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Bill Analysis
Legislative Service Commission

S.B. 172
123rd General Assembly
(As Introduced)

Sens. Drake, McLin, Hagan

BILL SUMMARY

- Authorizes a pharmacist to enter into a consult agreement with a physician to manage the drug therapy of an individual in a hospital or long-term care facility as long as the pharmacist is acting according to a policy developed by the hospital or facility.
- Permits a pharmacist who has completed a course in administration of drugs approved by the State Board of Pharmacy to administer drugs.
- Restricts the testimony that a pharmacist may give concerning communications with a client or with a health professional about a client's prescription.
- Expands the Board's disciplinary powers by allowing the Board to impose limits on a license to practice pharmacy, modifying the reasons for which the Board may impose licensing sanctions, permitting the Board to require a pharmacist or pharmacy intern who appears to be impaired to submit to a physical or mental examination, and preventing an applicant from withdrawing an application without the Board's approval.
- Requires that terminal distributors of drugs provide adequate safeguards for the safe and effective practice of pharmacy.

CONTENT AND OPERATION

Pharmacist-physician consult agreements

(sec. 4729.39)

Current law permits a pharmacist to enter into a "consult agreement" with a physician under which the pharmacist is authorized to manage an individual's drug

therapy, but only to the extent specified by the individual's physician in the agreement. The statutory requirements that apply to consult agreements include the following:

(1) The pharmacist's management of drug therapy may include monitoring and modifying a prescription, but cannot include dispensing a drug that has not been prescribed by a physician.

(2) Before commencing any action to manage drug therapy, the pharmacist must make reasonable attempts to contact and confer with the physician. The pharmacist must cease the action if the pharmacist has not conferred with the physician within 48 hours.

(3) A separate agreement is required for each individual whose drug therapy is to be managed. Each agreement applies only to the particular diagnosis for which a drug has been prescribed.

(4) Each agreement must be recorded in writing and signed by the pharmacist, physician, and patient before it can be implemented.

Consult agreements within hospitals or long-term care facilities

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

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

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

(3) The agreement must be signed by the pharmacist and physician and by the individual whose drug therapy will be managed or another person authorized to provide consent to treatment on behalf of the individual. If a group of pharmacists or physicians provide care for the individual, only the primary pharmacist and primary physician are required to sign.

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

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

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

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

(8) As under current law, the authority of a pharmacist acting under an agreement does not permit the pharmacist to act in a hospital or facility at which the pharmacist is not authorized to practice.

Consult agreements outside hospitals or long-term care facilities

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

Administration of medication

(secs. 4729.01(B)(8) and (X) and 4729.41)

The bill authorizes a pharmacist to administer drugs that have been prescribed by a licensed health professional who is authorized to prescribe drugs. To "administer" drugs means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or animal.

The authority to administer drugs extends only to a pharmacist who successfully completes an approved course in administration of drugs. The State Board of Pharmacy is required to approve courses for this purpose. Proof of successfully completing the course must be maintained by the pharmacist at the

pharmacist's place of employment, subject to inspection by the Board or the Board's designee.

Privileged communications

(sec. 2317.02)

Under the bill, a pharmacist must not testify in court concerning a communication made to the pharmacist by a client in that relation or the pharmacist's advice to a client, or a communication made to a pharmacist by a licensed health professional in regard to a client's prescription. The pharmacist can be compelled to testify, however, if the client or the guardian or other legal representative of the client gives express consent, or, if the client is deceased, the surviving spouse of the client or the executor or administrator of the client's estate gives express consent.

Licensing sanctions

(sec. 4729.16)

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

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

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

drugs that are subject to further restrictions because they have the potential of being abused.

Unprofessional conduct in the practice of pharmacy also includes obtaining or attempting to obtain a license from the Board by fraud, misrepresentation, or deception. The bill removes these acts from the meaning of unprofessional conduct and, instead, expresses them as separate reasons for the Board to impose sanctions. As opposed to current law, the bill specifies that the acts of fraud may occur when applying for or securing a license as a manufacturer or wholesaler of controlled substances.

Orders for physical or mental examinations

(sec. 4729.16(E))

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

Conference calls on summary suspensions

(secs. 121.22, 3719.121, and 4729.16)

Current law permits the State Board of Pharmacy to suspend the license of a person who is a pharmacist or pharmacy intern without a hearing if the Board determines that there is clear and convincing evidence that continuation of the person's practice presents a danger of immediate and serious harm to others. The bill provides that the suspension may occur by utilizing a telephone conference call to review the allegations and take a vote. When this occurs, the Board is exempt from the general law that requires public officials to act in open meetings.

Withdrawing applications

(secs. 4729.07, 4729.11, and 4729.12)

The bill provides that an application for a license to practice as a pharmacist or pharmacy intern cannot be withdrawn without the approval of the State Board of Pharmacy. The inability to withdraw an application extends to an application for annual renewal of a pharmacist's or pharmacy intern's identification card. One result of these provisions is that an applicant is prevented from unilaterally disrupting or eliminating the Board's jurisdiction to conduct an investigation.

Safe and effective practice

(sec. 4729.55)

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

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-22-99	p. 910

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