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Bill Analysis
Legislative Service Commission

Sub. H.B. 506*

123rd General Assembly

(As Reported by S. Health, Human Services and Aging)

Reps. Schuring, Ogg, DePiero, Van Vyven, Aslanides, Buehrer, Tiberi, Jones, Ford, Goodman, Perry, Stevens, Schuler, Damschroder, Jolivette, Verich, O'Brien, Harris, Krupinski, Salerno

BILL SUMMARY

CHIROPRACTORS

- Changes the name of the Chiropractic Examining Board to the State Chiropractic Board.
- Makes changes to the law governing the operation and management of the Board.
- Creates additional prohibitions and penalties related to the unauthorized practice of chiropractic.
- Authorizes the Board to adopt rules on various matters related to the practice of chiropractic.
- Modifies the requirements for obtaining a license to practice chiropractic.
- Establishes additional grounds on which the Board may discipline a chiropractor or applicant for a license to practice chiropractic.
- Provides for the automatic suspension of such a license on conviction of certain criminal offenses.
- Provides civil immunity to individuals who report certain information to the Board.

** This analysis was prepared before the report of the Senate Health, Human Services and Aging Committee appeared in the Senate Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

- Requires prosecutors and health care facilities to report certain information to the Board.
- Requires the Board to establish a chemical dependency and monitoring program for chiropractors.
- Modifies the requirements for Board investigations and hearings.
- Makes changes regarding certain license fees and the deposit of fines.
- Allows the patient of a chiropractor to view or copy medical records related to a patient's treatment by the chiropractor.

TESTIMONY

- Creates a testimonial privilege in civil actions for certain communications between chiropractors and their patients.
- Permits physicians and certain other professionals to testify, without the consent of the patient, concerning court-ordered treatment or services provided a patient if the treatment or services were ordered as part of a plan of care for a child alleged to be an abused, neglected, or dependent child or are necessary or relevant to a proceeding concerning such a child.

ORTHOTICS, PROSTHETICS, AND PEDORTHICS

- Extends by three months (until July 27, 2001) the deadline for submitting an application for licensure without examination to practice orthotics, prosthetics, orthotics and prosthetics, or pedorthics.

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CONTENT AND OPERATION

CHIROPRACTORS

Operation of the State Chiropractic Board

Name of Board

(sec. 4734.02; Section 4)

The bill changes the name of the Chiropractic Examining Board to the State Chiropractic Board. It provides that wherever the Chiropractic Examining Board or its secretary are referred to in any law, contract, or other document, the reference is to be deemed to refer to the State Chiropractic Board or its executive director, whichever is appropriate. The bill provides that no action or proceeding pending on the bill's effective date is affected by the renaming of the Board and is to be prosecuted or defended in the name of the State Chiropractic Board or its executive director.

Board membership

(sec. 4734.02)

Members of the Board are required by current law to have certain qualifications. The bill eliminates certain qualification requirements that applied when the Board was created and there were no licensed chiropractors to serve on the Board. It provides instead that each chiropractor member must have been licensed by the Board for at least five years at the time of appointment.

The Board is composed of four chiropractors and a fifth member who represents the public. The bill specifies that the public member must not be connected in any manner, other than as a chiropractic patient, with any chiropractor or chiropractic practice or any entity that routinely engages in business with members of the chiropractic profession.



Board meetings

(sec. 4734.04)

Current law provides that the Board must hold its annual meeting in Ohio in September of each year and must hold other meetings at times and places a majority of the Board directs. The bill provides that a special meeting must be held at the call of the Board's president or at the request of two or more Board members, in which case the meeting must be called by the Board's executive director.

The bill authorizes the Board to make rules necessary to govern its internal management.

Board officers

(sec. 4734.05)

Current law requires the Board to meet and elect a president from its members. The bill continues this requirement and specifies that elections for Board president are to be held at every other annual meeting of the Board.

The bill provides that the president, subject to the Board's approval, may designate another member of the Board to serve as vice president to fulfill the president's duties in the event that the president is absent or incapacitated. The vice president may perform any duty the president is authorized to perform.

The president is authorized by the bill to make certain decisions on behalf of the Board. A decision regarding Board activities may be made by the president if the president considers the decision to be minor and determines that making the decision will facilitate the responsiveness and effectiveness of the Board. A decision involving a situation that requires immediate Board attention may be made by the president if the circumstances surrounding the situation make holding a board meeting impractical, in which case the president must, at the earliest time possible, report the decision to the members of the Board, and the Board must meet to ratify or nullify the decision.

The bill requires the Board to appoint an executive director to serve as the Board's secretary and perform all other duties prescribed by the Board or Ohio law. While serving, the executive director must reside in Ohio and may not serve as a member of the Board. The executive director is to be part of the unclassified civil service. The Board is to fix the executive director's compensation and reimburse necessary expenses incurred in the performance of official duties. Prior to entering into the official duties of office, the executive director must take and subscribe an oath of office and give the treasurer of state a \$50,000 bond.

The executive director is to be the Board's authority for appointing personnel. With the Board's approval, the executive director may appoint any employees necessary to carry out the Board's functions, including investigative personnel and other employees to perform professional, clerical, and special work, and may establish standards for the conduct of and authority to be granted to the Board's employees.

Board committees

(sec. 4734.06)

The bill allows the Board to appoint committees and other groups to assist it in fulfilling its duties. A committee or group may consist of board members, other individuals with appropriate backgrounds, or both board members and other individuals with appropriate backgrounds. Any committee or group appointed must act under the direction of the Board and perform its functions within the limits established by the Board. Members of the committee or group may be reimbursed by the Board for any expenses incurred in the performance of their duties.

Liability of board members

(sec. 4734.07)

The bill provides that, in the absence of fraud or bad faith, the Board, a current or former board member, an agent or representative of the Board, or an employee of the Board will not be held liable in damages to any person as a result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to Ohio law governing chiropractors. If any one of those persons asks to be defended by the state against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the person's official duties, and the request is made in writing at a reasonable time before trial and the person requesting defense cooperates in good faith in the defense of the claim or action, the state must provide and pay for the person's defense and pay for any resulting judgment, compromise, or settlement, but the state will not pay any part of a claim or judgment that is for punitive or exemplary damages.

Board membership in national organization

(sec. 4734.08)

The bill requires that the Board become a member of the Federation of Chiropractic Licensing Boards. It provides that the Board may participate in any

of the Federation's activities, including reporting Board actions taken toward an applicant or license holder to any data bank established by the Federation.

Board contracts

(sec. 4734.09)

The bill provides that the Board may enter into contracts with any person or government entity to carry the intent of Ohio law governing the practice of chiropractic and the rules adopted under it, any other applicable state statutes or rules, and any applicable federal statutes or regulations.

Rulemaking authority

(sec. 4734.10; Section 5)

The bill provides that in addition to rules that are required by Ohio law governing the practice of chiropractic, the Board may adopt any other rules necessary to govern the practice of chiropractic and administer and enforce Ohio law governing the practice of chiropractic. The rules must be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.).

The bill stipulates that the authority it grants to the Board to adopt rules cannot be construed "to allow the Board to prohibit or restrict commercial speech by time, place, or medium of solicitation on behalf of chiropractors."

Prohibited conduct

Prohibitions

(sec. 4734.14)

Current law prohibits a person from advertising or announcing the person as a chiropractor without first obtaining a certificate from the Board. The bill provides that no person may advertise or claim to be a chiropractor, doctor of chiropractic, or chiropractic physician, or use the initials "D.C." in connection with the person's name, unless the person holds a current, valid license from the Board. A person who has retired from the practice of chiropractic in good standing and does not maintain a current, valid license from the Board or a person whose license has been classified inactive by the Board may continue to claim to be a chiropractor, doctor of chiropractic, or chiropractic physician, or use the initials "D.C." in connection with the person's name, if the person does not engage in the practice of chiropractic or otherwise violate Ohio law governing the practice of chiropractic or the rules adopted under it.

Current law provides that no person may practice chiropractic after a certificate has been revoked or, if a certificate has been suspended, during the time of suspension. The bill provides that no person may practice chiropractic in violation of the person's license revocation, forfeiture, or suspension or in violation of any restriction, limitation, or condition placed on the person's license.

The bill creates several new prohibitions related to the unauthorized practice of chiropractic. It provides that no person may employ fraud or deception in applying for or securing a license to practice chiropractic or in renewing a license to practice. It also provides that no person may make, issue, or publish, or cause to be made, issued, or published, for the purpose of sale, barter, or gift, a license, certificate, diploma, degree, or other writing or document falsely representing the holder or receiver to be licensed as a chiropractor under Ohio law or a graduate of a chiropractic school, college, or other educational institution of chiropractic, or sell, dispose of, or offer to sell or dispose of the license, certificate, diploma, degree, or other writing or document containing the false representation or use the person's name, or permit it to be used, as a subscriber to such false and fictitious license, certificate, diploma, degree, or other writing or document or engage in the practice of chiropractic under and by virtue of the fraudulent license, certificate, diploma, degree, or other writing or document.

In any proceeding brought against a person who is not licensed as a chiropractor but is a graduate of chiropractic college approved by the Board, it is an affirmative defense that the person is permitted to use the term "doctor" or the initials "D.C." in connection with the person's name, but only to the extent that the person does not indicate or act in a manner implying that the person is licensed as a chiropractor under Ohio law or otherwise violate Ohio law governing chiropractic or the rules adopted under it.

Penalties

(sec. 4734.99)

Under current law, a person who engages in the unauthorized practice of chiropractic or violates certain other prohibitions in Ohio law governing the practice of chiropractic is guilty of a misdemeanor of the second degree. For each subsequent offense, the offender is guilty of a felony of the fifth degree.

The bill provides that a person who practices chiropractic without a license from the Board or violates certain other prohibitions in current law or created by the bill is guilty of a felony of the fifth degree, unless the offender has been convicted of or has pleaded guilty to a prior violation of certain criminal and occupational licensing statutes, in which case the offender is guilty of a felony of

the fourth degree.¹ For each subsequent offense, the offender is guilty of a felony of the fourth degree.

The bill also provides that a person who violates the provisions in the bill that requires reporting of disciplinary actions taken against a chiropractor (see "**Report of disciplinary action**") is guilty of a minor misdemeanor on the first offense; on each subsequent offense, the person is guilty of a misdemeanor of the fourth degree, except that an individual guilty of a subsequent offense is not to be subject to imprisonment, but to a fine alone of up to \$1,000 for each offense.

Other requirements for chiropractors

Code of ethics

(sec. 4734.16)

Under current law a chiropractor is subject to discipline by the Board for violation of the code of ethics of the American Chiropractic Association or of another professional organization as determined by rule of the Board. The bill eliminates this provision. It provides instead that the State Chiropractic Board may establish a code of ethics that applies to chiropractors and their practice of chiropractic in Ohio. The Board may establish the code of ethics by creating its own code of ethics or adopting a code of ethics created by a state or federal organization that represents the interests of chiropractors. If a code of ethics is established, the Board must maintain current copies of it for distribution on request.

Examination on jurisprudence

(sec. 4734.22)

The Board or its representative is required by the bill to administer an examination on jurisprudence, as it relates to the practice of chiropractic, for individuals who apply to be licensed. The examination must cover the provisions of the statutes and rules governing the practice of chiropractic in Ohio and other legal topics considered appropriate by the Board. The examination must be offered at times and places selected by the Board and administered in the manner specified by the Board. The Board must determine the score that constitutes evidence of passing the examination.

¹ *The criminal and occupational licensing statutes included in this provision are aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, theft, Medicaid fraud, insurance fraud, Workers' Compensation fraud, receiving stolen property, falsification, and unauthorized practice of specified health care professions.*

Solicitation of patients

(sec. 4734.162)

The bill requires a chiropractor who solicits as a chiropractic patient any victim or relative of a victim of an accident, disaster, or other incident to follow the guidelines or limits established in rules adopted by the State Chiropractic Board. The Board must adopt rules it considers necessary to implement this requirement. The rules must be adopted in accordance with the Administrative Procedure Act.

Copies of statutes and rules

(sec. 4734.19)

The bill requires a chiropractor to retain at the chiropractor's primary practice location a current copy of the statutes and rules governing the practice of chiropractic in Ohio.

Licensing requirements

Requirements for a license

(secs. 4734.20 and 4734.201)

Current law requires a person seeking a license to practice chiropractic to apply to the Board of Chiropractic Examiners and meet certain statutory requirements. One of the requirements is that the applicant pass a written examination before the Board. The bill repeals the requirement that the examination be prepared by the Board.

The bill requires an applicant to have successfully completed, prior to matriculation at a school or college of chiropractic, at least two years of college credit in the arts and sciences at a college or university accredited by a state or regional accrediting organization recognized by the Board, except that the Board may adopt rules in accordance with the Administrative Procedure Act that require completion of additional years of college credit or receipt of a college degree in an area specified in the rules. An applicant must receive a "Certificate of Attainment" from the National Board of Chiropractic Examiners evidencing passage of Parts I, II, III, and IV of the physiotherapy section of the national board's examinations. The bill specifies that the term "physiotherapy" is a reference to a particular section of the examination offered by the National Board of Chiropractic Examiners and does not mean "physiotherapy" as the term is used in relation to the practice of physical therapy.

The bill provides that the Board must issue a certificate to practice chiropractic to each applicant who meets these requirements, files a complete application, and pays all applicable fees. The burden of proof is on the applicant, to prove by a clear and convincing evidence to the Board, that the applicant meets the conditions for the license.

The bill further provides that the Board may conduct any investigation it considers appropriate to verify an applicant's credentials, moral character, and fitness to receive a license. In conducting an investigation, the Board may request information from the records maintained by the Federal Bureau of Investigation, the Bureau of Criminal Identification and Investigation, and any other repositories of criminal records held in Ohio or another state. The Board may charge the applicant a fee for conducting the investigation. The amount of the fee must not exceed the expenses the Board incurs in conducting the investigation and may include any fees that must be paid to obtain information in the criminal record.

Recognizing out-of-state licenses

(sec. 4734.23)

Current law provides that the Board may, without examination, issue a license to an applicant who is licensed in another state or foreign country or has been issued a certificate by the National Board of Chiropractic Examiners, where the requirements for the registration or certification of the applicant are considered by the Board to be equivalent to those in Ohio law. The license fee is \$250.

The bill provides that the Board may for good cause, waive all or part of the educational and testing requirements and issue a license to an applicant if the applicant presents satisfactory proof of licensure in another state or country, where the requirements for receipt of the license, on the date the license was issued, are substantially equivalent to those in Ohio law. The applicant must also be at least 21 years old and of good moral character. If the Board does not waive all of the educational and testing requirements, the Board may require that the applicant complete and receive a score specified by the Board on one or more tests administered by the Board or by the National Board of Chiropractic Examiners or another testing entity. The bill increases the license fee to \$500.

License renewals

(sec. 4734.25)

Current law contains procedures and requirements for the renewal of licenses issued by the Board. It provides that before a renewal of a license issued by the Board, each licensee must furnish the Board with satisfactory evidence that

the licensee has attended one two-day educational program conducted in Ohio by the Ohio State Chiropractic Association or an equivalent educational program held in Ohio and approved by the Board.

The bill changes these requirements. It provides that before a renewal of a license is issued by the Board, the licensee must furnish to the Board satisfactory evidence that the licensee has completed during the current licensing period the number of hours of continuing education that the Board requires in rules adopted by the Board. For an activity to be applied toward the continuing education requirement, the activity must meet the Board's approval as a continuing education activity, as specified in the rules adopted by the Board. The bill also provides that the Board must adopt, in accordance with the Administrative Procedure Act, any rules it considers necessary for approval of continuing education courses in the practice of chiropractic.

Under current law, if an individual fails to comply with the license renewal requirements, the individual automatically forfeits the right to practice chiropractic. The bill continues this requirement and provides that if an individual's license has been forfeited for two or more years, the Board may also require as a condition of reinstatement that the individual complete training or testing specified by the Board.

Evaluation and approval of schools and colleges of chiropractic

(sec. 4734.21)

The Board is required by the bill to evaluate schools and colleges of chiropractic and approve those institutions that it determines are capable of adequately training individuals for the practice of chiropractic in Ohio, except that in appropriate cases, the Board may accept the approval of an institution that has been made pursuant to an evaluation conducted by the Council on Chiropractic Education or another entity acceptable to the Board.

When determining whether a school or college of chiropractic should receive approval or continue to be approved, the Board may make on-site inspections, reviews, and inquiries as it considers necessary. The Board may charge a school or college of chiropractic a fee to cover the reasonable costs incurred by the Board in conducting any inspection, review, or inquiry related to the approval of the school or college.

The Board is required by the bill to maintain a list of approved schools and colleges of chiropractic. On request, the Board must provide a copy of the list to the person making the request.

Inactive licenses

(sec. 4734.26)

The bill provides that an individual licensed to practice chiropractic who intends not to practice in Ohio for an extended period of time may send to the State Chiropractic Board written notice to that effect on or before the license renewal date. If the individual's license is in good standing and the individual is not under disciplinary review by the Board, the Board must classify the license as inactive. During the period the license is classified as inactive, the individual may not engage in the practice of chiropractic in Ohio or make any representation to the public that the person is actively licensed in Ohio. An individual whose license is classified as inactive is not required to pay the license renewal fee for the license.

The holder of an inactive license may apply to the Board to have the license restored. The Board must consider the length of inactivity, and, in accordance with the standards for the issuance of a license, the, moral character and the activities of the applicant during the inactive license period. The Board may impose terms and conditions on the restoration of a license by doing any of the following:

- (1) Requiring the applicant to obtain training, which may include requiring the applicant to pass an examination on completion of the training;
- (2) Require the applicant to pass an oral or written examination, or both, to determine fitness to resume practice;
- (3) Restricting or limiting the extent, scope, or type of practice of the applicant.

Recording licenses

(sec. 4734.08)

The bill eliminates a requirement of current law providing that every person who receives a license to practice chiropractic must, before beginning practice, record the license or a certified copy of it with the probate court in the county in which the chiropractor expects to practice. Until the license is filed, the license holder is not permitted to engage in the practice of chiropractic.

The bill also eliminates a provision of current law that requires a probate judge to keep a complete list of the licenses recorded with the date of the recording of each license. Each license holder is required to pay the probate court a \$2 fee for recording the license. The probate judge is required to note the

revocation or suspension of a license or the death or change of location of the license holder in the margin of the record. It is the duty of the Board and the license holder to report this information to the probate judge. If a license holder changes residence, the license holder must have the certificate recorded by the probate judge of the county to which the holder moves.

Limited licenses

(sec. 4734.27)

The bill provides that, to the extent it is in the public interest, the Board may issue, without examination, a special limited license to practice chiropractic to any of the following:

(1) A person who is seeking to participate in an internship, residency, preceptorship, or clinical fellowship in Ohio in preparation for the practice of chiropractic;

(2) A person who plans to provide chiropractic services in connection with a special activity, program, or event conducted in Ohio, if the person holds a current, valid, and unrestricted license to practice chiropractic in another state or country;

(3) A person who previously held an unrestricted license to practice chiropractic in Ohio and plans to offer gratuitous chiropractic services as a voluntary public service;

(4) Any other person for any other reason specified as good cause by the Board in rules adopted by the Board.

The bill requires an applicant for a special limited license to submit to the Board a complete application on a form prescribed by the Board, pay an application fee of \$75, and furnish proof satisfactory to the Board of being at least age 21, of good moral character, and of either holding the degree of doctor of chiropractic or being enrolled in a program leading to that degree. The institution from which the applicant received the degree or in which the applicant is enrolled must be a school or college that is approved by the Board.

The bill provides that the provisions of Ohio law governing the practice of chiropractic that apply to an applicant for and holders of licenses to practice chiropractic apply to applicants for and holders of special limited licenses to the extent the Board considers appropriate, including the Board's authority to conduct any investigation it considers appropriate to verify the applicant's credentials, moral character, and fitness to receive a license and the Board's authority to take disciplinary actions.

The Board is required to adopt any rules it considers necessary to implement these provisions. All rules adopted must be adopted in accordance with the Administrative Procedure Act.

Professional discipline

(sec. 4734.31)

Current law gives the Board authority to refuse a license or revoke or suspend the license of a chiropractor. The bill expands this authority. It gives the Board authority to refuse to issue, renew, restore, or reinstate a license to practice chiropractic; reprimand or censure a license holder; place limits, restrictions, or probationary conditions on a license holder's practice; impose a civil fine of not more than \$5,000 in accordance with a schedule of fines specified in rules the bill requires the Board to adopt; suspend a license for a limited or indefinite period of time; or revoke a license. The bill provides that the Board may specify that any disciplinary action it takes is a permanent action. Failure of the individual to renew a license does not remove or limit the Board's authority to take action against the individual.

Grounds for discipline

Current law provides specific grounds on which an applicant for a license or license holder may be disciplined by the Board. The bill provides additional grounds for discipline by the Board. Under the bill, an applicant for a license or license holder may be disciplined for any of the following additional reasons:

(1) Commission of an act that constitutes a felony in Ohio, regardless of the jurisdiction in which the act was committed;

(2) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude, as determined by the Board, in which case a certified copy of the court record will be conclusive evidence of the matter;

(3) Commission of an act involving moral turpitude that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which the act was committed;

(4) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice, in which case a certified copy of the court record will be conclusive evidence of the matter;

(5) Commission of an act in the course of practice that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which the act was committed;

(6) Any violation or attempted violation of the rules adopted under Ohio law governing the practice of chiropractic;

(7) Failure to cooperate with an investigation conducted by the Board, including failure to comply with a subpoena or order issued by the Board or failure to answer truthfully a question presented by the Board at a deposition or in written interrogatories, except that failure to cooperate with an investigation does not constitute grounds for discipline if the Board or a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(8) Engaging in an ongoing professional relationship with a person or entity that violates any provision of Ohio law governing the practice of chiropractic or rule adopted under it, unless the chiropractor makes a good faith effort to have the person or entity comply with the provisions;

(9) Retaliating against a chiropractor for the chiropractor's reporting to the Board or any other agency with jurisdiction any violation of the law or for cooperating with the Board or another agency in the investigation of any violation of the law;

(10) Aiding, abetting, assisting, counseling, or conspiring with any person in that person's violation of any provision of Ohio law governing the practice of chiropractic or the rules adopted under it, including the practice of chiropractic without a license, or aiding, abetting, assisting, counseling, or conspiring with any person in that person's unlicensed practice or any other health care profession that has licensing requirements;

(11) With respect to a report or record that is made, filed, or signed in connection with the practice of chiropractic, knowingly making or filing a report or record that is false, intentionally or negligently failing to file a report or record required by federal, state, or local law or willfully impeding or obstructing the required filing, or inducing another person to engage in such acts;

(12) Making a false, fraudulent, or deceitful statement to the Board or any agent of the Board during any investigation or other official proceeding conducted by the Board or in any filing that must be submitted to the Board;

(13) Attempting to secure a license or to corrupt the outcome of an official Board proceeding through bribery or any improper means;

(14) Willfully obstructing or hindering the Board or any agent of the Board in the discharge of the Board's official duties;

(15) Inability to practice chiropractic according to acceptable and prevailing standards of care by reason of chemical dependency, mental illness, or physical illness, including conditions in which physical deterioration has adversely affected the person's cognitive, motor, or perceptive skills and conditions in which a chiropractor's continued practice may pose a danger to the chiropractor or the public;

(16) Any act constituting gross immorality relative to the person's practice of chiropractic, including acts involving sexual abuse, sexual misconduct, or sexual exploitation;

(17) Exploiting a patient for personal or financial gain;

(18) Failing to maintain proper, accurate, and legible records in the English language documenting each patient's care, including, as appropriate, records of the following: dates of treatment, services rendered, examinations, tests, x-ray reports, referrals, and the diagnosis or clinical impression and clinical treatment plan provided to the patient;

(19) Except as otherwise provided by the Board or by law, disclosing patient information gained during the chiropractor's professional relationship with a patient without obtaining the patient's authorization for the disclosure;

(20) Failing to perform or negligently performing an act recognized by the Board as a general duty or the exercise of due care in the practice of chiropractic, regardless of whether injury results to the patient from the failure to perform or negligent performance of the act;

(21) Engaging in any conduct or practice that impairs or may impair the ability to practice chiropractic safely and skillfully;

(22) Practicing, or claiming to be capable of practicing, beyond the scope of the practice of chiropractic as established under Ohio law and the rules adopted under it;

(23) Accepting and performing professional responsibilities as a chiropractor when not qualified to perform those responsibilities, if the person knew or had reason to know that the person was not qualified to perform them;

(24) Delegating any of the professional responsibilities of a chiropractor to an employee or other individual when the delegating chiropractor knows or had

reason to know that the employee or other individual is not qualified by training, experience, or professional licensure to perform the responsibilities;

(25) Delegating any of the professional responsibilities of a chiropractor to an employee or other individual in a negligent manner or failing to provide proper supervision of the employee or other individual to whom the responsibilities are delegated;

(26) Failing to refer a patient to another health care practitioner for consultation or treatment when the chiropractor knows or has reason to know that the referral is in the best interest of the patient;

(27) Making misleading, deceptive, false, or fraudulent representations in the practice of chiropractic;

(28) Attempting to obtain any fee or other advantage by fraud or misrepresentation;²

(29) Actions taken for any reason, other than nonpayment of fees, by the chiropractic licensing authority of another state;

(30) Failure to maintain clean and sanitary conditions at the clinic, office, or other place in which chiropractic services are provided.

Intervention in lieu of conviction

(Section 6)

With respect to taking disciplinary action against a person who is subject to a judicial finding of "*intervention* in lieu of conviction," the bill specifies that the Board's authority to take action extends to a person subject to a judicial finding of "*treatment* in lieu of conviction," which was the authorized finding prior to the enactment of Am. Sub. H.B. 107 of the 123rd General Assembly

Adjudications

The bill provides that the adjudication requirement of the Administrative Procedure Act apply to the Board when taking disciplinary actions, except in the following circumstances:

² *Obtaining any fee by fraud or misrepresentation is grounds for discipline under current law.*

(1) An applicant is not entitled to an adjudication for failing to meet the requirements for receipt of a license that involve the Board's examination on jurisprudence or the examinations of the National Board of Chiropractic Examiners;

(2) A person is not entitled to an adjudication if the person fails to make a timely request for a hearing in accordance with the Administrative Procedure Act;

(3) In lieu of an adjudication, the Board may accept the surrender of a license from a chiropractor;

(4) In lieu of an adjudication, the Board may enter into a consent agreement with an individual to resolve an allegation of a violation of Ohio law governing the practice of chiropractic or any rule adopted under it. A consent agreement, when ratified by the Board, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent agreement, the admission and findings in the consent agreement will be of no force or effect.

The bill specifies that it does not require the Board to hire, contract with, or retain the services of an expert witness when the Board takes action against a chiropractor concerning compliance with acceptable and prevailing standards of care. As part of its action, the Board may rely on the knowledge of its members in making a determination of compliance, notwithstanding any expert testimony presented by the chiropractor that contradicts the knowledge or opinions of members of the Board.

The sealing of a conviction record by a court is to have no effect on a prior Board order or on the Board's jurisdiction to take action if, based on a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the Board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

Reporting drug and other offenses to licensing boards

(secs. 2929.24 and 3719.12)

Current law requires a prosecutor to report a drug conviction of a manufacturer, wholesaler, or distributor of dangerous drugs, pharmacy intern, dentist, doctor, podiatrist, nurse, physician assistant, optometrist, or veterinarian to the board that licenses the individual. The bill extends this provision to

chiropractors by requiring a prosecutor to report a chiropractor's drug conviction to the Board.

Current law also requires the prosecutor in a case against any person licensed, certified, registered, or otherwise authorized to practice as a dentist, nurse, physician, physician assistant, or veterinarian to notify the appropriate licensing board of any of the following charges, pleas, or convictions:

(1) A plea of guilty to, or conviction of, a felony, or a court order dismissing a felony charge on technical or procedural grounds;

(2) A plea of guilty to, or a conviction of, a misdemeanor committed in the course of practice, or a court order dismissing such a misdemeanor charge on technical or procedural grounds;

(3) A plea of guilty to, or a conviction of, a misdemeanor involving moral turpitude, or a court order dismissing such a change on technical or procedural grounds.

The bill extends this requirement to cover chiropractors.

Automatic suspensions

(sec. 3719.121)

Current law provides that except as otherwise provided by law, the license, certificate, or registration of any dentist, doctor, podiatrist, nurse, physician assistant, pharmacist, pharmacy intern, optometrist, or veterinarian who is or becomes addicted to the use of controlled substances must be suspended by the Board that authorized the person's license, certificate, or registration until the person offers satisfactory proof to the Board that the person is no longer addicted to the use of controlled substances. The bill includes chiropractors in this provision.

Report of disciplinary action

(sec. 4734.32)

The bill provides that if formal disciplinary action is taken against a chiropractor by any health care facility, including a clinic, hospital, or similar facility, the chief administrator or executive officer of the facility must file a report with the Board not later than 60 days after the disciplinary action is imposed. The report must include the name of the individual, the action taken by the facility, and a summary of the underlying facts leading to the action taken. On request, the Board must be provided with certified copies of the patient records that were the

basis for the facility's action. Prior to release to the Board, the summary must be approved by the peer review committee that reviewed the case or by the governing board of the facility. The filing of a report with the Board, a decision not to file a report with the Board, an investigation by the Board, or any disciplinary action taken by the Board does not preclude a health care facility from taking disciplinary action against a chiropractor. In the absence of fraud or bad faith, no individual or entity that provides patient records to the Board will be liable in damages to any person as a result of providing the records.

The bill also provides that disciplinary action taken against a chiropractor by a chiropractic clinic need not be reported to the Board if the clinic takes disciplinary action for reasons that do not involve clinical or patient care issues or the clinic employs fewer than five chiropractors and the disciplinary action taken does not rise above the level of a written reprimand.

The bill requires a chiropractor or professional association or society of chiropractors that believes a violation of any provision of Ohio law governing chiropractic or any rule of the Board has occurred to report to the Board the information on which the belief is based. This does not require any treatment provider approved by the Board or any employee, agent, or representative of a provider to make reports with respect to a chiropractor participating in treatment or aftercare for substance abuse as long as the chiropractor maintains participation in accordance with Ohio law and the treatment provider or employee, agent, or representative of the provider has no reason to believe that the chiropractor has violated any provision of Ohio law governing chiropractic or rule adopted under it, other than being impaired by alcohol, drugs, or controlled substances. The bill specifies that this provision does not require reporting by any member of an impaired practitioner committee established by a health care facility or by any representative or agent of a committee or program sponsored by a professional association or society of chiropractors to provide peer assistance to chiropractors with substance abuse problems with respect to a chiropractor who has been referred for examination to a treatment program approved by the Board if the chiropractor cooperates with the referral for examination and with any determination that the chiropractor should enter treatment and as long as the committee member, representative, or agent has no reason to believe that the chiropractor has ceased to participate in the treatment program or has violated any provision of Ohio law governing the practice of chiropractic or rule adopted under it, other than being impaired by alcohol, drugs, or other substances.

The bill provides that any professional association or society composed primarily of chiropractors that suspends or revokes an individual's membership for violations of professional ethics, or for reason of professional incompetence or professional malpractice, within 60 days after a final decision, must report to the

Board, on forms prescribed and provided by the Board, the name of the individual, the action taken by the professional organization, and a summary of the underlying facts leading to the action taken. The filing of a report with the Board, a decision not to file a report with the Board, an investigation by the Board, or any disciplinary action taken by the Board, does not preclude a professional organization from taking disciplinary action against a chiropractor.

The bill provides that any insurer providing professional liability insurance to any person holding a valid license as a chiropractor or any other entity that seeks to indemnify the professional liability of a chiropractor must notify the Board within 30 days after the final disposition of any written claim for damages where the disposition results in a payment exceeding \$10,000. The notice must contain the following information:

- (1) The name and address of the person submitting the notification;
- (2) The name and address of the insured who is the subject of the claim;
- (3) The name of the person filing a written claim;
- (4) The date of final disposition;
- (5) If applicable, the identity of the court in which the final disposition of the claim took place.

The bill provides that the Board may investigate possible violations of Ohio law governing chiropractic and the rules adopted under it that are brought to its attention as a result of these reporting requirements, except that the Board must conduct an investigation if a possible violation involves repeated malpractice. The bill defines "repeated malpractice" as three or more claims for malpractice within the previous five-year period, each resulting in a judgment or settlement in excess of \$10,000 in favor of the claimant, and each involving tortious conduct by the chiropractor.

All summaries, reports, and records received and maintained by the Board pursuant to the reporting requirements must be held in confidence and are not subject to discovery or introduction into evidence in any federal or state civil action involving a chiropractor or health care facility arising out of matters that are the subject of reporting required by the bill. The Board may use the information obtained only as the basis for an investigation, as evidence in a disciplinary hearing against a chiropractor, or in any subsequent trial or appeal of a Board action or order. The Board may disclose the summaries and reports it receives under the bill only to health care facility committees within or outside Ohio that are involved in credentialing or recredentialing a chiropractor or reviewing the

chiropractor's privilege to practice within a particular facility. The Board must indicate whether or not the information has been verified. Information transmitted by the Board is subject to the same confidentiality requirements as when maintained by the Board.

The bill provides that except for reports filed by a chiropractor or professional association or society that believes a violation of Ohio law governing chiropractic has occurred, the Board must send a copy of any reports or summaries it receives to the chiropractor. The chiropractor has the right to file a statement with the Board concerning the correctness or relevance of the information. The statement must at all times accompany that part of the record in contention.

An individual or entity that reports to the Board or refers an impaired chiropractor to a treatment provider approved by the Board is not to be subject to suit for civil damages as a result of the report, referral, or provision of the information. In the absence of bad faith, a professional association or society of chiropractors that sponsors a committee or program to provide peer assistance to a chiropractor with substance abuse problems, a representative or agent of the committee or program, and a member of the State Chiropractic Board are not to be held liable in damages to any person by reason of actions taken to refer a chiropractor to a treatment provider approved by the Board for examination and treatment.

Reporting criminal violations by chiropractors

(sec. 4734.35)

In addition to the reporting requirements of current law (see **Reporting drug and other offenses to licensing boards,**" above), the bill requires the prosecutor in any case against any chiropractor holding a valid license promptly to notify the Board of any of the following:

(1) A plea of guilty to, or a finding of guilt by a jury or a court of, a felony, or a case in which the trial court issues an order of dismissal on technical procedural grounds of a felony charge;

(2) A plea of guilty to, or a finding of guilt by a jury or court of, a misdemeanor committed in the course of practice, or a case in which the trial court issues an order of dismissal on technical or procedural grounds of a charge of a misdemeanor, if the alleged act was committed in the course of practice;

(3) A plea of guilty to, or a finding of guilt by a jury or court of, a misdemeanor involving moral turpitude, or a case in which the trial court issues an

order of dismissal on technical or procedural grounds of a charge of a misdemeanor involving moral turpitude.

The report must include the name and address of the chiropractor, the nature of the offense for which the action was taken, and the certified court documents recording the action. The Board may prescribe and provide forms for the prosecutors to make the reports. The form may be the same form as is required for reporting criminal proceeding against other licensed professionals.

Automatic suspension for committing certain offenses

(secs. 121.22 and 4734.36)

The bill provides that a chiropractor in Ohio who pleads guilty or is convicted of aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or who in another jurisdiction pleads guilty to or is convicted of a substantially similar criminal offense, is automatically suspended as of the date of the guilty plea or conviction. Continued practice after suspension is considered practicing chiropractic without a license. On receiving notice or otherwise becoming aware of the conviction, the State Chiropractic Board must notify the individual of the suspension by certified mail or in person. If an individual whose license is suspended under this section fails to make a timely request for an adjudication, the Board must enter a final order revoking the individual's license.

The bill provides that Ohio's Public Records Law does apply when the Board is determining whether to suspend a license without a prior hearing.

Mental and physical examinations

(sec. 4734.39)

Current law allows the Board to discipline an applicant or license holder for habitually using drugs to the extent that it renders the individual unfit to practice. The bill allows the discipline of an applicant or license holder who is unable to practice chiropractic according to acceptable and prevailing standards of care by reason of chemical dependency, mental illness, or physical illness, including conditions in which physical deterioration has adversely affected the person's cognitive, motor, or perception skills and conditions in which a chiropractor's continued practice may pose a danger to the chiropractor or the public.

As part of the Board's enforcement of these disciplinary provisions, the bill provides that if the Board has reason to believe that an individual who is a chiropractor or an applicant for a license suffers from an impairment, the Board

may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination must be undertaken by a provider chosen by the Board who is qualified to conduct the examination.

The bill provides that failure to submit to a mental or physical examination ordered by the Board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control. A default and final order may be entered without the taking of testimony or presentation of evidence.

If it determines that the individual's ability to practice is impaired, the Board is required to suspend the individual's certificate or deny the individual's application and must require the individual, as a condition for an initial, continued, reinstated, restored, or renewed license, to submit to care, counseling, or treatment.

Before being eligible to apply for reinstatement of a license suspended due to substance abuse, the impaired individual must demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care in the practice of chiropractic. If the Board adopts rules for approval of treatment providers, the demonstration must include the following:

(1) Certification from an approved treatment provider that the individual has successfully completed any required inpatient treatment;

(2) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(3) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports must be made by individuals or providers approved by the Board for making the assessments and must describe the basis for their determination.

The Board may reinstate a certificate suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice, the Board must require continued monitoring of the individual. The monitoring must include compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board order after a hearing, and, on termination of the consent agreement, submission to the Board for at least two years of annual

written progress reports made under penalty of perjury stating whether the individual has maintained sobriety.

Approving treatment providers for impaired chiropractors

(sec. 4734.40)

The bill provides that the Board may adopt rules in accordance with the Administrative Procedure Act establishing standards for approving treatment providers for impaired chiropractors. If adopted, the rules must include standards for both inpatient and outpatient treatment. The rules must provide that to be approved, a treatment provider must be capable of making an initial examination to determine the type of treatment an impaired chiropractor requires and be capable of adhering to guidelines the Board considers appropriate for assessment and referral of impaired chiropractors. The Board must review treatment providers on a regular basis and designate those providers that meet the standards for approval. The Board may deny or withdraw approval if it finds that the treatment provider being reviewed does not meet or no longer meets the standards for approval. A chiropractor who enters into treatment by an approved treatment provider is deemed to have waived any confidentiality requirements that would otherwise prevent the treatment provider from making reports required by the bill.

Chemical dependency and mental illness monitoring program

(sec. 4734.41)

The Board is required by the bill to establish a chemical dependency and mental illness monitoring program. The program is to be made available to any individual under the Board's jurisdiction who has a chemical dependency or mental illness and meets the Board's eligibility requirements for admission to and continued participation in the program.³ The Board must develop the program and

³ *The bill defines "chemical dependency" as (1) the chronic and habitual use of alcoholic beverages to the extent that the user no longer can control the use of alcohol or endangers the user's health, safety, or welfare or that of others, or (2) the use of a controlled substance, a harmful intoxicant, or a dangerous drug to the extent that the user becomes physically or psychologically dependent on the substance, intoxicant, or drug or endangers the user's health, safety, or welfare or that of others.*

"Mental illness" is defined as a recognized psychiatric or psychological condition, disorder, or syndrome that has been diagnosed by a psychiatrist, psychologist, clinical counselor, or independent social worker as a condition, disorder, or syndrome that may pose a danger to the person diagnosed or others or may prevent the person from practicing the person's profession according to acceptable and prevailing standards of care.

may designate a coordinator to administer it or enter into a contract for the program to be administered by another entity through a coordinator. The Board must adopt rules in accordance with the Administrative Procedure Act that establish standards and procedures for operating the program.

All records of an individual's participation in the monitoring program, including medical records, chemical dependency records, and mental health records, are confidential and not subject to discovery by subpoena or admissible as evidence in any judicial proceeding. The program coordinator must maintain all records as directed by the Board. The coordinator may disclose records or information regarding an individual's progress and status of participation in the program to the disciplinary section of the Board and to any person or government entity that the program participant authorizes in writing to be given the records or information. In disclosing information or records, the coordinator must not include any record or information that is protected by Ohio law governing drug and alcohol abuse treatment records or any federal statute or regulation that provides for the confidentiality of mental health or substance abuse records.

The bill provides that in the absence of fraud or bad faith, the monitoring program's coordinator, the Board, and the Board's employees and representatives are not liable for damages in a civil action as a result of disclosing information in accordance with the bill's requirements. In the absence of fraud or bad faith, any person reporting to the program an individual's chemical dependency or mental illness, or the progress or lack of progress with regard to treatment, is not liable for damages in any civil action as a result of the report.

The Board may abstain from taking formal disciplinary action against an individual because of the individual's chemical dependency or mental illness, if the individual meets eligibility requirements for admission into the monitoring program and does all of the following:

- (1) Enters into a monitoring agreement with the coordinator of the program;
- (2) Complies with the terms and conditions for continued participation in the program, as specified in the monitoring agreement;
- (3) Successfully completes the terms and conditions of the monitoring agreement, including the condition that the individual attain the ability to practice in accordance with acceptable and prevailing standards of care applicable to the practice of chiropractic.

Quality intervention program

(sec. 4734.42)

As part of the Board's investigative duties, the bill requires the Board to develop and implement a quality intervention program designed to improve through remedial education the clinical and communication skills of chiropractors. In developing and implementing the program, the Board is required to do all of the following:

(1) Offer in appropriate cases as determined by the Board an educational and assessment program pursuant to a Board investigation;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The Board is required to monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program and require further monitoring of the individual who completed the program or other action that the Board determines to be appropriate;

(5) Adopt rules in accordance with the Administrative Procedure Act to further implement the program.

Board investigations and hearings

Board investigations

(sec. 4734.45)

Current law provides that if any person makes an accusation against any licensed chiropractor, the accusation must be reduced to writing, verified by some person familiar with the facts, and three copies filed with the secretary of the Board. The bill repeals these requirements.

Under the bill, the Board is required to investigate evidence that appears to show that a person has violated any provision of Ohio law related to the practice of chiropractic or the rules adopted under it. Any person may report to the Board in writing or by other means any information the person has that appears to show a violation. In the absence of bad faith, a person who reports to the Board, cooperates in an investigation, or testifies before the Board in an adjudication is

not liable for civil damages as a result of reporting, cooperating, or providing testimony.

Information received by the Board pursuant to an investigation is confidential and not subject to discovery in any civil action, except that for good cause the Board or its executive director may disclose or authorize disclosure of information gathered pursuant to an investigation. The Board and its employees may share appropriate information in the Board's possession with any federal, state, or local law enforcement, prosecutorial, or regulatory agency or its officers or agents engaging in an investigation. The Board and its employees may cooperate in any other manner with the agency or its officers or agents engaging in an investigation.

An agency that receives confidential information must comply with the same requirements regarding confidentiality as those with which the Board must comply, notwithstanding any conflicting provision of Ohio law or procedure of the agency that applies when the agency is dealing with other information in its possession. The information may be admitted into evidence in a criminal trial in accordance with the Ohio Rules of Evidence, or in an administrative hearing conducted by an agency, but the court or agency must require that appropriate measures be taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients, complainants, or others whose confidentiality was protected by the Board when the information was in the Board's possession. Measures to ensure confidentiality that may be taken by the court or agency include sealing its records or redacting specific information from its records. All hearing and investigations are considered civil actions and held in confidence and not subject to discovery.

Board investigations and hearings

(sec. 4734.46)

Current law provides that any investigation, inquiry, or hearing the Board is empowered to hold or undertake may be held or undertaken by or before any member of the Board, and the finding or order of the member is deemed to be the order of the Board when confirmed by it. The bill continues these provisions and specifies that an investigation, inquiry, or hearing may be held or undertaken by any member of the Board.

The bill allows the Board to appoint an examiner who is an attorney to conduct an investigation, inquiry, or hearing. The findings of the hearing examiner or member who holds or undertakes an investigation, inquiry, or hearing are deemed to be the findings or order of the Board when approved and confirmed by it.

The bill requires the Board to adopt standards of conduct for the attorneys and other persons who practice before the Board at its hearings.

Following an inquiry, the bill allows the Board, in cases it considers appropriate, to issue a "letter of admonition" or a "letter of caution." Issuance of a letter is not an action taken in addition to or in lieu of taking disciplinary action and is not subject to an adjudication. The letter may not be used by an employer, insurer, or any other person or government entity as the basis of an adverse action against the recipient.

Executive director's duties

(sec. 4734.47)

Current law provides that the secretary of the Board is to enforce the laws related to the practice of chiropractic. If the secretary has knowledge or notice of a violation, the secretary must investigate the matter, and, on probable cause appearing, file a complaint and prosecute the offender. When requested by the secretary, the prosecuting attorney of the proper county must take charge and conduct the proceeding.

The bill provides that the executive director of the State Chiropractic Board is to function as the chief enforcement officer of the Board and enforce all laws related to the practice of chiropractic. If the executive director has knowledge or notice of a violation of those laws, the executive director must investigate the matter or cause the matter to be investigated. On probable cause appearing, the executive director must prosecute the offender or cause the offender to be prosecuted. If the matter involves an individual licensed to practice chiropractic in Ohio, the executive director must bring the matter before the Board. If the matter involves a violation for which a criminal penalty may be imposed, the executive director or a person authorized by the Board to represent the executive director may file a complaint with the prosecuting attorney of the proper county. The prosecuting attorney is to take charge of and conduct the prosecution.

For purposes of enforcing Ohio law related to the practice of chiropractic, the Board may petition a court of record to appoint an attorney to assist the prosecuting attorney in the prosecution of offenders or to take charge of and conduct the prosecutions as a special prosecutor. The court must grant the petition if it is in the public interest. A special prosecutor appointed by the court will be compensated by the court in an amount approved by the Board. If the court believes that public knowledge of the appointment of a special prosecutor could allow one or more persons to interfere with the prosecution of an investigation related to the prosecution, the court may seal all documents pertaining to the

appointment. Sealed documents are to remain sealed until there is court action on the prosecution or until the court orders the documents to be opened.

Investigative powers

(sec. 4734.48)

The bill provides that for purposes of enforcing Ohio law related to the practice of chiropractic, the Board or any of its members, the Board's executive director, and any person authorized by the Board to serve as the executive director's representative may do any of the following:

(1) Serve and execute any process issued by any court regarding the practice of chiropractic and serve and execute any papers or process issued by the Board or any officer or member of the Board.

(2) Administer oaths, propound interrogatories, order the taking of depositions, compel by subpoena that witnesses appear and testify, and compel by subpoena duces tecum the production of books, accounts, papers, records, documents, and other tangible objects. If a person fails to cooperate in an interrogatory or deposition or fails to comply with a subpoena or subpoena duces tecum, the Board may apply to the Franklin County Common Pleas Court for an order compelling the person to cooperate in the interrogatory or deposition or to comply with the subpoena or subpoena duces tecum or, for failure to do so, be held in contempt of court. The Board must adopt rules in accordance with the Administrative Procedure Act establishing procedures for taking these actions, including procedures regarding payment for and service of subpoenas.

(3) File with a judge or clerk of a court of record, or with a magistrate, an affidavit charging a person with committing a violation of any provision of Ohio law related to the practice of chiropractic or the rules adopted under it.⁴

The bill provides that any process, paper, or other document served by the Board, a board member, the executive director, or an authorized representative of the executive director may be served by personal service, residence service, or certified mail. Service may be made at the intended recipient's usual place of business. If attempts at service by personal service, residence service, or certified mail are unsuccessful, service may be made by ordinary mail. If the document mailed is not returned by the Postal Service, service on the intended recipient is deemed to have occurred on the tenth day after mailing. Service may also be made by publication of a notice in any newspaper of general circulation in the

⁴ *The bill provides that the person filing is a peace officer for the purposes of the law governing filing of an affidavit alleging that an offense has been committed.*

county in which the intended recipient's last known residential or business address is located.

Injunctive relief

(sec. 4734.49)

The bill provides that the Attorney General, the prosecuting attorney of the county in which a violation is committed or threatened to be committed or in which the offender resides, the Board, or any other person having knowledge of a person committing or threatening to commit a violation of Ohio law related to the practice of chiropractic may, in accordance with Ohio law governing injunctions, maintain an action in the name of the state to enjoin the person from committing the violation by applying for an injunction in any court of competent jurisdiction. On the filing of a verified petition in court, the court must conduct a hearing on the petition and give the same preference to the proceeding as is given to proceedings under the Administrative Procedure Act, irrespective of the position of the proceeding on the calendar of the court. If the court grants a final or permanent injunction that is a final appealable order, the court may award the person or entity that maintained the action an amount not exceeding \$5,000 to cover reasonable attorney's fees, investigative costs, and other costs related to the investigation and prosecution of the case. Injunction proceedings brought in this manner are in addition to, and not in lieu of, all penalties and other remedies provided in Ohio law governing the practice of chiropractic.

The practice of chiropractic by any person not at that time holding a valid and current license issued by the Board is declared by the bill to be inimical to the public welfare and constitutes a public nuisance.

Warnings

(sec. 4734.50)

The bill provides that it does not require the Board to act on minor violations of Ohio law governing the practice of chiropractic or the rules adopted under it, if the violations are committed by individuals licensed under Ohio law and the Board determines that the public interest is adequately served by issuing a notice or warning to the alleged offender.

Fines

Deposit of fines

(secs. 4734.53 and 4734.54)

Current law provides that all moneys received by the Board must be paid into the state treasury to the credit of the Occupational Licensing and Regulatory Fund. The bill continues this provision and provides that moneys and amounts collected by the Board are to be used solely for purposes related to the Board's enforcement of Ohio law governing the practice of chiropractic. The bill also specifies that moneys credited to the fund that are the result of any fee assessed for the evaluation or approval of a school or college of chiropractic must be used to implement the Board's responsibilities related to evaluating and reviewing schools and colleges of chiropractic.

Other provisions

Fees for a duplicate license and list of license holders

(sec. 4734.55)

Current law provides that the fee for a duplicate license issued by the Board is \$90. The bill reduces the fee to \$45.

Current law provides that on written request and payment of a fee of \$175, the Board will provide to any person a list of persons holding licenses to practice chiropractic. The bill reduces the fee to \$95.

Title

(Section 3)

The bill provides that the act is to be known as the Patient Protection and Professional Standards Act of 2000.

Technical and other nonsubstantive changes

(secs. 119.06, 119.12, 125.22, 2305.11, 3729.40, 4734.01, 4734.03, 4734.15, 4734.17, 4734.24, 4734.311, 4734.34, 4734.38, 4734.56, 4765.65, and 5903.12)

The bill makes several technical and nonsubstantive changes related to changing the name of the Board, renumbering sections, and other technical corrections in the bill.

Access to records

(sec. 3701.74)

The bill provides that a patient must be permitted to examine or be given a copy of a medical record of the treatment provided to the patient by a chiropractor.

TESTIMONY

Testimonial privilege for chiropractors

(sec. 2317.02)

Current law contains a testimonial privilege for physicians and dentists. It provides that a physician or dentist cannot be required to testify concerning a communication made by a patient in that relation or the physician or dentist's advice to a patient. A physician or dentist can be compelled to testify if the patient waives the privilege or one of the several statutory exceptions to the privilege applies.

The bill establishes a testimonial privilege for chiropractors, but only with respect to civil actions. The testimonial privilege does not apply in any criminal or administrative proceeding.

Exception regarding court-ordered treatment for children

(sec. 2317.02)

Under current law certain professionals are not permitted to testify concerning a communication made by a patient in the relationship as a patient or concerning advice to the patient, unless the patient consents or one of a number of exceptions specified in the Revised Code applies. The bill creates an additional exception applicable to testimony of a person who is authorized to practice as a physician, dentist, school guidance counselor, professional clinical counselor, professional counselor, social worker, independent social worker, or social work assistant. Under the bill such a person may testify, or be compelled to testify, in a civil action concerning court-ordered treatment or services received by a patient if the treatment or services were ordered as part of the case plan for a child alleged to be an abused, neglected, or dependent child or are necessary or relevant to proceedings for such a child concerning dependency, neglect, abuse, or temporary or permanent custody.⁵

⁵ A public children services agency or private child placing agency that provides services to a child alleged to be an abused, neglected, or dependent child must file a case plan

PRACTICE OF ORTHOTICS, PROSTHETICS, AND PEDORTHICS

Deadline for licensure without examination

(sec. 4779.16)

Am. Sub. S.B. 238 of the 123rd General Assembly established licensing requirements for individuals who practice orthotics, prosthetics, orthotics and prosthetics, and pedorthics. S.B. 238 gave certain individuals the opportunity to apply for a license without being required to pass an examination. The deadline for submitting the application occurs in April 2001.

The bill adds three months to the deadline for applying to receive a license without examination. Specifically, an application must be submitted not later than July 27, 2001.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-18-99	p. 1372
Reported, H. Health, Retirement & Aging	04-12-00	pp. 1821-1822
Passed House (96-0)	05-03-00	pp. 1874-1875
Reported, S. Health, Human Services & Aging	---	---

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with the court that is dealing with the child's case. The case plan specifies such things as who the child will live with and what services will be provided.

