

1 SENATE BILL NO. 272

2 INTRODUCED BY T. MURPHY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO PSYCHOLOGY; MAKING IT
5 UNLAWFUL FOR A PRESCRIBING PSYCHOLOGIST TO OWN, DIRECTLY OR INDIRECTLY, A COMMUNITY
6 PHARMACY; ADDING PRESCRIBING PSYCHOLOGISTS TO THOSE WHO MAY DISPENSE DRUGS OR
7 MEDICINE WHEN APPROPRIATE; REQUIRING PRESCRIBING PSYCHOLOGISTS TO REPORT A
8 DIAGNOSIS TO THE DEPARTMENT OF JUSTICE IF APPROPRIATE; PROVIDING PRESCRIBING
9 PSYCHOLOGISTS WITH IMMUNITY FROM LIABILITY; PROVIDING DEFINITIONS; GRANTING THE BOARD
10 OF PSYCHOLOGISTS RULEMAKING AUTHORITY; SPECIFYING THE QUALIFICATIONS FOR
11 PRESCRIPTIVE AUTHORITY OF PRESCRIBING PSYCHOLOGISTS; REQUIRING THE BOARD OF
12 PSYCHOLOGISTS TO DEVELOP AND IMPLEMENT PROCEDURES RELATING TO THE CERTIFICATION,
13 REVIEW, AND MONITORING OF PRESCRIBING PSYCHOLOGISTS; REQUIRING THE BOARD OF
14 PSYCHOLOGISTS AND THE BOARD OF PHARMACY TO INTERACT REGARDING PRESCRIBING
15 PSYCHOLOGISTS; CREATING A PRESCRIBING PSYCHOLOGISTS OVERSIGHT COMMITTEE; AMENDING
16 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,
17 37-17-104, 37-17-202, AND 37-17-313, MCA; AND REPEALING SECTION 37-17-103, MCA."

18

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

20

21 **Section 1.** Section 37-2-101, MCA, is amended to read:22 **"37-2-101. Definitions.** As used in this part, the following definitions apply:23 (1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated
24 within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

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

26 (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

27 (b) to affect the structure or any function of the body of humans.

28 (3) "Drug" has the ~~same~~ meaning ~~as~~ provided in 37-7-101.29 (4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or
30 distribution of drugs. The term does not include a pharmacy.

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

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

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

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

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

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

11 **"37-2-103. Practices declared unlawful between medical practitioners, prescribing psychologists,**
 12 **and pharmacies.** (1) It is unlawful for a medical practitioner or prescribing psychologist to own, directly or
 13 indirectly, a community pharmacy. This subsection does not prohibit a medical practitioner or prescribing
 14 psychologist from dispensing a drug that the ~~medical practitioner~~ individual is permitted to dispense under
 15 37-2-104.

16 (2) It is unlawful for a medical practitioner; or prescribing psychologist directly or indirectly, ~~to~~ solicit
 17 or ~~to~~ knowingly receive from a community pharmacy or for a community pharmacy to knowingly ~~to~~ pay or promise
 18 to pay to a medical practitioner or prescribing psychologist any rebate, refund, discount, commission, or other
 19 valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing
 20 by the community pharmacy of drugs to patients of a medical practitioner or prescribing psychologist."
 21

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

23 **"37-2-106. Existing ownership of pharmacy.** The provisions of 37-2-103(1) do not apply to a medical
 24 practitioner or prescribing psychologist with respect to any interest that the medical practitioner or prescribing
 25 psychologist owns on July 1, 1971. However, transfer of this interest to another person results in immediate
 26 termination of the exemption."
 27

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

29 **"37-2-311. Report to department of justice by physician or prescribing psychologist.** (1) ~~Any A~~
 30 physician or a prescribing psychologist, as defined in 37-17-102, who diagnoses a physical or mental condition

1 that, in the physician's or prescribing psychologist's judgment, will significantly impair a person's ability to safely
2 operate a motor vehicle may voluntarily report the person's name and other information relevant to the person's
3 condition to the department of justice. The department, upon receiving the report, shall require the person
4 reported to be examined or investigated as provided for in 61-5-207.

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

8 (b) The physician's or prescribing psychologist's report may not be ~~utilized~~ used in a criminal proceeding
9 or in a civil proceeding, other than as provided in this subsection (2), without the consent of the patient."
10

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

12 **"37-2-312. Physician's or prescribing psychologist's immunity from liability.** A physician or a
13 prescribing psychologist, as defined in 37-17-102, reporting in good faith is immune from any liability, civil or
14 criminal, that otherwise might result by reason of the physician's or prescribing psychologist's actions pursuant
15 to 37-2-311 except for damages occasioned by gross negligence. An action may not be brought against a
16 physician or prescribing psychologist for not making a report pursuant to 37-2-311."
17

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

19 **"37-7-502. Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

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

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

4 (8) "Prescriber" means a medical practitioner, as defined in 37-2-101, or a prescribing psychologist, as
5 defined in 37-17-102, who is licensed under the professional laws of the state to administer and prescribe
6 medicine and drugs.

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

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

11 (11) "Therapeutically equivalent" means those chemical equivalents ~~which~~ that, when administered in
12 the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a
13 symptom or a disease ~~and/or~~ or by toxicity."
14

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

16 **"37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
17 apply:

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

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

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

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

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

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

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

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

5 (7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of
6 the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The
7 practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and
8 infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications
9 and treatments prescribed by a physician, prescribing psychologist, naturopathic physician, physician assistant,
10 optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to
11 prescribe medications and treatments. These services are performed under the supervision of a registered nurse
12 or a physician, prescribing psychologist, naturopathic physician, physician assistant, optometrist, dentist,
13 osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

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

17 (8) "Practice of professional nursing" means the performance of services requiring substantial
18 specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of
19 nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis,
20 planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention,
21 casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also
22 includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the
23 administration of medications and treatments prescribed by physicians, prescribing psychologists, naturopathic
24 physicians, physician assistants, optometrists, advanced practice registered nurses, dentists, osteopaths, or
25 podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly
26 accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection
27 (8):

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

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

1 goals."

2

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

4 **"37-17-101. Purpose.** The legislature finds and declares that the practice of psychology in Montana
5 affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public
6 interest in order to protect the public from the unauthorized and unqualified practice of psychology and from
7 unprofessional conduct by persons licensed to practice psychology. The practice of psychology does not include
8 prescribing drugs, with the exception of drugs prescribed by prescribing psychologists."

9

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

11 **"37-17-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
12 apply:

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

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

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

17 (4) "Drug" means a drug as defined in 37-7-101 that is customarily used in the diagnosis or treatment
18 of mental or emotional disorders.

19 (5) "Medicine" means medicine as defined in 37-7-101 that is customarily used in the diagnosis or
20 treatment of mental or emotional disorders.

21 ~~(4)~~(6) (a) "Practice of psychology" means the observation, description, interpretation, and modification
22 of human behavior by the application of psychological principles, methods, and procedures for the purpose of
23 eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life
24 adjustment, personal effectiveness, and mental health.

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

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

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

30 (iii) diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency,

1 substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and

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

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

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

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

14 (9) "Prescriptive authority" means the authority to prescribe, administer, or discontinue drugs or medicine
 15 customarily used in the diagnosis and treatment of mental or emotional disorders or other treatment procedures
 16 within the scope of the practice of psychology in accordance with regulations adopted by the board."

17

18 **Section 10.** Section 37-17-104, MCA, is amended to read:

19 **"37-17-104. Exemptions.** (1) Except as provided in subsection (2), this chapter does not prevent:

20 (a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral
 21 counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a
 22 psychological nature consistent with their training if they do not hold themselves out to the public by a title or
 23 description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

24 (b) the activities, services, and use of an official title clearly delineating the nature and level of training
 25 on the part of a person in the employ of a federal, state, county, or municipal agency or of other political
 26 subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities
 27 and services are a part of the duties of the office or position within the confines of the agency or institution;

28 (c) the activities and services of a student, intern, or resident in psychology pursuing a course of study
 29 at an accredited university or college or working in a generally recognized training center if these activities and
 30 services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

1 (d) the activities and services of a person who is not a resident of this state in rendering consulting
 2 psychological services in this state when these services are rendered for a period which does not exceed, in the
 3 aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of
 4 that person's residence to perform these activities and services. However, these persons shall report to the
 5 department the nature and extent of the services in this state prior to providing those services if the services are
 6 to exceed 10 days in a calendar year.

7 (e) a person authorized by the laws of the state or country of the person's former residence to perform
 8 activities and services, who has recently become a resident of this state and who has submitted a completed
 9 application for a license in this state, from performing the activities and services pending disposition of the
 10 person's application; and

11 (f) the offering of lecture services.

12 (2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold
 13 themselves out as performing psychological testing, evaluation, and assessment, as ~~described~~ referred to in
 14 37-17-102(4)(b)(6)(b), provided that they are qualified to administer the test and make the evaluation or
 15 assessment.

16 (3) The board of social work examiners and professional counselors shall adopt rules that qualify a
 17 licensee under Title 37, chapter 22 or 23, to perform psychological testing, evaluation, and assessment. The rules
 18 for licensed clinical social workers and professional counselors must be consistent with the guidelines of their
 19 respective national associations. ~~Final rules must be adopted by October 1, 2010.~~ A qualified licensee providing
 20 services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the
 21 rules."

22
 23 **NEW SECTION. Section 11. Authorization to prescribe drugs and medicine.** (1) Prescribing
 24 psychologists may prescribe drugs or medicine customarily used in the diagnosis and treatment of mental or
 25 emotional disorders. The board shall assign an identification number to each prescribing psychologist.

26 (2) A prescription by a prescribing psychologist:

27 (a) must comply with all applicable state and federal law;

28 (b) must be identified as being issued by a prescribing psychologist; and

29 (c) must include the prescribing psychologist's identification number assigned by the board.

30 (3) Records of all prescriptions must be maintained in patient records.

1 (4) A prescribing psychologist may not designate any other person to prescribe drugs.

2

3 **Section 12.** Section 37-17-202, MCA, is amended to read:

4 **"37-17-202. Powers.** (1) The board may make reasonable and necessary rules for the proper
5 performance of its duties and for the regulation of proceedings before it.

6 (2) In addition to the other powers and duties set forth, the board may:

7 (a) revoke and suspend licenses;

8 (b) conduct hearings upon complaints concerning persons licensed under this chapter;

9 (c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its
10 secretary signed with the county attorney, in the county where the violation took place and incur necessary
11 expenses for the prosecution; and

12 (d) study and review new developments in research, training, and the practice of psychology and make
13 recommendations to the governor and other state officials regarding new and revised programs and legislation
14 related to psychology which could be beneficial to the citizens of the state of Montana.

15 (3) (a) The board shall certify prescribing psychologists to prescribe and dispense drugs or medicine in
16 accordance with applicable state and federal laws.

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

19 (c) A psychologist who applies for prescriptive authority shall demonstrate by official transcripts that the
20 applicant meets the qualifications for prescriptive authority as provided in [section 13]."

21

22 **NEW SECTION. Section 13. Qualifications for prescriptive authority.** (1) In order to qualify for
23 prescriptive authority, a psychologist:

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

25 (b) (i) must have a master's degree in clinical psychopharmacology that includes training in physical
26 assessment, neuroscience, pharmacology, physiology, pathophysiology, psychopharmacology, clinical
27 management, appropriate and relevant physical and laboratory assessment, and clinical pharmacotherapeutics
28 from an institution accredited by a regional accreditation organization; or

29 (ii) must have successfully completed the United States department of defense psychopharmacology
30 demonstration project or a similar program developed and operated by any branch of the United States armed

1 forces;

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

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

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

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

12 (4) The board has all other powers necessary to implement the provisions of [sections 11 and 13 through
13 16].

14

15 **NEW SECTION. Section 14. Controlled substance prescriptive authority.** (1) When writing a
16 prescription for a controlled substance, each prescribing psychologist shall file in a timely manner all individual
17 federal drug enforcement agency registrations and numbers with the board.

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

20

21 **NEW SECTION. Section 15. Interaction with board of pharmacy.** (1) The board shall transmit to the
22 board of pharmacy an annual list of prescribing psychologists containing:

23 (a) the name of each prescribing psychologist;

24 (b) the prescribing psychologist's identification number assigned by the board; and

25 (c) the effective date of the psychologist's prescriptive authority.

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

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

30

1 **Section 16.** Section 37-17-313, MCA, is amended to read:

2 **"37-17-313. Injunction for unlawful practice -- board authority.** (1) The practice of psychology in any
3 way other than as defined in this chapter may be enjoined by the district court on petition by the board. In the
4 proceeding, it is not necessary to show that any person is individually injured by the actions complained of. If the
5 respondent is found to have practiced improperly, the court shall enjoin the respondent from practicing ~~unless~~
6 ~~and~~ until the respondent has been licensed or takes the appropriate action. ~~Procedure~~ The procedure in these
7 cases is the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution
8 and punishment.

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

13
14 NEW SECTION. **Section 17. Prescribing psychologist oversight committee -- composition --**
15 **duties.** (1) There is a prescribing psychologist oversight committee composed of five members. The members
16 are:

- 17 (a) two physicians appointed by the board of medical examiners;
18 (b) two psychologists appointed by the board of psychologists; and
19 (c) one pharmacist appointed by the board of pharmacy.

20 (2) The members of the committee shall elect a presiding officer from the members of the committee.

21 (3) A meeting of the committee must be called by one of the represented boards upon receipt of a signed
22 written complaint regarding the prescribing, administering, or discontinuing of drugs or medicine by a prescribing
23 psychologist.

24 (4) A represented board shall, upon receipt of a complaint, forward a copy of the complaint to the
25 members of the committee. Each member of the committee must, subject to applicable confidentiality
26 requirements, be allowed access to all necessary records related to the complaint.

27 (5) The committee may investigate any complaint that it believes has a valid basis.

28 (6) Based on the findings of its investigation, the committee may:

- 29 (a) recommend to the board of psychologists that no further action be taken regarding the complaint;
30 (b) recommend that the board of psychologists initiate disciplinary proceedings. If the committee

1 recommends disciplinary proceedings, the board of psychologists shall take necessary action to begin disciplinary
2 proceedings.

3 (7) A copy of the committee's decision must be mailed to the complainant.

4 (8) If the committee makes a decision pursuant to this section, the board of psychologists shall respond
5 to the committee's decision in writing. A copy of the response must be sent to the board of medical examiners
6 and the board of pharmacy.

7
8 **NEW SECTION. Section 18. Repealer.** The following section of the Montana Code Annotated is
9 repealed:

10 37-17-103. Limitation of license authority.

11
12 **NEW SECTION. Section 19. Codification instruction.** [Sections 11, 13 through 15, and 17] are
13 intended to be codified as an integral part of Title 37, chapter 17, and the provisions of Title 37, chapter 17, apply
14 to [sections 11, 13 through 15, and 17].

15 - END -