

HOUSE BILL NO. 321

INTRODUCED BY YOUNKIN, HURWITZ, ROSS, SCHRUMPF, B. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL ASSISTANTS; PROVIDING A DEFINITION OF "MEDICAL ASSISTANT"; PROVIDING FOR EXEMPTION FROM LICENSING REQUIREMENTS; PROVIDING FOR PHYSICIAN OR PODIATRIST SUPERVISION OF AND RESPONSIBILITY FOR A MEDICAL ASSISTANT; REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ADOPT GUIDELINES BY ADMINISTRATIVE RULE REGARDING THE PERFORMANCE OF ADMINISTRATIVE AND CLINICAL TASKS; ~~AND~~ AMENDING SECTIONS 37-3-102, 37-3-103, 37-3-303, AND 37-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 37-3-102, MCA, is amended to read:

"37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Approved internship" means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

(2) "Approved medical school" means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) "Approved residency" means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board may upon investigation approve any other residency.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

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

(6) "Medical assistant" means an unlicensed allied health professional CARE WORKER who functions under the supervision of a physician OR PODIATRIST in a physician's OR PODIATRIST'S office or clinic and who performs administrative and clinical tasks.

~~(6)~~(7) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter."

Section 2. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

- (a) the gratuitous rendering of services in cases of emergency or catastrophe;
- (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.
- (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) the practice of optometry under the conditions and limitations defined by the laws of this state;
- (f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;
- (g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;
- (h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- (i) the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;
- (j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;
- (k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are

training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, medical assistant, as provided in [section 5], or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103;

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 3. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102~~(6)~~(7) in a manner reasonably consistent with ~~his~~ the holder's training, skill, and experience."

Section 4. Section 37-3-304, MCA, is amended to read:

"37-3-304. Practice authorized by temporary certificate. The temporary certificate, ~~which~~ may be issued to any citizen or to an alien otherwise qualified for a physician's certificate ~~and which may be issued~~ for a period not to exceed 1 year; and is subject to renewal for additional periods of 1 year, ~~but~~ not to exceed five

~~such renewals, at the discretion of the board; The temporary certificate~~ authorizes the holder to perform one or more of the acts embraced in 37-3-102(6)(7) in a manner reasonably consistent with ~~his~~ the holder's training, skill, and experience, subject, ~~nevertheless,~~ to all specifications, conditions, and limitations imposed by the board."

NEW SECTION. Section 5. Medical assistants -- guidelines. (1) The board ~~may~~ SHALL adopt guidelines by administrative rule for:

(a) the performance of administrative and clinical tasks by a medical assistant that are allowed to be delegated by a physician OR PODIATRIST, including the administration of medications; and

(b) the level of physician OR PODIATRIST supervision required for a medical assistant when performing specified administrative and clinical tasks delegated by a physician OR PODIATRIST ~~IF. HOWEVER, THE BOARD SHALL ADOPT A RULE REQUIRING ONSITE SUPERVISION OF A MEDICAL ASSISTANT BY A PHYSICIAN OR PODIATRIST IS REQUIRED FOR INVASIVE PROCEDURES, ADMINISTRATION OF MEDICATION, OR ALLERGY TESTING.~~

(2) The physician OR PODIATRIST who is supervising the medical assistant is responsible for:

(a) ensuring that the medical assistant is competent to perform clinical tasks and meets the requirements of the guidelines; ~~and~~

(b) ensuring that the performance of the clinical tasks by the medical assistant is in accordance with the board's guidelines and good medical practice; AND

(C) ENSURING MINIMUM EDUCATIONAL REQUIREMENTS FOR THE MEDICAL ASSISTANT.

(3) The board may hold the supervising physician OR PODIATRIST responsible in accordance with 37-1-410 or 37-3-323 for any acts of or omissions by the medical assistant acting in the ordinary course and scope of the assigned duties.

NEW SECTION. Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 37, chapter 3, part 1, and the provisions of Title 37, chapter 3, part 1, apply to [section 5].

NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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