

**MEDICAL EXAMINERS BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 3
MEDICINE**

This version of the Montana Code Annotated is provided as a tool for board members and department staff. In case of inconsistencies, the text in the West Publishing hardbound copy or the MCA online version from Legislative Services is the official rule text and will prevail.

CHAPTER 3 MEDICINE

Chapter Cross-References

Doctor-patient privilege, 26-1-805.
Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.
Limits on liability of health care provider in emergency situations, 27-1-734.
Liability of mental health professionals, Title 27, ch. 1, part 11.
Duty to warn of violent behavior, 27-1-1102.
Montana Medical Legal Panel Act, Title 27, ch. 6.
Professional service corporations, Title 35, ch. 4.
General provisions relating to health care practitioners, Title 37, ch. 2.
Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.
Regulation of prescriptions, Title 37, ch. 7, part 4.
Optometry laws not applicable to physicians and surgeons, 37-10-102.
Physician assistants, Title 37, ch. 20.
Validity of consent to medical treatment, Title 41, ch. 1, part 4.
Child abuse and neglect — reports and investigations, Title 41, ch. 3, part 2.
Child abuse and neglect — duty to report — penalty, 41-3-201, 41-3-207.
Hospitals and related facilities, Title 50, ch. 5.
Family practice residency training, Title 50, ch. 5, part 6.
Emergency medical services, Title 50, ch. 6.
Health care information, Title 50, ch. 16.
Montana Abortion Control Act, Title 50, ch. 20, part 1.
Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Chapter Administrative Rules

Title 24, chapter 156, ARM Board of Medical Examiners.

Chapter Case Notes

Osteopaths: When an applicant failed to supply the information required by the Board of Medical Examiners and failed to take a required examination, the Board was within the scope of its constitutional and statutory authority in denying the applicant a license by reciprocity to practice unlimited medicine and surgery in the state of Montana and did not act in a discriminatory or capricious manner. *Shelton v. Bd. of Medical Examiners*, 166 M 472, 534 P2d 870, 32 St. Rep. 394 (1975).

Definition of "Osteopathy": "Osteopathy", as defined by its founder, dictionaries, and decisions of courts, "administers no drugs and uses no knife". *St. v. Thierfelder*, 114 M 104, 132 P2d 1035 (1943), overruled on another point in *St. v. Labbitt*, 117 M 26, 156 P2d 163 (1945).

Major and Minor Surgery Prohibited: Under the law regulating osteopathy, the practitioner is not authorized to perform surgery of any kind, either major or minor. *St. v. Thierfelder*, 114 M 104, 132 P2d 1035 (1943), overruled on another point in *St. v. Labbitt*, 117 M 26, 156 P2d 163 (1945).

Removal of Tonsils as Practice of Medicine: An osteopath was practicing medicine without a license in removing tonsils. *St. v. Thierfelder*, 114 M 104, 132 P2d 1035 (1943), overruled on another point in *St. v. Labbitt*, 117 M 26, 156 P2d 163 (1945).

Surgery Not Permitted by Amendment: In amending the original act under which the osteopath was forbidden to practice "major, minor or operative surgery" by striking out the word "minor", the Legislature did not intend to permit minor surgery. *St. v. Thierfelder*, 114 M 104, 132 P2d 1035 (1943), overruled on another point in *St. v. Labbitt*, 117 M 26, 156 P2d 163 (1945).

Penalty: Section 37-5-312 (now repealed) prescribes the penalty for violation of 37-5-305 (now repealed), both having the same history, Ch. 51, L. 1905. *State ex rel. Freebourn v. District Court*, 105 M 77, 69 P2d 748 (1937).

License Required of Physician: A physician or surgeon is not entitled, under the statute, to practice osteopathy without a license from the Board of Osteopathic Physicians (now Board of Medical Examiners). *St. v. Hopkins*, 54 M 52, 166 P 304 (1917).

Negative of Exception to Licensure Not Required: Unless statutory exception found in a statute is part of definition of offense sought to be described, the State is not required to negative such exception in an indictment or information. The proviso contained in 37-5-101(2)(b) (now repealed) is not such an exception, since neither physician nor surgeon can practice osteopathy without first obtaining a license therefor. *St. v. Hopkins*, 54 M 52, 166 P 304 (1917); *St. v. Wood*, 53 M 566, 165 P 592 (1917).

Regulation of Osteopathy Not Unconstitutional: The statute regulating practice of osteopathy is not invalid as arbitrary and unreasonable class legislation; nor does it make an arbitrary classification denying right of citizens to engage in lawful occupation and is therefore not an abuse of the police power of the state. *St. v. Hopkins*, 54 M 52, 166 P 304 (1917).

Temporary License as Matter of Defense: In prosecution for practicing osteopathy without a license, State is not required to negative defendant's possession of temporary certificate referred to in 37-5-304 (now repealed), this being a matter of defense. *St. v. Hopkins*, 54 M 52, 166 P 304 (1917); *St. v. Wood*, 53 M 566, 165 P 592 (1917).

Limitations on Practice: Section 37-5-101 (now repealed) does not authorize an osteopath to practice medicine or surgery but requires him to confine his practice to treatment by the use of the hands or mechanical appliances. *St. v. Dodd*, 51 M 100, 149 P 481 (1915).

Osteopathy Within State Police Power: The practice of osteopathy is a proper subject for police regulation. *Johnson v. Great Falls*, 38 M 369, 99 P 1059 (1909).

Chapter Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under this chapter may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

Part 1 General

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.

Case Notes

Applying Pharmaceutical Definition of "Drug" in DUI Case — Counter to Legislative Intent: The defendant was charged with felony DUI and reckless driving after inhaling aerosol dust-remover that contained 1,1-Difluoroethane (DFE). The defendant argued that the charge should be dismissed because the definition of "drug" in 37-3-101 for pharmaceutical drugs did not include DFE. The District Court denied the motion to dismiss, reasoning that it was illogical to apply the pharmaceutical definition of "drug" in a DUI statute under 1-2-107 because it would run counter to the legislative intent of protecting

public safety. On appeal, the Supreme Court affirmed, ruling that the locations of the two uses of the term "drug" in the Montana Code Annotated demonstrated legislative intent that the pharmaceutical definition not apply to DUI statutes. *St. v. Pinder*, 2015 MT 157, 379 Mont. 357, 350 P.3d 377.

Driving Under Influence of Inhalant — Charge Proper Where Substance Used Diminishes Ability to Drive: The defendant was charged with felony DUI and reckless driving after inhaling aerosol dust-remover that contained 1,1-Difluoroethane (DFE). The defendant argued that the charge should be dismissed because the definition of "drug" in 37-3-101 did not include DFE. After his conviction, the defendant appealed the District Court's denial of his motion to dismiss. The Supreme Court affirmed, concluding that the language of the DUI statute plainly shows the Legislature intended to punish an individual who drove after ingesting "any" substance that diminished that person's ability to drive. *St. v. Pinder*, 2015 MT 157, 379 Mont. 357, 350 P.3d 377.

No Duty of Care Owed by State to Deceased Who Was Allegedly Victim of Malpractice by Doctor: Title 37, chapter 3, is not intended to protect a specific class of persons of which the deceased is a member from a particular type of harm, and thus no special relationship existed between the state and the deceased that gave rise to a special duty. Therefore the statutory special relationship exception to the public duty doctrine did not exist. *Nelson v. St.*, 2008 MT 336, 346 M 206, 195 P3d 293, (2008).

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

- (1) "ACGME" means the accreditation council for graduate medical education.
- (2) "AOA" means the American osteopathic association.
- (3) "Approved internship" means an internship training program of at least 1 year in a program that either is approved for intern training by the AOA or conforms to the standards for intern training established by the ACGME or successors. However, the board may, upon investigation, approve any other internship.
- (4) "Approved medical school" means a school that either is accredited by the AOA or conforms to the education standards established by the LCME or the world health organization or successors for medical schools that meet standards established by the board by rule.
- (5) "Approved residency" means a residency training program conforming to the standards for residency training established by the ACGME or successors or approved for residency training by the AOA.
- (6) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.
- (7) "Community-integrated health care" means the provision of out-of-hospital medical services that an emergency care provider with an endorsement may provide as determined by board rule.
- (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (9) "Emergency care provider" or "ECP" means a person licensed by the board, including but not limited to an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic. An emergency care provider with an endorsement may provide community-integrated health care.
- (10) "LCME" means the liaison committee on medical education.
- (11) "Medical assistant" means an unlicensed allied health care worker who functions under the supervision of a physician, physician assistant, or podiatrist in a physician's or podiatrist's office and who performs administrative and clinical tasks.
- (12) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.
- (13) "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, including electronic and technological means such as telemedicine. 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.
- (14) (a) "Telemedicine" means the practice of medicine using interactive electronic communications, information technology, or other means between a licensee in one location and a patient

in another location with or without an intervening health care provider. Telemedicine typically involves the application of secure videoconferencing or store-and-forward technology, as defined in 33-22-138.

(b) The term does not mean an audio-only telephone conversation, an e-mail or instant messaging conversation, or a message sent by facsimile transmission.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 112, Ch. 483, L. 2001; amd. Sec. 1, Ch. 85, L. 2003; amd. Sec. 3, Ch. 224, L. 2003; amd. Sec. 14, Ch. 109, L. 2009; amd. Sec. 2, Ch. 154, L. 2015; amd. Sec. 1, Ch. 225, L. 2017; amd. Sec. 6, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 inserted definition of community-integrated health care; in definition of emergency care provider at beginning inserted "'Emergency care provider" or", after "'ECP" means" substituted "a person" for "an emergency care provider", and at end inserted "An emergency care provider with an endorsement may provide community-integrated health care"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 225 in definition of medical assistant inserted "physician assistant"; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendment: Chapter 154 in definitions of approved internship, approved medical school, and approved residency substituted "AOA" for "American osteopathic association"; inserted definitions of ACGME, AOA, ECP, LCME, and telemedicine; in definition of approved internship in first sentence substituted "program" for "hospital", before "standards" deleted "minimum", and substituted "ACGME" for "council on medical education of the American medical association"; in definition of approved medical school before "education" deleted "minimum", substituted "LCME or the world health organization" for "council on medical education of the American medical association", and substituted "that meet standards established by the board by rule" for "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"; in definition of approved residency after "program" deleted "in a hospital", before "standards" deleted "minimum", and substituted "ACGME" for "council on medical education of the American medical association"; in definition of practice of medicine at end of first sentence inserted "including electronic and technological means such as telemedicine"; and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in definition of approved residency deleted second sentence that read: "However, the board may upon investigation approve any other residency". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendments — Composite Section: Chapter 85 inserted definition of medical assistant; and made minor changes in style. Amendment effective March 20, 2003.

Chapter 224 inserted definition of physician; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(c); changed internal references to the department and the board.

Administrative Rules

ARM 24.156.501 Definitions.

ARM 24.156.504 Internship.

ARM 24.156.609 Fifth pathway program.

Case Notes

Podiatrist Properly Excluded From Providing Testimony Regarding Doctor's Standard of Care — Consumer Protection Act Claims Properly Dismissed: The plaintiff sued the defendants, a doctor and his

related medical business. The plaintiff alleged medical malpractice and Consumer Protection Act (CPA) violations stemming from the defendants' purported refusal to conduct further postoperative visits after his foot surgery. The plaintiff intended to call a podiatrist to testify to the standard of care. However, the District Court excluded the podiatrist because he was not a doctor of medicine or doctor of osteopathy as required in 26-2-601 and 37-3-102. The District Court then granted partial summary judgment on the CPA claim because the legal theories were premised upon allegations of professional negligence. A jury found in favor of the defendant. On appeal, the Supreme Court affirmed, holding that the podiatrist did not meet statutory criteria to provide standard of care testimony and that the CPA claims failed because the claim stemmed from the alleged acts of professional negligence. *Hastie v. Alpine Orthopedics & Sports Medicine*, 2015 MT 346, 382 Mont. 21, 363 P.3d 435.

Partnership Agreement — Definition of "Practice of Medicine" — Application to Psychologists: Former partners of a medical clinic sued the clinic, claiming they were entitled to full partnership interest payments under a partnership agreement. The agreement provided for a reduction of partnership interest payments if a former partner continued to engage in the "practice of medicine" within 3 years of disassociation. The plaintiffs, who were psychologists still working in the community, claimed the phrase "practice of medicine" was a technical term that did not include psychologists. The District Court disagreed and concluded that under contract law, the ordinary and plain meaning of the phrase should be followed and that the ordinary meaning of the phrase included the practice of psychology. The plaintiffs appealed to the Supreme Court, which affirmed the District Court's grant of summary judgment in favor of the clinic. *Krajacich v. Great Falls Clinic, LLP*, 2012 MT 82, 364 Mont. 455, 276 P.3d 922.

Question of Validity of Definition of Practice of Medicine: Although much of defendant's brief concerns the statutes controlling the practice of medicine, the question of the constitutional validity of this section was rendered moot by the jury's acquittal of the counts charged under that section. *St. v. Blinzler*, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

Examination and Diagnosis of Physical Handicaps by Physical Therapists: A physical therapist may not act as a consultant in evaluating and diagnosing physical handicaps of any person unless acting at the request and direction of a licensed physician. 38 A.G. Op. 9 (1979).

Paramedical Specialist to Be Licensed to Practice Nursing: A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of this Act. 36 A.G. Op. 18 (1975).

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 chiropractic under the conditions and limitations defined by the laws of this state;
- (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- (h) the practice of medicine by a physician licensed in another state and employed by the federal government;
- (i) 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 conditions and limitations defined by law;
- (j) 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;
- (k) the rendering of services by a surgical or medical technician or medical assistant, as provided in 37-3-104, 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 the individuals listed in this subsection (1)(k);
- (l) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;
- (m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, including physical therapists and other licensees not specifically designated, under the conditions and limitations defined by law;
- (n) the execution of a death sentence pursuant to 46-19-103;
- (o) 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.
- (p) 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.", "D.O.", 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 disorder of mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part); amd. Sec. 7, Ch. 380, L. 1981; amd. Sec. 1, Ch. 411, L. 1983; amd. Sec. 8, Ch. 97, L. 1989; amd. Sec. 3, Ch. 493, L. 1989; amd. Sec. 25, Ch. 550, L. 1991; amd. Sec. 1, Ch. 335, L. 1999; amd. Sec. 11, Ch. 492, L. 2001; amd. Sec. 2, Ch. 85, L. 2003; amd. Sec. 4, Ch. 224, L. 2003; amd. Sec. 6, Ch. 126, L. 2005; amd. Sec. 4, Ch. 519, L. 2005; amd. Sec. 3, Ch. 154, L. 2015; amd. Sec. 1, Ch. 161, L. 2015.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 154 in (1)(j) deleted second sentence that read: "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"; in (1)(k) substituted "surgical or medical technician" for "physical therapist, technician", after "37-3-104" deleted "or other paramedical specialist", and substituted "the individuals listed in this subsection (1)(k)" for "a paramedical specialist"; in (1)(m) inserted "including physical therapists and other licensees"; and made minor changes in style. Amendment effective July 1, 2015.

Chapter 161 in (2) near end before "mind" inserted "disorder of". Amendment effective April 1, 2015.

2005 Amendments — Composite Section: Chapter 126 in (1)(h) substituted "the practice of medicine by a physician licensed in another state and employed by the federal government" for "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"; and in (1)(i) at end after "nurse-midwives" substituted "under the conditions and limitations defined by law" for "under the supervision of a licensed physician". Amendment effective July 1, 2005.

Chapter 519 in (1)(l) substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

2003 Amendment: Chapter 85 in (1)(k) inserted reference to services by a medical assistant. Amendment effective March 20, 2003.

Chapter 224 deleted former (1)(f) that read: "(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"; in middle of (2) after "M.D." inserted "D.O."; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

2001 Amendment: Chapter 492 in (1)(i) after "medical officers" deleted "of the armed forces of the United States". Amendment effective May 1, 2001.

1999 Amendment: Chapter 335 inserted (1)(q) exempting from licensing use of a defibrillator pursuant to Title 50, chapter 6, part 5; and made minor changes in style. Amendment effective July 1, 1999.

1991 Amendment: In (1)(p), at beginning of last sentence, inserted exception clause. Amendment effective July 1, 1991.

1989 Amendments: Chapter 97, in (1)(m) substituted "physician assistant-certified" for "physician's assistant".

Chapter 493 inserted (1)(p) relating to practice of direct-entry midwifery. Amendment effective April 11, 1989.

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

1983 Amendment: Inserted (1)(o) concerning execution of death sentence.

1981 Amendment: Substituted "appropriate amount and type of supervision" for "personal and responsible direction and" as regards paramedical specialists and technicians in (1)(l); inserted subsection (1)(m) concerning rendering of service by physician's assistant; inserted "with the exception of those licensees who hold a medical degree" after "licenses and," near the middle of (2).

Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Podiatry, Title 37, ch. 6.

Nursing, Title 37, ch. 8.

Optometry, Title 37, ch. 10.

Physical therapy, Title 37, ch. 11.

Chiropractic, Title 37, ch. 12.

Physician assistant defined, 37-20-401.

Case Notes

Certified Registered Nurse Anesthetists Authorized to Administer Anesthesia Without Supervision by Physician: The Legislature has authorized certified registered nurse anesthetists to administer anesthesia to patients without physician supervision. *Mont. Soc'y of Anesthesiologists v. Bd. of Nursing*, 2007 MT 290, 339 M 472, 171 P3d 704 (2007).

Attorney General's Opinions

Paramedical Specialist to Be Licensed to Practice Nursing: A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of this Act. 36 A.G. Op. 18 (1975).

Law Review Articles

Regulation of Midwives as Home Birth Attendants, McIntosh, 30 B.C.L. Rev. 477 (1989).

37-3-104. Medical assistants — guidelines. (1) The board 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, physician assistant, or podiatrist, including the administration of medications; and

(b) the level of physician, physician assistant, or podiatrist supervision required for a medical assistant when performing specified administrative and clinical tasks delegated by a physician, physician assistant, or podiatrist. However, the board shall adopt a rule requiring onsite supervision of a medical assistant by a physician, physician assistant, or podiatrist for invasive procedures, administration of medication, or allergy testing.

(2) The physician, physician assistant, 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;

(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, physician assistant, 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.

History: En. Sec. 5, Ch. 85, L. 2003; amd. Sec. 2, Ch. 225, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 225 throughout section in six places inserted "physician assistant"; and made minor changes in style. Amendment effective October 1, 2017.

Effective Date: Section 7, Ch. 85, L. 2003, provided: "[This act] is effective on passage and approval." Approved March 20, 2003.

Part 2

Board of Medical Examiners

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1731.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Department to provide facilities, 37-1-101.

Board members' compensation and expenses, 37-1-133.

Effect of chemical dependency, 37-3-323.

Approval of class for optometric use of drugs, 37-10-304.

Transfer of funds derived from licensure of physical therapists, 37-11-203.

Power to regulate acupuncture, Title 37, ch. 13, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

Part Administrative Rules

Title 24, chapter 156, subchapter 1, ARM Organizational rule.

Title 24, chapter 156, subchapter 2, ARM Procedural rules.

Part Case Notes

Board of Medical Examiners — Immunity From Suit: In the exercise of its quasi-judicial authority, the Board of Medical Examiners is entitled to the absolute immunity from suit afforded executive officials. *Koppen v. Bd. of Medical Examiners*, 233 M 214, 759 P2d 173, 45 St. Rep. 1433 (1988).

Part Law Review Articles

Clamping Down on Health-Care Professionals: Board of Medical Examiners May Be Granted Unprecedented Investigative and Disciplinary Authority, *Saravia & Kantor*, 166 N.J.L.J. 8 (2001).

Reporting Physician Discipline and Malpractice, Haines, 26 Md. B.J. 39 (1993).

37-3-201. Organization. (1) (a) The board shall elect from among its members a president, vice-president, and secretary.

(b) The board shall adopt a seal on which appear the words "The Board of Medical Examiners of Montana" and "Official Seal".

(2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307.

History: En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015; amd. Sec. 1, Ch. 60, L. 2005; amd. Sec. 7, Ch. 126, L. 2005; amd. Sec. 4, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 in (1)(a) after "shall" deleted "at the first meeting each year"; in (1)(b) deleted second sentence that read: "The board shall authenticate acts, rules, orders, and licenses by applying the seal"; and in (2) after "37-1-307" deleted "and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-3-203". Amendment effective July 1, 2015.

2005 Amendments — Composite Section: Chapter 60 inserted (2) requiring the board to establish a screening panel for disciplinary matters and authorize the screening panel to oversee any rehabilitation program; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 126 in (1)(b) in second sentence after "orders" deleted "certificates" and at end after "by" inserted "applying"; and made minor changes in style. Amendment effective July 1, 2005.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Transfer of Regulation: The preamble to SB 393 (Ch. 87, L. 1981) provided: "WHEREAS, the sunset law, sections 2-8-103 [repealed in 1983] and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of Osteopathic Physicians, 79SS-6, Legislative Auditor, 1980.

Administrative Rules

ARM 24.156.501 Definitions.

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.

Compiler's Comments

Continuing Licensure of Current Osteopath Licensees: Section 3, Ch. 87, L. 1981, provided: "Persons presently licensed by the board of osteopathic physicians shall continue to be eligible for licensure by meeting current qualifications for licensure. No new qualifications for licensure may be required of persons licensed prior to the effective date of this act [July 1, 1981]."

Law Review Articles

Professional Malpractice: Although focusing on the legal profession, this article outlines the malpractice issues of the professions of accounting, medicine, and law in a systematic approach and offers a calculus for analyzing proposed solutions. Legal Malpractice: A Calculus for Reform, Huszagh & Molloy, 37 Mont. L. Rev. 279 (1976).

Expanding the Potential Tort Liability of Physicians: A Legal Portrait of "Nontraditional Patients" and Proposals for Change, Squillante, 40 UCLA L. Rev. 1617 (1993).

37-3-203. Powers and duties — rulemaking authority. (1) The board may:

(a) adopt rules necessary or proper to carry out the requirements in Title 37, chapter 3, parts 1 through 4, and of chapters covering podiatry, acupuncture, physician assistants, nutritionists, and emergency care providers as set forth in Title 37, chapters 6, 13, 20, and 25, and 50-6-203, respectively. Rules adopted for emergency care providers with an endorsement to provide community-integrated health care must address the scope of practice, competency requirements, and educational requirements.

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

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

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

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

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

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

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

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

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

(iii) the general nature of the complaints;

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

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

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

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

(i) the name of the physician;

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

(iii) the disciplinary action taken against the physician.

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

(4) The board may enter into agreements with other states for the purposes of mutual recognition of licensing standards and licensing of physicians and emergency care providers from other states under the terms of a mutual recognition agreement.

History: En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017; amd. Sec. 1, Ch. 83, L. 1981; amd. Sec. 1, Ch. 283, L. 1987; amd. Sec. 1, Ch. 135, L. 1989; amd. Sec. 1, Ch. 436, L. 1991; amd. Sec. 2, Ch. 419, L. 1993; amd. Sec. 5, Ch. 224, L. 2003; amd. Sec. 18, Ch. 467, L. 2005; amd. Sec. 1, Ch. 137, L. 2007; amd. Sec. 1, Ch. 326, L. 2009; amd. Sec. 4, Ch. 122, L. 2011; amd. Sec. 1, Ch. 124, L. 2011; amd. Sec. 5, Ch. 154, L. 2015; amd. Sec. 7, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (1)(a) after "Title 37, chapter 3, parts 1 through 4" substituted "and of" for "as well as" and at end substituted "Rules adopted for emergency care providers with an endorsement to provide community-integrated health care must address the scope of practice, competency requirements, and educational requirements" for "The rules must be fair, impartial, and nondiscriminatory"; in (4) after "licensing of physicians and" substituted "emergency care providers" for "ECPs"; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 154 in (1)(a) in first sentence after "carry out" substituted MCA references for "parts 1 through 3 of this chapter"; in (1)(c) in first sentence after "enforcement of" substituted MCA references for "parts 1 through 3 of this chapter", in second sentence at beginning inserted "The board also may assist the county attorneys of this state in", and at end of second sentence substituted "the provisions listed in this subsection (1)(c)" for "parts 1 through 3 of this chapter"; inserted (4) regarding board agreements with other states and ECPs from other states; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendments — Composite Section: Chapter 122 deleted former (1)(d) that read: "(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness"; inserted (2)(a) regarding medical assistance program; in (2)(b) at beginning deleted "If the board establishes a program pursuant to subsection (1)(d)", in two places before "program" inserted "medical assistance", and in two places before "program" inserted "treatment"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 124 inserted (3) regarding requirement for the board of examiners to report complaints of physician practice related to medical use of marijuana; and made minor changes in style. Amendment effective April 7, 2011.

Pursuant to sec. 38(1), Ch. 419, L. 2011, the Code Commissioner in (3)(a), (3)(a)(v), and (3)(c) substituted "use of marijuana for a debilitating medical condition" for "medical use of marijuana".

Pursuant to sec. 38(2), Ch. 419, L. 2011, the Code Commissioner in (3)(a) substituted "50-46-302" for "50-46-102".

2009 Amendment: Chapter 326 inserted (2) requiring board to allow licensee to enroll in a qualified program within Montana if one is available; and made minor changes in style. Amendment effective April 18, 2009.

2007 Amendment: Chapter 137 inserted (5) providing for board review of disability certification and eligibility determination for permit to hunt from vehicle; and made minor changes in style. Amendment effective April 5, 2007.

2005 Amendment: Chapter 467 deleted former (5) that read: "(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in (4) after "rehabilitate" substituted "licensees subject to the jurisdiction of the board" for "licensed physicians". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1993 Amendment: Chapter 419 in (4), before "drugs", substituted "addictive" for "narcotic" and at end inserted reference to mental or chronic physical illness; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: Inserted (6) concerning funding additional staff by increasing license fees. Amendment effective April 16, 1991.

Preamble: The preamble attached to Ch. 436, L. 1991, provided: "WHEREAS, the workload of the Board of Medical Examiners has increased significantly; and

WHEREAS, additional staff is necessary for the Board to address the increased caseload, serve Montana's physicians and the public, and fulfill its statutory mandates; and

WHEREAS, the Legislature feels it is appropriate to allow the Department of Commerce [now Department of Labor and Industry] to hire additional staff and fund any new position through an increase in the license fees charged to licensed physicians by the Board."

1989 Amendment: Inserted (5) relating to an executive secretary.

1987 Amendment: Inserted (4) allowing Board to establish a program to assist impaired licensees.

1981 Amendment: Deleted former subsection (2) requiring board approval of department hiring and other matters.

Continuation of Existing Osteopath Rules: Section 5, Ch. 87, L. 1981, provided: "Current rules of the board of osteopathic physicians remain in effect unless amended or repealed by the board of medical examiners."

37-3-204. Meetings. The board shall hold meetings for business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings that the president considers advisable or necessary.

History: En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018; amd. Sec. 12, Ch. 492, L. 2001; amd. Sec. 6, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 in first sentence before "business" deleted "examinations and for other". Amendment effective July 1, 2015.

2001 Amendment: Chapter 492 deleted former third sentence that read: "Four members of the board constitute a quorum"; and made minor changes in style. Amendment effective October 1, 2001.

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for licenses and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019; amd. Sec. 8, Ch. 126, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 126 in first sentence after "applicants for" substituted "licenses" for "certificates". Amendment effective July 1, 2005.

Administrative Rules

ARM 24.156.616 Registry.

Case Notes

Register as Evidence: Fact that osteopath's name did not appear on register of applicants to Board of Medical Examiners for certificate to practice was sufficient to establish that he was not a duly licensed practitioner of medicine or surgery; where the record has been identified as one required by law to be kept, the presumption attaches, under 26-1-602, that it has been correctly kept. *St. v. Hopkins*, 54 M 52, 166 P 304 (1917).

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020; amd. Sec. 7, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: After "shall" substituted language providing that Board members receive compensation and travel expenses as provided in 37-1-133 for "\$25 per day compensation while traveling to and from board meetings and while attending board meetings and for each full day away from home while conducting board business, plus travel expenses as provided for in 2-18-501 through 2-18-503, while in the active and necessary discharge of his duties".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-3-207 reserved.

37-3-208. Repealed. Sec. 9, Ch. 122, L. 2011.
History: En. Sec. 1, Ch. 271, L. 2007; amd. Sec. 2, Ch. 326, L. 2009.

37-3-209 and 37-3-210 reserved.

37-3-211. Executive officer. To perform services to the board in connection with the board's duties under this chapter, assist in prosecution and matters of license discipline, and administer the board's affairs, the department shall hire an executive officer.

History: En. Sec. 2, Ch. 135, L. 1989; amd. Sec. 13, Ch. 492, L. 2001; amd. Sec. 19, Ch. 467, L. 2005; amd. Sec. 7, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 at end substituted "executive officer" for "executive secretary". Amendment effective July 1, 2015.

2005 Amendment: Chapter 467 near beginning after "services" substituted "to the board in connection with the board's duties under this chapter, assist in prosecution and matters of license discipline, and administer the board's affairs" for "provided for in 37-3-203(5)" and at end after "secretary" deleted "selected by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 after "shall hire" substituted "an executive secretary" for "a person" and after "by the board" deleted part of former introductory clause and former (1) through (3) that read: "who:

(1) is a citizen of the United States;

(2) is of good moral character; and

(3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine"; and made minor changes in style. Amendment effective October 1, 2001.

Part 3 Licensing

Part Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-603, 1-5-604.

Oaths, Title 1, ch. 6.

Licensing to follow contested case procedure, 2-4-631.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Affidavits, Title 26, ch. 1, part 10.

Surcharge for pretrial review fund, 27-6-206.

Duty of Department to administer and grade examinations, 37-1-101.

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

Nondiscrimination in licensing, 49-3-204.

Part Law Review Articles

Physician Specialty Advertising, Olson, 11 J. Legal Med. 351 (1990).

37-3-301. License required — kinds of licenses. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue two kinds of licenses under the board's seal, a physician's license and a resident license.

(3) The board shall provide guidelines by administrative rule for the practice of telemedicine by physicians.

(4) A license issued by the board that has not expired prior to July 1, 2015, remains valid until renewal unless the licensee is otherwise subject to disciplinary proceedings.

History: (1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part); amd. Sec. 1, Ch. 145, L. 1995; amd. Sec. 4, Ch. 492, L. 1997; amd. Sec. 10, Ch. 371, L. 1999; amd. Sec. 9, Ch. 126, L. 2005; amd. Sec. 20, Ch. 467, L. 2005; amd. Sec. 8, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 in (2) near beginning of first sentence substituted "two" for "four", at end of first sentence substituted "and a resident license" for "a specialized license, a temporary license, and a telemedicine license issued in accordance with 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349", and deleted second and third sentences that read: "The physician's license and the specialized license must be signed by the president, but the temporary license may be signed by any board member. The board shall decide which kind of license to issue"; inserted (3) regarding guidelines for practice of telemedicine; inserted (4) regarding validity of existing license; and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendments — Composite Section: Chapter 126 in (2) in first sentence after "four" substituted "kinds of licenses" for "forms of certificates of licensure", after "physician's" substituted "license" for "certificate", substituted "a specialized license" for "the restricted certificate", after "temporary" substituted "license" for "certificate", and after "telemedicine" substituted "license" for "certificate", in second sentence after "physician's" substituted "license" for "certificate", substituted "specialized license" for "restricted certificate", and after "temporary" substituted "license" for "certificate", and in third sentence after "which" substituted "kind of license" for "certificate"; deleted former (2)(a) through (2)(d) that read: "These certificates must be designated as:

(a) physician's certificate, which is subject to renewable registration in accordance with department rules;

(b) restricted certificate;

(c) temporary certificate, which is subject to specifications and limitations imposed by the board;

and

(d) telemedicine certificate"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 467 in (2) near end of first sentence after "37-3-341 through" inserted "37-3-345 and 37-3-347 through"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Chapter 371 in (2) near beginning substituted "four forms" for "three forms" and inserted "and the telemedicine certificate issued in accordance with 37-3-341 through 37-3-349"; inserted (2)(d) concerning a telemedicine certificate; and made minor changes in style. Amendment effective October 1, 2000.

1997 Amendment: Chapter 492 in (2)(a) substituted "renewable registration" for "annual registration" and inserted "in accordance with department rules"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 145 in (2), in first sentence, increased number of forms of certificates from two to three and after "certificates" inserted "of licensure" and in first and second sentences inserted reference to restricted certificate; inserted (2)(b) relating to restricted certificate; and made minor changes in style. Amendment effective March 15, 1995.

37-3-302. Repealed. Sec. 46, Ch. 126, L. 2005.

History: En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.

37-3-303. Practice authorized by physician's license. A physician's license authorizes the holder to perform one or more of the acts covered by the practice of medicine, as defined in 37-3-102, in a manner consistent with the holder's training, skill, and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979; amd. Sec. 3, Ch. 85, L. 2003; amd. Sec. 6, Ch. 224, L. 2003; amd. Sec. 10, Ch. 126, L. 2005; amd. Sec. 9, Ch. 154, L. 2015; amd. Sec. 8, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in middle substituted "covered by the practice of medicine, as defined in 37-3-102" for "embraced in 37-3-102(12)"; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 154 substituted "37-3-102(12)" for "37-3-102(8)" and after "manner" deleted "reasonably". Amendment effective July 1, 2015.

2005 Amendment: Chapter 126 at beginning after "physician's" substituted "license" for "certificate". Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapters 85 and 224 substituted "37-3-102(8)" for "37-3-102(6)"; and made minor changes in style. Chapter 85 amendment effective March 20, 2003, and Ch. 224 amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Case Notes

Authority of Hospital Board of Directors to Exclude Physician: Board of directors of either a public or private hospital has discretionary right to exclude, suspend, or enjoin staff privileges upon grounds set by medical staff that do not violate due process or discriminate. *N. Valley Hosp., Inc. v. Kauffman*, 169 M 70, 544 P2d 1219 (1976).

Practice in Hospitals: A licensee does not have an unqualified right, constitutional or otherwise, to practice in a public hospital. *N. Valley Hosp., Inc. v. Kauffman*, 169 M 70, 544 P2d 1219 (1976).

37-3-304. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024; amd. Sec. 4, Ch. 85, L. 2003; amd. Sec. 7, Ch. 224, L. 2003; amd. Sec. 1, Ch. 306, L. 2003; amd. Sec. 11, Ch. 126, L. 2005.

37-3-305. Qualifications for licensure. (1) Except as provided in subsection (2), the board shall grant a physician's license to practice medicine in this state to an applicant who:

- (a) is of good moral character as determined by the board;
- (b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved residency program or, for an applicant who graduated from medical school prior to 2000, has had experience or training that the board has determined is at least the equivalent of an approved residency program;

(d) has passed all of the steps of the United States medical licensing examination, the federation of state medical boards' federation licensing examination, or an examination offered by any of the following entities:

- (i) the national board of medical examiners or its successors;
- (ii) the national board of osteopathic medical examiners or its successors;
- (iii) the medical council of Canada or its successors if the applicant is a graduate of a Canadian medical school approved by the medical council of Canada or its successors; or
- (iv) the educational commission for foreign medical graduates or its successors if the applicant is a graduate of a foreign medical school outside of the United States and Canada;
- (e) has submitted a completed application with the required nonrefundable fee; and
- (f) is able to communicate in the English language as determined by the board.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A physician applying for expedited licensure in another state as allowed under 37-3-356 shall submit fingerprints to the board to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.

(4) The board may by rule impose additional requirements for licensure to protect the health and safety of the public or to enter into a mutual recognition licensing agreement with another state.

(5) The board may adopt rules that provide conditions for short-term nondisciplinary licenses.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979; amd. Sec. 3, Ch. 419, L. 1993; amd. Sec. 7, Ch. 230, L. 1999; amd. Sec. 2, Ch. 306, L. 2003; amd. Sec. 21, Ch. 467, L. 2005; amd. Sec. 15, Ch. 109, L. 2009; amd. Sec. 10, Ch. 154, L. 2015; amd. Sec. 1, Ch. 156, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 156 inserted (3) regarding expedited licensure in another state, a fingerprint-based criminal record background check, and the prohibition on dissemination of criminal history record information; and made minor changes in style. Amendment effective April 4, 2017.

2015 Amendment: Chapter 154 in (1) substituted "subsection (2), the board shall grant" for "subsections (4) and (5), a person may not be granted" and substituted "to an applicant who" for "unless the person"; in (1)(c) near beginning before "completed" deleted "successfully", near beginning after first "program" deleted "of at least 2 years", and near end substituted "an approved residency program" for "a 2-year approved residency program"; inserted (1)(d) regarding passage of steps involved in medical examinations offered by various entities; in (1)(e) inserted "with the required nonrefundable fee"; inserted (3) and (4) allowing board to adopt rules; deleted former (3), (4), and (5) regarding temporary licenses (see 2015 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in (1)(c) and in (3)(c) at beginning after "has" inserted "successfully", after "approved" substituted "residency" for "postgraduate", after "2 years or" inserted "for an applicant who graduated from medical school prior to 2000", and near end after "2-year" substituted "approved residency" for "postgraduate"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2005 Amendment: Chapter 467 in (1)(d) at beginning after "has" inserted "submitted" and at end after "application" deleted "file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board"; in (5)(d) at end after "department on" substituted "an approved form" for "a form prescribed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 306 in (1) near beginning of introductory clause substituted "subsections (4) and (5)" for "subsection (4)"; and inserted (5) providing that the 2-year minimum requirements do not apply to certain persons. Amendment effective October 1, 2003.

1999 Amendment: Chapter 230 at beginning of (1) inserted exception clause; in (1)(c) and (3)(c) substituted "postgraduate program of at least 2 years" for "internship of at least 1 year" and at end substituted "a 2-year postgraduate program" for "1 year internship"; deleted former (3)(d) that read: "(d) has made a personal appearance before at least one member of the board"; inserted (4) outlining persons exempt from 2-year minimum postgraduate requirements; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendment: Chapter 419 in (1) substituted "license" for "certificate"; in (1)(d), at beginning, inserted reference to file review by Board member and personal appearance at discretion of Board member and at end, after "before the board", deleted "unless such appearance has been specifically waived by the board"; and made minor changes in style. Amendment effective April 20, 1993.

Administrative Rules

ARM 24.156.607 Graduate training requirements for foreign medical graduates.

37-3-306. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979; amd. Sec. 12, Ch. 126, L. 2005; amd. Sec. 22, Ch. 467, L. 2005; amd. Sec. 16, Ch. 109, L. 2009.

37-3-307. Qualifications for licensure — resident license. (1) The board may authorize the department to issue a resident license to practice medicine to an applicant who:

(a) is in good standing:

(i) in a Montana residency program and is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state; or

(ii) with an approved residency and who, in the course of an approved rotation of the applicant's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state; and

(b) submits an application to the department on an approved form and submits the fee set by the board, as provided in 37-3-308.

(2) A resident license may not be issued for a period that exceeds 1 year. A resident license may be renewed, at the board's discretion, for additional 1-year periods as long as the resident is in good standing in an approved residency program.

History: (1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3); amd. Sec. 8, Ch. 224, L. 2003; amd. Sec. 13, Ch. 126, L. 2005; amd. Sec. 23, Ch. 467, L. 2005; amd. Sec. 11, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 in (1) near beginning of first sentence substituted "issue a resident license" for "issue to an applicant a temporary license" and substituted current text in (1)(a), (1)(b), and (2) regarding a good standing requirement, application and fee submission, and license renewal for former (1)(a) through (1)(d) (see 2015 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendments — Composite Section: Chapter 126 in (1) and in (3) in six places after "temporary" substituted "license" for "certificate"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 467 in (1)(a) at end after "examination" substituted "prescribed by the board" for "given and graded by the department, subject to 37-1-101"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in middle of (1)(b) after "successors" inserted "by the national board of osteopathic medical examiners or successors"; throughout (3) substituted "temporary certificate" for "temporary license"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Administrative Rules

ARM 24.156.608 ECFMG requirements.

37-3-308. Application fee — further tax forbidden. (1) Each applicant shall pay an initial application fee as prescribed by the board.

(2) A license tax may not be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031; amd. Sec. 2, Ch. 345, L. 1981; amd. Sec. 17, Ch. 109, L. 2009; amd. Sec. 12, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 in (1) after "applicant" deleted "for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee. All applicants, including applicants for a temporary license"; and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in (2) at beginning substituted "A license tax may not" for "No license tax shall"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1981 Amendment: Substituted "all applicants including applicants for a temporary license, shall pay an initial application fee as prescribed by the board" for "all applicants except applicants for temporary licenses shall pay an initial application fee of \$100" in (2); and deleted former subsection (3) which provided for a \$25 fee for temporary licenses and renewals.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.156.601 Fee schedule.

ARM 24.156.606 Examination.

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-3-309. Application for license. A person desiring a license to practice medicine shall apply to the department on an approved form. The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the release of records and information pertinent to the department's inquiry.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032; amd. Sec. 1, Ch. 348, L. 1983; amd. Sec. 24, Ch. 429, L. 1995; amd. Sec. 14, Ch. 126, L. 2005; amd. Sec. 24, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 126 in (2) near beginning of third sentence after "granted a" substituted "license" for "certificate"; and made minor changes in style. Amendment effective July 1, 2005. The amendment by Ch. 467 rendered the amendment by Ch. 126 void.

Chapter 467 at end of first sentence after "shall" substituted "apply to the department on an approved form" for "make application to the department, verified by oath and in a form prescribed by the board"; deleted former (2) that read: "(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not

at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a certificate until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in third sentence in (1) substituted "department" for "board" and at beginning of fourth sentence deleted "At the board's request" and at end substituted "pertinent to the department's inquiry" for "pertinent to the board's information"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: Near beginning of (2), substituted "60 days" for "30 days".

Administrative Rules

ARM 24.156.601 Fee schedule.

ARM 24.156.603 Applications for licensure.

ARM 24.156.609 Fifth pathway program.

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in the application the person's correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting the person. A person licensed to practice medicine in this state shall keep the department advised at all times of the person's correct mailing address and of the person's correct name. If the person changes the person's address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department electronically or in writing of the old and new address or of the former name and new name. This information must be entered promptly by the department in the official records of the department.

History: En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048; amd. Sec. 1357, Ch. 56, L. 2009; amd. Sec. 4, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in third sentence inserted "electronically or". Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-3-311. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033; amd. Sec. 2, Ch. 348, L. 1983; amd. Sec. 1, Ch. 405, L. 1985; amd. Sec. 25, Ch. 467, L. 2005; amd. Sec. 18, Ch. 109, L. 2009.

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part); amd. Sec. 13, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 after "medicine" deleted "which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board". Amendment effective July 1, 2015.

37-3-313. Limiting authority to impose renewal fees. A license or renewal fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042; amd. Sec. 3, Ch. 345, L. 1981; amd. Sec. 25, Ch. 429, L. 1995; amd. Sec. 5, Ch. 492, L. 1997; amd. Sec. 9, Ch. 224, L. 2003; amd. Sec. 7, Ch. 271, L. 2003; amd. Sec. 26, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a renewal fee as prescribed by the board.

(2) The payments for renewal must be made prior to the expiration date of the license, as set forth in a department rule. The department shall mail renewal notices before the renewal is due.

(3) Except as provided in 37-1-138, in case of default in the payment of the renewal fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying license to practice medicine may be considered lapsed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 224 in (1) substituted "renewal fee" for "registration fee"; in (2) in three places and near beginning of (3) substituted "renewal" for "registration"; in first sentence of (2) substituted "license" for "registration" and after "rule" deleted "and a receipt acknowledging payment of the registration fee must be issued by the department" and in middle of second sentence after "notices" deleted "at least 60 days"; near end of first sentence of (3) substituted "license" for "certificate", after "may be" substituted "considered lapsed" for "revoked", and after "board" deleted "on 30 days' notice given to the delinquent of the time and place of considering the revocation" and deleted former second, third, and fourth sentences that read: "A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law"; in (4) after "A" deleted "registration or" and after "license" inserted "or renewal"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 271 in (3) at beginning of first sentence inserted "Except as provided in 37-1-138" and at beginning of second sentence after "A" deleted "registered or" (amendment in second sentence rendered void by Ch. 224 amendment); and made minor changes in style. Amendment effective April 9, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 492 in (1), in (2), in first sentence, and in (3), in three places, before "registration", deleted "annual"; in (1), after "in this state shall pay", deleted "each year"; in (2), near beginning after "The", deleted "annual" and substituted "the expiration date of the registration, as set forth in a department rule" for "April 1"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted second sentence in (1) that read: "If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year of absence or inactive practice"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1981 Amendment: Deleted ", not to exceed the sum of \$100," after "an annual registration fee" in the first sentence of (1); deleted "in an amount not to exceed \$50" after "a fee prescribed by the board" in the second sentence of (1); substituted "may be reinstated on the payment of a fee prescribed by the board" for "may be reinstated on the payment of a fee not to exceed \$50" near the end of (1); and substituted "prescribed by the board" for "of \$10" after "together with a delinquency penalty" near the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.156.601 Fee schedule.

ARM 24.156.615 Renewals.

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the state special revenue fund may be used, on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

37-3-315. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 2, Ch. 145, L. 1995; amd. Sec. 10, Ch. 224, L. 2003; amd. Sec. 15, Ch. 126, L. 2005.

37-3-316 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that the applicant has committed unprofessional conduct, the board may deny the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036; amd. Sec. 1358, Ch. 56, L. 2009; amd. Sec. 14, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 in first sentence at end substituted "the board may deny the license" for "it shall refrain from authorizing the department to issue a license" and deleted former second and third sentences that read: "The department shall mail to the applicant, at the applicant's last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after the hearing the board determines that the applicant is not entitled to a license, the board shall refuse to grant the license." Amendment effective July 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Administrative Rules

ARM 24.156.604 Refusal of license.

Law Review Articles

Professional Malpractice: Although focusing on the legal profession, this article outlines the malpractice issues of the professions of accounting, medicine, and law in a systematic approach and offers a calculus for analyzing proposed solutions. Legal Malpractice: A Calculus for Reform, Huszagh & Molloy, 37 Mont. L. Rev. 279 (1976).

Expanding the Potential Tort Liability of Physicians: A Legal Portrait of "Nontraditional Patients" and Proposals for Change, Squillante, 40 UCLA L. Rev. 1617 (1993).

Procedural Fairness in the Defence of Professionals Charged With Sexual Abuse, Campbell & Lisus, 15 Advoc. Q. 308 (1993).

37-3-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979; amd. Sec. 1, Ch. 328, L. 1989; amd. Sec. 1, Ch. 164, L. 1991; amd. Sec. 4, Ch. 419, L. 1993; amd. Sec. 11, Ch. 619, L. 1993.

37-3-323. Suspension of license — investigation. (1) The department may investigate whenever the department learns of a reason to suspect that a license applicant or a person having a license to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that the condition incapacitates the person for the safe performance of professional duties;

(b) has engaged in unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated the terms of probation.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or

physicians selected by the board or the board's representative if the board considers that the evaluation is in the best interests of the public. The board may examine and scrutinize the hospital records and reports of a licensee or license applicant as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proved to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038; amd. Sec. 1, Ch. 321, L. 1989; amd. Sec. 1, Ch. 540, L. 1991; amd. Sec. 5, Ch. 419, L. 1993; amd. Sec. 26, Ch. 429, L. 1995; amd. Sec. 7, Ch. 490, L. 1997; amd. Sec. 16, Ch. 126, L. 2005; amd. Sec. 19, Ch. 109, L. 2009; amd. Sec. 15, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 in (1)(b) substituted "has engaged in" for "has been guilty of"; and in (2) near end of first sentence substituted "the board or the board's representative if the board considers that the evaluation is in the best interests of the public" for "the board if it appears to be in the best interests of the public that this evaluation be secured". Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in (1) near middle after "suspect that a" inserted "license applicant or a"; and in (2) in second sentence after "licensee" inserted "or license applicant". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2005 Amendment: Chapter 126 in (1) near end after "license" deleted "or certificate"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 490 in (3), in first sentence after "incompetent", deleted "or seriously mentally ill or" and after "substances" inserted "or to have been committed pursuant to 53-21-127"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 429 at beginning of (1) substituted "department" for "board"; in (2), in first sentence after "may", inserted "upon order of the board" and deleted third and fourth sentences that read: "If the board has reasonable cause to believe that this probability exists, the department shall mail to the person's last address of record with the department a specification of the charges, together with a written notice of the time and place of the hearing on the charges, advising that the person may be present and may be represented by counsel if the person wants to offer evidence and be heard in the person's own defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice"; deleted (3) through (6) that read: "(3) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice medicine in this state charging that person with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section. The complaint must set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at the person's last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing, the board shall adopt a resolution finding the accused guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if the person is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

- (a) revoke the person's license;
- (b) suspend the person's right to practice for a period not exceeding 1 year;
- (c) suspend its judgment of revocation on the terms and conditions to be determined by the board;
- (d) place the person on probation;
- (e) impose a fine, not to exceed \$500 an incident; or

(f) take any other action in relation to disciplining the person as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee must be reinstated by the board if the suspended person furnishes the board with evidence that the person is then of good moral character and conduct, is restored to good health, and has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows the person has practiced medicine in this state during the term of suspension, the board shall revoke the license, using the notice and hearing procedure provided in subsection (2). The revocation is final and absolute"; deleted (8) and (9) that read: "(8) A fine imposed under this section must be deposited in the general fund.

(9) The remedies and method of enforcement of this part, as provided for in this section, are concurrent and in addition to the other remedies provided in this part"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 419 in (6) substituted "subsection (2)" for "subsection (1)"; in (7), in first sentence after "use of", substituted "addictive substances" for "narcotics"; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: Near beginning of (3), before "complaint", substituted "written" for "sworn".

1989 Amendment: Inserted (4)(e) authorizing Board to impose fine not exceeding \$500 upon licensee guilty of offenses; inserted (8) requiring deposit of fine in general fund; and inserted (9) establishing that remedies and method of enforcement are concurrent and in addition to other remedies.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Administrative Rules

ARM 24.156.626 Revocation or suspension proceedings.

Case Notes

What Section Applicable to License Revocation: Erickson asserted that the Montana State Board of Medical Examiners, pursuant to 37-1-203, needed to ascertain whether Erickson's conviction of Medicaid fraud related to the public health, welfare, or safety before considering whether to revoke Erickson's medical license. The Supreme Court held that this section sets out the procedure to be applied when the Board revokes or suspends a medical license. A person who has had a license revoked under this section as a result of a criminal conviction is entitled to consideration under 37-1-203 when seeking a new license following rehabilitation. Section 37-1-203 does not apply to the revocation of a license. Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997), overruling Mills v. Comm'r of Ins., 226 M 387, 736 P2d 102 (1987), and Gilpin v. Bd. of Nursing, 254 M 308, 837 P2d 1342 (1992).

License Revocation Warranted — Negligence, Malpractice, Unprofessional Conduct: Revocation of a general practitioner's medical license was warranted where evidence showed negligence and medical malpractice in the practice of obstetrics and neonatal care that resulted in the deaths of two infants. The physician continued to accept obstetrical patients after the restriction of the physician's practice in those areas. This was compounded by the physician's unprofessional conduct in misleading some of his obstetrical patients by informing them that he would have hospital privileges before the birth of their children and by providing obstetrical care in violation of the order to discontinue that service. Kauffman v. Dept. of Commerce, 229 M 204, 746 P2d 103, 44 St. Rep. 1905 (1987).

Charges Instituted by Board: Necessity prevents disqualification of Board from hearing charges instituted by it, since no other body is given jurisdiction to hear such charges. State ex rel. Yuhas v. Bd. of Medical Examiners, 135 M 381, 339 P2d 981 (1959).

Unprofessional Conduct: Former provision of statute authorizing revocation of physician's certificate "for unprofessional, dishonorable, or immoral conduct" gave Board jurisdiction to hear charges involving an attempted abortion, unauthorized removal of x-rays, overcharges for services not performed, and the encouragement of fraudulent claims before the Industrial Accident Board (now Division of Workers' Compensation) for injuries not received. State ex rel. Yuhas v. Bd. of Medical Examiners, 135 M 381, 339 P2d 981 (1959).

Notice of Revocation: Though Board of Medical Examiners is empowered to revoke certificate (see 2005 amendment) of a physician for unprofessional, dishonorable, or immoral conduct, it cannot arbitrarily revoke the certificate (see 2005 amendment) without giving physician reasonable notice of charge against him and time and place of trial. St. v. Schultz, 11 M 429, 28 P 643 (1892).

Law Review Articles

Professional Malpractice: Although focusing on the legal profession, this article outlines the malpractice issues of the professions of accounting, medicine, and law in a systematic approach and offers a calculus for analyzing proposed solutions. Legal Malpractice: A Calculus for Reform, Huszagh & Molloy, 37 Mont. L. Rev. 279 (1976).

An HMO Tale of Rashomon; Courts Have Read a Key Health-Care Decision Differently in Last Year, Morrisey, 23 Nat'l L.J. A1 (2001).

Informed Consent and the Scope of a Physician's Duty of Disclosure, Hanson, 77 N.D.L. Rev. 71 (2001).

Justices Affirm Decision Allowing Med-Mal Suit Against an HMO, Cohen, 24 Pa. L. Weekly 1 (2001).

Negligence Per Se Charge Allowed for Violating FDA Rules, Rodier, 24 Pa. L. Weekly 5 (2001).
Proving Reasonable Care and Causation, Zwerling, 225 N.Y.L.J. 1 (2001).

Retained Experts' Opinions in Medical Malpractice Cases, Lavin, 89 Ill. B.J. 39 (2001).

Update on Informed Consent, Moore & Gaiether, 225 N.Y.L.J. 3 (2001).

Cyber-Malpractice: Legal Exposure for Cybermedicine, Terry, 25 Am. J.L. & Med. 327 (1999).

Mediation and Medical Malpractice Disputes: Potential Obstacles in the Traditional Lawyer's Perspective, McMullen, 1990 J. Dispute Resolution 371 (1990).

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.

Case Notes

Proper Denial of Petition for Judicial Review of Board of Medical Examiners' Decision to Disallow Reconsideration of Stipulation of Unprofessional Conduct: The Board of Medical Examiners found that a doctor had conducted himself in an unprofessional manner by drawing a smiley face on the breast of a cancer patient. The doctor attended two out-of-state facilities at the request of the professional assistance program and subsequently sued the program and several program physicians for false imprisonment, conspiracy, and other charges. The program then withdrew from the treatment arrangement, and the Board produced a stipulation, which the doctor signed, wherein he admitted that the conduct was unprofessional. The doctor's conduct was reported to the national practitioner database, and he was placed on probation for 1 year. After probation was terminated, the doctor petitioned for reconsideration of the stipulation on grounds that it was signed under duress, that the conduct was not unprofessional, and that the record of the charge made it difficult to find employment. The Board denied reconsideration, the District Court affirmed, and the doctor appealed, but the Supreme Court also affirmed. Substantial evidence supported the District Court's findings that the stipulation was not signed under duress, and the court's failure to address the Board's omission of the doctor's requested findings of fact was not in error. The Board has wide discretion under this section whether to reconsider a prior action, and the District Court did not err in concluding that the Board acted within its discretion in denying the petition for

reconsideration. *Hughes v. Mont. Bd. of Medical Examiners*, 2003 MT 305, 318 M 181, 80 P3d 415 (2003).

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation, except a professional service corporation under Title 35, chapter 4, practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than \$250 or more than \$1,000 or be imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as the person's own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041; amd. Sec. 1359, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Penalty for unlawful use of physician assistant, 37-20-104.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Case Notes

Physiotherapy Practice of Medicine:

An alleged physiotherapist who attempted to remove moles from patient's body by use of surgical diathermy machine was guilty of unlawful practice of medicine. *St. v. Moore*, 141 M 86, 375 P2d 218 (1962).

Unlicensed person who affixed title "Dr." to his name and represented himself as a physiotherapist was guilty of practicing medicine without a certificate (see 2005 amendment). *St. v. Bain*, 130 M 90, 295 P2d 241 (1956).

The practice of physiotherapy constitutes the practice of medicine under Montana law. *St. v. Bain*, 130 M 90, 295 P2d 241 (1956).

Medicine and Surgery the Same: Where an osteopath was charged with practicing medicine (removing tonsils) without a license, his contention that the information was fatally defective in that, if he was guilty of any offense it was practicing surgery, held of no merit, the practice of medicine and surgery being considered as one under the statutes and by long acceptance by the people generally. "Osteopathy", as defined by its founder, dictionaries, and decisions of courts, briefly stated, "administers no drugs and uses no knife". *St. v. Thierfelder*, 114 M 104, 132 P2d 1035 (1943), reversed on other grounds in *St. v. Labbitt*, 117 M 26, 156 P2d 163 (1945).

Designation of Offense — Bill of Particulars Required: Where statute under which one is charged sets forth a number of ways in which the offense may be committed (such as former section prohibiting practice of medicine or surgery without a certificate, see 2005 amendment, and defining "practicing medicine or surgery"), the accused is entitled to know what particular portion of the section he is accused of violating, and by entering a plea of not guilty he may not be held to have waived his right to a bill of particulars. There is no statute in Montana requiring it, but the right exists by virtue of the provisions of both federal and state constitutions to know the nature and cause of the accusation. *State ex rel. Wong Sun v. District Court*, 112 M 153, 113 P2d 996 (1941).

Penalty — Jurisdiction in District Court: Prosecution of osteopath for practicing medicine and surgery without a license fell within exclusive jurisdiction of District Court and not within that of Justice of

the Peace, the penalty for the offense exceeding Justice's Court jurisdiction. State ex rel. Freebourn v. District Court, 105 M 77, 69 P2d 748 (1937).

Osteopaths — Practice of Medicine: In former statute prohibiting practice of medicine or surgery without a certificate (see 2005 amendment) and defining "practicing medicine or surgery", proviso that nothing in section should restrict legally licensed osteopaths did not permit osteopaths to practice medicine or surgery without a certificate (see 2005 amendment). St. v. Hopkins, 54 M 52, 166 P 304 (1917); St. v. Wood, 53 M 566, 165 P 592 (1917); St. v. Dodd, 51 M 100, 149 P 481 (1915).

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045; amd. Sec. 1360, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Affidavits, Title 26, ch. 1, part 10.

Injunctions, Title 27, ch. 19.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-327. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.

37-3-328. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047; amd. Sec. 1361, Ch. 56, L. 2009.

37-3-329 through 37-3-332 reserved.

37-3-333. Written informed consent for breast cancer treatment. (1) For the purpose of this section, "written informed consent" means an agreement in writing that is freely executed by the patient that certifies that full disclosure has been made to the patient about:

(a) the full range of efficacious medical treatment alternatives that may be viable, including surgical procedures relating to the removal of breast tissue, radiological or chemotherapeutic treatments or any other generally accepted medical treatment, or combinations of procedures and treatments;

(b) the advantages, disadvantages, risks, and descriptions of the procedures and treatments listed in subsection (1)(a); and

(c) aspects of recovery, including the options that are available for reconstructive surgery.

(2) Failure of a physician or surgeon to provide written informed consent as provided in subsection (1) constitutes unprofessional conduct.

History: En. Sec. 3, Ch. 410, L. 1997.

Compiler's Comments

Applicability: Section 9, Ch. 410, L. 1997, provided: "[This act] is applicable to all contracts issued or renewed on or after January 1, 1998."

Cross-References

Revocation or suspension for unprofessional conduct, 37-3-323.

37-3-334 through 37-3-340 reserved.

37-3-341. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 1, Ch. 371, L. 1999; amd. Sec. 27, Ch. 467, L. 2005.

37-3-342. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 2, Ch. 371, L. 1999; amd. Sec. 28, Ch. 467, L. 2005; amd. Sec. 20, Ch. 109, L. 2009.

37-3-343. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 3, Ch. 371, L. 1999; amd. Sec. 17, Ch. 126, L. 2005; amd. Sec. 29, Ch. 467, L. 2005; amd. Sec. 25, Ch. 419, L. 2011.

37-3-344. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 4, Ch. 371, L. 1999; amd. Sec. 18, Ch. 126, L. 2005; amd. Sec. 30, Ch. 467, L. 2005.

37-3-345. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 5, Ch. 371, L. 1999; amd. Sec. 11, Ch. 224, L. 2003; amd. Sec. 19, Ch. 126, L. 2005.

37-3-346. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 371, L. 1999; amd. Sec. 8, Ch. 271, L. 2003.

37-3-347. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 7, Ch. 371, L. 1999; amd. Sec. 21, Ch. 126, L. 2005; amd. Sec. 31, Ch. 467, L. 2005; amd. Sec. 26, Ch. 419, L. 2011.

37-3-348. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 8, Ch. 371, L. 1999; amd. Sec. 22, Ch. 126, L. 2005.

37-3-349. Repealed. Sec. 18, Ch. 154, L. 2015.

History: En. Sec. 9, Ch. 371, L. 1999; amd. Sec. 23, Ch. 126, L. 2005.

37-3-350 through 37-3-355 reserved.

37-3-356. Enactment — provisions. The Interstate Medical Licensure Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1 PURPOSE

In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state's

existing Medical Practice Act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact.

SECTION 2 DEFINITIONS

In this compact:

(1) "Bylaws" means those bylaws established by the interstate commission pursuant to Section 11 for its governance, or for directing and controlling its actions and conduct.

(2) "Commissioner" means the voting representative appointed by each member board pursuant to Section 11.

(3) "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board.

(4) "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact.

(5) "Interstate commission" means the interstate commission created pursuant to Section 11.

(6) "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.

(7) "Medical Practice Act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.

(8) "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.

(9) "Member state" means a state that has enacted the compact.

(10) "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the Medical Practice Act of a member state.

(11) "Physician" means any person who:

(a) is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(b) passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(c) successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(d) holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(e) possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(f) has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(g) has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(h) has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(i) is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

(12) "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.

(13) "Rule" means a written statement by the interstate commission promulgated pursuant to Section 12 of the compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(14) "State" means any state, commonwealth, district, or territory of the United States.

(15) "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

SECTION 3 ELIGIBILITY

(1) A physician must meet the eligibility requirements as defined in Section 2(11) to receive an expedited license under the terms and provisions of the compact.

(2) A physician who does not meet the requirements of Section 2(11) may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

SECTION 4 DESIGNATION OF STATE OF PRINCIPAL LICENSE

(1) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

(a) the state of primary residence for the physician; or

(b) the state where at least 25% of the practice of medicine occurs; or

(c) the location of the physician's employer; or

(d) if no state qualifies under subsection (1)(a), subsection (1)(b), or subsection (1)(c), the state designated as state of residence for the purpose of federal income tax.

(2) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (1).

(3) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

SECTION 5 APPLICATION AND ISSUANCE OF EXPEDITED LICENSURE

(1) A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(2) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.

(a) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(b) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with C.F.R. 731.202.

(c) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(3) Upon verification in subsection (2), physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (1), including the payment of any applicable fees.

(4) After receiving verification of eligibility under subsection (2) and any fees under subsection (3), a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state.

(5) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(6) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(7) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

SECTION 6

FEEES FOR EXPEDITED LICENSURE

(1) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.

(2) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

SECTION 7

RENEWAL AND CONTINUED PARTICIPATION

(1) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(a) maintains a full and unrestricted license in a state of principal license;

(b) has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(c) has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(d) has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(2) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(3) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(4) Upon receipt of any renewal fees collected in subsection (3), a member board shall renew the physician's license.

(5) Physician information collected by the interstate commission during the renewal process will be distributed to all member boards.

(6) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the compact.

SECTION 8

COORDINATED INFORMATION SYSTEM

(1) The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under Section 5.

(2) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the compact.

(3) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(4) Member boards may report any nonpublic complaint or disciplinary or investigatory information not required by subsection (3) to the interstate commission.

(5) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(6) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(7) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

SECTION 9

JOINT INVESTIGATIONS

(1) Licensure and disciplinary records of physicians are deemed investigative.

(2) In addition to the authority granted to a member board by its respective Medical Practice Act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(3) A subpoena issued by a member state shall be enforceable in other member states.

(4) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(5) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

SECTION 10

DISCIPLINARY ACTIONS

(1) Any disciplinary action taken by any member board against a physician licensed through the compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that state.

(2) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the Medical Practice Act of that state.

(3) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(a) impose the same or lesser sanctions against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or

(b) pursue separate disciplinary action against the physician under its respective Medical Practice Act, regardless of the action taken in other member states.

(4) If a license granted to a physician by a member board is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for 90 days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the 90-day suspension period in a manner consistent with the Medical Practice Act of that state.

SECTION 11

INTERSTATE MEDICAL LICENSURE COMPACT COMMISSION

(1) The member states hereby create the "Interstate Medical Licensure Compact Commission".

(2) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(3) The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(4) The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:

(a) an allopathic or osteopathic physician appointed to a member board;

(b) an executive director, executive officer, or similar executive of a member board; or

(c) a member of the public appointed to a member board.

(5) The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(6) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(7) Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subsection (4).

(8) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

- (a) relate solely to the internal personnel practices and procedures of the interstate commission;
- (b) discuss matters specifically exempted from disclosure by federal statute;
- (c) discuss trade secrets or commercial or financial information that is privileged or confidential;
- (d) involve accusing a person of a crime or formally censuring a person;
- (e) discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (f) discuss investigative records compiled for law enforcement purposes; or
- (g) specifically relate to the participation in a civil action or other legal proceeding.

(9) The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(10) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(11) The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

(12) The interstate commission may establish other committees for governance and administration of the compact.

SECTION 12

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the duty and power to:

- (1) oversee and maintain the administration of the compact;
- (2) promulgate rules which shall be binding to the extent and in the manner provided for in the compact;
- (3) issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;
- (4) enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
- (5) establish and appoint committees including, but not limited to, an executive committee as required by Section 11, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;
- (6) pay or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the interstate commission;
- (7) establish and maintain one or more offices;
- (8) borrow, accept, hire, or contract for services of personnel;
- (9) purchase and maintain insurance and bonds;
- (10) employ an executive director who shall have such powers to employ, select, or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;
- (11) establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(12) accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;

(13) lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;

(14) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(15) establish a budget and make expenditures;

(16) adopt a seal and bylaws governing the management and operation of the interstate commission;

(17) report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission.

(18) coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;

(19) maintain records in accordance with the bylaws;

(20) seek and obtain trademarks, copyrights, and patents; and

(21) perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

SECTION 13 FINANCE POWERS

(1) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(2) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(3) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(4) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

SECTION 14 ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(1) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within 12 months of the first interstate commission meeting.

(2) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

(3) Officers selected in subsection (2) shall serve without remuneration from the interstate commission.

(4) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

SECTION 15 RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(2) Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act" of 2010, and subsequent amendments thereto.

(3) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

SECTION 16

OVERSIGHT OF INTERSTATE COMPACT

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities, or actions of the interstate commission.

(3) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules.

SECTION 17

ENFORCEMENT OF INTERSTATE COMPACT

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

(2) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

SECTION 18

DEFAULT PROCEDURES

(1) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the compact, or the rules and bylaws of the interstate commission promulgated under the compact.

(2) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:

(a) provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(b) provide remedial training and specific technical assistance regarding the default.

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(5) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state or the withdrawal of a member state.

(6) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(7) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(8) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

SECTION 19 DISPUTE RESOLUTION

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states or member boards.

(2) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

SECTION 20 MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

(1) Any state is eligible to become a member state of the compact.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(3) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(4) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

SECTION 21 WITHDRAWAL

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until 1 year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(4) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of notice provided under subsection (3).

(5) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations the performance of which extend beyond the effective date of withdrawal.

(6) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(7) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

SECTION 22 DISSOLUTION

(1) The compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(2) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

SECTION 23 SEVERABILITY AND CONSTRUCTION

(1) The provisions of the compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of the compact shall be liberally construed to effectuate its purposes.

(3) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

SECTION 24 BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(2) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(3) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(4) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(5) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

History: En. Sec. 1, Ch. 203, L. 2015.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

37-3-357. Designation of appointing authority. The governor shall appoint members of the board of medical examiners or the board's executive officer to serve as commissioners on the interstate medical licensure compact commission provided for in 37-3-356.

History: En. Sec. 2, Ch. 203, L. 2015.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Part 4 Reporting Obligations

Part Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.
Nonliability for peer review, Title 37, ch. 2, part 2.

Part Law Review Articles

When Physicians Hold Their Colleagues Accountable. 32 *Trauma* 1 (1990).
A Qualified Privilege for Peer Review: Physician, Reveal Thyself!, Schneider, 17 *Pac. L.J.* 499 (1986).
The Peer Review Privilege: A Law in Search of a Valid Policy, Goldberg, 10 *Am. J.L. & Med.* 151 (1984).

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

- (a) medically incompetent;
- (b) mentally or physically unable to safely engage in the practice of medicine; or
- (c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the medical assistance program established by the board under 37-3-203, in lieu of reporting directly to the board.

(b) The medical assistance program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

- (i) the licensee fails or refuses to:

(A) comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(B) undergo a reasonable course of recommended treatment, including reasonable aftercare;

(C) satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(ii) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(iii) the medical assistance program personnel are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053; amd. Sec. 6, Ch. 419, L. 1993; amd. Sec. 3, Ch. 326, L. 2009; amd. Sec. 5, Ch. 122, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 122 in (2)(a) near end before "program" inserted "medical assistance" and substituted "37-3-203" for "37-3-203(1)(d)"; in (2)(b) before "program" inserted "medical assistance"; in (2)(b)(i)(B) and (2)(b)(i)(C) at beginning deleted "the licensee fails or refuses to"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 326 in (2)(a) near end substituted "37-3-203(1)(d)" for "37-3-203(4)". Amendment effective April 18, 2009.

1993 Amendment: Chapter 419 inserted (2) regarding program for physicians impaired by drugs or alcohol; and made minor changes in style. Amendment effective April 20, 1993.

Case Notes

Voluntary Act Precluding False Imprisonment Claim — Lack of Underlying Tort Precluding Civil Conspiracy Claim: A woman with breast cancer was advised by Hughes, a radiation oncologist, to undergo therapeutic radiology for the disease. Prior to radiation, an oncologist makes specific marks on the affected area to identify where to direct radiation beams. However, in addition to the marks directing radiation beams, Hughes drew a "smiley face" on the woman's breast by drawing two dime-sized "eyes" above the nipple of the breast and outlining the scar from the breast biopsy for the "mouth". The woman complained to hospital administration, and an ad hoc investigative committee recommended that Hughes receive a letter of reprimand, have a term of probation, have a chaperone while working, and be

evaluated by the Montana Professional Assistance Program (MPAP). Hughes agreed to a medical, psychiatric, or chemical dependency evaluation and voluntarily enrolled in two such programs in Texas and Kansas. After release, Hughes signed an aftercare agreement. Hughes then brought suit against the individual members of the ad hoc committee and MPAP, alleging false imprisonment, civil conspiracy, breach of contract, and civil right violations related to the disciplinary actions. Summary judgment was granted to defendants in federal District Court on the civil rights claims, and the remaining charges were remanded to state District Court, where they were also summarily dismissed. Hughes appealed. The Supreme Court affirmed dismissal of the false imprisonment claim because Hughes voluntarily signed the treatment agreements and submitted to evaluation. Two elements of false imprisonment are the restraint of an individual against the individual's will and the unlawfulness of that restraint, but because no material fact existed as to the voluntariness of Hughes's action, the false imprisonment claim failed as a matter of law. Further, to sustain a civil conspiracy claim, plaintiff must allege a tort committed by one of the conspirators, but because the false imprisonment claim failed, there was no underlying tort action to form a basis for civil conspiracy, so that claim failed as well. *Hughes v. Pullman*, 2001 MT 216, 306 M 420, 36 P3d 339 (2001).

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision. The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, and the basis of the settlement or court decision.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054; amd. Sec. 4, Ch. 243, L. 1981.

Compiler's Comments

1981 Amendment: Inserted the second sentence pertaining to reporting of settlements; added "and the basis of the settlement or court decision" at the end of the section.

37-3-403. Report of prohibition or limitation on practice by hospital. With the exception of the first two violations of hospital policies related to charts, medical records, or other policies not directly associated with the clinical care of a patient, each hospital or health care facility that prohibits or limits the privilege of a physician to practice medicine within that facility shall report the action to the state board of medical examiners within 30 days after the action is taken. The report must include each reason for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055; amd. Sec. 27, Ch. 429, L. 1995; amd. Sec. 16, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 at beginning of first sentence inserted exception clause regarding first two violations of various hospital policies; and made minor changes in style. Amendment effective July 1, 2015.

1995 Amendment: Chapter 429 at end of first sentence, after "taken", deleted "if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 37-3-322 or 37-3-323(1)"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Case Notes

Injunction to Preclude Reporting of Physician's Suspension Until Breach of Contract Issue Settled: A physician applied for a preliminary injunction to preclude defendant medical center from reporting the physician's suspension until the issue of whether defendant breached its contract by

suspending the physician without just cause was resolved. The District Court granted the injunction and defendant appealed, but the Supreme Court affirmed. Defendant failed to demonstrate that the District Court manifestly abused its discretion by issuing the preliminary injunction. The District Court correctly found that the physician had met two criteria for issuance of the injunction by demonstrating the likelihood of success on the merits of the case and the need for relief to prevent great or irreparable injury to the physician. The criteria for issuing the injunction having been met, the District Court did not err in dismissing defendant's motion to dismiss. *Doe v. Community Medical Center, Inc.*, 2009 MT 395, 353 M 378, 221 P3d 651 (2009). See also *Cole v. St. James Healthcare*, 2008 MT 453, 348 M 68, 199 P3d 810 (2008).

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.

Cross-References

Suspension of license subject to contested case procedure, 2-4-631.

Parts 5 through 7 reserved

Part 8 Montana Health Corps Act

Part Compiler's Comments

Effective Date: Section 10, Ch. 385, L. 2009, provided: "[This act] is effective July 1, 2009."

Part Administrative Rules

Title 24, chapter 156, ARM Board of Medical Examiners.

37-3-801. Short title. This part may be cited as the "Montana Health Corps Act".

History: En. Sec. 1, Ch. 385, L. 2009.

37-3-802. Purpose — establishment of program. (1) The purposes of this part are to:

(a) provide primary outpatient care to individuals eligible for medicare or medicaid by retired physicians at affordable prices;

(b) keep the elderly or infirm in their homes longer; and

(c) provide home health care visits for patients who have difficulty in traveling.

(2) The board shall adopt rules to establish the program. The rules must provide procedures for enrolling retired physicians in the health corps and procedures under which physicians or health care facilities may refer medicare or medicaid patients to members of the health corps.

History: En. Sec. 2, Ch. 385, L. 2009.

37-3-803. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Health care" has the meaning provided in 50-16-504.

(2) "Health care facility" has the meaning provided in 50-5-101.

History: En. Sec. 3, Ch. 385, L. 2009.

37-3-804. Eligibility for participation. A retired physician who is properly licensed and in good standing in Montana may participate in the health corps provided for in this part. The board shall accept applications for participation in the health corps and provide written guidelines to participants in the health corps concerning the provisions of this part and rules adopted to implement this part.

History: En. Sec. 4, Ch. 385, L. 2009.

37-3-805. Referral of patients to program — visits — charges. (1) The board shall adopt rules under which physicians or health care facilities may refer medicare or medicaid patients to the health corps program.

(2) A health corps member shall make home visitations to eligible patients for the purpose of providing health care to eligible patients.

(3) A health corps member may charge \$10 for a patient contact or visit and may submit a charge to medicare or medicaid.

History: En. Sec. 5, Ch. 385, L. 2009.

37-3-806. Limitation on liability. A physician who renders health care within the scope of the physician's license to a patient under this part is not liable to a patient or other person for civil damages resulting from the rendering of the care unless the damages were the result of gross negligence or willful or wanton acts or omissions by the physician. Each patient must be given notice that under state law the physician may not be held legally liable for ordinary negligence for services provided under the health corps program.

History: En. Sec. 6, Ch. 385, L. 2009.

37-3-807. Termination of participation in health corps. The board may take disciplinary action against a physician participating in the health corps program as provided in Title 37 and may terminate a physician's participation in the health corps program based upon the disciplinary action.

History: En. Sec. 7, Ch. 385, L. 2009.