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*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 585\***

123rd General Assembly

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

**Reps. Vesper, Hollister, O'Brien, Clancy, Krupinski, Harris, Barrett, Smith, Allen, Buehrer, Terwilleger, Sykes, Olman, Tiberi, Ogg, Gardner, Metzger, Logan, Flannery, Perry, Hoops, Redfern, Verich**

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### **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.
- Modifies the existing exceptions to Ohio's physician licensing law and establishes new exceptions.
- Authorizes the State Medical Board to issue a telemedicine certificate to a physician licensed by another state that requires at least 50 hours of continuing medical education every two years.
- Defines "the practice of telemedicine" as the practice of medicine in Ohio through the use of any communication, including oral, written, or electronic communication, by a physician located outside this state.
- Requires the State Medical Board to adopt rules establishing standards and procedures to be followed by physicians who delegate medical tasks to persons who are not licensed or specifically authorized by the Revised Code to perform the tasks.
- Provides that the administration of prescribed topical drugs is part of the practice of physical therapy and athletic training.

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*\* 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 the legislative history may be incomplete.*

- In the law governing the practice of medicine, changes "podiatry" to "podiatric medicine."
- Requires the State Board of Optometry to adopt rules establishing standards and procedures to be followed by optometrists who delegate optometric tasks to persons who are not licensed or specifically authorized by the Revised Code to perform the tasks.

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## CONTENT AND OPERATION

### *The practice of medicine, surgery, or podiatry*

(sec. 4731.34)

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.

A person is regarded as practicing medicine, surgery, or podiatry if the person does either of the following:

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

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

The bill redefines the practice of medicine, surgery, and podiatry by modifying these provisions and adding certain activities. 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.," "D.P.M.," and "physician."<sup>1</sup> 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 persons regarded as practicing medicine any person who advertises, solicits, or represents in any way that the person is practicing medicine, surgery, or podiatry, in any of its branches.

### **Exceptions to Ohio's physician licensing law**

(sec. 4731.36)

Current law excepts certain conduct from Ohio's physician licensing law. The bill modifies the existing exceptions and establishes new exceptions.

### **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 when providing consultation to an Ohio physician who is responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation and one of the following applies:

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

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

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

(3) The consultation is 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 the neighboring state. The bill limits the exception to physicians in contiguous states and removes the requirement that the state accord equal rights and privileges to Ohio physicians.

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

**--Commissioned medical officers.** 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.<sup>2</sup>

**--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.

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<sup>2</sup> "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).

**--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.

**--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.

### **Applicability of the exceptions**

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

### **Telemedicine certificate**

(sec. 4731.296)

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

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

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

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

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

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

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

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

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

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

The Board must convert a telemedicine certificate to an Ohio certificate based on reciprocity on the written request of the certificate holder.<sup>4</sup>

*Special activity certificate*

(sec. 4731.294)

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

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<sup>4</sup> *Current law permits the Board to issue a license, without examination, to a person who holds a license from another state or country if the person meets all the other requirements for an Ohio license.*

other requirements. The bill permits the Board to issue a special activity certificate to the holder of a telemedicine certificate without submitting evidence of licensure or meeting other requirements, and without payment of the fee.

The bill requires the Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) that specify how often an applicant may be granted a special activity certificate.

**English proficiency**

(sec. 4731.29)

Under current law, an applicant for a certificate to practice medicine or osteopathic medicine in Ohio whose license from another state is based in part on certification from the Educational Commission for Foreign Medical Graduates must demonstrate proficiency in spoken English if the applicant's undergraduate education was outside the United States. One exception to this requirement is an applicant who has been actively practicing medicine in the U.S. for the five years prior to applying for a certificate to practice in Ohio. The bill creates an additional exception. An applicant would not have to demonstrate proficiency in spoken English if, at the beginning of the five-year period preceding the date of application for a certificate to practice in Ohio, the applicant was participating in graduate medical education and since completing that education has been actively practicing medicine in the U.S.

**Failure to renew a license**

(sec. 4731.281)

If the holder of a certificate authorizing the practice of medicine, osteopathic medicine, or podiatry in Ohio fails to renew, the certificate is automatically suspended. If it has been suspended for two years or less, the certificate may be reinstated but there is a penalty of \$50. Under the bill, a certificate that has been suspended for more than two years must be restored (rather than reinstated) and the State Medical Board may require the applicant to complete additional training or pass an exam. There is a penalty of \$100, which is referred to in current law as a penalty for reinstatement. The bill clarifies that this penalty is for restoring the certificate.

**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 or any other court of competent jurisdiction.

**Intent**

(Section 3)

The bill specifies that the amendments made by the bill to Revised Code sections governing the practice of medicine are not intended to modify either of the following:

(1) The provision of current law that specifies that a health insuring corporation holding a certificate of authority in Ohio is not considered to be practicing medicine;

(2) The Ohio Attorney General opinion that interprets the provision described in (1).<sup>5</sup>

**Delegation of medical tasks**

(sec. 4731.053)

The bill requires the State Medical Board to adopt rules establishing standards to be met and procedures to be followed by a physician with respect to the physician's delegation of the performance of a medical task to a person who is not licensed or otherwise specifically authorized by the Revised Code to perform the task.<sup>6</sup> The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires public hearings on proposed rules.

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

(1) On-site supervision when the delegation occurs in a health care facility, unless the Board establishes a specific exception with respect to routine administration of a topical drug, such as medicated shampoo;

(2) Evaluation of whether delegation is appropriate according to patient acuity;

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<sup>5</sup> (OAG 99-044.)

<sup>6</sup> For the purpose of this provision, "physician" means a person authorized by Ohio law to practice medicine, osteopathic medicine, or podiatric medicine.

(3) Training and competency requirements that must be met by the person administering the drugs;

(4) Other standards and procedures the Board considers relevant.

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

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

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

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

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

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

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

(7) Conflict with any rules adopted pursuant to the Revised Code that is in effect on the bill's effective date, as long as the rule remains in effect, specifically authorizing an individual to perform a particular task;

(8) Prohibit a perfusionist from administering drugs intravenously while practicing as a perfusionist;<sup>7</sup>

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

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<sup>7</sup> According to Washington University in St. Louis, which has a perfusionist training program, "a perfusionist is a person who operates extracorporeal circulation and autotransfusion equipment during any medical situation where it is necessary to support or temporarily replace the patient's circulatory or respiratory function," [www.artsci.westl.edu/](http://www.artsci.westl.edu/), visited 11/15/00.

## **Optometrists**

(secs. 4725.09 and 4725.26)

The bill requires the State Board of Optometry to adopt rules that establish standards to be met and procedures to be followed with respect to the delegation by an optometrist of the performance of an optometric task to a person who is not licensed or otherwise specifically authorized by the Revised Code to perform the task. The rules must permit an optometrist who is licensed to administer drugs to delegate the administration of drugs included in the optometrist's scope of practice.

The rules must provide for all of the following:

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

The bill provides that the following are not subject to provisions of the Revised Code prohibiting the practice of optometry without a license:

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

## **Physical therapists and athletic trainers**

(secs. 4755.40 and 4755.60)

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

**Podiatric medicine**

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

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

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	02-17-00	pp. 1624-1625
Reported, H. Health, Retirement & Aging	05-09-00	p. 1901
Passed House (97-0)	05-10-00	pp. 1927-1928
Reported, S. Health, Human Services & Aging	---	---

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