



**Am. Sub. S.B. 172**

123rd General Assembly

(As Passed by the General Assembly)

**Sens. Drake, McLin, Hagan, Prentiss, Herington, Spada**

**Reps. Van Vyven, Terwilleger, Brading, Amstutz, Myers, Allen, Barnes, Mead, Corbin, O'Brien, D. Miller, Krupinski, Barrett, Britton**

**Effective date: \***

---

**ACT SUMMARY**

**Pharmacists**

- Authorizes a pharmacist to enter into a consult agreement with a physician to manage the drug therapy of an individual in a hospital or long-term care facility, as long as the pharmacist is acting according to a policy developed by the hospital or facility.
- Expands the disciplinary powers of the State Board of Pharmacy by allowing the Board to impose limits on a license to practice pharmacy, modifying the reasons for which the Board may impose licensing sanctions, permitting the Board to require a pharmacist or pharmacy intern who appears to be impaired to submit to a physical or mental examination, and preventing an applicant from withdrawing, without Board approval, an application for authority to practice pharmacy as a pharmacist or pharmacy intern.
- Requires that terminal distributors of dangerous drugs provide adequate safeguards for the safe and effective practice of pharmacy.

---

\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

*Local registrars of vital statistics*

- Authorizes the health commissioners of the health districts that constitute a combined primary registration district to jointly appoint the local registrar of vital statistics for the combined district.
- Authorizes a board of health, on a recommendation of the health commissioner, to remove from office the local registrar of vital statistics.

*Optometrists*

- Permits an optometrist who retired or relocated prior to March 9, 1999, to apply for reinstatement of the optometrist's expired license by paying one annual renewal fee and a reinstatement fee and without necessarily having to pass all or part of the optometry licensing examination.
- Permits an optometrist whose license has expired to renew the license during a four-month late renewal period by paying an additional fee of \$75.

*Chemical dependency professionals*

- Requires the Ohio Department of Alcohol and Drug Addiction Services to establish and administer a process for the certification or credentialing of chemical dependency professionals for the purpose of qualifying the services they provide for Medicare or Medicaid reimbursements and repeals this requirement on July 1, 2002.

---

**TABLE OF CONTENTS**

PHARMACISTS

Pharmacist-physician consult agreements ..... 3  
    Consult agreements within hospitals or long-term care facilities..... 4  
    Consult agreements outside hospitals or long-term care facilities..... 4  
Privileged communications ..... 5  
Licensing sanctions ..... 5  
Orders for physical or mental examinations ..... 6  
Conference calls on summary suspensions ..... 6  
Cooperation with government investigations..... 6  
Withdrawing applications ..... 6  
Safe and effective practice ..... 7

LOCAL REGISTRARS OF VITAL STATISTICS

Appointment and removal of local registrars of vital statistics ..... 7
Background..... 7
Appointments..... 7
Removal from office ..... 7

OPTOMETRISTS

Reinstatement of inactive and expired licenses..... 8
Late license renewal..... 8

CHEMICAL DEPENDENCY PROFESSIONALS

Ohio Credentialing Board..... 9
ODADAS..... 9
Sunset ..... 11

CONTENT AND OPERATION

PHARMACISTS

Pharmacist-physician consult agreements

(sec. 4729.39)

Continuing law permits a pharmacist to enter into a "consult agreement" with a physician under which the pharmacist is authorized to manage an individual's drug therapy, but only to the extent specified by the individual's physician in the agreement. The statutory requirements that apply to consult agreements include the following:

- (1) The pharmacist's management of drug therapy may include monitoring and modifying a prescription, but cannot include dispensing a drug that has not been prescribed by a physician.
(2) Before commencing any action to manage drug therapy, the pharmacist must make reasonable attempts to contact and confer with the physician. The pharmacist must cease the action if the pharmacist has not conferred with the physician within 48 hours.
(3) A separate agreement is required for each individual whose drug therapy is to be managed. Each agreement applies only to the particular diagnosis for which a drug has been prescribed.
(4) Each agreement must be recorded in writing and signed by the pharmacist, physician, and patient before it can be implemented.



### **Consult agreements within hospitals or long-term care facilities**

Under prior law, regardless of whether an individual is or is not in a hospital or long-term care facility, the standards for managing the individual's drug therapy under a consult agreement are the same. The act creates separate requirements for consult agreements that are implemented in a hospital or long-term care facility. These requirements include the following:

(1) Before a consult agreement may be entered into and implemented, a hospital or long-term care facility must adopt a policy for consult agreements. For any period of time during which a pharmacist or physician acting under a consult agreement is not physically present and available at the hospital or facility, the policy must require that another pharmacist and physician be available at the hospital or facility.

(2) The agreement must be made in writing and comply with the hospital's or facility's policy on consult agreements.

(3) The content of the agreement must be communicated to the individual whose drug therapy will be managed in a manner consistent with the policy on consult agreements.

(4) A pharmacist acting under an agreement must maintain in the individual's medical record a record of each action taken under the agreement.

(5) Communication between the pharmacist and physician must take place at regular intervals specified by the primary physician acting under the agreement.

(6) The agreement may be terminated by the individual or person authorized to act on behalf of the individual, the primary physician acting under the agreement, or the primary pharmacist. All parties to the agreement must be notified and the termination must be recorded in the individual's medical record.

### **Consult agreements outside hospitals or long-term care facilities**

Under the act, the requirements that apply to all consult agreements continue to apply to an agreement implemented for individuals who are not hospital patients or residents of long-term care facilities. The act modifies the requirements, however, to provide for alternate physicians and pharmacists. A physician entering into a consult agreement is authorized to specify one other physician who has agreed to serve as an alternate physician in the event that the primary physician is unavailable to consult directly with the pharmacist. The pharmacist is authorized to specify one other pharmacist.

### **Privileged communications**

(sec. 2317.02)

With a limited exception, continuing law prohibits a physician from testifying in court proceedings regarding communications made to the physician by a patient in that relation or the physician's advice to a patient. The act provides that this privilege against testifying is not waived when a communication is made by a physician to a pharmacist or when there is communication between a patient and a pharmacist in furtherance of the physician-patient relation.

### **Licensing sanctions**

(sec. 4729.16)

Under continuing law, the State Board of Pharmacy is authorized to take disciplinary actions against pharmacists and pharmacy interns if the Board finds the individual to be guilty of certain actions. The sanctions that may be imposed include revocation, suspension, placement on probation, or refusal to issue or renew the identification card issued by the Board that authorizes an individual to practice pharmacy. Under the act, the Board is also permitted to limit an identification card.

One of the reasons for which a licensing sanction may be imposed is being found guilty by the Board of willfully violating, conspiring to violate, or aiding and abetting the violation of any of the state's laws regarding drugs or the practice of pharmacy. The act expands this reason for imposing sanctions by allowing the Board to impose sanctions if it finds an individual guilty of violating any of the Board's rules adopted under those laws.

Another reason for imposing sanctions is being found guilty of unprofessional conduct in the practice of pharmacy, which under prior law included willfully and knowingly filling false or forged prescriptions and willfully and knowingly failing to maintain records of controlled substances. The act eliminates the standard of "willfulness" and specifies that the following are unprofessional acts: (1) knowingly dispensing medication pursuant to false or forged prescriptions and (2) knowingly failing to maintain complete and accurate records of all dangerous drugs received or dispensed. Dangerous drugs are generally those drugs that require a prescription to be dispensed, while controlled substances are limited to drugs that are subject to further restrictions because they have the potential of being abused.

Unprofessional conduct in the practice of pharmacy also included obtaining or attempting to obtain a license from the Board by fraud, misrepresentation, or deception. The act removes these acts from the meaning of unprofessional conduct and, instead, expresses them as separate reasons for the Board to impose sanctions.

The act specifies that the acts of fraud may occur when applying for or securing a license as a manufacturer or wholesaler of controlled substances.

**Orders for physical or mental examinations**

(sec. 4729.16(E))

The act authorizes the State Board of Pharmacy to require an individual who is a pharmacist or pharmacy intern to submit to a physical or mental examination, or both, if the Board has reasonable cause to believe that the individual is physically or mentally impaired. The Board must act pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.).

**Conference calls on summary suspensions**

(secs. 121.22, 3719.121, and 4729.16)

Continuing law permits the State Board of Pharmacy to suspend the license of an individual who is a pharmacist or pharmacy intern without a hearing if the Board determines that there is clear and convincing evidence that continuation of the individual's practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others. The act provides that a telephone conference call may be used to review the allegations and take a vote on suspension. When this occurs, the Board is exempt from the provisions of current law that require public officials to act in open meetings.

**Cooperation with government investigations**

(sec. 4729.19)

The act requires a pharmacist to cooperate with federal, state, and local government investigations and to divulge all relevant information when requested by a government agency. The act does not specify a penalty for violating this requirement. However, the Board has the authority to take disciplinary action against a pharmacist who violates any provision of the law governing the practice of pharmacy (Revised Code section 4729.16). This authority allows the Board to take action against a pharmacist who violates this requirement.

**Withdrawing applications**

(secs. 4729.07, 4729.11, and 4729.12)

The act provides that an application for a license to practice as a pharmacist or pharmacy intern cannot be withdrawn without the approval of the State Board of Pharmacy. The inability to withdraw an application extends to an application for

annual renewal of a pharmacist's or pharmacy intern's identification card. One result of these provisions is that an applicant is prevented from unilaterally disrupting or eliminating the Board's jurisdiction to conduct an investigation.

### **Safe and effective practice**

(sec. 4729.55)

As a condition of receiving a license to engage in business as a terminal distributor of dangerous drugs, the act requires that an applicant furnish satisfactory proof to the State Board of Pharmacy that adequate safeguards are assured that the applicant will carry on business in a manner that allows pharmacists and pharmacy interns employed by the terminal distributor to practice pharmacy in a safe and effective manner. Otherwise, the Board is prohibited from issuing the license.

## **LOCAL REGISTRARS OF VITAL STATISTICS**

### **Appointment and removal of local registrars of vital statistics**

(secs. 3705.05 and 3705.25; 3705.04, not in the act)

#### **Background**

Continuing law provides for a statewide system for the registration of births, deaths, fetal deaths, and other vital statistics that consists of the Office of Vital Statistics in the Department of Health and primary registration districts. Each city or general health district of the state constitutes a primary registration district. The Director of Health has the authority to combine two or more primary registration districts.

#### **Appointments**

In each primary registration district, the board of health on a recommendation of the health commissioner, is required to appoint a local registrar of vital statistics. Under the act, in the case of two or more primary registration districts that have been combined into one primary registration district, the health commissioners of the health districts that constitute the combined primary registration district (rather than the Director of Health) are required to jointly appoint the local registrar for the combined district. If the health commissioners fail to appoint the local registrar for the combined district, the Director of Health must appoint the local registrar.

#### **Removal from office**

Continuing law provides that a local registrar of vital statistics, deputy registrar, or sub-registrar who fails to discharge the registrar's official duties must

forthwith be removed from office. Under the act, on a recommendation of the health commissioner, the board of health of the health district that constitutes the primary registration district (rather than the Director of Health) is required to remove a registrar from office for failing to perform the registrar's official duties. In the case of a local registrar serving a combined primary registration district, the registrar may be removed by joint action of the boards of health of the health districts that constitute the combined district.

## **OPTOMETRISTS**

### **Reinstatement of inactive and expired licenses**

(secs. 4725.17, 4725.171 and 4725.34(A)(10))

Continuing law allows an optometrist who intends to retire or relocate to apply to the State Board of Optometry to have the optometrist's certificates or certificates to practice (hereafter, "license") placed on inactive status. An application to have a license placed on inactive status must be made before the license expires. To later reinstate the license, the optometrist must pay one annual renewal fee, a \$75 reinstatement fee, and pass all or part of a licensing examination as the Board considers appropriate. If the optometrist has been practicing in another state or country, the optometrist must submit evidence of being in active practice and that the optometrist's license to practice there is in good standing. Once the license is reinstated, the optometrist must complete the continuing education requirements for the year in which reinstatement occurs.

The act establishes an identical license reinstatement process for optometrists who retired or relocated and let their licenses expire before the process of placing licenses on inactive status became available as a result of Am. Sub. H.B. 553 of the 122nd General Assembly, which took effect March 9, 1999.

With respect to the condition on reinstatement that pertains to passage of all or part of the optometry licensing examination, the act provides that the examination is required as the Board considers appropriate, if the Board considers examination necessary to determine whether to reinstate the license. The act includes the same stipulation in its provisions allowing for reinstatement of licenses that expired before H.B. 553 took effect.

### **Late license renewal**

(secs. 4725.16 and 4725.34(A)(7))

Continuing law requires an optometrist to apply for license renewal and pay the annual renewal fee before December 31. Under prior law, if this deadline was

not met, the optometrist's license was classified as delinquent and the optometrist was no longer permitted to practice in Ohio.

The act establishes a late renewal period from January 1 to April 30. The prohibition against practicing after December 31 applies during the late renewal period, but the optometrist's license is not classified as delinquent until the late renewal period has ended. The act requires an optometrist who applies during the late renewal period to pay an additional \$75 fee.

## **CHEMICAL DEPENDENCY PROFESSIONALS**

### **Ohio Credentialing Board**

(sec. 3793.07)

Prior law authorized the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to accept the certification or credentials of an individual who is a member of the profession of alcoholism counseling, drug abuse counseling, or chemical dependency counseling, or who is an alcoholism or drug abuse prevention consultant or specialist only if the individual was certified by or held credentials from the Ohio Credentialing Board for Chemical Dependency Professionals. ODADAS, in consultation with the Department of Job and Family Services and the Board, was required to submit to the federal agency that administers the Medicare and Medicaid programs a request that the agency accept the Board's certifications and credentials for the purpose of Medicare and Medicaid reimbursement.

### **ODADAS**

The act eliminates these provisions of law and instead requires that ODADAS establish and administer a process for the certification or credentialing of chemical dependency professionals for the purpose of qualifying the services they provide for Medicare or Medicaid reimbursements. The process is to be made available to any individual who is a member of the profession of alcoholism counseling, drug abuse counseling, or chemical dependency counseling, or who is an alcoholism or drug abuse prevention consultant or specialist.

The act requires ODADAS to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing standards and procedures for the certification or credentialing process. The rules must include the following:

- (1) Eligibility requirements;
- (2) Application procedures;

(3) Minimum educational and clinical training requirements that must be met for initial certification or credentialing;

(4) Continuing education and training requirements for certified or credentialed individuals;

(5) Application and renewal fees that do not exceed the cost incurred in implementing and administering the process;

(6) Administration or approval of examinations;

(7) Investigation of complaints and alleged violations of the act;

(8) Maintenance of the confidentiality of investigative records;

(9) Disciplinary actions, including application denial and suspension or revocation of certification or credentials;

(10) Any other rules ODADAS considers necessary to establish or administer the certification or credentialing process.

ODADAS is to investigate alleged violations of the act or the rules adopted under it. As part of its investigation, ODADAS may issue subpoenas, examine witnesses, and administer oaths. It must ensure that all records it holds pertaining to an investigation remain confidential.

With respect to hearings conducted by ODADAS as part of the certification or credentialing process, both of the following apply:

(1) An individual whose application for certification or credentials has been denied by ODADAS may request a hearing in accordance with the Administrative Procedure Act and the rules adopted under the act.

(2) ODADAS may appoint a referee or hearing examiner to conduct the proceedings and make recommendations as appropriate.

ODADAS is required by the act to maintain a record of the fees it collects for certification or credentialing, which are to be paid into the state treasury to the credit of the Credentialing Fund created by the act. Money credited to the Fund may be used solely to pay the costs of establishing and administering the process for certification or credentialing of chemical dependency professionals.

Certifications made and credentials issued by the Ohio Credentialing Board for Chemical Dependency Professionals prior to the date ODADAS establishes its

certification or credentialing process under the act are to be accepted by ODADAS until, with respect to any particular individual, one of the following occurs:

(1) The individual's certification or credentials from the Board expire.

(2) The individual's certification or credentials from the Board would be suspended or revoked by ODADAS if the certification or credentials had been issued by ODADAS under the act.

**Sunset**

(Sections 6, 7, and 8)

The act eliminates on July 1, 2002, the certification or credentialing process to be established by ODADAS under the act and replaces the process with prior law under which ODADAS was authorized to accept the certification or credentials from the Ohio Credentialing Board for Chemical Dependency Professionals (see **Ohio Credentialing Board**" above).

---

**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, S. Health, Human Services & Aging	07-22-99	p. 910
Passed Senate (33-0)	05-16-00	p. 1697
Reported, H. Health, Retirement & Aging	05-16-00	p. 1704
Passed House (95-2)	09-19-00	p. 2258
Senate concurred in House amendments (29-0)	09-20-00	pp. 2264-2268
	09-20-00	p. 2106

00-SB172.123/jc

