request or investigation by the board;
205 or failure to comply with a lawfully issued subpoena of the board.

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

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

211 (r) Violation(s) of the provisions of Sections 41-121-1
212 through 41-121-9 relating to deceptive advertisement by health
213 care practitioners. This paragraph shall stand repealed on July
214 1, 2020.

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



220 (3) When a license to practice dentistry or dental hygiene
221 is revoked or suspended by the board, the board may, in its
222 discretion, stay the revocation or suspension and simultaneously
223 place the licensee on probation upon the condition that the
224 licensee shall not violate the laws of the State of Mississippi
225 pertaining to the practice of dentistry or dental hygiene and
226 shall not violate the rules and regulations of the board and shall
227 not violate any terms in relation to his or her license as may be
228 set by the board.

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

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

241 (b) For the second violation of any of subparagraph
242 (a), (b), (c), (d), (f), (i), (l), (m), (n), (o) or (q) of
243 subsection (1) of this section, a monetary penalty of not less



244 than One Hundred Dollars (\$100.00) nor more than One Thousand
245 Dollars (\$1,000.00).

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

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

257 (5) The power and authority of the board to assess and levy
258 monetary penalties under this section shall not be affected or
259 diminished by any other proceeding, civil or criminal, concerning
260 the same violation or violations except as provided in this
261 section.

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

267 (7) Any monetary penalty assessed and levied under this
268 section shall not take effect until after the time for appeal has



269 expired. In the event of an appeal, the appeal shall act as a
270 supersedeas.

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

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

290 (10) In addition to the reasons specified in subsection (1)
291 of this section, the board shall be authorized to suspend the
292 license of any licensee for being out of compliance with an order
293 for support, as defined in Section 93-11-153. The procedure for



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

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

307 **SECTION 4.** Section 73-25-29, Mississippi Code of 1972, is
308 brought forward as follows:

309 73-25-29. The grounds for the nonissuance, suspension,
310 revocation or restriction of a license or the denial of
311 reinstatement or renewal of a license are:

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

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

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



319 addiction-sustaining liability otherwise than in the course of
320 legitimate professional practice.

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

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

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

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

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

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

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

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



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

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

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

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

362 (9) The refusal of a licensing authority of another
363 state or jurisdiction to issue or renew a license, permit or
364 certificate to practice medicine in that jurisdiction or the
365 revocation, suspension or other restriction imposed on a license,
366 permit or certificate issued by such licensing authority which
367 prevents or restricts practice in that jurisdiction, a certified
368 copy of the disciplinary order or action taken by the other state



369 or jurisdiction being prima facie evidence thereof,
370 notwithstanding the pendency of any appeal.

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

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

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

391 (13) Violation of any provision(s) of the Medical
392 Practice Act or the rules and regulations of the board or of any
393 order, stipulation or agreement with the board.



394 (14) Violation(s) of the provisions of Sections
395 41-121-1 through 41-121-9 relating to deceptive advertisement by
396 health care practitioners.

397 (15) Performing or inducing an abortion on a woman in
398 violation of any provision of Sections 41-41-131 through
399 41-41-145.

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

413 **SECTION 5.** This act shall take effect and be in force from
414 and after July 1, 2018.

