

Amendments to House Bill No. 429
1st Reading Copy

Requested by Representative Tom Berry

For the House Human Services Committee

Prepared by Sue O'Connell
February 14, 2011 (2:12pm)

1. Title, page 1, line 8.

Strike: "TELEMEDICINE"

Insert: "ELECTRONIC MEANS TO CONDUCT EXAMS"

2. Title, page 1, line 10.

Following: "SECTIONS"

Insert: "37-1-316,"

3. Page 1, line 15.

Insert: "Section 1. Section 37-1-316, MCA, is amended to read:

"37-1-316. **Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or

other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the

scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards;

(19) the sole use of any electronic means, including teleconferencing, to obtain the information required for the physician affidavit that would be used to petition a court for authorization for the medical use of marijuana as provided in Title 50, chapter 46."

{ Internal References to 37-1-316:

28-10-103x 37-1-319x 37-1-320x 37-2-304x
37-3-348x 37-35-301x 37-35-301x * 37-35-301x *
50-20-307x }"

Renumber: subsequent sections

4. Page 4, line 13.

Following: "perjury"

Insert: "-- confidentiality"

5. Page 8, line 14.

Following: "(16)"

Insert: "(a)"

6. Page 8, line 16.

Following: "affidavit,"

Insert: "and"

Following: "documentation"

Strike: ", and court order"

Insert: "are confidential and"

7. Page 8, line 20.

Following: "only"

Strike: "necessary"

Insert: "allowed by a court"

8. Page 8, line 22.

Strike: "(a)"

Insert: "(i)"

9. Page 8, line 24.

Strike: "(b)"

Insert: "(ii)"

10. Page 8.

Following: line 26

Insert: "(b) A court order allowing the medical use of marijuana by a petitioner is a public document."

11. Page 10, line 17.

Following: "(c)"

Insert: "except as provided in subsection (2),"

12. Page 10, line 25.

Following: "worship;"

Strike: "or"

13. Page 10.

Following: line 25

Insert: "(vii) in a health care facility as defined in 50-5-101;
or"

Renumber: subsequent subsection

14. Page 10.

Following: line 26

Insert: "(2) A hospice licensed under Title 50, chapter 5, may
adopt a policy that allows medical use of marijuana."

Renumber: subsequent subsections

- END -

1 of an application or renewal is considered a final department action, subject to judicial review.

2 ~~_____ (6) The department shall issue a registry identification card within 5 days of approving an application or~~
3 ~~renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must~~
4 ~~state:~~

5 ~~_____ (a) the name, address, and date of birth of the qualifying patient;~~

6 ~~_____ (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;~~

7 ~~_____ (c) the date of issuance and expiration date of the registry identification card; and~~

8 ~~_____ (d) other information that the department may specify by rule.~~

9 ~~(7)(15) A person who has been issued a registry identification card~~ court order allowing the medical use
10 of marijuana shall ~~notify the department~~ file an affidavit with the court to notify the court of any change in the
11 qualifying patient's person's name, address, physician, or caregiver or change in status of the qualifying patient's
12 person's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
13 department court, the registry identification card court order is void.

14 ^(a) ~~(8)(16) The department shall maintain a confidential list of the persons to whom the department has~~
15 ~~issued registry identification cards. Individual names and other identifying information on the list~~ petition,
16 physician's affidavit, and any other supporting documentation, and court order are confidential and must be confidential and are not subject
17 to disclosure, except may be provided to:

18 ~~(a) authorized employees of the department as necessary to perform official duties of the department;~~
19 or

20 ~~_____ (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that~~
21 a person is a lawful possessor of a registry identification card

22 ⁽ⁱ⁾ ~~(a) determine whether the person who is the subject of a marijuana-related complaint has a court order~~
23 allowing the medical use of marijuana; or

24 ⁽ⁱⁱ⁾ ~~(b) confirm that a valid court order exists if a person states that the person is allowed to engage in the~~
25 medical use of marijuana under a court order issued pursuant to this chapter but is not in possession of the court
26 order. (b) A court order allowing the medical use... is a public document.

27 ~~(9) The department shall report annually to the legislature the number of applications for registry~~
28 ~~identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating~~
29 ~~medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number~~
30 ~~of physicians providing written certification for qualifying patients. The department may not provide any identifying~~

1 ~~(6)~~(4) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as
 2 provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity
 3 of the medical use of marijuana as permitted under this chapter.

4 ~~(7)~~(5) Possession of or ~~application a petition~~ for a ~~registry identification card~~ court order does not alone
 5 constitute probable cause to search the person or property of the person possessing or applying for the ~~registry~~
 6 ~~identification card~~ court order or otherwise subject the person or property of the person possessing or applying
 7 for the ~~card~~ court order to inspection by any governmental agency, including a law enforcement agency.

8 ~~(8) A registry identification card or its equivalent issued by another state government to permit the~~
 9 ~~medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical~~
 10 ~~use of marijuana has the same force and effect as a registry identification card issued by the department."~~

11
 12 **Section 6.** Section 50-46-205, MCA, is amended to read:

13 **"50-46-205. Limitations of Medical Marijuana Act.** (1) This chapter does not permit:

14 (a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or
 15 motorboat while under the influence of marijuana;

16 (b) the use of marijuana by a caregiver; or

except as provided in subsection (2),

17 ~~(c) the smoking~~ medical use of marijuana in the following locations by a qualifying patient person with
 18 a court order allowing medical use:

19 (i) in a school bus or other form of public transportation;

20 (ii) in a school or postsecondary school as defined in 20-5-402;

21 ~~(iii)~~(iii) on any school grounds or in any property owned by a school district or a postsecondary school or
 22 leased by a school district or postsecondary school when the property is being used for school-related purposes;

23 ~~(iii)~~(iv) in any correctional facility; or

24 ~~(iv)~~(v) at any public park, public beach, public recreation center, or youth center;

25 (vi) in or on the property of any church, synagogue, or other place of worship; or

26 ~~(vii) in a health care facility as defined in 50-5-10; or~~
 27 (vii) in plain view of the public.

28 ~~(2) A hospice licensed under Title 50, chapter 5, may adopt...~~

29 ~~(2) A~~ law enforcement officer who suspects that a person with a court order issued pursuant to this
 30 chapter is driving under the influence of marijuana may apply for a search warrant to require the person to provide
a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a
tetrahydrocannabinol (THC) level of 3.5 ng/ml may be charged with a violation of 61-8-401.