



Deborah B. McCarthy

Bill Analysis
Legislative Service Commission

H.B. 585

123rd General Assembly
(As Introduced)

Reps. Vesper, Hollister, O'Brien, Clancy, Krupinski, Harris, Barrett, Smith, Allen, Buehrer, Terwilleger, Sykes

BILL SUMMARY

- Redefines the practice of medicine, surgery, and podiatry to include a person who either in person or through the use of any communication, including oral, written, or electronic communication, practices medicine, surgery, or podiatry in Ohio.
- Requires, with certain exceptions, a physician licensed in another state who provides medical services in Ohio to comply with all laws governing the practice of medicine in Ohio and to submit to the jurisdiction of the State Medical Board and Ohio courts.
- Modifies the existing exceptions to Ohio's physician licensing law and establishes new exceptions.
- Requires an Ohio physician who consults with an out-of-state physician to obtain written consent to the consultation from a patient.
- Requires that actions to enjoin any person from engaging in the unauthorized practice of medicine be filed in the Franklin County Common Pleas Court (rather than any court of competent jurisdiction).

CONTENT AND OPERATION

Under current law, with certain exceptions, the practice of medicine and surgery, or any of its branches, is prohibited in Ohio without a certificate from the State Medical Board. The bill provides that the practice of medicine, surgery, and podiatry includes practice through the use of any communication, including oral, written, or electronic communication. An out-of-state physician who provides medical services in Ohio is required by the bill to comply with all laws governing the practice of medicine in Ohio and to submit to the jurisdiction of the State

Medical Board and Ohio courts. In addition, the bill modifies the existing exceptions to Ohio's physician licensing law and establishes new exceptions.

The practice of medicine, surgery, or podiatry

(sec. 4731.34)

Under current law, a person is regarded as practicing medicine, surgery, or podiatry if the person does either of the following:

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

(2) For compensation of any kind, direct or indirect, either (a) examines or diagnoses, or (b) prescribes, advises, recommends, administers, or dispenses a drug or medicine, appliance, mold or case, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease.

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

Requirements imposed on out-of-state physicians

(secs. 2307.386, 4731.342, and 4731.361(A))

Under the bill, an out-of-state physician who practices medicine in Ohio by providing medical services to patients either in person or through the use of any communication must comply with both of the following, unless the physician is exempted from Ohio's physician licensing law:

(1) All Ohio laws and rules governing the practice of medicine and the preservation of confidentiality of a patient's medical records;

(2) Certain reporting requirements established in current law governing the practice of medicine.

The bill provides that an out-of-state physician who is practicing medicine in Ohio consents to the jurisdiction of the State Medical Board and the Ohio courts in any legal action or proceeding, including a civil action based on a medical claim, arising out of examination, diagnosis, or treatment provided to a patient in Ohio.¹ An Ohio resident may commence, in the appropriate Ohio court, a civil action against an out-of-state physician based on a medical claim.

Rule-making authority

(sec. 4731.361(B))

The bill authorizes the State Medical Board to adopt rules to carry out the bill's provisions concerning the practice of medicine in Ohio by out-of-state physicians. The rules may include standards for each of the following:

- (1) The practice of medicine in person or through the use of any communication, including oral, written, or electronic communication;
- (2) The appropriate delegation to individuals providing health care services;
- (3) Electronic recordkeeping, including measures to prevent tampering with electronic records and to preserve and maintain the confidentiality and authenticity of the records.

Exceptions to Ohio's physician licensing law

(secs. 4731.341 and 4731.36)

Current law excepts certain conduct from Ohio's physician licensing law. The bill modifies the existing exceptions, establishes new exceptions, and authorizes the State Medical Board to seek an injunction against any person acting under one of the exceptions if the conduct is in violation of the law governing physician discipline.

¹ "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, or hospital, against any employee or agent of a physician, podiatrist, or hospital, or against a registered nurse, midwife, or physical therapist, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person and a claim that is asserted in a civil action against a hospital and that is based on negligent credentialing. (Revised Code section 2305.11; not in bill.)

Modifications

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

--Consultation with an out-of-state physician. One of the existing exceptions applies to a physician residing in another state or territory who is a legal practitioner of medicine and surgery in that state when the physician is in consultation with an Ohio physician. Under the bill, an out-of-state physician who is a legal practitioner of medicine in that state is excepted from the Ohio's physician licensing law under the following circumstances:

- (1) When providing episodic consultation. "Episodic consultation" means consultation that occurs on an irregular or infrequent basis.²
- (2) When providing consultation without remuneration;
- (3) When providing consultation as part of the curriculum of an Ohio medical school or osteopathic medical school or training program.

--Practitioners in border states. Current law excepts from Ohio's physician licensing law a physician residing on the border of a neighboring state who is authorized to practice medicine in that state and whose practice extends into Ohio, provided equal rights and privileges are accorded by the neighboring state to the Ohio physicians residing on the border of such neighboring state. The bill removes the requirement that the neighboring state accord equal rights and privileges to Ohio physicians.

--Commissioned medical officers. Current law excepts a commissioned medical officer of the United States Army, Navy, or Marine Hospital Service in the discharge of the officer's professional duties. Under the bill, the exception applies to a commissioned medical officer of the U.S. armed forces, or an employee of the U.S. Veterans Administration or U.S. Public Health Service in the discharge of the officer's or employee's professional duties.³

² *Under the bill, consultation means the act of providing advice or information regarding examination, diagnosis, or treatment of a patient to an Ohio physician who has primary responsibility over the examination, diagnosis, or treatment.*

³ *"Armed forces of the United States" means the Army, Air Force, Navy, Marine Corps, Coast Guard, and any other military service branch that is designated by Congress as part of the armed forces (R.C. 5903.11; not in bill).*

--**Dentists.** One of the current exceptions applies to a dentist when engaged exclusively in the practice of dentistry or when administering anesthetics. The bill limits the anesthetics exception to administering anesthetics in the practice of dentistry.

New exceptions

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

--**Follow-up services by an out-of-state physician.** Under the bill, an out-of-state physician who provided services to a patient in another state is excepted when providing follow-up services in Ohio to the patient for the same condition. The follow-up services must be provided not later than one year after the last date services were provided in the other state

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

--**Internal reviews by health insuring corporations.** The bill excepts from the physician licensing law the conduct of an internal review system established and maintained by a health insuring corporation.

--**Independent review organizations.** Under the bill, the conduct of an independent review organization accredited by the Superintendent of Insurance for the purposes of external reviews conducted by health insuring corporations and sickness and accident insurers is excepted from the physician licensing law.

Requests for determinations from the State Medical Board

The bill permits any person to request in writing a determination from the State Medical Board of whether the person is or has engaged in an act that is excepted from the physician licensing law. On receipt of a request, the Board is required to make a determination and provide written notice of it to the requesting person.

Public nuisance

Under current law, the unauthorized practice of medicine and surgery is declared to be a public nuisance, and the State Medical Board may seek an injunction against any person who is engaging in the unauthorized practice. The bill establishes as a public nuisance conduct that is otherwise excepted from Ohio's physician licensing law if the individual to whom the exception applies is in

violation of the law governing physician discipline. The Board may seek an injunction against the individual.

Disclosures by Ohio physicians who consult with out-of-state physicians

(sec. 4731.362)

Under the bill, an Ohio physician who consults with an out-of-state physician must, prior to providing medical care to a patient in Ohio, obtain consent for the consultation from the patient or the patient's legal representative. A request for consent must be communicated to the patient or representative orally and in a written document and disclose all of the following:

(1) The right of the patient or representative to refuse or withdraw consent at any time;

(2) A description of the risks, benefits, and potential consequences of receiving medical care either in person or through the use of any communication, including oral, written, or electronic communication, through consultation with an out-of-state physician;

(3) The existence of a physician-patient relationship between the consulting physician and patient, including the right of confidentiality of patient information;

(4) The right of the patient or the patient's legal representative to obtain the patient's medical records from the consulting physician.

The patient or representative is required to sign a copy of the consent document. The Ohio physician must retain the signed copy in the patient's medical record.

The bill specifies that refusal or withdrawal of consent is not to affect a patient's right to receive medical care.

Injunctions against certain conduct that violates the law governing physicians

(sec. 4731.341)

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

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-17-00	pp. 1624-1625

H0585-I.123/jc