

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1168
93RD GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, May 3, 2006, with recommendation that the Senate Committee Substitute do pass.

3668S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 338.010 and 338.095, RSMo, and to enact in lieu thereof three new sections relating to pharmacists.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 338.010 and 338.095, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 338.010, 338.095,
3 and 338.380, to read as follows:

338.010. 1. The "practice of pharmacy" [shall mean] means the
2 interpretation, implementation, and evaluation of medical or veterinary
3 prescription orders, including receipt, transmission, or handling of such
4 orders or facilitating the dispensing of such orders; the designing,
5 initiating, implementing, and monitoring of a medication therapeutic
6 plan as defined by the prescription order so long as the prescription
7 order is specific to each patient for care by a specific pharmacist; the
8 compounding, dispensing [and], labeling, and administration of drugs and
9 devices pursuant to medical or veterinary prescription orders and
10 administration of vaccines by written protocol authorized by a
11 physician; the participation in drug selection according to state law and
12 participation in drug utilization reviews; the proper and safe storage of drugs and
13 devices and the maintenance of proper records thereof; consultation with patients
14 and other health care practitioners about the safe and effective use of drugs and
15 devices; and the offering or performing of those acts, services, operations, or
16 transactions necessary in the conduct, operation, management and control of a

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 pharmacy. No person shall engage in the practice of pharmacy unless he is
18 licensed under the provisions of this chapter. This chapter shall not be construed
19 to prohibit the use of auxiliary personnel under the direct supervision of a
20 pharmacist from assisting the pharmacist in any of his duties. This assistance
21 in no way is intended to relieve the pharmacist from his responsibilities for
22 compliance with this chapter and he will be responsible for the actions of the
23 auxiliary personnel acting in his assistance. This chapter shall also not be
24 construed to prohibit or interfere with any legally registered practitioner of
25 medicine, dentistry, podiatry, or veterinary medicine, or the practice of optometry
26 in accordance with and as provided in sections 195.070 and 336.220, RSMo, in the
27 compounding or dispensing of his own prescriptions.

28 2. Any pharmacist who accepts a prescription order for a
29 medication therapeutic plan shall have a written protocol from the
30 physician who refers the patient for medication therapy services. The
31 written protocol and the prescription order for a medication
32 therapeutic plan shall come from the physician only, and shall not come
33 from a nurse engaged in a collaborative practice arrangement under
34 section 334.104, RSMo, or from a physician assistant engaged in a
35 supervision agreement under section 334.735, RSMo.

36 3. Nothing in this section shall be construed as to prevent any person,
37 firm or corporation from owning a pharmacy regulated by sections 338.210 to
38 338.315, provided that a licensed pharmacist is in charge of such pharmacy.

39 [3.] 4. Nothing in this section shall be construed to apply to or interfere
40 with the sale of nonprescription drugs and the ordinary household remedies and
41 such drugs or medicines as are normally sold by those engaged in the sale of
42 general merchandise.

43 5. No health carrier as defined in chapter 376, RSMo, shall
44 require any physician with which they contract to enter into a written
45 protocol with a pharmacist for medication therapeutic services.

46 6. This section shall not be construed to allow a pharmacist to
47 diagnose or independently prescribe pharmaceuticals.

48 7. The state board of registration for the healing arts, under
49 section 334.125, RSMo, and the state board of pharmacy, under section
50 338.140, shall jointly promulgate rules regulating the use of protocols
51 for prescriptions orders for medication therapy services. Such rules
52 shall require protocols to include provisions allowing for timely

53 communication between the pharmacist and the referring physician,
54 and any other patient protection provisions deemed appropriate by
55 both boards. In order to take effect, such rules shall be approved by a
56 majority vote of a quorum of each board. Neither board shall
57 separately promulgate rules regulating the use of protocols for
58 prescription orders for medication therapy services.

59 8. The state board of pharmacy may grant a certificate of
60 medication therapeutic plan authority to a licensed pharmacist who
61 submits proof of successful completion of a board-approved course of
62 academic clinical study beyond a bachelor of science in pharmacy,
63 including but not limited to clinical assessment skills, from a nationally
64 accredited college or university, or a certification of equivalence issued
65 by a nationally recognized professional organization and approved by
66 the board of pharmacy.

67 9. Any pharmacist who has received a certificate of medication
68 therapeutic plan authority may engage in the designing, initiating,
69 implementing, and monitoring of a medication therapeutic plan as
70 defined by a prescription order from a physician that is specific to each
71 patient for care by a specific pharmacist.

72 10. Nothing in this section shall be construed to allow a
73 pharmacist to make a therapeutic substitution of a pharmaceutical
74 prescribed by a physician unless authorized by the written protocol or
75 the physician's prescription order.

338.095. 1. The terms "prescription" and "prescription drug order" are
2 hereby defined as a lawful order for medications or devices issued and signed by
3 an authorized prescriber within the scope of his professional practice which is to
4 be dispensed or administered by a pharmacist or dispensed or administered
5 pursuant to section 334.104, RSMo, to and for the ultimate user. The terms
6 "prescription" and "drug order" do not include an order for medication requiring
7 a prescription to be dispensed, which is provided for the immediate
8 administration to the ultimate user or recipient.

9 2. The term "telephone prescription" is defined as an order for medications
10 or devices transmitted to a pharmacist by telephone or similar electronic medium
11 by an authorized prescriber or his authorized agent acting in the course of his
12 professional practice which is to be dispensed or administered by a pharmacist
13 or dispensed or administered pursuant to section 334.104, RSMo, to and for the

14 ultimate user. A telephone prescription shall be promptly reduced to written or
15 electronic medium by the pharmacist and shall comply with all laws governing
16 prescriptions and record keeping.

17 3. A licensed pharmacist may lawfully provide prescription or medical
18 information to a licensed health care provider or his agent who is legally qualified
19 to administer medications and treatments and who is involved in the treatment
20 of the patient. The information may be derived by direct contact with the
21 prescriber or through a written protocol approved by the prescriber. Such
22 information shall authorize the provider to administer appropriate medications
23 and treatments.

24 4. Nothing in this section shall be construed to limit the authority of other
25 licensed health care providers to prescribe, administer, or dispense medications
26 and treatments within the scope of their professional practice.

27 5. It is unlawful for any person other than the patient or the
28 patient's authorized representative to accept a prescription presented
29 to be dispensed unless that person is located on a premises licensed by
30 the board as a pharmacy.

338.380. 1. As used in this section the term "committee" means
2 the well-being committee established under subsection 3 of this section.

3 2. The board may refuse to issue any certificate of registration
4 or authority, permit or license, required under this chapter for one or
5 any combination of causes stated in subsection 2 of section 338.055, or
6 the board may, as a condition to issuing or renewing any such
7 certificate of registration or authority, permit or license, require a
8 person to submit himself or herself for identification, intervention,
9 treatment, or rehabilitation by the well-being committee as provided in
10 this section. The board shall notify the applicant in writing of the
11 reasons for the refusal and shall advise the applicant of his or her right
12 to file a complaint with the administrative hearing commission as
13 provided by chapter 621, RSMo.

14 3. The board may establish an impaired licensee committee, to
15 be designated as the "Well-being Committee", to promote the early
16 identification, intervention, treatment and rehabilitation of licensees
17 identified within this chapter, who may be impaired by reasons of
18 illness, substance abuse, or as a result of any physical or mental
19 condition. The board may enter into a contractual agreement with a

20 nonprofit corporation or an association for the purpose of creating,
21 supporting and maintaining such a committee. The board may
22 promulgate rules subject to the provisions of this section to effectuate
23 and implement any committee formed under this section. The board
24 may expend appropriated funds necessary to provide for operational
25 expenses of the committee formed under this section. Any member of
26 the committee, as well as any administrator, staff member, consultant,
27 agent or employee of the committee, acting within the scope of his or
28 her duties and without actual malice and, all other persons who furnish
29 information to the committee in good faith and without actual malice,
30 shall not be liable for any claim of damages as a result of any
31 statement, decision, opinion, investigation or action taken by the
32 committee or by any individual member of the committee.

33 4. All information, interviews, reports, statements, memoranda
34 or other documents furnished to or produced by the committee, as well
35 as communications to or from the committee, any findings, conclusions,
36 interventions, treatment, rehabilitation, or other proceedings of the
37 committee which in any way pertain to a licensee who may be, or who
38 actually is, impaired shall be absolutely privileged and confidential.

39 5. All records and proceedings of the committee which pertain
40 or refer to a licensee who may be, or who actually is, impaired shall be
41 privileged and confidential and shall be used by the committee and its
42 members only in the exercise of the proper function of the committee
43 and shall not be considered public records under chapter 610, RSMo,
44 and shall only be subject to discovery or introduction as evidence in
45 any civil, criminal, or administrative proceedings except as provided
46 in subsection 6 of this section.

47 6. The committee may disclose information relative to an
48 impaired licensee only when:

- 49 (1) It is essential to disclose the information to further the
50 intervention, treatment, or rehabilitation needs of the impaired
51 licensee and only to those persons or organization with a need to know;
52 (2) Its release is authorized in writing by the impaired licensee;
53 (3) The committee is required to make a report to the board;
54 (4) The information is subject to a court order.

55 7. In lieu of the pursuing discipline against a licensee for
56 violating one or more causes stated in subsection 2 of section 338.055,

57 the board may enter into a diversion agreement with a licensee to refer
58 the licensee to the committee under such terms and conditions as are
59 agreed to by the board and licensee. The board shall enter into no
60 more than two diversion agreements with any individual licensee. If
61 the licensee violates a term or condition of a diversion agreement
62 entered into under this section, the board may elect to pursue
63 discipline against the licensee under chapter 621, RSMo, for the
64 original conduct that resulted in the diversion agreement, or for any
65 subsequent violation of subsection 2 of section 338.055. While the
66 licensee participates in the committee, the time limitations of section
67 620.154, RSMo, shall toll under subsection 7 of section 620.154,
68 RSMo. All records pertaining to diversion agreements are confidential
69 and may only be released under subdivision (7) of subsection 14 of
70 section 620.010, RSMo.

71 8. The committee shall report to the board the name of any
72 licensee who fails to enter treatment within forty-eight hours following
73 the provider's determination that the pharmacist needs treatment or
74 any failure by a licensee to comply with the terms of a treatment
75 contract during inpatient or outpatient treatment or aftercare or
76 report a licensee who resumes the practice of pharmacy before the
77 treatment provider has made a clear determination that the pharmacist
78 is capable of practicing according to acceptable and prevailing
79 standards.

80 9. The board may disclose information and records to the
81 committee to assist the committee in the identification, intervention,
82 treatment, and rehabilitation of any licensee who may be impaired by
83 reason of illness, substance abuse, or as the result of any physical or
84 mental condition. The committee shall keep all information and
85 records provided by the board confidential to the extent the board is
86 required to treat the information and records as closed to the public
87 under chapter 620, RSMo.

88 10. Any rule or portion of a rule, as that term is defined in
89 section 536.010, RSMo, that is created under the authority delegated in
90 this section shall become effective only if it complies with and is
91 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
92 section 536.028, RSMo. This section and chapter 536, RSMo, are
93 nonseverable and if any of the powers vested with the general assembly

94 pursuant to chapter 536, RSMo, to review, to delay the effective date,
95 or to disapprove and annul a rule are subsequently held
96 unconstitutional, then the grant of rulemaking authority and any rule
97 proposed or adopted after August 28, 2006, shall be invalid and void.

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