

SENATE BILL NO. 347

INTRODUCED BY S. VINTON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MEDICAL RESIDENT LICENSURE LAWS; REVISING DEFINITIONS; REMOVING UNLICENSED TRAINEES FROM LICENSING EXEMPTIONS; REVISING RESIDENCY REQUIREMENTS FOR LICENSING QUALIFICATIONS; AND AMENDING SECTIONS 37-3-102, 37-3-103, 37-3-305, AND 37-26-301, MCA."

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

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

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

(1) "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)~~(3) "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)~~(4) "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)~~(5) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

~~(7)~~(6) "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)~~(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

1 ~~(9)~~(8) "Emergency care provider" or "ECP" means a person licensed by the board, including but not
2 limited to an emergency medical responder, an emergency medical technician, an advanced emergency
3 medical technician, or a paramedic. An emergency care provider with an endorsement may provide community-
4 integrated health care.

5 ~~(10)~~(9) "LCME" means the liaison committee on medical education.

6 ~~(11)~~(10) "Medical assistant" means an unlicensed allied health care worker who functions under the
7 supervision of a physician, physician assistant, or podiatrist in a physician's or podiatrist's office and who
8 performs administrative and clinical tasks.

9 ~~(12)~~(11) "Physician" means a person who holds a degree as a doctor of medicine or doctor of
10 ~~osteopathy-osteopathic medicine~~ and who has a valid license to practice medicine or ~~osteopathic medicine~~ in
11 this state.

12 (12) (a) "PGY" means the post-graduate year as defined by an approved residency.

13 (b) "PGY-1" means the first curriculum year of an approved residency, during which the individual
14 in the approved residency is currently enrolled.

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

22 (14) "Resident" means a person who:

23 (a) holds a degree as a doctor of medicine or doctor of osteopathic medicine from an approved
24 medical school;

25 (b) is enrolled in an approved residency; and

26 (c) has a valid resident license to practice medicine as a resident in this state.

27 ~~(14)~~(15) "Store-and-forward technology" means electronic information, imaging, and communication that
28 is transferred, recorded, or otherwise stored in order to be reviewed at a later date by a health care provider or

1 health care facility at a distant site without the patient present in real time. The term includes interactive audio,
2 video, and data communication.

3 ~~(45)(16)~~(a) "Telemedicine" means the practice of medicine using interactive electronic communications,
4 information technology, audio-only conversations, or other means between a licensee in one location and a
5 patient in another location with or without an intervening health care provider. Telemedicine includes the
6 application of secure videoconferencing or store-and-forward technology.

7 (b) The term does not mean an e-mail or instant messaging conversation or a message sent by
8 facsimile transmission.

9 (c) For physicians providing written certification of a debilitating medical condition pursuant to 16-
10 12-509, the term does not include audio-only communication unless the physician has previously established a
11 physician-patient relationship through an in-person encounter."
12

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

14 **"37-3-103. Exemptions from licensing requirements.** (1) This chapter does not prohibit or require a
15 license with respect to any of the following acts:

16 (a) the gratuitous rendering of services in cases of emergency or catastrophe;

17 (b) the rendering of services in this state by a physician lawfully practicing medicine in another
18 state or territory. However, if the physician does not limit the services to an occasional case or if the physician
19 has any established or regularly used hospital connections in this state or maintains or is provided with, for the
20 physician's regular use, an office or other place for rendering the services, the physician must possess a
21 license to practice medicine in this state.

22 (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

23 (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

24 (e) the practice of optometry under the conditions and limitations defined by the laws of this state;

25 (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

26 (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by
27 rabbis;

28 (h) the practice of medicine by a physician licensed in another state and employed by the federal

1 government;

2 (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their
3 duties as nurses or of midwife services by registered nurse-midwives under the conditions and limitations
4 defined by law;

5 ~~(j) the rendering of services by interns or resident physicians in a hospital or clinic in which they~~
6 ~~are training, subject to the conditions and limitations of this chapter;~~

7 ~~(k)(j)~~ the rendering of services by a surgical or medical technician or medical assistant, as provided
8 in 37-3-104, under the appropriate amount and type of supervision of a person licensed under the laws of this
9 state to practice medicine, but this exemption does not extend the scope of the individuals listed in this
10 subsection (1)~~(k)(j)~~;

11 ~~(l)~~ (k) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;

12 ~~(m)~~ (l) the practice by persons licensed under the laws of this state to practice a limited field of the
13 healing arts, including physical therapists and other licensees not specifically designated, under the conditions
14 and limitations defined by law;

15 ~~(n)~~ (m) the execution of a death sentence pursuant to 46-19-103;

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

20 ~~(p)~~ (o) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

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

27

28 **Section 3.** Section 37-3-305, MCA, is amended to read:

1 **"37-3-305. Qualifications for licensure.** (1) Except as provided in subsection (2), the board shall

2 grant a physician's license to practice medicine in this state to an applicant who:

3 (a) is of good moral character as determined by the board;

4 (b) is a graduate of an approved medical school as defined in 37-3-102;

5 (c) ~~has completed an approved residency program or, for an applicant who graduated from~~

6 ~~medical school prior to 2000, has had experience or training that the board has determined is at least the~~

7 ~~equivalent of an approved residency program;~~

8 (c) possesses one or more of the qualifications:

9 (i) has completed PGY-1 of an approved residency program, provided the individual remains

10 enrolled and in good standing throughout the residency program;

11 (ii) has completed an approved residency program; or

12 (iii) for an applicant who graduated from medical school prior to 2000, has experience or training

13 that the board determines is at least the equivalent of an approved residency program;

14 (d) has passed all of the steps of the United States medical licensing examination, the federation

15 of state medical boards' federation licensing examination, or an examination offered by any of the following

16 entities:

17 (i) the national board of medical examiners or its successors;

18 (ii) the national board of osteopathic medical examiners or its successors;

19 (iii) the medical council of Canada or its successors if the applicant is a graduate of a Canadian

20 medical school approved by the medical council of Canada or its successors; or

21 (iv) the educational commission for foreign medical graduates or its successors if the applicant is a

22 graduate of a foreign medical school outside of the United States and Canada;

23 (e) has submitted a completed application with the required nonrefundable fee; and

24 (f) is able to communicate in the English language as determined by the board.

25 (2) The board may authorize the department to issue the license subject to terms of probation or

26 other conditions or limitations set by the board or may refuse a license if the applicant has committed

27 unprofessional conduct or is otherwise unqualified.

28 (3) A physician applying for expedited licensure in another state as allowed under 37-3-356 shall

1 submit fingerprints to the board to facilitate a fingerprint-based criminal record background check by the
2 Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal
3 history record information resulting from the background check across state lines.

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

6 (5) The board may adopt rules that provide conditions for short-term nondisciplinary licenses."
7

8 **Section 4.** Section 37-26-301, MCA, is amended to read:

9 **"37-26-301. Practice of naturopathic health care -- alternative health care formulary committee.**

10 (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as
11 exempted in 37-3-103(1)(~~m~~)(l), with the following restrictions. A naturopathic physician may not:

12 (a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole
13 gland thyroid; homeopathic preparations; the therapeutic substances, drugs, and therapies described in
14 subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not
15 prescribe or dispense oxytocin (pitocin);

16 (b) administer ionizing radioactive substances for therapeutic purposes;

17 (c) perform surgical procedures except those minor surgery procedures authorized by this chapter;
18 or

19 (d) claim to practice any licensed health care profession or system of treatment other than
20 naturopathic medicine unless holding a separate license in that profession.

21 (2) Naturopathic physicians may prescribe, administer, and dispense for preventive and
22 therapeutic purposes the following therapeutic substances, drugs, and therapies, as well as drugs as specified
23 by the formulary list provided for in subsection (3):

24 (a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines,
25 homeopathic preparations, and oxytocin (pitocin);

26 (b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic
27 physical applications, therapeutic devices, and nonprescription drugs; and

28 (c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) A five-member alternative health care formulary committee appointed by the board shall establish a formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.

(4) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(5) If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable."

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