

HOUSE BILL NO. 235

INTRODUCED BY D. JONES

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING LICENSING AND REGULATION OF ANESTHESIOLOGIST ASSISTANTS; ALLOWING APPOINTMENT OF AN ANESTHESIOLOGIST ASSISTANT TO THE BOARD OF MEDICAL EXAMINERS; PROVIDING EXEMPTIONS; PROVIDING RECIPROCITY IN A DECLARED DISASTER OR EMERGENCY; ALLOWING BILLING FOR ANESTHESIOLOGIST ASSISTANT SERVICES; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-1731 AND 37-3-203, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 2-15-1731, MCA, is amended to read:

**"2-15-1731. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of 13 members appointed by the governor with the consent of the senate.

Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine, including one member with experience in emergency medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist;

(e) one member who is a licensed physician assistant or a licensed anesthesiologist assistant;

(f) one member who is a licensed acupuncturist;

(g) one member who is a volunteer emergency medical technician, as defined in 50-6-202; and

(h) two members of the general public who are not medical practitioners.

(4) (a) The members having the degree of doctor of medicine may not be from the same county.

(b) The volunteer emergency medical technician must have a demonstrated interest in and knowledge of state and national issues involving emergency medical service.

(c) Each member must be a citizen of the United States.



1 (d) (i) Each member, except for public members and, if appointed, the representative of anesthesiologist  
2 assistants until 2022, must have been licensed and must have practiced medicine, acupuncture, emergency  
3 medical care, or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for  
4 at least 5 years.

5 (ii) Beginning in 2022, a member appointed as the anesthesiologist assistant representative on the board  
6 must meet the same requirements as other licensee members of the board.

7 (5) Members shall serve staggered 4-year terms. A term begins on September 1 of each year of  
8 appointment. A member may be removed by the governor for neglect of duty, incompetence, or unprofessional  
9 or dishonorable conduct.

10 (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."  
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12 **NEW SECTION. Section 2. Definitions.** As used in [sections 2 through 10], the following definitions  
13 apply:

14 (1) "Anesthesiologist" means a physician who has completed a residency in anesthesiology approved  
15 by the American board of anesthesiology or the American osteopathic board of anesthesiology.

16 (2) "Anesthesiologist assistant" means an individual who:

17 (a) is a graduate of an anesthesiologist assistant program accredited by the commission on accreditation  
18 of allied health education programs or its successor agency;

19 (b) has passed the certifying examination administered by the national commission for certification of  
20 anesthesiologist assistants or its successor organization; and

21 (c) provides health care services delegated by an anesthesiologist licensed by the board;

22 (3) "Board" means the Montana state board of medical examiners established in 2-15-1731.

23 (4) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

24 (5) "Duties and delegation agreement" means a written agreement between the supervising  
25 anesthesiologist and the anesthesiologist assistant that meets the requirements of [section 6].

26 (6) "Supervising anesthesiologist" means a medical doctor or a doctor of osteopathy licensed by the  
27 board, meeting the criteria for an anesthesiologist, who has agreed to a supervision agreement and a duties and  
28 delegation agreement.

29 (7) "Supervision agreement" means a written agreement between a supervising anesthesiologist and  
30 an anesthesiologist assistant providing for the supervision of the anesthesiologist assistant.

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2           **NEW SECTION. Section 3. Application for and renewal of license -- fees.** (1) A person desiring to  
3 practice as an anesthesiologist assistant shall submit an application to the department on a form prescribed by  
4 the department and pay all applicable fees to the department. The applicant shall provide the authorization  
5 necessary for the release of records or other information necessary for licensure to the department. The burden  
6 of proving that the applicant has complied with all application requirements is on the applicant. However, the  
7 department may make an independent investigation to determine whether the applicant possesses the required  
8 qualifications and whether the applicant has ever committed unprofessional conduct.

9           (2) To renew a license, an anesthesiologist assistant shall pay to the department a renewal fee as  
10 prescribed by the board. Except as provided in 37-1-138, the provisions of 37-1-141 apply to license renewals.

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12           **NEW SECTION. Section 4. Criteria for licensure.** An individual may not be licensed as an  
13 anesthesiologist assistant in this state unless the individual:

- 14           (1) is of good moral character;
- 15           (2) has graduated from an anesthesiologist assistant program accredited by the commission on  
16 accreditation of allied health education programs, its successor agency, or any other applicable accrediting body  
17 recognized by the U.S. department of education to accredit allied health education programs;
- 18           (3) has successfully passed the certifying examination administered by the national commission for  
19 certification of anesthesiologist assistants or its successor organization; and
- 20           (4) has active certification by the national commission for certification of anesthesiologist assistants or  
21 its successor organization.

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23           **NEW SECTION. Section 5. Agent of supervising anesthesiologist -- degree of supervision**  
24 **required -- scope of practice.** An anesthesiologist assistant is considered the agent of the supervising  
25 anesthesiologist with regard to all duties delegated to the anesthesiologist assistant and is professionally and  
26 legally responsible for the care and treatment of a patient if the anesthesiologist assistant is licensed in  
27 accordance with [sections 2 through 10]. A health care provider shall consider the instructions of an  
28 anesthesiologist assistant as being the instructions of the supervising anesthesiologist as long as the instructions  
29 concern the duties delegated to the anesthesiologist assistant.

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1           **NEW SECTION. Section 6. Requirements for use of anesthesiologist assistant -- supervision**  
 2 **agreement -- duties and delegation agreement -- content -- approval -- filing.** (1) (a) Before hiring and making  
 3 use of the services of an anesthesiologist assistant in the practice of medicine, as defined in 37-3-102 and as  
 4 related to anesthesiology, or as provided in [sections 2 through 10], a physician, office, firm, state institution, or  
 5 professional service corporation must comply with or determine that the anesthesiologist assistant has complied  
 6 with the requirements in subsections (2) and (3).

7           (b) An anesthesiologist assistant must meet the requirements of subsections (2) and (3) to be employed  
 8 or practice as an anesthesiologist assistant in this state.

9           (2) The anesthesiologist assistant must:

10           (a) be supervised by an anesthesiologist licensed as a physician in this state;

11           (b) be licensed as an anesthesiologist assistant by the board;

12           (c) have submitted an anesthesiologist assistant supervision agreement to the board on a form  
 13 prescribed by the department; and

14           (d) have paid to the board the applicable fees required by the board.

15           (3) A supervising anesthesiologist and the supervised anesthesiologist assistant shall execute a duties  
 16 and delegation agreement constituting an agreement that defines the anesthesiologist assistant's professional  
 17 relationship with the supervising anesthesiologist and the limitations on the anesthesiologist assistant's practice  
 18 under the supervision of the supervising anesthesiologist. The agreement must be kept current, by amendment  
 19 or substitution, to reflect changes in the duties of each party occurring over time. The board may by rule specify  
 20 other requirements for the agreement.

21           (4) An anesthesiologist assistant and the anesthesiologist assistant's supervising anesthesiologist shall  
 22 keep the supervision agreement and the duties and delegation agreement at their place of work and provide a  
 23 copy upon request to a health care provider, a health care facility, a state or federal agency, the board, or any  
 24 other individual who requests a copy.

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 26           **NEW SECTION. Section 7. Exemptions from licensure -- prohibited use of terminology.** (1) The  
 27 provisions of [sections 2 through 10] do not require a license as an anesthesiologist assistant to render a medical  
 28 or medically related service if the service rendered is within the applicable scope of practice for any of the  
 29 following:

30           (a) an anesthesiologist assistant providing services in a declared disaster or emergency, as provided

1 in [section 8];

2 (b) an anesthesiologist assistant who is a federally employed anesthesiologist assistant;

3 (c) a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a medication  
4 aide licensed or authorized under Title 37, chapter 8;

5 (d) a student anesthesiologist assistant when practicing in a hospital or clinic in which the student is  
6 training;

7 (e) a physical therapist licensed under Title 37, chapter 11;

8 (f) a medical assistant as provided in 37-3-104;

9 (g) an emergency medical technician licensed under Title 50, chapter 6; or

10 (h) any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide  
11 when licensed or authorized pursuant to the laws of this state.

12 (2) A licensee or other individual referenced in subsection (1) who is not a licensed anesthesiologist  
13 assistant may not use the title "AA" or "C-AA" to indicate or induce others to believe that the individual is an  
14 anesthesiologist assistant or certified anesthesiologist assistant.

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16 **NEW SECTION. Section 8. Participation in disaster and emergency care -- liability of**  
17 **anesthesiologist assistant and supervising anesthesiologist.** (1) An anesthesiologist assistant licensed in  
18 this state, licensed or authorized to practice in another state, territory, or possession of the United States, or  
19 credentialed as an anesthesiologist assistant by a federal employer who provides medical care in response to  
20 a declared emergency or a declared federal, state, or local disaster, as those terms are defined in 10-3-103, may  
21 provide that care either without supervision otherwise required by [sections 2 through 10] or with whatever  
22 supervision is available. The provision of care allowed by this subsection is limited to the duration of the declared  
23 disaster or emergency.

24 (2) An anesthesiologist who supervises an anesthesiologist assistant providing medical care in response  
25 to a declared emergency or disaster as described in subsection (1) need not comply with the requirements of  
26 [sections 2 through 10] applicable to supervising anesthesiologists.

27 (3) An anesthesiologist assistant referred to in subsection (1) who voluntarily, gratuitously, and other than  
28 in the ordinary course of employment or practice renders emergency medical care during an emergency or  
29 disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or  
30 omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is provided

1 somewhere other than in a health care facility as defined in 50-5-101 or a physician's office where those services  
2 are normally provided.

3 (4) A physician who supervises an anesthesiologist assistant voluntarily and gratuitously providing  
4 emergency care at a declared emergency or disaster described in subsection (1) is not liable for civil damages  
5 for a personal injury resulting from an act or omission in supervising the anesthesiologist assistant if the injury  
6 is caused by simple or ordinary negligence on the part of the anesthesiologist assistant providing the care or on  
7 the part of the supervising physician.

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9 **NEW SECTION. Section 9. Billing.** A supervising anesthesiologist, office, firm, institution, or other entity  
10 may bill for a service provided by a supervised anesthesiologist assistant.

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12 **NEW SECTION. Section 10. Unlawful acts.** An individual who performs acts constituting the practice  
13 of medicine related to anesthesiology in this state acts unlawfully if the individual:

14 (1) has not been issued a license pursuant to [sections 2 through 10] and is not exempt from the  
15 licensing requirement of [sections 2 through 10]; or

16 (2) has received a license pursuant to [sections 2 through 10] but has not completed a duties and  
17 delegation agreement or a supervision agreement.

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19 **Section 11.** Section 37-3-203, MCA, is amended to read:

20 **"37-3-203. Powers and duties.** (1) The board may:

21 (a) adopt rules necessary or proper to carry out the requirements in Title 37, chapter 3, parts 1 through  
22 4, as well as chapters covering podiatry, acupuncture, physician assistants, nutritionists, anesthesiologist  
23 assistants, and emergency care providers as set forth in Title 37, chapters 6, 13, 20, ~~and~~ 25, and [sections 2  
24 through 10], and 50-6-203, respectively. The rules must be fair, impartial, and nondiscriminatory.

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

27 (c) aid the county attorneys of this state in the enforcement of parts 1 through 4 and 8 of this chapter as  
28 well as Title 37, chapters 6, 13, 20, ~~and~~ 25, and [sections 2 through 10], and Title 50, chapter 6, regarding  
29 emergency care providers licensed by the board. The board also may assist the county attorneys of this state  
30 in the prosecution of persons, firms, associations, or corporations charged with violations of the provisions listed

1 in this subsection (1)(c).

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

4 (e) fund additional staff, hired by the department, to administer the provisions of this chapter, by  
5 increasing license fees as necessary.

6 (2) (a) The board shall establish a medical assistance program to assist and rehabilitate licensees who  
7 are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual  
8 intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness  
9 or chronic physical illness.

10 (b) The board shall ensure that a licensee who is required or volunteers to participate in the medical  
11 assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll  
12 in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified  
13 treatment program outside the state unless the board finds that there is no qualified treatment program in this  
14 state.

15 (3) (a) The board shall report annually on the number and types of complaints it has received involving  
16 physician practices in providing written certification, as defined in 50-46-302, for the use of marijuana for a  
17 debilitating medical condition provided for in Title 50, chapter 46. The report must contain:

18 (i) the number of complaints received by the board pursuant to 37-1-308;

19 (ii) the number of complaints for which a reasonable cause determination was made pursuant to  
20 37-1-307;

21 (iii) the general nature of the complaints;

22 (iv) the number of investigations conducted into physician practices in providing written certification; and

23 (v) the number of physicians disciplined by the board for their practices in providing written certification  
24 for the use of marijuana for a debilitating medical condition.

25 (b) Except as provided in subsection (3)(c), the report may not contain individual identifying information  
26 regarding the physicians about whom the board received complaints.

27 (c) For each physician against whom the board takes disciplinary action related to the physician's  
28 practices in providing written certification for the use of marijuana for a debilitating medical condition, the report  
29 must include:

30 (i) the name of the physician;

1 (ii) the general results of the investigation of the physician's practices; and

2 (iii) the disciplinary action taken against the physician.

3 (d) The board shall provide the report to the children, families, health, and human services interim  
4 committee by August 1 of each year and shall make a copy of the report available on the board's website.

5 (4) The board may enter into agreements with other states for the purposes of mutual recognition of  
6 licensing standards and licensing of physicians and ECPs from other states under the terms of a mutual  
7 recognition agreement."

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9 NEW SECTION. Section 12. Codification instruction. [Sections 2 through 10] are intended to be  
10 codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 2 through 10].

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12 NEW SECTION. Section 13. Effective date. [This act] is effective September 1, 2017.

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