

By: Representative Warren

To: Public Health and Human Services

HOUSE BILL NO. 239

1 AN ACT TO REENACT SECTIONS 73-19-1 THROUGH 73-19-29,
2 MISSISSIPPI CODE OF 1972, AND SECTIONS 73-19-33 THROUGH 73-19-45,
3 MISSISSIPPI CODE OF 1972, WHICH REGULATE THE PRACTICE OF
4 OPTOMETRY; TO AMEND SECTION 73-19-31, MISSISSIPPI CODE OF 1972, TO
5 EXTEND THE REPEALER ON THOSE SECTIONS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 73-19-1, Mississippi Code of 1972, is
8 reenacted as follows:

9 73-19-1. The practice of optometry is defined to be the
10 application of optical principles, through technical methods and
11 devices in the examination of human eyes for the purpose of
12 ascertaining departures from the normal, measuring their
13 functional powers and adapting optical accessories for the aid
14 thereof. The practice of optometry shall include the prescribing
15 and use of therapeutic pharmaceutical agents by optometrists
16 certified under Sections 73-19-153 through 73-19-165. The
17 practice of optometry shall not include the performing of any
18 invasive surgery including laser surgery, but shall not preclude
19 the removal of superficial foreign bodies from the eye or other
20 noninvasive procedures. Nothing in this section or any other
21 provision of law shall be construed to prohibit optometrists who
22 have been certified under Sections 73-19-153 through 73-19-165
23 from providing postophthalmic surgical or clinical care and
24 management with the advice and consultation of the operating or
25 treating physician.

26 **SECTION 2.** Section 73-19-3, Mississippi Code of 1972, is
27 reenacted as follows:

28 73-19-3. It shall not be lawful for any person in this state
29 to engage in the practice of optometry or to hold himself out as a
30 practitioner of optometry, or attempt to determine by an
31 examination of the eyes the kind of glasses needed by any person,
32 or to hold himself out as able to examine the eyes of any person
33 for the purpose of fitting the same with glasses, excepting those
34 hereinafter exempted, unless he has first fulfilled the
35 requirements of this chapter and has received a certificate of
36 licensure from the State Board of Optometry created by this
37 chapter, nor shall it be lawful for any person in this state to
38 represent that he is the lawful holder of a certificate of
39 licensure such as provided for in this chapter, when in fact he is
40 not such lawful holder or to impersonate any licensed practitioner
41 of optometry, or to fail to register the certificate as provided
42 by law.

43 **SECTION 3.** Section 73-19-5, Mississippi Code of 1972, is
44 reenacted as follows:

45 73-19-5. (1) Any person violating the provisions of this
46 chapter shall be guilty of a misdemeanor and, upon conviction for
47 his first offense shall be fined not more than Five Hundred
48 Dollars (\$500.00) at the discretion of the court, and upon
49 conviction for a second or later offense shall be fined not less
50 than Five Hundred Dollars (\$500.00) nor more than One Thousand
51 Dollars (\$1,000.00) or imprisoned not less than six (6) months nor
52 more than one (1) year, at the discretion of the court.

53 (2) Any entity, organization or person, including the board,
54 any member of the board and its agents or employees, acting in
55 good faith and without malice, who makes any report or information
56 available to the board regarding violation of any of the
57 provisions of Sections 73-19-1 through 73-19-111, or who assists
58 in the organization, investigation or preparation of any such
59 report or information or assists the board in carrying out any of

60 its duties or functions provided by law, shall be immune from
61 civil or criminal liability for such acts.

62 **SECTION 4.** Section 73-19-7, Mississippi Code of 1972, is
63 reenacted as follows:

64 73-19-7. The Governor, with the advice and consent of the
65 Senate, shall appoint a State Board of Optometry, consisting of
66 five (5) persons, citizens of Mississippi, each of whom shall be a
67 nonmedical man or woman actually engaged in the practice of
68 optometry for five (5) years next preceding his appointment.
69 Within ninety (90) days after March 25, 1974, the Governor shall
70 appoint: one (1) member for a term of one (1) year, one (1)
71 member for a term of two (2) years, one (1) member for a term of
72 three (3) years, one (1) member for a term of four (4) years, and
73 one (1) member for a term of five (5) years; and upon the
74 expiration of all such terms their successors shall be appointed
75 by the Governor for a term of five (5) years. From and after July
76 1, 1983, the appointments to the board shall be made with one (1)
77 member to be appointed from each of the congressional districts as
78 existing on January 1, 1980; provided that the present members of
79 the State Board of Optometry whose terms have not expired by July
80 1, 1983, shall continue to serve until their terms of office have
81 expired. Each member shall remain in office after the expiration
82 of his term until his successor shall be duly appointed and
83 qualified.

84 No person so appointed shall be a stockholder in or a member
85 of the faculty or of the board of trustees of any school of
86 optometry, or serve to exceed two (2) five-year terms.

87 Vacancies on said board shall be filled by appointment by the
88 Governor, with the advice and consent of the Senate, from a list
89 of names submitted by the Mississippi Optometric Association
90 consisting of three (3) of its members, or by appointment of any
91 qualified member of the association.

92 **SECTION 5.** Section 73-19-9, Mississippi Code of 1972, is
93 reenacted as follows:

94 73-19-9. The State Board of Optometry shall organize by the
95 election from its members of a president and a secretary, who
96 shall hold their respective offices for one (1) year.

97 It shall hold regular meetings for examination, beginning on
98 the second week of January and July of each year, and additional
99 meetings at such times and places as the board shall determine,
100 said additional meetings not to exceed ten (10) meeting days
101 annually, but the July meeting shall be held in the City of
102 Jackson.

103 A majority of the board shall constitute a quorum, but a less
104 number may adjourn from time to time.

105 The board shall make such rules and regulations as may be
106 necessary to carry out the provisions of this chapter; provided,
107 however, that it shall require the concurrence of a majority of
108 the members of the board to grant or revoke a license.

109 **SECTION 6.** Section 73-19-11, Mississippi Code of 1972, is
110 reenacted as follows:

111 73-19-11. Before entering upon the discharge of the duties
112 of his office the Secretary of the State Board of Optometry shall
113 give a bond to the state, to be approved by the board, in the sum
114 of Two Thousand Dollars (\$2,000.00) conditioned for the faithful
115 discharge of the duties of his office. The premium for such bond
116 to be paid from the funds paid into the State Treasury by the
117 secretary of the board.

118 Such bond, with the approval of the board and oath of office
119 indorsed thereon, shall be deposited with the Secretary of State
120 and kept in his office. Each month all monies received by the
121 secretary shall be paid by him into the State Treasury to the
122 credit of a fund for the use of the State Board of Optometry.

123 **SECTION 7.** Section 73-19-13, Mississippi Code of 1972, is
124 reenacted as follows:

125 73-19-13. Each member of the State Board of Optometry shall
126 be entitled to receive per diem as authorized under Section
127 25-3-69 in addition to all actual, necessary expenses incurred in
128 the discharge of official duties, including mileage as authorized
129 by law for state officials and employees.

130 The secretary shall receive an annual salary, to be fixed by
131 the board, and his necessary expenses incurred in the discharge of
132 his official duties. The State Board of Optometry may engage the
133 services of an attorney to assist it in the discharge of its
134 duties on terms to be fixed by the board.

135 The compensation and expenses of the secretary, attorney and
136 members of the board, and the expenses of the board necessary in
137 carrying out the provisions of this chapter, shall be paid from
138 the fund in the State Treasury for use of the board on the
139 requisition signed by the president and secretary of the board and
140 the warrant of the auditor of the state; provided, however, that
141 said compensation and expenses shall not exceed the amount paid
142 into the State Treasury under the provisions of this chapter; and
143 provided further, that all expenditures from such special fund
144 shall be authorized by the Legislature and shall be subject to all
145 applicable provisions of the state budget law.

146 **SECTION 8.** Section 73-19-15, Mississippi Code of 1972, is
147 reenacted as follows:

148 73-19-15. The State Board of Optometry shall have an
149 official seal and shall keep a record of its proceedings, a
150 register of persons registered as optometrists and register
151 licenses by it revoked.

152 Its records shall be open to public inspection, and it shall
153 keep on file all examination papers for a period of ninety (90)
154 days after each examination. A transcript of an entry in such
155 records certified by the secretary under the seal of the board,
156 shall be evidence of the facts therein stated. The board shall
157 annually on or before January 1 make a report to the Governor of

158 all its official acts during the preceding year, and of its
159 receipts and disbursements, and a full and complete report of the
160 conditions of optometry in this state.

161 **SECTION 9.** Section 73-19-17, Mississippi Code of 1972, is
162 reenacted as follows:

163 73-19-17. Any person over the age of twenty-one (21) years,
164 of good moral character, and who has graduated from a high school
165 or preparatory school affiliated with and recognized by a state
166 university, and who has graduated from a reputable school or
167 college of optometry, shall be entitled to stand the examination
168 for license to practice optometry in Mississippi. The examining
169 Board of Optometry shall keep on file a list of schools or
170 colleges of optometry which are recognized by said board. The
171 examination to practice optometry shall consist of tests in
172 practical, theoretical and physiological optics, in theoretical
173 and practical optometry and in anatomy and physiology of the eye
174 and in pathology as applied to optometry. The State Board of
175 Optometry shall not examine or certify any optometrist in any
176 therapeutic procedures unless the optometrist has successfully
177 completed the proper didactic education and supervised clinical
178 training taught by an institution accredited by a regional or
179 professional accreditation organization that is recognized or
180 approved by the Council on Postsecondary Accreditation of the
181 United States Department of Education, or its successor, and
182 approved by the State Board of Optometry with the advice and
183 consultation of the designated members of the State Board of
184 Medical Licensure and the State Board of Pharmacy.

185 **SECTION 10.** Section 73-19-19, Mississippi Code of 1972, is
186 reenacted as follows:

187 73-19-19. Every person desiring to be licensed as in this
188 chapter provided, shall file with the secretary an application,
189 verified by oath, setting forth the facts which entitle the
190 applicant to examination and licensure under the provisions of

191 this chapter. The said board shall hold at least two (2)
192 examinations each year. In case of failure at any examination the
193 applicant, after the expiration of six (6) months and within two
194 (2) years, shall have the privilege of a second examination by the
195 board without the payment of an additional fee. In the case of
196 any applicant who shall fail the examination twice, said applicant
197 shall not be permitted to again take the examination until he has
198 completed a further course of study outlined by the board and paid
199 the examination fee therefor. Every applicant who shall pass the
200 examination, and who shall otherwise comply with the provisions of
201 this chapter, shall receive from the said board under its seal a
202 certificate of licensure entitling him to practice optometry in
203 this state, which certificate shall be duly registered in a record
204 book to be properly kept by the secretary of the board for that
205 purpose, which shall be open to public inspection, and a duly
206 certified copy of said record shall be received as evidence in all
207 courts of this state in the trial of any case.

208 Each application or filing made under this section shall
209 include the Social Security number(s) of the applicant in
210 accordance with Section 93-11-64, Mississippi Code of 1972.

211 **SECTION 11.** Section 73-19-21, Mississippi Code of 1972, is
212 reenacted as follows:

213 73-19-21. Said board shall charge the following fees for
214 examination, registrations and renewals of certificates: The sum
215 of not more than Two Hundred Dollars (\$200.00) for an examination
216 of an applicant who is a resident of Mississippi and not more than
217 Three Hundred Dollars (\$300.00) for a nonresident of Mississippi
218 to cover the additional expenses of checking references, character
219 and other statements contained in the application. Every
220 registered optometrist who desires to continue the practice of
221 optometry shall, biennially, on or before January 1, pay to the
222 secretary of the board a renewal registration fee of not more than
223 Four Hundred Dollars (\$400.00) for which he shall receive a

224 renewal of his certificate. The board, in its discretion, may set
225 the renewal registration fee at different amounts for registered
226 optometrists, for registered optometrists certified to use
227 diagnostic pharmaceutical agents, and for registered optometrists
228 certified to use diagnostic and therapeutic pharmaceutical agents,
229 not to exceed the maximum amount prescribed in this section.

230 In case of neglect to pay the renewal registration fee herein
231 specified, the board may revoke such certificate and the holder
232 thereof may be reinstated by complying with the conditions
233 specified in this chapter. But no certificate or permit shall be
234 revoked without giving sixty (60) days' notice to the delinquent,
235 who, within such period shall have the right of renewal of such
236 certificate on payment of the renewal fee with a penalty of not
237 more than Fifteen Dollars (\$15.00), provided, that retirement from
238 practice for a period not exceeding five (5) years shall not
239 deprive the holder of said certificate of the right to renew his
240 certificate on the payment of all lapsed fees. The board shall
241 adopt a seal and certificate of suitable design and shall conduct
242 its examination at Jackson, in this state. Its permanent records
243 shall be kept in the office of the secretary, which records shall
244 be open to public inspection.

245 **SECTION 12.** Section 73-19-23, Mississippi Code of 1972, is
246 reenacted as follows:

247 73-19-23. (1) The board shall refuse to grant a certificate
248 of licensure to any applicant and may cancel, revoke or suspend
249 the operation of any certificate by it granted for any or all of
250 the following reasons, to-wit: unprofessional and unethical
251 conduct or the conviction of a crime involving moral turpitude,
252 habitual intemperance in the use of ardent spirits, or stimulants,
253 narcotics, or any other substance which impairs the intellect and
254 judgment to such an extent as to incapacitate one for the
255 performance of the duties of an optometrist. The certificate of

256 licensure of any person can be revoked for violating any section
257 of this chapter.

258 (2) The board shall further be authorized to take
259 disciplinary action against a licensee for any unlawful acts which
260 shall include violations of regulations promulgated by the board,
261 as well as the following acts:

262 (a) Fraud or misrepresentation in applying for or
263 procuring an optometric license or in connection with applying for
264 or procuring periodic renewal of an optometric license.

265 (b) Cheating on or attempting to subvert the optometric
266 licensing examination(s).

267 (c) The conviction of a felony in this state or any
268 other jurisdiction, or the entry of guilty or nolo contendere plea
269 to a felony charge.

270 (d) The conviction of a felony as defined by federal
271 law, or the entry of a guilty or nolo contendere plea to a felony
272 charge.

273 (e) Conduct likely to deceive, defraud or harm the
274 public.

275 (f) Making a false or misleading statement regarding
276 his or her skill or the efficacy or value of the medicine, device,
277 treatment or remedy prescribed by him or her or used at his or her
278 direction in the treatment of any disease or other condition.

279 (g) Willfully or negligently violating the
280 confidentiality between doctor and patient, except as required by
281 law.

282 (h) Negligence or gross incompetence in the practice of
283 optometry as determined by the board.

284 (i) Being found mentally incompetent or insane by any
285 court of competent jurisdiction.

286 (j) The use of any false, fraudulent, deceptive or
287 misleading statement in any document connected with the practice
288 of optometry.

289 (k) Aiding or abetting the practice of optometry by an
290 unlicensed, incompetent or impaired person.

291 (l) Commission of any act of sexual abuse, misconduct
292 or exploitation related to the licensee's practice of optometry.

293 (m) Being addicted or habituated to a drug or
294 intoxicant.

295 (n) Violating any state or federal law or regulation
296 relating to a drug legally classified as a controlled substance.

297 (o) Obtaining any fee by fraud, deceit or
298 misrepresentation.

299 (p) Disciplinary action of another state or
300 jurisdiction against a licensee or other authorization to practice
301 optometry based upon acts or conduct by the licensee similar to
302 acts or conduct which would constitute grounds for action as
303 defined in this chapter, a certified copy of the record of the
304 action taken by the other state or jurisdiction being conclusive
305 evidence thereof.

306 (q) Failure to report to the board the relocation of
307 his or her office in or out of the jurisdiction, or to furnish
308 floor plans as required by regulation.

309 (r) Violation of any provision(s) of the Optometry
310 Practice Act or the rules and regulations of the board or of an
311 action, stipulation or agreement of the board.

312 (s) To advertise in a manner that tends to deceive,
313 mislead or defraud the public.

314 (t) The designation of any person licensed under this
315 chapter, other than by the terms "optometrist," "Doctor of
316 Optometry" or "O.D."

317 (u) To knowingly submit or cause to be submitted any
318 misleading, deceptive or fraudulent representation on a claim
319 form, bill or statement.

320 (v) To practice or attempt to practice optometry while
321 his or her license is suspended.

322 (3) Any person who is holder of a certificate of licensure
323 or who is an applicant for examination for a certificate of
324 licensure, against whom is preferred any charges, shall be
325 furnished by the board with a copy of the complaint and shall have
326 a hearing in Jackson, Mississippi, before the board, at which
327 hearing he may be represented by counsel. At such hearing
328 witnesses may be examined for and against the accused respecting
329 the said charges, and said hearing orders or appeals will be
330 conducted according to the procedure now provided in Section
331 73-25-27. The suspension of a certificate of licensure, by reason
332 of the use of stimulants or narcotics may be removed when the
333 holder thereof shall have been adjudged by the said board to be
334 cured and capable of practicing optometry.

335 (4) In addition to the reasons specified in subsections (1)
336 and (2) of this section, the board shall be authorized to suspend
337 the license of any licensee for being out of compliance with an
338 order for support, as defined in Section 93-11-153. The procedure
339 for suspension of a license for being out of compliance with an
340 order for support, and the procedure for the reissuance or
341 reinstatement of a license suspended for that purpose, and the
342 payment of any fees for the reissuance or reinstatement of a
343 license suspended for that purpose, shall be governed by Section
344 93-11-157 or 93-11-163, as the case may be. If there is any
345 conflict between any provision of Section 93-11-157 or 93-11-163
346 and any provision of this chapter, the provisions of Section
347 93-11-157 or 93-11-163, as the case may be, shall control.

348 **SECTION 13.** Section 73-19-25, Mississippi Code of 1972, is
349 reenacted as follows:

350 73-19-25. An applicant for a certificate of licensure who
351 has been examined by the state board of another state which,
352 through reciprocity, similarly accredits the holder of a
353 certificate issued by the board of this state to the full
354 privileges of practice within such state, on the payment of a fee

355 of not more than Fifty Dollars (\$50.00) to the said board and on
356 filing in the office of the board a true and attested copy of the
357 said license, certified by the president or secretary of the state
358 board issuing the same, and showing also that the standard
359 requirements adopted and enforced by said board are equal to that
360 provided by this state, may, without further examination, receive
361 a certificate of licensure, provided that such applicant has not
362 previously failed at an examination held by the board of this
363 state.

364 **SECTION 14.** Section 73-19-27, Mississippi Code of 1972, is
365 reenacted as follows:

366 73-19-27. Nothing in this chapter shall be construed as
367 conferring on the holder of any certificate of licensure issued by
368 said board the title of oculist, ophthalmologist, or any other
369 word or abbreviation indicating that he is engaged in the practice
370 of medicine or surgery, or the treatment or the diagnosis of
371 diseases of, or injuries to, the human eye, or the right to use
372 drugs or medicines in any forms for the treatment or examination
373 of the human eye. However, optometrists who have been certified
374 by the board under the provisions of Sections 73-19-101 through
375 73-19-109 may use diagnostic pharmaceutical agents in the practice
376 of optometry in accordance with the requirements of Sections
377 73-19-101 through 73-19-109, and optometrists who have been
378 certified by the board under the provisions of Sections 73-19-153
379 through 73-19-165 may use therapeutic pharmaceutical agents in the
380 practice of optometry in accordance with the requirements of
381 Sections 73-19-150 through 73-19-165. Nothing contained in
382 Chapter 303, Laws of 1991, shall be construed as expanding the
383 scope of practice of a licensed optometrist beyond that authorized
384 prior to July 1, 1991.

385 **SECTION 15.** Section 73-19-29, Mississippi Code of 1972, is
386 reenacted as follows:

387 73-19-29. The provisions of this chapter shall not apply to
388 physicians or surgeons practicing under authority of licenses
389 issued under the laws of this state for the practice of medicine
390 or surgery. And provided that this chapter shall not prohibit
391 merchants and druggists who are actually engaged in business in
392 this state from selling and assisting purchasers in fitting
393 spectacles and eye glasses in their place of business at time of
394 sale.

395 **SECTION 16.** Section 73-19-33, Mississippi Code of 1972, is
396 reenacted as follows:

397 73-19-33. Complaints, irrespective of source, touching upon
398 the professional conduct or conduct evincing unfitness for the
399 practice of optometry made against optometrists licensed in this
400 state, that may be received by or that may come to the attention
401 of any member of the board, shall be referred by the president of
402 the board to an impartial member of the board for preliminary
403 investigation and further action as may be appropriate. The
404 complaint must be in writing and signed by the person making the
405 complaint or charge and shall contain the street address of the
406 complaining party and each witness.

407 **SECTION 17.** Section 73-19-35, Mississippi Code of 1972, is
408 reenacted as follows:

409 73-19-35. When any complaint or charge touching upon the
410 professional conduct or conduct evincing unfitness for the
411 practice of optometry against any optometrist subject to
412 discipline hereunder is referred to a member of the board for
413 investigation, the board member shall take the following action:

414 (a) Cause the complaint or charge to be filed and
415 docketed with the secretary of the board; and

416 (b) Refer the complaint to the board investigator for
417 further investigation and report.

418 **SECTION 18.** Section 73-19-37, Mississippi Code of 1972, is
419 reenacted as follows:

420 73-19-37. The board investigator shall immediately
421 investigate the complaint; and upon completion of his
422 investigation he shall inform the accused optometrist that a
423 complaint has been filed against him and that he is under
424 investigation, advise the accused optometrist of the general
425 nature of the charges, furnish him a copy of the complaint and any
426 evidence supporting it, and afford the accused optometrist an
427 opportunity to respond. Communications and notices to the accused
428 optometrist shall be transmitted by registered or certified mail,
429 postage prepaid, to the last known residence or business address
430 of the licensee.

431 **SECTION 19.** Section 73-19-39, Mississippi Code of 1972, is
432 reenacted as follows:

433 73-19-39. After completion of his investigation, the board
434 investigator shall make a report of his findings and
435 recommendations to the member of the board designated to
436 investigate the matter. After receipt of the investigator's
437 report, the board member shall take the following action:

438 (a) If upon review of the complaint, board
439 investigator's report and any written response by the accused
440 optometrist, the board member determines that there is not
441 reasonable ground to believe that the accused optometrist has been
442 guilty of unprofessional conduct or conduct evincing unfitness for
443 the practice of optometry, the board member shall present his
444 findings and recommendations to the board at the next regular
445 board meeting. The board may dismiss the complaint or may prepare
446 a formal complaint against the licensee as provided in Section
447 73-19-41, Mississippi Code of 1972. In the event of dismissal,
448 the person filing the complaint and the accused optometrist shall
449 be given written notice of the board's determination.

450 (b) If the board member determines there is reasonable
451 cause to believe the accused optometrist is guilty of such
452 conduct, which, if proven, would warrant suspension for a definite

453 or an indefinite period or license revocation, the board member
454 shall request the board to prepare and file a formal complaint
455 against the accused optometrist. The board may dismiss the
456 complaint or may prepare a formal complaint against the licensee
457 as provided in Section 73-19-41, Mississippi Code of 1972. In the
458 event of a dismissal, the person filing the complaint and the
459 accused optometrist shall be given written notice of the board's
460 determination.

461 **SECTION 20.** Section 73-19-41, Mississippi Code of 1972, is
462 reenacted as follows:

463 73-19-41. (1) The board shall fix a time and place for any
464 formal complaint hearing and shall cause a written notice
465 specifying the offense or offenses for which the licensee is
466 charged and notice of the time and place of the hearing to be
467 served upon the licensee at least twenty (20) days prior to the
468 hearing date. Such notice may be served by mailing a copy thereof
469 by certified mail, postage prepaid, to the last known residence or
470 business address of the licensee.

471 (2) The board is hereby authorized and empowered to issue
472 subpoenas for the attendance of witnesses and the production of
473 books and papers at such hearing. Process issued by the board
474 shall extend to all parts of the state and shall be served by any
475 person designated by the board for such service.

476 (3) The accused shall have the right to appear either
477 personally or by counsel or both to produce witnesses or evidence
478 in his behalf, to cross-examine witnesses and to have subpoenas
479 issued by the board.

480 (4) At the hearing, the board shall administer oaths as may
481 be necessary for the proper conduct of the hearing. All hearings
482 shall be conducted by the board, with the exception of the
483 investigating board member who shall not participate in the
484 hearing. The board shall not be bound by strict rules of
485 procedure or by the laws of evidence in the conduct of its

486 proceedings, but the determination shall be based upon sufficient
487 evidence to sustain it. All proceedings shall be transcribed by a
488 court reporter.

489 (5) Where, in any proceeding before the board, any witness
490 fails or refuses to attend upon a subpoena issued by the board,
491 refuses to testify, or refuses to produce any books and papers the
492 production of which is called for by a subpoena, the attendance of
493 such witness, the giving of his testimony or the production of the
494 books and papers shall be enforced by any court of competent
495 jurisdiction of this state in the manner provided for the
496 enforcement of attendance and testimony of witnesses in civil
497 cases in the courts of this state.

498 (6) The board shall, within sixty (60) days after conclusion
499 of the hearing, reduce its decision to writing and forward an
500 attested true copy thereof to the last known residence or business
501 address of such licensee by way of United States first class,
502 certified mail, postage prepaid.

503 **SECTION 21.** Section 73-19-43, Mississippi Code of 1972, is
504 reenacted as follows:

505 73-19-43. (1) Upon finding of the existence of grounds for
506 discipline of any person holding a license, seeking a license, or
507 seeking to renew a license under the provisions of this chapter,
508 the board may impose one or more of the following penalties:

509 (a) Suspension of the offender's license for a term to
510 be determined by the board;

511 (b) Revocation of the offender's license;

512 (c) Restriction of the offender's license to prohibit
513 the offender from performing certain acts or from engaging in the
514 practice of optometry in a particular manner for a term to be
515 determined by the board;

516 (d) Imposition of a monetary penalty as follows:

517 (i) For the first violation, a monetary penalty of
518 not less than Fifty Dollars (\$50.00) nor more than Five Hundred
519 Dollars (\$500.00) for each violation;

520 (ii) For the second violation and subsequent
521 violations, a monetary penalty of not less than One Hundred
522 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)
523 for each violation;

524 (e) Refusal to renew offender's license;

525 (f) Placement of the offender on probation and
526 supervision by the board for a period to be determined by the
527 board;

528 (g) Public or private reprimand.

529 (2) Any person whose license has been suspended, revoked or
530 restricted pursuant to this chapter, whether voluntarily or by
531 action of the board, shall have the right to petition the board at
532 reasonable intervals for reinstatement of such license. Such
533 petition shall be made in writing and in the form prescribed by
534 the board. Upon investigation and hearing, the board may, in its
535 discretion, grant or deny such petition, or it may modify its
536 original finding to reflect any circumstances which have changed
537 sufficiently to warrant such modifications. The procedure for the
538 reinstatement of a license that is suspended for being out of
539 compliance with an order for support, as defined in Section
540 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as
541 the case may be.

542 (3) Nothing herein shall be construed as barring criminal
543 prosecutions for violation of this chapter where such violations
544 are deemed as criminal offenses in other statutes of this state or
545 of the United States.

546 (4) A monetary penalty assessed and levied under this
547 section shall be paid to the board by the licensee upon the
548 expiration of the period allowed for appeal of such penalties
549 under Section 73-19-45, Mississippi Code of 1972, or may be paid

550 sooner if the licensee elects. Money collected by the board under
551 this section shall be deposited to the credit of the General Fund
552 of the State Treasury.

553 (5) When payment of a monetary penalty assessed and levied
554 by the board against a licensee in accordance with this section is
555 not paid by the licensee when due under this section, the board
556 shall have the power to institute and maintain proceedings in its
557 name for enforcement of payment in the Chancery Court of the First
558 Judicial District of Hinds County, Mississippi. When such
559 proceedings are instituted, the board shall certify its order to
560 the chancery court and the matter shall thereupon be heard in due
561 course by the court, which shall review the order and make its
562 determination thereon. The hearing on the matter may, in the
563 discretion of the chancellor, be tried in vacation. If the
564 chancellor finds no errors on the face of the board's order, the
565 board shall have a judgment for the amount due which shall be
566 enforceable as all other judgments.

567 **SECTION 22.** Section 73-19-45, Mississippi Code of 1972, is
568 reenacted as follows:

569 73-19-45. (1) The right to appeal from a final action of
570 the board is hereby granted. Such appeal shall be to the chancery
571 court of the county of residence of the licensee and shall be on
572 the record made, including a verbatim transcript of the testimony
573 at the hearing. The appeal shall be taken within thirty (30) days
574 after notice of the action of the board. The appeal shall be
575 perfected upon filing notice of the appeal with the chancery court
576 and by the prepayment of all costs, including the cost of the
577 preparation of the record of the proceedings by the board, and the
578 filing of a bond in the sum of Two Hundred Dollars (\$200.00),
579 conditioned that if the action of the board be affirmed by the
580 chancery court, the licensee will pay the costs of the appeal and
581 the action in the chancery court. A copy of the Notice of Appeal
582 shall be served upon board counsel.

583 (2) If there is an appeal, such appeal may, in the
584 discretion of and on motion to the chancery court, act as a
585 supersedeas. The chancery court shall dispose of the appeal and
586 enter its decision promptly. The hearing on the appeal may, in
587 the discretion of the chancellor, be tried in vacation. The scope
588 of review of the chancery court shall be limited to a review of
589 the record made before the board to determine if the action of the
590 board is unlawful for the reason that it was (a) not supported by
591 substantial evidence, (b) arbitrary or capricious, (c) beyond the
592 power of the board to make, or (d) in violation of some statutory
593 or constitutional right of the appellant. The decision of the
594 chancery court may be appealed to the Supreme Court in the manner
595 provided by the rules of the Supreme Court.

596 (3) Actions taken by the board in suspending a license when
597 required by Section 93-11-157 or 93-11-163 are not actions from
598 which an appeal may be taken under this section. Any appeal of a
599 license suspension that is required by Section 93-11-157 or
600 93-11-163 shall be taken in accordance with the appeal procedure
601 specified in Section 93-11-157 or 93-11-163, as the case may be,
602 rather than the procedure specified in this section.

603 **SECTION 23.** Section 73-19-31, Mississippi Code of 1972, is
604 amended as follows:

605 73-19-31. Sections 73-19-1 through 73-19-29 and 73-19-33
606 through 73-19-45, which create the Mississippi Board of Optometry
607 and prescribe its duties and powers, shall stand repealed as of
608 July 1, 2007.

609 **SECTION 24.** This act shall take effect and be in force from
610 and after July 1, 2005.