



AN ACT REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ENSURE THAT A LICENSEE WHO IS REQUIRED TO PARTICIPATE IN A REHABILITATION PROGRAM MUST BE ALLOWED TO ENROLL IN A QUALIFIED PROGRAM WITHIN MONTANA IF ONE IS AVAILABLE; AMENDING SECTIONS 37-3-203, 37-3-208, AND 37-3-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. (1) The board may:

~~(1)~~(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

~~(2)~~(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

~~(3)~~(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

~~(4)~~(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

~~(5)~~(e) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

~~(6)~~(f) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) If the board establishes a program pursuant to subsection (1)(d), the board shall ensure that a licensee who is required or volunteers to participate in the program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified program within this state and may not require

a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state."

Section 2. Section 37-3-208, MCA, is amended to read:

"37-3-208. Confidentiality of information -- physician assistance program. (1) The proceedings and records of the program created by the board pursuant to 37-3-203~~(4)~~(1)(d) relating to a physician who has received assistance from the program are considered to be proceedings and records of a professional standards review committee under 37-2-201 and are not subject to discovery or introduction into evidence in any administrative or judicial proceeding, except that the proceedings and records of the program as they pertain to a physician are subject to discovery or introduction into evidence in a disciplinary proceeding before the board against the physician.

(2) Proceedings and records of the program created by the board pursuant to 37-3-203~~(4)~~(1)(d) do not include health care information, as defined in 50-16-803, maintained by a health care provider in the provision of health care services to a physician who is receiving or has received assistance from the program. The health care information is subject to discovery from the physician or health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law."

Section 3. Section 37-3-401, MCA, is amended to read:

"37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

- (a) medically incompetent;
- (b) mentally or physically unable to safely engage in the practice of medicine; or
- (c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program

established by the board under 37-3-203~~(4)~~(1)(d), in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0401, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 401

INTRODUCED BY J. LASLOVICH

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