

1 HOUSE BILL NO. 238

2 INTRODUCED BY J. ETCHART

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MENTAL AND
5 PHYSICAL EVALUATIONS FOR PROFESSIONAL LICENSEES; CREATING A STANDARD REVIEW
6 PROCESS FOR A MENTAL OR PHYSICAL EVALUATION REQUEST BY A BOARD OF A LICENSEE OR
7 LICENSE APPLICANT; CREATING A STANDARD REVIEW PROCESS FOR A MENTAL OR PHYSICAL
8 EVALUATION REQUEST BY THE DEPARTMENT OF LABOR AND INDUSTRY OF A LICENSEE OR
9 LICENSE APPLICANT; AND AMENDING SECTIONS 37-3-323, 37-6-311, AND 37-12-322, MCA."

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

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13 NEW SECTION. **Section 1. Mental and physical evaluations.** (1) If a board has objective and
14 reasonable belief that a licensee or license applicant presents a significant risk of substantial harm to public
15 health and safety, the board may require an evaluation of the licensee or license applicant by an appropriate
16 medical provider.

17 (2) The evaluation in subsection (1) must determine to what extent and how any existing mental or
18 physical impairment or disability or use of controlled substances by the individual may impact the individual's
19 performance of the profession or occupation with reasonable skill and safety. The factors to be considered
20 include but are not limited to:

- 21 (a) the duration of the risk;
22 (b) the nature and severity of the potential harm;
23 (c) the likelihood that the potential harm will occur; and
24 (d) the imminence of the potential harm.

25 (3) The board may consider additional mental or physical evaluations and may base a proposed
26 disciplinary or enforcement action on a single evaluation or the totality of any evaluations considered.

27 (4) The board may summarily suspend the license of or suspend processing the application of an
28 individual who refuses to submit to the evaluation.

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2 NEW SECTION. Section 2. Mental and physical evaluations. (1) If the department, on behalf of a
3 program, has objective and reasonable belief that a licensee or license applicant presents a significant risk of
4 substantial harm to public health and safety, the department may require an evaluation of the licensee or
5 license applicant by an appropriate medical provider.

6 (2) The evaluation in subsection (1) must determine to what extent and how any existing mental or
7 physical impairment or disability or use of controlled substances by the individual may impact the individual's
8 performance of the profession or occupation with reasonable skill and safety. The factors to be considered
9 include but are not limited to:

- 10 (a) the duration of the risk;
11 (b) the nature and severity of the potential harm;
12 (c) the likelihood that the potential harm will occur; and
13 (d) the imminence of the potential harm.

14 (3) The department may consider additional mental or physical evaluations and may base a
15 proposed disciplinary or enforcement action on a single evaluation or the totality of any evaluations considered.

16 (4) The department may summarily suspend the license of or suspend processing the application
17 of an individual who refuses to submit to the evaluation.

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19 **Section 3.** Section 37-3-323, MCA, is amended to read:

20 **"37-3-323. Suspension of license -- investigation.** (1) The department may investigate whenever
21 the department learns of a reason to suspect that a license applicant or a person having a license to practice
22 medicine in this state:

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

28 (b) has engaged in unprofessional conduct;

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

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

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

5 (2) The investigation must be for the purpose of determining the probability of the existence of
6 these conditions or the commission of these offenses ~~and may, upon order of the board, include requiring the~~
7 ~~person to submit to a physical examination or a mental examination, or both, by a physician or physicians~~
8 ~~selected by the board or the board's representative if the board considers that the evaluation is in the best~~
9 ~~interests of the public.~~ The board may examine and scrutinize the hospital records and reports of a licensee or
10 license applicant as part of the examination investigation, and copies must be released to the board on written
11 request.

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

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19 **Section 4.** Section 37-6-311, MCA, is amended to read:

20 **"37-6-311. Refusal or revocation of license -- investigation.** (1) After notice and opportunity for a
21 hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the
22 board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

23 (2) The department may investigate whenever it is brought to its attention that a licensed podiatrist:

24 (a) is mentally or physically unable to engage safely in the practice of podiatry;

25 (b) has procured the license by fraud, misrepresentation, or through error;

26 (c) has been declared incompetent by a court of competent jurisdiction and has not later been
27 lawfully declared competent;

28 (d) has a condition that impairs the licensee's intellect or judgment to the extent that it

1 incapacitates the licensee in the safe performance of professional duties;

2 (e) has been found guilty of unprofessional conduct;

3 (f) has practiced podiatry while the license was suspended or revoked;

4 (g) has had the license suspended or revoked by any licensing authority for reasons other than
5 nonpayment of fees; or

6 (h) while under probation has violated its terms.

7 (3) The investigation must be for the purpose of determining the probability that the alleged
8 conditions exist or that the alleged offenses were committed. ~~Upon order of the board, the investigation may~~
9 ~~include requiring the person to submit to a physical examination or a mental examination, or both, by a~~
10 ~~physician or physicians selected by the board if it appears to be in the best interest of the public that this~~
11 ~~evaluation be secured.~~ The board may examine the hospital records and reports of a licensee as part of the
12 ~~examination~~ investigation, and copies must be released to the board on written request.

13 (4) If a person holding a license to practice podiatry under this chapter is by a final order or
14 adjudication of a court of competent jurisdiction determined to be mentally incompetent, to be addicted to the
15 use of narcotics, or to have been committed pursuant to 53-21-127, the license may be suspended by the
16 board. The suspension continues until the licensee is found by the court to be restored to reason or cured or
17 until the licensee is discharged as restored to reason or cured and the licensee's professional competence has
18 been proved to the satisfaction of the board."

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20 **Section 5.** Section 37-12-322, MCA, is amended to read:

21 **"37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever it
22 is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

23 (a) has a mental or physical condition that renders the person unable to safely engage in the
24 practice of chiropractic;

25 (b) has been declared incompetent or has been committed pursuant to 53-21-127 by a court of
26 competent jurisdiction and has not later been declared competent or released from supervision;

27 (c) has procured the license through mistake;

28 (d) has been guilty of unprofessional conduct;

1 (e) has practiced chiropractic while the license was suspended or revoked;

2 (f) has while under probation violated its terms.

3 (2) The investigation must be for the purpose of determining the probability of the existence of
4 these conditions or the commission of these offenses ~~and may, upon order of the board, include requiring the~~
5 ~~person to submit to a physical or mental examination, or both, by a physician or physicians selected by the~~
6 ~~board if it appears to be in the best interests of the public that this evaluation be secured.~~ The board may
7 examine the hospital records and reports of the licensee as part of the examination investigation, and copies of
8 these must be released to the board on written request."

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

12 (2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 1, part 4, and the
13 provisions of Title 37, chapter 1, part 4, apply to [section 2].

14 - END -