

SENATE BILL NO. 522
INTRODUCED BY WEINBERG

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO PSYCHOLOGY; MAKING IT UNLAWFUL FOR A PRESCRIBING PSYCHOLOGIST TO OWN, DIRECTLY OR INDIRECTLY, A COMMUNITY PHARMACY; ADDING PRESCRIBING PSYCHOLOGISTS TO THOSE WHO MAY DISPENSE DRUGS OR MEDICINE WHEN APPROPRIATE; REQUIRING PRESCRIBING PSYCHOLOGISTS TO REPORT A DIAGNOSIS TO THE DEPARTMENT OF JUSTICE IF APPROPRIATE; PROVIDING PRESCRIBING PSYCHOLOGISTS WITH IMMUNITY FROM LIABILITY; PROVIDING DEFINITIONS; SPECIFYING THE QUALIFICATIONS FOR PRESCRIPTIVE AUTHORITY OF PRESCRIBING PSYCHOLOGISTS; REQUIRING THE BOARD OF PSYCHOLOGY TO DEVELOP AND IMPLEMENT PROCEDURES RELATING TO THE CERTIFICATION, REVIEW, AND MONITORING OF PRESCRIBING PSYCHOLOGISTS; REQUIRING THE BOARD OF PSYCHOLOGY AND THE BOARD OF PHARMACY TO INTERACT REGARDING PRESCRIBING PSYCHOLOGISTS; AMENDING SECTIONS 37-2-101, 37-2-103, 37-2-106, 37-2-311, 37-2-312, 37-7-502, 37-8-102, 37-17-101, 37-17-102, 37-17-202, AND 37-17-313, MCA; AND REPEALING SECTION 37-17-103, MCA."

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

Section 1. Section 37-2-101, MCA, is amended to read:

"37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

- (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;
- (b) to affect the structure or any function of the body of humans.

(3) "Drug" has the same meaning as provided in 37-7-101.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in

the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" has the same meaning as provided in 37-7-101.

(8) "Prescribing psychologist" has the meaning provided in 37-17-102.

~~(8)~~(9) "State" means the state of Montana or any political subdivision of the state."

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

"37-2-103. Practices declared unlawful between medical practitioners, prescribing psychologists, and pharmacies. (1) It ~~shall be~~ is unlawful for a medical practitioner or prescribing psychologist to own, directly or indirectly, a community pharmacy. ~~Nothing in this~~ This subsection ~~shall~~ does not prohibit a medical practitioner or prescribing psychologist from dispensing a drug ~~which he~~ that the individual is permitted to dispense under 37-2-104.

(2) It ~~shall be~~ is unlawful for a medical practitioner or prescribing psychologist directly or indirectly to solicit or ~~to~~ knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by ~~such~~ the community pharmacy of drugs to patients of any medical practitioner or prescribing psychologist."

Section 3. Section 37-2-106, MCA, is amended to read:

"37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) ~~shall do~~ do not apply to a medical practitioner or prescribing psychologist with regard ~~as~~ to any interest ~~which he~~ that the individual owns as set forth in ~~said subsection~~ 37-2-103(1) on July 1, 1971; ~~provided that~~ However, transfer of this interest to another person ~~shall result~~ results in immediate termination of ~~such~~ the exemption."

Section 4. Section 37-2-311, MCA, is amended to read:

"37-2-311. Report to department of justice by physician or prescribing psychologist. (1) Any physician or prescribing psychologist, as defined in 37-17-102, who diagnoses a physical or mental condition that, in the physician's or prescribing psychologist's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to ~~his~~ the person's condition to the department of justice. The department, upon receiving the report, shall require the

reported person ~~so reported~~ to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's or prescribing psychologist's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's or prescribing psychologist's report may not be ~~utilized~~ used in a criminal proceeding or in a civil proceeding, other than as provided in this subsection (2), without the consent of the patient."

Section 5. Section 37-2-312, MCA, is amended to read:

"37-2-312. Physician's or prescribing psychologist's immunity from liability. Any physician or prescribing psychologist, as defined in 37-17-102, reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his the individual's actions pursuant to 37-2-311 except for damages occasioned by gross negligence. ~~No~~ An action may not be brought against a physician or prescribing psychologist for not making a report pursuant to 37-2-311."

Section 6. Section 37-7-502, MCA, is amended to read:

"37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent ~~which that~~, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug; or its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of an official compendium recognized by the board.

(7) "Person" has the ~~same~~ meaning as provided in 37-7-101.

(8) "Prescriber" means a medical practitioner, as defined in 37-2-101, and a prescribing psychologist.

as defined in 37-17-102, licensed under the professional laws of the state to administer and prescribe medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of an official compendium recognized by the board.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents ~~which~~ that, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease ~~and/or~~ or toxicity."

Section 7. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

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

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, a prescribing psychologist, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of

the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, prescribing psychologist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, prescribing psychologist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, prescribing psychologists, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 8. Section 37-17-101, MCA, is amended to read:

"37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should ~~therefore~~ be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology. The practice of psychology does not include prescribing drugs, with the exception of drugs prescribed by prescribing psychologists."

Section 9. Section 37-17-102, MCA, is amended to read:

"37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of schools and colleges.

(2) "Board" means the board of psychologists provided for in 2-15-1741.

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

(4) "Drug" has the meaning provided in 37-7-101 and is customarily used in or related to the diagnosis and treatment of mental or emotional disorders.

(5) "Medicine" has the meaning provided in 37-7-101 and is customarily used in or related to the diagnosis and treatment of mental or emotional disorders.

~~(4)~~(6) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to:

(i) psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;

(ii) counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy;

(iii) diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and

(iv) psychoeducational evaluation, therapy, remediation, and consultation.

(7) "Prescribing psychologist" means a licensed psychologist who has undergone specialized postdoctoral training in psychopharmacology, has passed an examination accepted by the board of psychologists, and has received from the board a current certificate granting prescriptive authority, which has not been revoked or suspended.

(8) "Prescription" is an order for a laboratory test, medicine, device, treatment, or drug, including a controlled substance as provided in Title 50, chapter 32.

(9) "Prescriptive authority" means the authority to prescribe drugs or medicines customarily used in or related to the diagnosis and treatment of mental or emotional disorders or other treatment procedures within the

scope of practice of psychology in accordance with regulations adopted by the board.

~~(5)~~(10) A person represents to the public that the person is a "~~psychologist~~" psychologist when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services ~~defined~~ referred to in subsection ~~(4)~~ (6) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee."

NEW SECTION. Section 10. Authorization to prescribe drugs and medicines. (1) Prescribing psychologists may prescribe drugs or medicines customarily used in or related to the diagnosis and treatment of mental or emotional disorders. The board shall assign an identification number to each prescribing psychologist.

- (2) A prescription by a prescribing psychologist:
 - (a) must comply with all applicable state and federal law; and
 - (b) must be identified as being issued by a prescribing psychologist; and
 - (c) must include the prescribing psychologist's identification number assigned by the board.
- (3) Records of all prescriptions must be maintained in patient records.
- (4) A prescribing psychologist may not designate any other person to prescribe drugs.

Section 11. Section 37-17-202, MCA, is amended to read:

"37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

- (2) In addition to the other powers and duties set forth, the board may:
 - (a) revoke and suspend licenses;
 - (b) conduct hearings upon complaints concerning persons licensed under this chapter;
 - (c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses for the prosecution; and
 - (d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology ~~which~~ that could be beneficial to the citizens of the state of Montana.

(3) (a) The board shall certify prescribing psychologists to prescribe and dispense drugs in accordance

with applicable state and federal laws.

(b) The board shall develop and implement procedures for reviewing educational and training credentials for the certification process in accordance with current standards of practice.

(c) A psychologist who applies for prescriptive authority shall demonstrate by official transcripts that the applicant meets the qualifications for prescriptive authority as provided in [section 12]."

NEW SECTION. Section 12. Qualifications for prescriptive authority. (1) In order to qualify for prescriptive authority, a psychologist:

(a) must hold a current license to practice psychology in Montana;

(b) must have completed a program of education, as established by the board by rule, in an organized program of intensive instruction of at least ~~300~~ 400 contact hours, consisting of core areas of instruction, including neuroscience, pharmacology, psychopharmacology, physiology, pathophysiology, appropriate and relevant physical and laboratory assessment, and other clinical pharmacotherapeutics;

(c) must have obtained supervised and relevant clinical experience with at least 100 patients that is sufficient to attain competency under the direction of qualified practitioners as determined by the board preceding the date of application; and

(d) shall pass a certifying examination developed by a nationally recognized body and approved by the board.

(2) The board shall prescribe by rule a method for the renewal of prescriptive authority in conjunction with the renewal of licenses.

(3) Each applicant for renewal of prescriptive authority shall present satisfactory evidence to the board demonstrating the completion of 20 contact hours of instruction relevant to prescriptive authority during the previous 2-year period.

(4) The board has all other powers necessary to implement the provisions of [sections 9 and 12 through 14].

NEW SECTION. Section 13. Controlled substance prescriptive authority. (1) When writing a prescription for a controlled substance, each prescribing psychologist shall file in a timely manner all individual federal drug enforcement agency registrations and numbers with the board.

(2) The board shall maintain current records for each prescribing psychologist, including federal drug enforcement agency registrations and numbers.

NEW SECTION. Section 14. Interaction with board of pharmacy. (1) The board shall transmit to the board of pharmacy an annual list of prescribing psychologists containing:

- (a) the name of each prescribing psychologist;
- (b) the prescribing psychologist's identification number assigned by the board; and
- (c) the effective date of the psychologist's prescriptive authority.

(2) The board shall promptly forward to the board of pharmacy the names and titles of prescribing psychologists added to or deleted from the annual list provided for in subsection (1).

(3) The board shall notify the board of pharmacy in a timely manner upon termination, suspension, or reinstatement of a prescribing psychologist's prescriptive authority.

Section 15. Section 37-17-313, MCA, is amended to read:

"37-17-313. Injunction for unlawful practice. (1) The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any ~~such~~ proceeding, it ~~shall is~~ not ~~be~~ necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have ~~so~~ practiced, the court shall enjoin ~~him~~ the respondent from ~~so~~ practicing unless and until ~~he~~ the respondent has been duly licensed. ~~Procedure~~ The procedure in such the cases shall must be the same as in any other injunction suit. The remedy by injunction ~~hereby given~~ is in addition to criminal prosecution and punishment.

(2) The board shall prescribe by rule the criteria for disciplining, suspending, or revoking the prescriptive authority or license of a prescribing psychologist. The board may require remediation, suspension, or revocation of a prescribing psychologist's prescriptive authority for a specified period of time to be determined at the discretion of the board in accordance with Montana law."

NEW SECTION. Section 16. Repealer. Section 37-17-103, MCA, is repealed.

NEW SECTION. Section 17. Codification instruction. [Sections 10 and 12 through 14] are intended to be codified as an integral part of Title 37, chapter 17, and the provisions of Title 37, chapter 17, apply to [sections 10 and 12 through 14].

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