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(As Passed by the General Assembly)

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Sens. Drake, Latell

Effective date: April 10, 2001

ACT SUMMARY

- Redefines the practice of medicine, surgery, and podiatry to include a person who either in person or through the use of any communication, including oral, written, or electronic communication, practices medicine, surgery, or podiatry in Ohio.
- Modifies the existing exceptions to Ohio's physician licensing law and establishes new exceptions.
- Authorizes the State Medical Board to issue a telemedicine certificate to a physician licensed by another state that requires at least 50 hours of continuing medical education every two years.
- Defines "the practice of telemedicine" as the practice of medicine in Ohio through the use of any communication, including oral, written, or electronic communication, by a physician located outside this state.
- Requires the State Medical Board to adopt rules establishing standards and procedures to be followed by physicians who delegate medical tasks to persons who are not licensed or specifically authorized by statute to perform the tasks.
- Requires the State Board of Optometry to adopt rules establishing standards and procedures to be followed by optometrists who delegate optometric tasks to persons who are not licensed or specifically authorized by statute to perform the tasks.

- Provides that the administration of prescribed topical drugs is part of the practice of physical therapy and athletic training.
- In the law governing the practice of medicine, changes "podiatry" to "podiatric medicine."

TABLE OF CONTENTS

The practice of medicine, surgery, or podiatry	2
Exceptions to Ohio's physician licensing law	3
Modifications	3
New exceptions	4
Applicability of the exceptions	6
Telemedicine certificate	6
Special activity certificate	7
English proficiency.....	8
Failure to renew a license	8
Injunctions against certain conduct that violates the law governing physicians	8
Intent.....	9
Delegation of medical tasks.....	9
Optometrists	10
Physical therapists and athletic trainers	11
Podiatric medicine	12

CONTENT AND OPERATION

The practice of medicine, surgery, or podiatry

(sec. 4731.34)

Under continuing law, with certain exceptions, the practice of medicine or any of its branches is prohibited in Ohio without a certificate from the State Medical Board. A person is regarded as practicing medicine, surgery, or podiatry if the person does either of the following:

(1) Uses certain words, letters, or any other title with the person's name that represents that the person is engaged in the practice of medicine, surgery, or podiatry;

(2) For compensation of any kind, direct or indirect, either (a) examines or diagnoses, or (b) prescribes, advises, recommends, administers, or dispenses a drug or medicine, appliance, mold or cast, application, operation, or treatment, of

whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease.

The act redefines the practice of medicine, surgery, and podiatry by modifying these provisions and adding certain activities. With respect to (1), the act removes "Professor," "D.S.C.," "Pod. D.," and "M.B." from the list of titles and initials and adds "D.O.," "D.P.M.," and "physician."¹ With respect to the activities described in (2), the act provides that the activities are those performed either in person or, regardless of the person's location, through the use of any communication, including oral, written, or electronic communication. The act also adds to persons regarded as practicing medicine any person who advertises, solicits, or represents in any way that the person is practicing medicine, surgery, or podiatry, in any of its branches.

Exceptions to Ohio's physician licensing law

(secs. 4731.35 and 4731.36)

Continuing law excepts certain conduct from Ohio's physician licensing law. The act modifies the pre-existing exceptions and establishes new exceptions.

Modifications

The act modifies the following exceptions to Ohio's physician licensing law.

--Consultation with an out-of-state physician. Under prior law, an exception applied to a physician residing and licensed in another state or territory when the physician was in consultation with an Ohio physician. Under the act, an out-of-state licensed physician is excepted from the Ohio's physician licensing law when providing consultation to an Ohio physician who is responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation and one of the following applies:

(1) The out-of-state physician does not provide consultation in Ohio on a regular or frequent basis;

(2) The out-of-state physician provides the consultation without compensation of any kind, direct or indirect;

¹ As under current law, use of *Dr.*, *Doctor*, or *M.D.* will cause a person to be considered to be practicing medicine.

(3) The consultation is part of the curriculum of an Ohio medical school or osteopathic medical school or training program.

--Practitioners in border states. Under prior law, an exception from Ohio's physician licensing law applied to a physician residing on the border of a neighboring state whose practice extended into Ohio, provided equal rights and privileges were accorded by the neighboring state to the Ohio physicians residing on the border of the neighboring state. The act limits the exception to physicians in contiguous states and removes the requirement that the state accord equal rights and privileges to Ohio physicians.

Continuing law prohibits a practitioner who comes within the border state exception from opening an office or appointing a place to see patients in Ohio. The act provides that this prohibition applies to an action "either in person or through the use of any communication, including oral, written, or electronic communication."

--Commissioned medical officers. Under prior law, an exception to Ohio's physician licensing law applied to a commissioned medical officer of the United States Army, Navy, or Marine Hospital Service in the discharge of the officer's professional duties. Under the act, the exception applies to a commissioned medical officer of the U.S. armed forces, which includes the Army, Air Force, Navy, Marine Corps, Coast Guard, and any other military service branch that is designated by Congress as part of the armed forces. The act also excepts an employee of the U.S. Veterans Administration or U.S. Public Health Service in the discharge of the officer's or employee's professional duties.

--Dentists. Under continuing law, an exception applies to a dentist when engaged exclusively in the practice of dentistry or when administering anesthetics. The act limits the anesthetics exception to administering anesthetics in the practice of dentistry.

--Certified registered nurse anesthetists. Prior law specified that the physician licensing laws did not prohibit the administration of an anesthetic by a certified registered nurse anesthetist. Rather than having the exception apply to the administration of an *anesthetic*, the act applies the exception to the nurse's administration of *anesthesia*.

New exceptions

The act establishes the following new exceptions to Ohio's physician licensing law.

--Follow-up services by an out-of-state physician. Under the act, an out-of-state physician who provided services to a patient in another state is excepted when providing follow-up services in Ohio to the patient for the same condition. The follow-up services must be provided not later than one year after the last date services were provided in the other state. The follow-up services may be provided in person or through the use of any form of communication.

--Peer review. Under the act, a board, committee, or corporation engaged in peer review activities is excepted from the physician licensing law when acting within the scope of the functions of the board, committee, or corporation.

--Independent review organizations. Under the act, the conduct of an independent review organization accredited by the Superintendent of Insurance for the purposes of conducting external reviews of coverage decisions made by health insurers is excepted from the physician licensing law.

--Administration of drugs. According to an opinion issued by the Ohio Attorney General prior to the act, a person was subject to the prohibition against the unauthorized practice of medicine when that person administered a drug or medicine, unless the person was specifically authorized by statute to administer the drug or medicine.² The act provides that the laws regulating the practice of medicine do not prohibit the administration of drugs by any of the following:

(1) An individual who is licensed or otherwise specifically authorized by the Revised Code to administer drugs;

(2) An individual who is not licensed or otherwise specifically authorized by the Revised Code to administer drugs, but is acting pursuant to the rules for delegation of medical tasks that are to be adopted under the act (see 'Delegation of medical tasks' below);

(3) An individual specifically authorized to administer drugs pursuant to an administrative rule that was in effect on the act's effective date and remains in effect.

--Assistance with self-administration of drugs. Continuing law provides that the prohibition against practicing medicine without a license does not prohibit service in case of emergency or domestic administration of family remedies. The act further provides that physician licensing laws do not prohibit the provision of assistance to another individual who is self-administering drugs.

² (OAG 2000-23.)

Applicability of the exceptions

The act specifies that the exceptions for out-of-state physicians who consult or provide follow-up services or who reside in a state that borders Ohio do not apply to a physician whose certificate to practice in Ohio is under suspension or has been revoked or permanently revoked by action of the State Medical Board.

Telemedicine certificate

(sec. 4731.296)

The act establishes a new certificate authorizing the practice of telemedicine in Ohio. For this purpose, "the practice of telemedicine" is defined as "the practice of medicine in this state through the use of any communication, including oral, written, or electronic communication by a physician located outside this state."

Application for a telemedicine certificate is to be made to the State Medical Board and accompanied by a fee of \$300. The act permits the Board to issue the certificate, without an exam, to a person who meets all of the following requirements:

(1) The person holds a current, unrestricted license to practice medicine or osteopathic medicine issued by another state that requires license holders to complete at least 50 hours of continuing medical education every two years and the person's principal place of practice is in that state.³

(2) The person does not hold a certificate authorizing the practice of medicine or osteopathic medicine in Ohio.

(3) The person meets the same age, moral character, and educational requirements an applicant must meet to receive a certificate to practice medicine or osteopathic medicine in Ohio and, if applicable, demonstrates proficiency in spoken English (see "*English proficiency*" below).

A person who is issued a telemedicine certificate may practice telemedicine in Ohio, but may not practice in person without obtaining a special activity certificate issued by the Board (see "*Special activity certificate*" below).

³ When used with regard to parts of the United States, "state" is defined as including any territory, commonwealth, or other area that is subject to the legislative authority of the U.S. (R.C. 1.59).

The Board may revoke a telemedicine certificate or take other disciplinary action against a certificate holder on receiving proof satisfactory to the Board that the holder has engaged in practice in Ohio outside the scope of the certificate or that there are other grounds for discipline. The grounds for discipline and the disciplinary procedures are the same as those for certificates to practice in person.

A telemedicine certificate is to be valid for a period specified by the Board, and initial renewal is to be in accordance with a schedule established by the Board. Thereafter, the certificate is valid for two years and may be renewed.

To be eligible for renewal, the holder must pay a fee of \$305 and certify to the Board compliance with the continuing medical education requirements of the state in which the certificate holder's principal place of practice is located. The Board may require a random sample of certificate holders to submit materials documenting completion of the continuing medical education requirements.

On the written request of a telemedicine certificate holder, the Board must convert a telemedicine certificate to an Ohio certificate based on the Board's pre-existing authority to issue a license, without examination, to a person who holds a license from another state or country if the person meets all the other requirements for an Ohio license.

Special activity certificate

(sec. 4731.294)

Under continuing law, the State Medical Board is permitted to issue a special activity certificate, without examination, to any person seeking to practice medicine or osteopathic medicine in conjunction with a special activity, program, or event taking place in Ohio. The applicant must pay a fee of \$125 and provide evidence to the Board that the applicant holds a license from another state or country and meets other requirements.

Under the act, the holder of a telemedicine certificate who applies for a special activity certificate is not required to submit evidence of out-of-state licensure or submit evidence related to determining that the applicant is currently active in the practice of medicine or osteopathic medicine. The Board is not permitted to charge the applicant a fee for issuing the special activity certificate.

The act requires the Board to adopt rules that specify how often any individual may be granted a special activity certificate. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

English proficiency

(sec. 4731.29)

Under continuing law, an applicant for a certificate to practice medicine or osteopathic medicine in Ohio whose license from another state is based in part on certification from the Educational Commission for Foreign Medical Graduates must demonstrate proficiency in spoken English if the applicant's undergraduate education was outside the United States. An exception to this requirement applies if an individual has been actively practicing medicine in the U.S. for the five years prior to applying for a certificate to practice in Ohio.

The act creates an additional exception under which an applicant is not required to demonstrate proficiency in spoken English. This exception applies if, at the beginning of the five-year period preceding the date of application for a certificate to practice in Ohio, the applicant was participating in graduate medical education, and since completing that education, the applicant has been actively practicing medicine in the U.S. under an unrestricted license.

Failure to renew a license

(secs. 4731.222 and 4731.281)

If the holder of a certificate authorizing the practice of medicine, osteopathic medicine, or podiatry in Ohio fails to renew, the certificate is automatically suspended. The act clarifies the distinction between the pre-existing process of reinstating or restoring an automatically suspended certificate. Reinstatement applies when a certificate has been suspended for two years or less. Restoration applies when a certificate has been suspended for more than two years.

Injunctions against certain conduct that violates the law governing physicians

(sec. 4731.341)

Under continuing law, the Attorney General, State Medical Board, county prosecutor, or any other person who has knowledge of the unauthorized practice of medicine may seek an injunction to stop the unauthorized practice in any court of competent jurisdiction. The act identifies the Franklin County Common Pleas Court as one court of competent jurisdiction in which an injunction may be sought.

Intent

(Section 3)

The act specifies that the amendments it makes to certain Revised Code sections governing the practice of medicine are not intended to modify the provision of continuing law specifying that a health insuring corporation authorized to do business in Ohio is not considered to be practicing medicine, as well as the Ohio Attorney General opinion that interprets that provision.⁴

Delegation of medical tasks

(sec. 4731.053; Section 4)

The act requires the State Medical Board to adopt rules establishing standards to be met and procedures to be followed by a physician with respect to the physician's delegation of the performance of a medical task to a person who is not licensed or otherwise specifically authorized by the Revised Code to perform the task.⁵ The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires public hearings on proposed rules. Initial rules must be adopted not later than August 31, 2001.

To the extent that delegation applies to the administration of drugs, the rules must provide for all of the following:

- (1) On-site supervision when the delegation occurs in a health care facility, unless the Board establishes a specific exception with respect to routine administration of a topical drug, such as medicated shampoo;
- (2) Evaluation of whether delegation is appropriate according to patient acuity;
- (3) Training and competency requirements that must be met by the person administering the drugs;
- (4) Other standards and procedures the Board considers relevant.

The act prohibits the Board from adopting rules that do any of the following:

⁴ (OAG 99-044.)

⁵ For the purpose of this provision, "physician" means a person authorized by Ohio law to practice medicine, osteopathic medicine, or podiatric medicine.

(1) Authorize a physician to transfer the physician's responsibility for supervising a person who is performing a delegated medical task to a health professional other than another physician;

(2) Authorize an individual to whom a medical task is delegated to delegate the performance of that task to another individual;

(3) Except as provided in (4) through (8) below, authorize a physician to delegate the administration of anesthesia, controlled substances, drugs administered intravenously, or any other drug or category of drug the Board considers to be inappropriate for delegation;

(4) Prevent an individual from engaging in any activity performed for a handicapped child as a service needed to meet the education needs of the child, as identified in the child's individualized education program;

(5) Prevent delegation from occurring pursuant to pre-existing laws that permit delegation of medical tasks within the programs and services offered by a county board of mental retardation and developmental disabilities;

(6) Conflict with any provision of the Revised Code that specifically authorizes an individual to perform a particular task;

(7) Conflict with any rule in effect on the act's effective date, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;

(8) Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist;⁶

(9) Authorize a physician assistant, anesthesiologist assistant, or any other professional regulated by the Board to delegate tasks pursuant to the rules.

Optometrists

(secs. 4725.09 and 4725.26)

The act requires the State Board of Optometry to adopt rules that establish standards to be met and procedures to be followed with respect to the delegation

⁶ According to Washington University in St. Louis, which has a perfusionist training program, "a perfusionist is a person who operates extracorporeal circulation and autotransfusion equipment during any medical situation where it is necessary to support or temporarily replace the patient's circulatory or respiratory function," www.artsci.westl.edu/, visited 11/15/00.

by an optometrist of the performance of an optometric task to a person who is not licensed or otherwise specifically authorized by the Revised Code to perform the task. With respect to an optometrist who is licensed to administer drugs, the rules must permit the optometrist to delegate the administration of drugs included in the optometrist's scope of practice.

The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) and provide for all of the following:

- (1) On-site supervision when the delegation occurs in a health care facility, unless the Board establishes a specific exception with respect to routine administration of a topical drug;
- (2) Evaluation of whether delegation is appropriate according to patient acuity;
- (3) Training and competency requirements that must be met by the person administering the drugs;
- (4) Other standards and procedures the Board considers relevant.

The act provides that the following are not subject to provisions of the prohibition against practicing optometry without a license:

- (1) An individual who is licensed or otherwise specifically authorized by the Revised Code to engage in an activity that is included in the practice of optometry;
- (2) An individual who is not licensed or otherwise specifically authorized by the Revised Code to engage in an activity that is included in the practice of optometry, but is acting pursuant to the rules for delegation of optometric tasks adopted under the act.

Physical therapists and athletic trainers

(secs. 4755.40 and 4755.60)

The act provides that the administration of prescribed topical drugs is included within the scope of practice of a physical therapist or athletic trainer.

Podiatric medicine

(secs. 4731.143, 4731.20, 4731.22, 4731.222. 4731.224, 4731.281, 4731.31, 4731.34, 4731.51, 4731.52, 4731.53, 4731.55, 4731.56, 4731.57, 4731.571, 4731.572, 4731.60, 4731.62, 4731.66, and 4731.85)

The act changes the term "podiatry" to "podiatric medicine and surgery" in the sections of the Revised Code governing the practice of medicine.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-17-00	pp. 1624-1625
Reported, H. Health, Retirement & Aging	05-09-00	p. 1901
Passed House (97-0)	05-10-00	pp. 1927-1928
Reported, S. Health, Human Services & Aging	11-16-00	pp. 2249-2250
Passed Senate (33-0)	11-16-00	p. 2268
House concurred in Senate amendments (93-0)	12-05-00	pp. 2414-2415

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