4/13 4158P

Chapter No. 409
12/SS02/R605CS
JN / TBIEC

SENATE BILL NO. 2670

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2670

AN ACT ENTITLED "THE PATIENT'S RIGHT TO INFORMED HEALTH CARE CHOICES ACT"; TO PROVIDE DEFINITIONS; TO REGULATE AND PROVIDE STANDARDS FOR HEALTH CARE PRACTITIONERS' ADVERTISEMENT PRACTICES AND COMMUNICATIONS; TO PROVIDE PENALTIES FOR VIOLATION OF THIS ACT; TO AMEND SECTIONS 73-9-61, 73-21-97, 73-25-29, 73-26-5, 73-27-13, 73-15-29, 73-19-23, 73-6-19 AND 73-39-77, MISSISSIPPI CODE OF 1972, TO INCLUDE VIOLATIONS OF DECEPTIVE ADVERTISEMENT BY HEALTH CARE PRACTITIONERS AS SPECIFIC GROUNDS FOR DISCIPLINARY ACTION AGAINST LICENSEES; AND FOR RELATED PURPOSES.

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

SECTION 1. Title. This act shall be known and may be cited as "The Patient's Right to Informed Health Care Choices Act."

SECTION 2. Purpose. The Legislature finds and declares that:

(a) There are a multitude of professional degrees using the term "doctor," including Medical Doctor (M.D.); Doctor of Osteopathic Medicine (D.O.); Doctor of Dental Surgery (D.D.S.); Doctor of Podiatric Medicine (D.P.M.); Doctor of Optometry (O.D.); Doctor of Chiropractic (D.C.); Doctor of Nursing Practice (D.N.P.); Doctor of Pharmacy (Pharm.D.); and other designations which may be used by health care practitioners.

(b) Choosing a health care provider is one of the most important decisions a patient makes, which should be supported by full disclosure from their health care provider. There are differences regarding the training and qualifications required to earn the professional degrees described in and subject to this act. These differences often concern the training and skills necessary to correctly detect, diagnose, prevent and treat serious health care conditions.

(c) There is a compelling state interest in patients being promptly and clearly informed of the actual training and qualifications of their health care practitioners who provide health care services. This act aims to provide public protection against potentially misleading and deceptive health care advertising that cause patients to have undue expectations regarding their medical treatments and outcomes.

SECTION 3. Definitions. For the purposes of this act:

(a) "Advertisement" means any communication or statement, whether printed, electronic or oral, that names the health care practitioner in relation to his or her practice, profession, or institution in which the individual is employed, volunteers or otherwise provides health care services. This includes business cards, letterhead, patient brochures, email, Internet, audio and video, and any other communication or statement used in the course of business or any other definition provided by regulations of the licensing board of proper jurisdiction.

(b) "Deceptive" or "misleading" includes, but is not limited to, any advertisement or affirmative communication or representation that misstates, falsely describes, holds out or falsely details the health care practitioner's profession, skills, training, expertise, education, board certification or licensure as determined by each respective licensing board.

(c) "Health care practitioner" means any person who engages in acts that are the subject of licensure or regulation. Categories of health care practitioner include:

(i) Practitioners of allopathic medicine, signified by the letters "M.D." or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery.

(ii) Practitioners of osteopathic medicine, signified by the letters "D.O." or the words surgeon, osteopathic

surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.

(iii) Practitioners of nursing, signified by the letters "D.N.P.," "N.P.," "R.N.," "L.P.N.," "C.R.N.A.," or any other commonly used signifier to denote a doctorate of nursing practice, nurse practitioner, registered nurse, licensed practical nurse, or certified registered nurse anesthetist, respectively, as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(iv) Practitioners of podiatry, signified by the letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.

(v) Practitioners of chiropractic, signified by the letters "D.C." or the words chiropractor, doctor of chiropractic or chiropractic physician.

(vi) Practitioners of dentistry, signified by the letters "D.D.S." or "D.M.D.," as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate.

(vii) Practitioners of optometry, signified by the letters "O.D." or the words optometrist or doctor of optometry.

(viii) Practitioners of pharmacy, signified by the letters "BSc.Pharm" or "Pharm.D." or the words pharmacists or doctor of pharmacy.

(ix) Physician assistants, signified by the letters "P.A." or the words physician assistant.

(x) Medical assistants, signified by the letters "M.A." or the words medical assistant.

(xi) Practitioners of audiology, signified by the letters "Au.D.," "Sc.D." or "Ph.D.," or the words audiologist or doctor of audiology.

(xii) Psychologists, therapists, speech-language pathologists, counselors, or any other health care practitioner not covered under this section, including, but not limited to, those signified by the letters "Ph.D.," "Ed.D.," "P.T.," "M.P.T." or "Psy.D.," or "Sc.D.," as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(d) "Licensee" means a health care practitioner who holds an active license with the licensing board governing his or her practice in this state.

SECTION 4. Requirements. (1) An advertisement for health care services that names a health care practitioner must identify the type of license held according to the definitions under this act. The advertisement shall be free from any and all deceptive or misleading information.

(2) A health care practitioner providing health care services in this state must conspicuously post in their office and affirmatively communicate the practitioner's specific licensure as defined under this act. This shall consist of the following: The health care practitioner shall display in his or her office a writing that clearly identifies the type of license held by the health care practitioner. The writing must be of sufficient size so as to be visible and apparent to all current and prospective patients.

(3) A health care practitioner who practices in more than one (1) office shall be required to comply with these requirements in each practice setting.

(4) Health care practitioners working in nonpatient care settings, and who do not have any direct patient care interactions, are not subject to the provisions of this act.

SECTION 5. Violations and enforcement. (1) Failure to comply with any provision under this section shall constitute a violation under this act.

(2) Knowingly aiding, assisting, procuring, employing or advising any unlicensed person or entity to practice or engage in acts contrary to the health care practitioner's degree of licensure shall constitute a violation under this act.

(3) Delegating or contracting for the performance of health care services by a health care practitioner when the licensee delegating or contracting for performance knows, or has reason to know, the person does not have the required authority under the person's licensure, shall constitute a violation under this act.

(4) Violations of this act relating to practitioners of pharmacy shall be regulated in accordance with the restrictions on the use of business name for pharmacists in Section 73-21-109.

(5) Each day that this act is violated shall constitute a separate offense and shall be punishable as such.

(6) Any health care practitioner who violates any provision under this act is guilty of unprofessional conduct and subject to disciplinary action under the appropriate licensure provisions governing the respective health care practitioner.

(7) Any and all fees and other amounts billed to and paid by the patient may be effectively rescinded and refunded. This includes third parties contracted to collect fees on behalf of the health care practitioner, the health care practitioner's employer, or other entity contracting with the health care practitioner as determined by each respective licensing board.

(8) The imposition of professional sanctions, administrative fees or other disciplinary actions shall be publicly reported by the governmental administrative body of proper jurisdiction at its discretion.

(9) Notwithstanding the imposition of any penalty, a professional licensing board or other administrative agency with

jurisdiction may seek an injunction or other legal means as appropriate against a person or entity violating this act as determined by each respective licensing board.

(10) A licensing board may only enforce violations of this act with licensees that are subject to its jurisdiction.

SECTION 6. Sections 1 through 5 of this act shall stand repealed on July 1, 2016.

SECTION 7. Section 73-9-61, Mississippi Code of 1972, is amended as follows:

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

(a) Misrepresentation in obtaining a license, or attempting to obtain, obtaining, attempting to renew or renewing a license or professional credential by making any material misrepresentation, including the signing in his or her professional capacity any certificate that is known to be false at the time he or she makes or signs the certificate.

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

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

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

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

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

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

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

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

(j) The refusal of a licensing authority of another state or jurisdiction to issue or renew a license, permit or certificate to practice dentistry or dental hygiene in that jurisdiction or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by the licensing authority that prevents or restricts practice in that

jurisdiction, a certified copy of the disciplinary order or action taken by the other state or jurisdiction being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(k) Surrender of a license or authorization to practice dentistry or dental hygiene in another state or jurisdiction when the board has reasonable cause to believe that the surrender is made to avoid or in anticipation of a disciplinary action.

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

(i) Committing any crime involving moral turpitude.

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

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

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

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

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

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

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

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

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

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

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

(r) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

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

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

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

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

(b) For the second violation of any of subparagraph (a), (b), (c), (d), (f), (i), (l), (m), (n), (o) or (q) of subsection (1) of this section, a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00).

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

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

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

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

(7) Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal has expired. In the event of an appeal, the appeal shall act as a supersedeas.

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

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

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

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

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

SECTION 8. Section 73-21-97, Mississippi Code of 1972, is amended as follows:

73-21-97. (1) The board may refuse to issue or renew, or may suspend, reprimand, revoke or restrict the license, registration or permit of any person upon one or more of the following grounds:

(a) Unprofessional conduct as defined by the rules and regulations of the board;

(b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, confidence and safety to the public;

(c) Being found guilty by a court of competent jurisdiction of one or more of the following:

(i) A felony;

(ii) Any act involving moral turpitude or gross immorality; or

(iii) Violation of pharmacy or drug laws of this state or rules or regulations pertaining thereto, or of statutes, rules or regulations of any other state or the federal government;

(d) Fraud or intentional misrepresentation by a licensee or permit holder in securing the issuance or renewal of a license or permit;

(e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license;

(f) Violation of any of the provisions of this chapter or rules or regulations adopted pursuant to this chapter;

(g) Failure to comply with lawful orders of the board;

(h) Negligently or willfully acting in a manner inconsistent with the health or safety of the public;

(i) Addiction to or dependence on alcohol or controlled substances or the unauthorized use or possession of controlled substances;

(j) Misappropriation of any prescription drug;

(k) Being found guilty by the licensing agency in another state of violating the statutes, rules or regulations of that jurisdiction;

(l) The unlawful or unauthorized possession of a controlled substance;

(m) Willful failure to submit drug monitoring information or willful submission of incorrect dispensing information as required by the Prescription Monitoring Program under Section 73-21-127; * * *

(n) Failure to obtain the license, registration or permit required by this chapter; or

(o) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) In lieu of suspension, revocation or restriction of a license as provided for above, the board may warn or reprimand the offending pharmacist.

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

SECTION 9. Section 73-25-29, Mississippi Code of 1972, is amended as follows:

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

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

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

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

(4) Conviction of violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or any drug considered a controlled substance under state or federal law, a certified copy of the conviction order or judgment

rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

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

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

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

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

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

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

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

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

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

(f) Use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the licensing requirements, including the signing in his professional

capacity any certificate that is known to be false at the time he makes or signs such certificate.

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

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

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

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

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

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

(14) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

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

SECTION 10. Section 73-26-5, Mississippi Code of 1972, is amended as follows:

73-26-5. (1) The board shall promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of physician assistants. Those rules shall include, but are not limited to: qualifications for licensure for physician assistants; scope of practice of physician assistants; supervision of physician assistants; identification of physician assistants; grounds for disciplinary actions and discipline of physician assistants, which through June 30, 2016,

shall specifically include discipline for violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners; and setting and charging reasonable fees for licensure and license renewals for physician assistants. However, nothing in this chapter or in rules adopted by the board shall authorize physician assistants to administer or monitor general inhaled anesthesia, epidural anesthesia, spinal anesthesia or monitored anesthesia as utilized in surgical procedures. The board shall promulgate rules for licensure and license renewals in accordance with Section 33-1-39.

(2) If the board appoints a task force or committee to address physician assistant regulation, at least one (1) member of the task force shall be a nurse practitioner who is a member of the Mississippi Board of Nursing or a nurse practitioner appointee selected by the board from a list of three (3) recommendations submitted by the Mississippi Nurses Association, and at least one (1) member shall be a physician assistant selected by the board from a list of three (3) recommendations submitted by the Mississippi Academy of Physician Assistants.

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

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

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

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

(c) Administering, dispensing or prescribing any narcotic drug, or any other drug having addiction-forming or

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

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

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

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

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

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

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

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

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

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

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

(vi) Use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the

licensing requirements, including the signing in his professional capacity any certificate that is known to be false at the time he makes or signs such certificate.

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

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

(j) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) Upon the nonissuance, suspension or revocation of a license to practice podiatry, the board may, in its discretion and with the advice of the advisory committee, reissue a license after a lapse of six (6) months. No advertising shall be permitted except regular professional cards.

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

(4) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended

for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 12. Section 73-15-29, Mississippi Code of 1972, is amended as follows:

73-15-29. (1) The board shall have power to revoke, suspend or refuse to renew any license issued by the board, or to revoke or suspend any privilege to practice, or to deny an application for a license, or to fine, place on probation and/or discipline a licensee, in any manner specified in this article, upon proof that such person:

(a) Has committed fraud or deceit in securing or attempting to secure such license;

(b) Has been convicted of felony, or a crime involving moral turpitude or has had accepted by a court a plea of nolo contendere to a felony or a crime involving moral turpitude (a certified copy of the judgment of the court of competent jurisdiction of such conviction or pleas shall be prima facie evidence of such conviction);

(c) Has negligently or willfully acted in a manner inconsistent with the health or safety of the persons under the licensee's care;

(d) Has had a license or privilege to practice as a registered nurse or a licensed practical nurse suspended or revoked in any jurisdiction, has voluntarily surrendered such license or privilege to practice in any jurisdiction, has been placed on probation as a registered nurse or licensed practical nurse in any jurisdiction or has been placed under a disciplinary order(s) in any manner as a registered nurse or licensed practical nurse in any jurisdiction, (a certified copy of the order of

suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action);

(e) Has negligently or willfully practiced nursing in a manner that fails to meet generally accepted standards of such nursing practice;

(f) Has negligently or willfully violated any order, rule or regulation of the board pertaining to nursing practice or licensure;

(g) Has falsified or in a repeatedly negligent manner made incorrect entries or failed to make essential entries on records;

(h) Is addicted to or dependent on alcohol or other habit-forming drugs or is a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effect, or has misappropriated any medication;

(i) Has a physical, mental or emotional condition that renders the licensee unable to perform nursing services or duties with reasonable skill and safety;

(j) Has engaged in any other conduct, whether of the same or of a different character from that specified in this article, that would constitute a crime as defined in Title 97 of the Mississippi Code of 1972, as now or hereafter amended, and that relates to such person's employment as a registered nurse or licensed practical nurse;

(k) Engages in conduct likely to deceive, defraud or harm the public;

(l) Engages in any unprofessional conduct as identified by the board in its rules; * * *

(m) Has violated any provision of this article; or

(n) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) When the board finds any person unqualified because of any of the grounds set forth in subsection (1) of this section, it may enter an order imposing one or more of the following penalties:

(a) Denying application for a license or other authorization to practice nursing or practical nursing;

(b) Administering a reprimand;

(c) Suspending or restricting the license or other authorization to practice as a registered nurse or licensed practical nurse for up to two (2) years without review;

(d) Revoking the license or other authorization to practice nursing or practical nursing;

(e) Requiring the disciplinee to submit to care, counseling or treatment by persons and/or agencies approved or designated by the board as a condition for initial, continued or renewed licensure or other authorization to practice nursing or practical nursing;

(f) Requiring the disciplinee to participate in a program of education prescribed by the board as a condition for initial, continued or renewed licensure or other authorization to practice;

(g) Requiring the disciplinee to practice under the supervision of a registered nurse for a specified period of time; or

(h) Imposing a fine not to exceed Five Hundred Dollars ($500.00).

(3) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license or privilege to practice of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license or privilege to practice for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license

or privilege to practice suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license or privilege to practice suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(4) If the public health, safety or welfare imperatively requires emergency action and the board incorporates a finding to that effect in an order, the board may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined by the board.

SECTION 13. Section 73-19-23, Mississippi Code of 1972, is amended as follows:

73-19-23. (1) The board shall refuse to grant a certificate of licensure to any applicant and may cancel, revoke or suspend the operation of any certificate by it granted for any or all of the following reasons: unprofessional and unethical conduct or the conviction of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits, or stimulants, narcotics, or any other substance that impairs the intellect and judgment to such an extent as to incapacitate one for the performance of the duties of an optometrist. The certificate of licensure of any person can be revoked for violating any section of this chapter.

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

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

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

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

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

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

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

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

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

(i) Being found to be a person with mental illness or with an intellectual disability by any court of competent jurisdiction.

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

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

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

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

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

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

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

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

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

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

(t) The designation of any person licensed under this chapter, other than by the terms "optometrist," "Doctor of Optometry" or "O.D.," which through June 30, 2016, shall include any violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners.

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

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

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

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

SECTION 14. Section 73-6-19, Mississippi Code of 1972, is amended as follows:

73-6-19. (1) The board shall refuse to grant a certificate of licensure to any applicant or may cancel, revoke or suspend the certificate upon the finding of any of the following facts regarding the applicant or licensed practitioner:

(a) Failure to comply with the rules and regulations adopted by the State Board of Chiropractic Examiners;

(b) Violation of any of the provisions of this chapter or any of the rules and regulations of the State Board of Health pursuant to this chapter with regard to the operation and use of x-rays;

(c) Fraud or deceit in obtaining a license;

(d) Addiction to the use of alcohol, narcotic drugs, or anything which would seriously interfere with the competent performance of his professional duties;

(e) Conviction by a court of competent jurisdiction of a felony, other than manslaughter or any violation of the United States Internal Revenue Code;

(f) Unprofessional and unethical conduct;

(g) Contraction of a contagious disease which may be carried for a prolonged period;

(h) Failure to report to the Mississippi Department of Human Services or the county attorney any case wherein there are reasonable grounds to believe that a child or vulnerable adult has been abused by its parent or person responsible for such person's welfare;

(i) Advising a patient to use drugs, prescribing or providing drugs for a patient, or advising a patient not to use a drug prescribed by a licensed physician or dentist;

(j) Professional incompetency in the practice of chiropractic;

(k) Having disciplinary action taken by his peers within any professional chiropractic association or society;

(l) Offering to accept or accepting payment for services rendered by assignment from any third-party payor after offering to accept or accepting whatever the third-party payor covers as payment in full, if the effect of the offering or acceptance is to eliminate or give the impression of eliminating

the need for payment by an insured of any required deductions applicable in the policy of the insured;

(m) Associating his practice with any chiropractor who does not hold a valid chiropractic license in Mississippi, or teach chiropractic manipulation to nonqualified persons under Section 73-6-13;

(n) Failure to make payment on chiropractic student loans;

(o) Failure to follow record keeping requirements prescribed in Section 73-6-18; * * *

(p) If the practitioner is certified to provide animal chiropractic treatment, failure to follow guidelines approved by the Mississippi Board of Veterinary Medicine; or

(q) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) Any holder of such certificate or any applicant therefor against whom is preferred any of the designated charges shall be furnished a copy of the complaint and shall receive a formal hearing in Jackson, Mississippi, before the board, at which time he may be represented by counsel and examine witnesses. The board is authorized to administer oaths as may be necessary for the proper conduct of any such hearing. In addition, the board is authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the board shall extend to all parts of the state. Where in any proceeding before the board any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of

competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(3) In addition to any other investigators the board employs, the board shall appoint one or more licensed chiropractors to act for the board in investigating the conduct relating to the competency of a chiropractor, whenever disciplinary action is being considered for professional incompetence and unprofessional conduct.

(4) Whenever the board finds any person unqualified to practice chiropractic because of any of the grounds set forth in subsection (1) of this section, after a hearing has been conducted as prescribed by this section, the board may enter an order imposing one or more of the following:

(a) Deny his application for a license or other authorization to practice chiropractic;

(b) Administer a public or private reprimand;

(c) Suspend, limit or restrict his license or other authorization to practice chiropractic for up to five (5) years;

(d) Revoke or cancel his license or other authorization to practice chiropractic;

(e) Require him to submit to care, counseling or treatment by physicians or chiropractors designated by the board, as a condition for initial, continued or renewal of licensure or other authorization to practice chiropractic;

(f) Require him to participate in a program of education prescribed by the board; or

(g) Require him to practice under the direction of a chiropractor designated by the board for a specified period of time.

(5) Any person whose application for a license or whose license to practice chiropractic has been cancelled, revoked or suspended by the board within thirty (30) days from the date of

such final decision shall have the right of a de novo appeal to the circuit court of his county of residence or the Circuit Court of the First Judicial District of Hinds County, Mississippi. If there is an appeal, such appeal may, in the discretion of and on motion to the circuit court, act as a supersedeas. The circuit court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the circuit judge, be tried in vacation. Either party shall have the right of appeal to the Supreme Court as provided by law from any decision of the circuit court.

(6) In a proceeding conducted under this section by the board for the revocation, suspension or cancellation of a license to practice chiropractic, after a hearing has been conducted as prescribed by this section, the board shall have the power and authority for the grounds stated in subsection (1) of this section, with the exception of paragraph (c) thereof, to assess and levy upon any person licensed to practice chiropractic in the state a monetary penalty in lieu of such revocation, suspension or cancellation, as follows:

(a) For the first violation, a monetary penalty of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for each violation.

(b) For the second and each subsequent violation, a monetary penalty of not less than One Thousand Dollars ($1,000.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00) for each violation.

The power and authority of the board to assess and levy such monetary penalties under this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations. A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section to the circuit court under the same conditions as a right of appeal is provided for in this section

for appeals from an adverse ruling, or order, or decision of the board. Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal has expired, and an appeal of the assessment and levy of such a monetary penalty shall act as a supersedeas.

(7) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 15. Section 73-39-77, Mississippi Code of 1972, is amended as follows:

73-39-77. (1) Upon a written complaint sworn to by any person, the board, in its sole discretion, may, after a hearing, revoke, suspend or limit for a certain time a license, impose an administrative fine not to exceed One Thousand Dollars ($1,000.00) for each separate offense, or otherwise discipline any licensed veterinarian for any of the following reasons:

(a) The employment of fraud, misrepresentation or deception in obtaining a license.

(b) The inability to practice veterinary medicine with reasonable skill and safety because of a physical or mental disability, including deterioration of mental capacity, loss of motor skills or abuse of drugs or alcohol of sufficient degree to diminish the person's ability to deliver competent patient care.

(c) The use of advertising or solicitation that is false or misleading.

(d) Conviction of the following in any federal court or in the courts of this state or any other jurisdiction, regardless of whether the sentence is deferred:

(i) Any felony;

(ii) Any crime involving cruelty, abuse or neglect of animals, including bestiality;

(iii) Any crime of moral turpitude;

(iv) Any crime involving unlawful sexual contact, child abuse, the use or threatened use of a weapon, the infliction of injury, indecent exposure, perjury, false reporting, criminal impersonation, forgery and any other crime involving a lack of truthfulness, veracity or honesty, intimidation of a victim or witness, larceny, or alcohol or drugs.

For the purposes of this paragraph, a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction.

(e) Incompetence, gross negligence or other malpractice in the practice of veterinary medicine.

(f) Aiding the unlawful practice of veterinary medicine.

(g) Fraud or dishonesty in the application or reporting of any test for disease in animals.

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

(i) Failure to keep accurate patient records.

(j) Dishonesty or gross negligence in the performance of food safety inspections or in the issuance of any health or inspection certificates.

(k) Failure to keep veterinary premises and equipment, including practice vehicles, in a clean and sanitary condition.

(l) Failure to permit the board or its agents to enter and inspect veterinary premises and equipment, including practice vehicles, as set by rules promulgated by the board.

(m) Revocation, suspension or limitation of a license to practice veterinary medicine by another state, territory or district of the United States.

(n) Loss or suspension of accreditation by any federal or state agency.

(o) Unprofessional conduct as defined in regulations adopted by the board.

(p) The dispensing, distribution, prescription or administration of any veterinary prescription drug, or the extralabel use of any drug in the absence of a veterinarian-client-patient relationship.

(q) Violations of state or federal drug laws.

(r) Violations of any order of the board.

(s) Violations of this chapter or of the rules promulgated under this chapter.

(t) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) A certified copy of any judgment of conviction or finding of guilt by a court of competent jurisdiction or by a

governmental agency, or agency authorized to issue licenses or permits, including the United States Department of Agriculture, Animal and Plant Health Inspection Service, the Mississippi Board of Animal Health and the Mississippi Board of Health, of a veterinarian or veterinary technician of any matters listed in this section shall be admissible in evidence in any hearing held by the board to discipline such veterinarian or technician and shall constitute prima facie evidence of the commission of any such act.

SECTION 16. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE SENATE
March 8, 2012

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
April 4, 2012

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

4:58pm