

ENROLLED ACT NO. 118, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2009 GENERAL SESSION

AN ACT relating to the Medical Practice Act; correcting and updating definitions; amending the composition, powers, duties and operations of the board of medicine; providing for criminal background checks; amending compensation and reimbursement of expenses of board of medicine members; amending licensure provisions of physicians and physician assistants; authorizing emeritus physician and physician assistant licenses as specified; providing for the regulation of the practice of medicine by physicians and physician assistants; providing processes and procedures for discipline of physicians and physician assistants; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 7-19-106(a) by creating a new paragraph (xx), 7-19-201(a) by creating a new paragraph (xiii), 33-26-102(a)(vii)(intro), (D), (xviii), (xix), (xx) and by creating new paragraphs (xxii) through (xxix), 33-26-103(a)(iii) and (iv), 33-26-201(a), (e) and by creating a new subsection (f), 33-26-202(b)(x), (xii) and by creating new paragraphs (xv) through (xxix), 33-26-203, 33-26-301(a), (b)(iv) and by creating new paragraphs (vi) through (viii), 33-26-303(a)(intro), (ii), (iv), (vi), (vii), (ix) and by creating new subsections (c) and (d), 33-26-304(a)(intro), (ii), (b), (c)(ii), (iii), (vi) and by creating new subsections (e) and (f), 33-26-305(c) and by creating a new subsection (e), 33-26-307(b), 33-26-402(a)(xxv), (xxvi)(A) and (xxvii)(P), 33-26-405(b)(ii), 33-26-406(a), (b) and (c)(i), 33-26-501(a)(v)(A) and (B), 33-26-502(d), 33-26-503(b) by creating a new paragraph (vii), 33-26-504(f) and (g), 33-26-505(b), 33-26-506(a), 33-26-601(a), (c), (d)(intro), (iv)(A) and (e) through (j) are amended to read:

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7-19-106. Access to, and dissemination of, information.

(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

(xx) The board of medicine for purposes of obtaining background information on applicants for licensure or certification by the board whose application or other information received by the board indicates the applicant has or may have been convicted of a crime, and for purposes of investigation of complaints and disciplinary action against licensees of the board.

7-19-201. State or national criminal history record information.

(a) The following persons shall be required to submit to fingerprinting in order to obtain state and national criminal history record information:

(xiii) All persons applying for licensure or certification to the Wyoming board of medicine on or after July 1, 2009, whose application or other information received by the board indicates that the applicant has or may have been convicted of a crime, and any licensee of the board of medicine upon written request from the board of medicine as part of an ongoing investigation of or disciplinary action against the licensee.

33-26-102. Definitions.

(a) As used in this chapter:

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(vii) "Impaired" means a person who ~~cannot~~is unable to practice medicine with reasonable skill and safety to patients by reason of one (1) or more of the following:

(D) Chemical or alcohol impairment, addiction, dependence or abuse.

(xviii) "FLEX examination" means the federation of state medical boards ~~post-licensure competency~~licensing examination;

(xix) "R.C.P.S.C." means the royal college of physicians and surgeons of Canada;

(xx) "Physician-patient relationship" means a relationship between a licensee and any person formed for the purpose of the licensee providing medical diagnosis or treatment to the person, whether or not for compensation; ~~and~~

(xxii) "Board counsel" means an attorney designated by the board to provide legal counsel to the board and its staff in the conduct of the board's business;

(xxiii) "Board prosecutor" means an attorney designated by the board to prosecute, and to provide legal counsel to interviewers and petitioners in, disciplinary cases pending before the board pursuant to this act and the Wyoming Administrative Procedure Act;

(xxiv) "COMLEX" means the comprehensive osteopathic medical licensing examination, administered by the national board of osteopathic medical examiners;

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(xxv) "Condition" means a specific requirement or prohibition imposed by any medical licensing board of any jurisdiction, or by any health care facility on an applicant's or licensee's clinical privileges at that facility, that shall be fulfilled by an applicant or licensee in order to obtain or continue to hold a license in that jurisdiction, or clinical privileges at that facility;

(xxvi) "E.C.F.M.G." means the educational commission for foreign medical graduates;

(xxvii) "Restriction" means a limitation placed by any medical licensing board of any jurisdiction on an applicant's or licensee's scope of practice in that jurisdiction, or by any health care facility on an applicant's or licensee's clinical privileges at that facility;

(xxviii) "SPEX examination" means the federation of state medical boards special purpose post-licensure competency examination;

(xxix) "Telemedicine" means the practice of medicine by electronic communication or other means from a physician in a location to a patient in another location, with or without an intervening health care provider.

33-26-103. Applicability of chapter.

(a) This chapter does not apply to:

(iii) Commissioned medical officers of the United States armed services and medical officers of the United States public health service or the United States department of veterans ~~administration of the United States~~

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affairs in the discharge of their official duties or within federally controlled facilities or enclaves, provided that the persons who are licensees of the board shall be subject to the provisions of this act and further provided that all such persons shall be the holder of a full and unrestricted license to practice medicine in one (1) or more jurisdictions of the United States;

(iv) Any individual residing in and licensed in good standing to practice medicine in another state or country ~~called~~ brought into this state for consultation by a physician licensed to practice medicine in this state, provided the physician licensed in this state notifies the board of the consultation in compliance with regulations adopted by the board;

33-26-201. State board of medicine; composition; appointment; terms; qualifications; removal; vacancies; quorum.

(a) The Wyoming state board of medicine shall consist of five (5) physicians licensed to practice medicine in Wyoming, not less than one (1) of whom shall possess the degree of doctor of osteopathy and not less than two (2) of whom shall possess the degree of doctor of medicine, one (1) physician assistant and two (2) lay members, ~~not directly related to physicians,~~ appointed by the governor by and with the consent of the senate as required by W.S. 28-12-101 through 28-12-103. Board members appointed by the governor shall serve at the pleasure of the governor. The board members shall annually elect a president, a vice-president, and a secretary.

(e) A quorum of the board consists of five (5) board members, including a lay member, unless otherwise specified in subsection (f) of this section.

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(f) If the board president determines that due to conflicts of interest or other circumstances it may not be possible to seat a quorum of board members to hear a disciplinary case brought pursuant to this act, the president may submit a written request to the governor for the appointment of one (1) or more acting board members to hear the disciplinary case in question. Upon receipt of the request, the governor shall appoint the requested number of temporary board members for the sole purpose of hearing the disciplinary case in question. Only persons who previously served as members of the board shall be eligible for temporary appointment to hear disciplinary cases before the board. Appointments made under this subsection shall not require the consent of the senate pursuant to W.S. 28-12-101 through 28-12-103. Persons appointed pursuant to this subsection shall be compensated and have their expenses reimbursed in the same manner as regular board members under W.S. 33-26-203(c). The appointment of a person under this subsection shall automatically terminate upon the entering of a final order in the disciplinary case for which he was appointed.

33-26-202. Board; duties; general powers.

(b) The board is empowered and directed to:

(x) Verify the status of licenses and privileges held by licensees and applicants for licensure with the federation of state licensing—medical boards, medical licensing boards in other jurisdictions and federal data banks, and make a similar inquiry with regard to all applicants for licensure to provide verification of the status of licenses held in this state by licensees to the entities specified in this paragraph;

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(xii) Participate in and ~~contribute to~~ contract with a program or programs to assist in the return to practice of licensees who have exhibited disruptive behaviors, substance dependence or abuse or are suffering from physical or mental impairment;

(xv) Publish nonbinding advisory opinions or other guidance on the application and interpretation of this act and the rules and regulations promulgated pursuant to this act;

(xvi) Request criminal history background information for purposes of licensure and discipline, as authorized under W.S. 7-19-106(a);

(xxvii) Use, retain or employ investigators, the offices of the attorney general, the state division of criminal investigation, any other investigatory or fact finding agency and medical specialty consultants, as necessary, to investigate and evaluate complaints against licensees and possible violations of this act and the board's rules;

(xxviii) Adopt rules and regulations for the practice of medicine in Wyoming by physicians and physician assistants not otherwise licensed in Wyoming in the event of a public health emergency or pandemic;

(xxix) Adopt rules and regulations for the practice of telemedicine.

33-26-203. Board; employment and salary of executive director; and other employees; per diem and expenses of members.

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(a) The board may employ or contract with an executive ~~secretary—~~director, board counsel, board prosecutor and other necessary staff. The executive ~~secretary—~~director shall not be a board member.

(b) The executive ~~secretary's—salary—~~director's compensation and terms of employment shall, and board counsel's ~~salary—and the board prosecutor's compensation~~ may, be set by the board. The ~~salaries—compensation~~ of other staff shall be set by the human resources division of the department of administration and information.

(c) Board members ~~shall not receive compensation for their services but~~ shall receive ~~mileage and per diem salary~~ in the same manner and amount as members of the Wyoming legislature and shall be reimbursed for actual and necessary expenses and mileage incurred in the performance of their official duties. Any incidental expenses necessarily incurred by the board or any member, if approved by the board, shall be paid from the account from fees collected pursuant to this chapter.

33-26-301. License required.

(a) No person shall practice medicine in this state without a license granted by the board, or as otherwise provided by law.

(b) Upon appropriate application, fulfillment of eligibility criteria and successful completion of all other requirements, the board may grant:

(iv) An inactive license, provided the qualifications for and the conditions of this license shall be established by rule; ~~or~~

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(vi) An emeritus license, allowing retired physicians to provide health care without remuneration, provided the qualifications for and the conditions of this license shall be established by rule;

(vii) A volunteer license, allowing physicians not otherwise licensed in Wyoming to practice medicine in the state without remuneration, provided the qualifications for and conditions of this license shall be established by rule;

(viii) An administrative medicine license for physicians not providing patient care, provided the qualifications for and the conditions of this license shall be established by rule.

33-26-303. Requirements for granting license.

(a) The board may grant a license to practice medicine in this state to any applicant who demonstrates, to the ~~satisfaction of a majority of the~~ board, that he:

(ii) Has graduated from a school of medicine accredited by the L.C.M.E., a school of osteopathy accredited by the A.O.A., ~~or~~ a Canadian accredited school of medicine or has been certified by the E.C.F.M.G.;

(iv) Has provided written evidence that he has completed at least one (1) year of postgraduate training in an A.C.G.M.E, A.O.A. or R.C.P.S.C. accredited program; ~~An applicant who graduated from a medical school not accredited by the L.C.M.E. or A.O.A. shall present written evidence that he has completed at least two (2) years of medical education at the medical school from which he graduated and that he has completed at least two (2) years~~

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~~of postgraduate training in an A.C.G.M.E., A.O.A. or R.C.P.S.C. accredited program;~~

(vi) Has successfully completed all three (3) parts of the USMLE, national boards, the FLEX, a board approved, state constructed licensing examination, the examination by the licentiate of the medical council of Canada, or the examination developed by the national board of osteopathic medical examiners COMLEX, provided the conditions and requirements for completion of all parts of the examinations shall be established by board rule;

(vii) Has completed an application form provided or approved by the board;

(ix) Has completed to the satisfaction of a majority of board members, if required pursuant to board rule, a personal interview consisting of inquiry and oral response to medical knowledge, personal and professional history and intentions for practicing medicine in this state; and

(c) A person whose medical license has been revoked, suspended, restricted, had conditions placed on it or been voluntarily or involuntarily relinquished or surrendered, by or to another state medical or licensing board, or has a disciplinary action pending before another state medical or licensing board, may apply for licensure provided, however, the board may deny licensure based upon the revocation, suspension, restrictions, conditions, relinquishment, surrender of licensure or pending disciplinary action alone.

(d) A person whose clinical privileges at a health care facility have been revoked, suspended, restricted, had conditions placed upon them or been voluntarily or

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involuntarily resigned, or against whom a clinical privilege action is pending at a health care facility, may apply for licensure provided, however, the board may deny licensure based upon the revocation, suspension, restrictions, conditions, resignation of privileges or pending clinical privilege action alone.

33-26-304. Temporary license to practice medicine; medical training license; application; qualifications.

(a) The board may issue a temporary license for a term that expires at 8:00 a.m. on the ~~date~~ first day of the next regularly scheduled board meeting to a person who:

(ii) Meets all licensing requirements of W.S. 33-26-303 except that the board may defer the interview required by W.S. 33-26-303(a)(ix) at its discretion until no later than the next board meeting;

(b) ~~A temporary license is valid until the date of the next board meeting following the date of issuance.~~ The board, in its discretion may extend a temporary license for an additional term no longer than 8:00 a.m. on the ~~date~~ first day of the second ~~regular~~ regularly scheduled board meeting following the date of the initial issuance of a temporary license.

(c) The board may issue a medical training license for a term that expires at 12:01 a.m. July 1 of each year to a person who:

(ii) Has graduated from a school of medicine accredited by the L.C.M.E., a school of osteopathy accredited by the A.O.A. or a Canadian accredited school of medicine, or has been certified by the E.C.F.M.G.;

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(iii) Has successfully completed steps one (1) and two (2) of the USMLE or the COMLEX;

(vi) Has paid the appropriate fees pursuant to W.S. 33-26-307; and

(e) A person whose medical license has been revoked, suspended, restricted, had conditions placed on it or been voluntarily or involuntarily relinquished or surrendered, by or to another state medical or licensing board, or has a disciplinary action pending before another state medical or licensing board, may apply for licensure provided, however, the board may deny licensure based upon the revocation, suspension, restrictions, conditions, relinquishment, surrender of licensure or pending disciplinary action alone.

(f) A person whose clinical privileges at a health care facility have been revoked, suspended, restricted, had conditions placed upon them or been voluntarily or involuntarily resigned, or against whom a clinical privilege action is pending at a health care facility, may apply for licensure provided, however, the board may deny licensure based upon the revocation, suspension, restrictions, conditions, resignation of privileges or pending clinical privilege action alone.

33-26-305. Annual renewal; expiration; reactivation of lapsed and inactive licenses; restoration of emeritus licenses to active status; duplicates.

(c) The board may reactivate a lapsed or inactive license if the applicant ~~pays a reactivation fee and fulfills all requirements for the granting of an initial license~~ meets the requirements established by the rules and regulations promulgated by the board.

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(e) The board may restore an emeritus license to active status if the applicant meets the requirements established by the rules and regulations promulgated by the board.

33-26-307. Fees.

(b) All money received or collected under this chapter shall be paid to the state treasurer for deposit in a separate account. The money in the account is subject at all times to the warrant of the state auditor drawn upon written requisition ~~of the president and~~ attested by the executive ~~secretary~~ director of the board, ~~with seal attached,~~ for the payment of any board expenses.

33-26-402. Grounds for suspension; revocation; restriction; imposition of conditions; refusal to renew or other disciplinary action.

(a) The board may refuse to renew, and may revoke, suspend or restrict a license or take other disciplinary action, including the imposition of conditions or restrictions upon a license on one (1) or more of the following grounds:

(xxv) Suspension, probation, imposition of conditions or restrictions, relinquishment, surrender or revocation of a license to practice medicine in another jurisdiction;

(xxvi) Any action by a health care entity that:

(A) Adversely affects clinical privileges for a period ~~exceeding~~ of thirty (30) or more consecutive days;

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(xxvii) Unprofessional or dishonorable conduct not otherwise specified in this subsection, including but not limited to:

(P) Intentionally or negligently releasing or disclosing confidential patient information. This restriction shall not apply to disclosures permitted or required by state or federal law or when disclosure is necessary to prevent imminent risk of harm to the patient or others;

33-26-405. Order of the board.

(b) Restriction of a license may include, but is not limited to, the following:

(ii) Requiring the licensee to practice medicine under the supervision of another physician in a clinic or other controlled setting, and setting the conditions of the licensee's practice of medicine;

33-26-406. Reinstatement of license; removal of restrictions or conditions from a license.

(a) A person whose license has been voluntarily relinquished, revoked, restricted or suspended, ~~under this chapter~~ or had conditions or restrictions placed upon his license, voluntarily or by action of the board, may petition for reinstatement of his license or for removal of any restrictions or conditions placed upon his license pursuant to W.S. 33-26-405 not less than six (6) months after final judicial review of a board order accepting relinquishment of, or revoking, restricting, placing conditions upon or suspending the petitioner's license or

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six (6) months after the date of the board order if there is no judicial review.

(b) The petitioner shall submit a petition in writing to the board that, at a minimum, sets forth and provides information regarding the petitioner's fulfillment of any and all conditions or compliance with all restrictions imposed upon petitioner by any prior order of the board or success in correcting the conduct that formed the basis for revocation or relinquishment of petitioner's license.

(c) Upon receipt of the petition, the board shall set the matter for hearing in accordance with the provisions of the Wyoming Administrative Procedure Act. The burden of proof upon the petitioner at the hearing shall be to demonstrate, by a preponderance of evidence, that:

(i) Petitioner has corrected the conduct that formed the basis for the revocation or relinquishment of petitioner's license and that petitioner is able to safely, skillfully and competently resume the practice of medicine; or

33-26-501. Definitions.

(a) As used in this article:

(v) "Supervising physician" means a:

(A) Board-approved physician who utilizes and agrees to be responsible for the medical acts of ~~an approved~~-a board-approved physician assistant; or

(B) Back-up physician when acting in the absence of the supervising physician.

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33-26-502. Scope of W.S. 33-26-501 through 33-26-511.

(d) Nothing in this article shall be construed to conflict with or alter the provisions and requirements of W.S. 33-26-101 through 33-26-410 and 33-26-601 et seq.

33-26-503. Board powers and duties.

(b) The board shall:

(vii) Pass upon the qualifications and ability of physicians desiring to serve as a supervising physician or back-up physician including, but not limited to, the compatibility of the supervising physician's or back-up physician's specialty and scope of practice with that of the physician assistant to be supervised.

33-26-504. License required; application; qualifications; consideration of applications.

(f) The board, with the concurrence of the advisory committee, shall approve an application by a licensed physician to supervise physician assistants if the board is satisfied that each proposed physician assistant is a graduate of an approved program, has satisfactorily completed a certification examination and is fully qualified to assist in the practice of medicine under the responsible supervision of a licensed physician. ~~It shall be the policy of the board to allow at least three (3) physician assistants per physician and the board and the advisory committee shall not deny an application due to the number of physician assistants supervised up to at least three (3), except for good cause specific to the circumstances of that individual~~ The board shall provide by rule for requirements and limitations on the practice by and supervision of physician assistants. However, a

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physician shall be limited to the supervision of three (3) or fewer physician assistants only for good cause specific to the circumstances of that individual physician.

(g) The board may ~~allow~~ provide by rule for arrangements for other physicians to serve as back up or on call physicians for multiple physician assistants.

33-26-505. Temporary license.

(b) A temporary license is valid until the next board meeting following the date of issuance. ~~but not to exceed one (1) year.~~ The board may extend the temporary license at its discretion upon a showing of good cause for a period not to exceed one (1) year from the original date of issuance of the temporary license.

33-26-506. Term of license; renewal; duplicates.

(a) All licenses other than temporary licenses expire annually on December 31. A physician assistant may renew his license by ~~sending his signature, current address, practice related information requested~~ completing and submitting a renewal application form published by the board and renewal fee to the board prior to expiration of his current license.

33-26-601. Emeritus physician and physician assistant licenses.

(a) As used in this section, "low income uninsured person" ~~and "nonprofit health care facility" have~~ has the same ~~meanings~~ meaning as in W.S. 33-15-131(a).

(c) The state board of medicine may issue, with or without examination, ~~a volunteer's~~ an emeritus physician or

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emeritus physician assistant license to a person who is retired from practice so that the person may provide medical services. ~~to low income uninsured persons at nonprofit health care facilities.~~ The board shall deny issuance of ~~a volunteer's~~ an emeritus physician or emeritus physician assistant license to a person who is not qualified under this section to hold ~~a volunteer's~~ an emeritus license.

(d) An application for ~~a volunteer's~~ an emeritus license shall include all of the following:

(iv) A notarized statement from the applicant, on a form prescribed by the board, that the applicant:

(A) Will not accept any form of remuneration for any medical services rendered while in possession of ~~a volunteer's~~ an emeritus license; and

(e) The holder of ~~a volunteer's~~ an emeritus license may provide medical services ~~only~~ on the premises of a ~~nonprofit~~ health care facility or a medical practice in this state and ~~only~~ to low income uninsured persons. The holder shall not accept any form of remuneration for providing medical services while in possession of the license. The board may revoke ~~a volunteer's~~ an emeritus license on receiving proof satisfactory to the board that the holder has engaged in practice in this state outside the scope of the license.

(f) ~~A volunteer's~~ An emeritus license shall be valid for a period of one (1) year, unless earlier revoked under subsection (e) of this section or pursuant to title 33, chapter 26 of the Wyoming statutes. ~~A volunteer's~~ An emeritus license may be renewed upon the application of the holder. The board shall maintain a register of all persons

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who hold ~~volunteer's~~emeritus licenses. The board shall not charge a fee for issuing or renewing a license pursuant to this section.

(g) To be eligible for renewal of ~~a volunteer's~~an emeritus license, the holder of the license shall certify to the board completion of any continuing education required under this chapter as if the holder of the license were in active practice. The board shall not renew a license if the holder has not complied with the continuing education requirements. ~~The nonprofit~~A health care facility or a medical practice in which the holder of an emeritus license provides medical services may pay for or reimburse the holder for any costs incurred in obtaining the required continuing education.

(h) The board shall issue to each person who qualifies under this section ~~a volunteer's~~an emeritus license. The ~~volunteer's~~emeritus medical license shall permit the general practice of medicine under this chapter. The emeritus physician assistant license shall permit the practices authorized for physician assistants under W.S. 33-26-501 through 33-26-512.

(j) Except as provided in this section, any person holding ~~a volunteer's~~an emeritus license issued by the board under this section shall be subject to the requirements of this chapter and the jurisdiction of the board.

Section 2. W.S. 33-26-303(a)(x), 33-26-304(c)(vii) and 33-26-601(d)(iv)(B) are repealed.

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Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk