

By: Representatives Cockerham, Currie

To: Judiciary A

HOUSE BILL NO. 1165

1 AN ACT TO BE KNOWN AS THE "PHYSICIAN PROTECTION ACT OF 2018";
2 TO CREATE THE POSITIONS OF HEARING OFFICERS FOR THE STATE BOARD OF
3 MEDICAL LICENSURE; TO STATE THE POLICY CONCERNING THE DUTIES OF
4 THE HEARING OFFICERS; TO PROVIDE THAT HEARING OFFICERS WILL REVIEW
5 CASES FROM THE LAST THREE YEARS TO CORRECT ACTIONS OF THE BOARD;
6 TO REQUIRE ALL MEMBERS OF THE BOARD TO ANNUALLY OBTAIN SIX HOURS
7 OF TRAINING IN JUDICIAL AND DISCIPLINARY PROCESS; TO AMEND
8 SECTIONS 73-25-27, 73-25-28, 73-25-29, 73-25-30 AND 73-25-31,
9 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE ATTORNEY GENERAL'S
10 OFFICE WILL APPOINT THREE IMPARTIAL HEARING OFFICERS TO CONDUCT
11 DISCIPLINARY HEARINGS IN LIEU OF THE BOARD; TO AUTHORIZE MEDICAL
12 LICENSEES TO HAVE THEIR DISCIPLINARY MATTERS HEARD BY A HEARING
13 OFFICER RATHER THAN THE BOARD; TO PROVIDE THAT LICENSEES MAY
14 ACCEPT RESPONSIBILITY FOR THE ALLEGATIONS WHILE RETAINING THE
15 RIGHT TO A HEARING AND APPEAL; TO INCREASE THE STANDARD OF PROOF
16 TO CLEAR AND CONVINCING EVIDENCE IN ORDER TO FIND A LICENSEE
17 GUILTY OF AN OFFENSE; TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF
18 THE BOARD WILL AFFIRM OR REJECT THE HEARING OFFICER'S
19 DETERMINATION; AND FOR RELATED PURPOSES.

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

21 **SECTION 1.** This act shall be known and may be cited as the
22 "Physician Protection Act of 2018."

23 **SECTION 2.** (1) By establishing the positions of hearing
24 officers for the State Board of Medical Licensure as provided in
25 Section 75-25-27, the State of Mississippi intends to ensure that
26 physicians brought before this board are provided with impartial



27 and basic legal protections and are protected against unduly
28 harsh, arbitrary or capricious rulings in disciplinary actions of
29 the board.

30 (2) A hearing officer shall review any disciplinary
31 proceedings or actions taken over the three (3) years preceding
32 the effective date of this act to correct inappropriately harsh,
33 capricious, arbitrary or unethical action taken by the board
34 during that period.

35 **SECTION 3.** All members of the State Board of Medical
36 Licensure shall be required to annually obtain six (6) hours of
37 training in judicial and disciplinary process that is overseen and
38 approved by the board's attorney.

39 **SECTION 4.** Section 73-25-27, Mississippi Code of 1972, is
40 amended as follows:

41 73-25-27. The Attorney General's Office shall appoint three
42 (3) impartial hearing officers to conduct disciplinary hearings in
43 lieu of the board. The State Board of Medical Licensure and the
44 hearing officers, after notice and opportunity for a hearing to
45 the licentiate, * * * are authorized to suspend or revoke for any
46 cause named in this chapter any license * * * that the board has
47 issued, or the renewal thereof, that authorizes any person to
48 practice medicine, osteopathy, or any other method of preventing,
49 diagnosing, relieving, caring for, or treating, or curing disease,
50 injury or other bodily condition. The procedure for suspension of
51 a license for being out of compliance with an order for support,



52 and the procedure for the reissuance or reinstatement of a license
53 suspended for that purpose, and the payment of any fees for the
54 reissuance or reinstatement of a license suspended for that
55 purpose, shall be governed by Section 93-11-157 or 93-11-163, as
56 the case may be. If there is any conflict between any provision
57 of Section 93-11-157 or 93-11-163 and any provision of this
58 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
59 case may be, shall control.

60 The notice shall be effected by registered mail or personal
61 service setting forth * * *, in substantial detail, all reasons
62 for the proposed action and fixing a date not less than thirty
63 (30) days or more than sixty (60) days from the date of the
64 mailing or the service, at which time the licentiate shall be
65 given an opportunity for a prompt * * *, fair and unbiased
66 hearing.

67 The licentiate may elect for a hearing officer to conduct the
68 hearing in lieu of the board. To do so, the licentiate must
69 submit a written request to the executive director of the board
70 within thirty (30) days of receiving the notice. If so elected,
71 the time for fixing the hearing may be extended up to but not
72 longer than sixty (60) days from the date the executive director
73 receives the written request, and the licentiate shall select one
74 (1) of the three (3) hearing officers to conduct the hearing.

75 For the purpose of the hearing the board and the hearing
76 officers, acting by and through * * * the board's executive



77 office, may subpoena persons and papers on * * * their own behalf
78 and on behalf of the licentiate, including records obtained under
79 Section 73-25-28 and Section 73-25-83(c), may administer oaths and
80 the testimony when properly transcribed, together with the papers
81 and exhibits, shall be admissible in evidence for or against the
82 licentiate. At the hearing the licentiate may appear by counsel
83 and personally in his or her own behalf. Any person sworn and
84 examined as a witness in the hearing shall not be held to answer
85 criminally, nor shall any papers or documents produced by the
86 witness be competent evidence in any criminal proceedings against
87 the witness other than for perjury in delivering his or her
88 evidence. The board * * * and the hearing officers, in the
89 conduct of any hearing, shall not be bound by strict laws or rules
90 of evidence. The board and the hearing officers may adopt rules
91 and discovery and procedure governing all proceedings before * * *
92 them. The licentiate shall have the opportunity to state all
93 facts relevant to the case. The licentiate may accept
94 responsibility for the disciplinary violation(s) alleged while
95 retaining the right to a hearing on the discipline to be imposed
96 for the violation(s) and retaining the right to appeal any
97 discipline determination to the chancery court. On the basis of
98 any such hearing, or upon default of the licentiate, the board or
99 the hearing officers shall make a determination specifying * * *
100 their findings of fact and conclusions of law. The board or the
101 hearing officers shall make * * * their determination based upon a



102 * * * finding of * * * clear and convincing evidence. If a
103 hearing officer hears the matter, the board's executive director
104 must affirm or reject the hearing officer's determination on the
105 basis of the facts presented at the hearing alone. If the
106 executive director rejects the hearing officer's determination, he
107 or she must detail in writing the specific basis for the
108 rejection. The executive director's affirmance or rejection shall
109 constitute a final, appealable decision.

110 A copy of the determination shall be sent by registered mail
111 or served personally upon the licentiate and the licentiate's
112 representative, if any. The decision of the board or the hearing
113 officer revoking or suspending the license shall become final
114 thirty (30) days after so mailed or served unless within that
115 period the licentiate appeals the decision to the chancery court,
116 under the provisions of this section. The appeal to the chancery
117 court shall be based solely on the record made before the board or
118 the hearing officer and the executive director's basis for
119 rejecting the hearing officer's determination, if any. A
120 transcript of the proceedings and evidence, together with
121 exhibits, presented at the hearing before the board or the hearing
122 officer in the event of appeal shall be a part of the record
123 before the chancery court. The chancery court shall dispose of
124 the appeal and enter its decision promptly. The hearing on the
125 appeal may, in the discretion of the chancellor, be tried in
126 vacation. Appeals may be taken to the Supreme Court of the State



127 of Mississippi as provided by law from any final action of the
128 chancery court. No such person shall be allowed to practice
129 medicine in violation of any action of the chancery court
130 affirming, in whole or in part, the determination of the board or
131 the hearing officer, while any such appeal to the Supreme Court is
132 pending.

133 For the purpose of conducting investigations, the board and
134 the hearing officers, through * * * the executive director of the
135 board, may issue subpoenas to any individual, clinic, hospital,
136 pharmacy or other entity having in its possession papers,
137 documents, medical charts, prescriptions or any other nonfinancial
138 records. Any such subpoenas issued by the executive director
139 shall be made pursuant to an order of the board entered on its
140 minutes, determined on a case-by-case basis. Investigatory
141 subpoenas, as provided in this section, may be served either by
142 personal process or by registered mail, and upon service shall
143 command production of the papers and documents to the board at the
144 time and place so specified. The board and the hearing officers
145 shall be entitled to the assistance of the chancery court or the
146 chancellor in vacation, which, on petition by the board or the
147 hearing officers, shall issue ancillary subpoenas and petitions
148 and may punish as for contempt of court in the event of
149 noncompliance with the subpoenas or petitions.

150 For the purpose of conducting hearings, the board and the
151 hearing officers, through * * * the executive director of the



152 board, may subpoena persons and papers on * * * their own behalf
153 and on behalf of the respondent, including records obtained under
154 Section 73-25-28 and Section 73-25-83(c), may administer oaths,
155 and may compel the testimony of witnesses. Any such subpoenas
156 issued by the executive director shall be made pursuant to an
157 order of the board entered on its minutes or by the hearing
158 officers, determined on a case-by-case basis. * * * They may
159 issue subpoenas to take testimony, and testimony so taken and
160 sworn to shall be admissible in evidence for and against the
161 respondent. The board and the hearing officers shall be entitled
162 to the assistance of the chancery court or the chancellor in
163 vacation, which, on petition by the board, shall issue ancillary
164 subpoenas and petitions and may punish as for contempt of court in
165 the event of noncompliance with the subpoenas or petitions.

166 Unless the court otherwise decrees, a license that has been
167 suspended by the board or the hearing officers for a stated period
168 of time shall automatically become valid on the expiration of that
169 period and a license that has been suspended for an indefinite
170 period shall become again valid if and when the board so orders,
171 which it may do on its own motion or on the petition of the
172 respondent. A license that has been revoked shall not be restored
173 to validity except: (1) by order of the board based on petition
174 for reinstatement filed under Section 73-25-32 or (2) by order of
175 the chancery court or Supreme Court following appeal. Any
176 licentiate whose license becomes again valid after a period of



177 suspension or after it has been restored to validity by order of
178 the board or by an order of the court, shall record it again in
179 the office of the clerk of the circuit court of the county in
180 which he or she resides in conformity with the requirements of
181 Section 73-25-13. Nothing in this chapter shall be construed as
182 limiting or revoking the authority of any court or of any
183 licensing or registering officer or board, other than the State
184 Board of Medical Licensure, to suspend, revoke and reinstate
185 licenses and to cancel registrations under the provisions of
186 Section 41-29-311.

187 **SECTION 5.** Section 73-25-28, Mississippi Code of 1972, is
188 amended as follows:

189 73-25-28. (1) In any case in which disciplinary action
190 against a medical physician, osteopathic physician or podiatrist
191 is being considered by the State Board of Medical Licensure, the
192 executive officer of the board, or its investigators accompanied
193 by any member of the board or any licensed physician or podiatrist
194 appointed to act for the board, upon reasonable cause as defined
195 below, may enter, at a time convenient to all parties, any
196 hospital, clinic, office of a medical physician, osteopathic
197 physician or podiatrist or emergency care facility to inspect and
198 copy patient records, charts, emergency room records or any other
199 document which would assist the board in its investigation of a
200 medical physician, osteopathic physician or podiatrist.

201 Reasonable cause shall be demonstrated by allegations of one or



202 more of the following: (a) a single incident of gross negligence;
203 (b) a pattern of inappropriate prescribing of controlled
204 substances; (c) an act of incompetence or negligence causing death
205 or serious bodily injury; (d) a pattern of substandard medical
206 care; (e) a pattern of unnecessary surgery or unindicated medical
207 procedures; (f) disciplinary action taken against a physician or
208 podiatrist by a licensed hospital or by the medical staff of the
209 hospital; (g) voluntary termination by a physician or podiatrist
210 of staff privileges or having restrictions placed thereon; or (h)
211 habitual personal use of narcotic drugs or other drugs having
212 addiction-forming or addiction-sustaining liability, or the
213 habitual personal use of intoxicating liquors or alcoholic
214 beverages, to an extent which affects professional competency.
215 Whether reasonable cause exists shall be determined by the
216 executive officer and executive committee of the board, and
217 documentation of that determination shall be provided to the
218 hospital, clinic, office or emergency care facility before entry
219 for inspection and copying hereunder.

220 (2) A certified copy of any record inspected or copied
221 pursuant to subsection (1) shall be subject to subpoena by the
222 board to be used as evidence * * * in a licensure disciplinary
223 proceeding initiated pursuant to the provisions of Sections
224 73-25-1 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81
225 through 73-25-95 and 73-27-1 through 73-27-19, Mississippi Code of
226 1972. All references to a patient's name and address or other



227 information which would identify the patient shall be deleted from
228 the records unless a waiver of the medical privilege is obtained
229 from the patient.

230 (3) All records of the investigation and all patient charts,
231 records, emergency room records or any other document that may
232 have been copied shall be kept confidential and shall not be
233 subject to discovery or subpoena. If no disciplinary proceedings
234 are initiated within a period of five (5) years after the
235 determination of insufficient cause, then the board shall destroy
236 all records obtained pursuant to this section.

237 (4) Notwithstanding any right to privacy, confidentiality,
238 privilege or exemption from public access conferred by this
239 section, Section 73-52-1, or otherwise by statute or at law, the
240 board shall provide to any hospital, as defined in Section 41-9-3,
241 any and all information it may have concerning any physician who
242 has applied for a license, other than information contained in
243 records exempt from the provisions of the Mississippi Public
244 Records Act of 1983 pursuant to Sections 45-29-1 and 45-29-3,
245 Mississippi Code of 1972, upon receipt by the board of a written
246 request from the hospital for such information and documentation
247 that the physician has applied for appointment or reappointment to
248 the medical staff of the hospital or staff privileges at the
249 hospital. The board, any member of the board, and its agents or
250 employees, acting without malice in providing the documents or



251 information hereunder, shall be immune from civil or criminal
252 liability.

253 **SECTION 6.** Section 73-25-29, Mississippi Code of 1972, is
254 amended as follows:

255 73-25-29. The grounds for the nonissuance, suspension,
256 revocation or restriction of a license or the denial of
257 reinstatement or renewal of a license are:

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

318 (10) Surrender of a license or authorization to
319 practice medicine in another state or jurisdiction or surrender of
320 membership on any medical staff or in any medical or professional
321 association or society while under disciplinary investigation by
322 any of those authorities or bodies for acts or conduct similar to



323 acts or conduct which would constitute grounds for action as
324 defined in this section.

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

336 (12) Failure to furnish the board, its
337 investigators * * *, it representatives or the hearing officers
338 with information legally requested by the board or the hearing
339 officers.

340 (13) Violation of any provision(s) of the Medical
341 Practice Act or the rules and regulations of the board or of any
342 order, stipulation or agreement with the board.

343 (14) Violation(s) of the provisions of Sections
344 41-121-1 through 41-121-9 relating to deceptive advertisement by
345 health care practitioners.



346 (15) Performing or inducing an abortion on a woman in
347 violation of any provision of Sections 41-41-131 through
348 41-41-145.

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

362 **SECTION 7.** Section 73-25-30, Mississippi Code of 1972, is
363 amended as follows:

364 73-25-30. (1) The Mississippi State Board of Medical
365 Licensure and the hearing officers, in exercising * * * their
366 authority under the provisions of Section 73-25-29, shall have the
367 power to discipline the holder of a license who has been
368 found * * * in violation of that statute after notice and a
369 hearing as provided by law, and the licensee * * * may be
370 disciplined as follows:



371 (a) By placing him or her upon probation, the terms of
372 which may be set by the board or the hearing officers, or

373 (b) By suspending his or her right to practice for a
374 time deemed proper by the board or the hearing officers, or

375 (c) By revoking his or her license, or

376 (d) By taking any other action in relation to his or
377 her license as the board or the hearing officers may deem proper
378 under the circumstances.

379 (2) Upon the execution of a disciplinary order by the board
380 or the hearing officers, either following a hearing or in lieu of
381 a hearing, the board or the hearing officers, in addition to the
382 disciplinary powers specified in subsection (1) of this section,
383 may assess the licensee for those reasonable costs that are
384 expended by the board or the hearing officers in the investigation
385 and conduct of a proceeding for licensure disciplinary action
386 including, but not limited to, the cost of process service, court
387 reporters, witness fees, expert witnesses, investigators, and
388 other related expenses. Money collected by the board or the
389 hearing officers under this section shall be deposited to the
390 credit of the special fund of the board to reimburse the existing
391 current year appropriated budget.

392 (3) An assessment of costs under this section shall be paid
393 to the board by the licensee, upon the expiration of the period
394 allowed for appeals under Section 73-25-27, or may be paid sooner



395 if the licensee elects. Cost assessed under this section shall
396 not exceed Ten Thousand Dollars (\$10,000.00).

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

410 **SECTION 8.** Section 73-25-31, Mississippi Code of 1972, is
411 amended as follows:

412 73-25-31. Every order and judgment of the board and its
413 hearing officers shall take effect immediately on its promulgation
414 unless * * * such order or judgment fixes a probationary period
415 for the licentiate. Such order and judgment shall continue in
416 effect unless upon appeal the court by proper order or decree
417 terminates it earlier. The board may make public its orders and
418 judgments, and those of its hearing officers, in such manner and
419 form as it deems proper. It shall in event of the suspension or



420 revocation of a license direct the clerk of the circuit court of
421 the county in which that license was recorded to cancel such
422 record.

423 **SECTION 9.** This act shall take effect and be in force from
424 and after July 1, 2018.

