



**Sub. S.B. 172\***

123rd General Assembly

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

**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.
- 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

---

\* *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.*

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 available at the hospital or facility.

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

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

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

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

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

(7) 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 hospital patients or residents of 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. The bill also requires a physician entering into a consult agreement to specify the extent to which the pharmacist is authorized to manage the drug therapy of the individual specified in the agreement.

### **Privileged communications**

(sec. 2317.02)

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

### **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.

---

## **COMMENT**

Because the bill refers to waiver of the physician-patient privilege, the effect of the bill is to clarify when a physician may testify, not when a pharmacist may testify. The amendment makes it clear that when, for example, a patient discusses the patient's prescription with a pharmacist, that communication does not lift the privilege so that the physician can then testify regarding the physician's treatment of the patient. It does not affect the pharmacist's status. Although some Ohio courts have interpreted the physician-patient privilege to encompass a

patient's communications with nurses or other medical personnel when those persons are performing duties that assist the physician in the diagnosis or treatment of the patient, no Ohio court has concluded that communications with pharmacists are encompassed by the physician-patient privilege.

---

## HISTORY

| ACTION   | DATE     | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced                                     | 07-22-99 | p. 910        |
| Reported, S. Health, Human<br>Services & Aging | ---      | ---           |

S0172-RS.123/jc