

FIRST REGULAR SESSION

# HOUSE BILL NO. 545

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WASSON (Sponsor), TILLEY, SATER, YAEGER,  
THRELKELD, PORTWOOD, SKAGGS, DEMPSEY, RICHARD, WELLS,  
MUSCHANY AND COOPER (155) (Co-sponsors).

Read 1st time January 23, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1577L.01I

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### AN ACT

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

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Section A. Sections 338.010 and 338.095, RSMo, are repealed and three new sections  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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

23       **2. Any pharmacist who accepts a prescription order for a medication therapeutic**  
24 **plan shall have a written protocol from the physician who refers the patient for medication**  
25 **therapy services. The written protocol and the prescription order for a medication**  
26 **therapeutic plan shall come from the physician only, and shall not come from a nurse**  
27 **engaged in a collaborative practice arrangement under section 334.104, RSMo, or from a**  
28 **physician assistant engaged in a supervision agreement under section 334.735, RSMo.**

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

32       [3.] **4.** Nothing in this section shall be construed to apply to or interfere with the sale of  
33 nonprescription drugs and the ordinary household remedies and such drugs or medicines as are  
34 normally sold by those engaged in the sale of general merchandise.

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

38       **6. This section shall not be construed to allow a pharmacist to diagnose or**  
39 **independently prescribe pharmaceuticals.**

40       **7. The state board of registration for the healing arts, under section 334.125, RSMo,**  
41 **and the state board of pharmacy, under section 338.140, shall jointly promulgate rules**  
42 **regulating the use of protocols for prescription orders for medication therapy services.**  
43 **Such rules shall require protocols to include provisions allowing for timely communication**  
44 **between the pharmacist and the referring physician, and any other patient protection**  
45 **provisions deemed appropriate by both boards. In order to take effect, such rules shall be**  
46 **approved by a majority vote of a quorum of each board. Neither board shall separately**  
47 **promulgate rules regulating the use of protocols for prescription orders for medication**  
48 **therapy services. Any rule or portion of a rule, as that term is defined in section 536.010,**

49 **RSMo, that is created under the authority delegated in this section shall become effective**  
50 **only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,**  
51 **if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**  
52 **nonseverable and if any of the powers vested with the general assembly pursuant to**  
53 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**  
54 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**  
55 **rule proposed or adopted after August 28, 2007, shall be invalid and void.**

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

62 **9. Any pharmacist who has received a certificate of medication therapeutic plan**  
63 **authority may engage in the designing, initiating, implementing, and monitoring of a**  
64 **medication therapeutic plan as defined by a prescription order from a physician that is**  
65 **specific to each patient for care by a specific pharmacist.**

66 **10. Nothing in this section shall be construed to allow a pharmacist to make a**  
67 **therapeutic substitution of a pharmaceutical prescribed by a physician unless authorized**  
68 **by the written protocol or the physician's prescription order.**

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

8 2. The term "telephone prescription" is defined as an order for medications or devices  
9 transmitted to a pharmacist by telephone or similar electronic medium by an authorized  
10 prescriber or his authorized agent acting in the course of his professional practice which is to be  
11 dispensed or administered by a pharmacist or dispensed or administered pursuant to section  
12 334.104, RSMo, to and for the ultimate user. A telephone prescription shall be promptly reduced  
13 to written or electronic medium by the pharmacist and shall comply with all laws governing  
14 prescriptions and record keeping.

15 3. A licensed pharmacist may lawfully provide prescription or medical information to  
16 a licensed health care provider or his agent who is legally qualified to administer medications

17 and treatments and who is involved in the treatment of the patient. The information may be  
18 derived by direct contact with the prescriber or through a written protocol approved by the  
19 prescriber. Such information shall authorize the provider to administer appropriate medications  
20 and treatments.

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

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

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

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

11 3. The board may establish an impaired licensee committee, to be designated as the  
12 "Well-being Committee", to promote the early identification, intervention, treatment, and  
13 rehabilitation of licensees identified within this chapter, who may be impaired by reasons  
14 of illness, substance abuse, or as a result of any physical or mental condition. The board  
15 may enter into a contractual agreement with a nonprofit corporation or an association for  
16 the purpose of creating, supporting and maintaining such a committee. The board may  
17 promulgate rules subject to the provisions of this section to effectuate and implement any  
18 committee formed under this section. The board may expend appropriated funds  
19 necessary to provide for operational expenses of the committee formed under this section.  
20 Any member of the committee, as well as any administrator, staff member, consultant,  
21 agent or employee of the committee, acting within the scope of his or her duties and  
22 without actual malice and, all other persons who furnish information to the committee in  
23 good faith and without actual malice, shall not be liable for any claim of damages as a  
24 result of any statement, decision, opinion, investigation or action taken by the committee  
25 or by any individual member of the committee.

26           **4. All information, interviews, reports, statements, memoranda or other documents**  
27 **furnished to or produced by the committee, as well as communications to or from the**  
28 **committee, any findings, conclusions, interventions, treatment, rehabilitation, or other**  
29 **proceedings of the committee which in any way pertain to a licensee who may be, or who**  
30 **actually is, impaired shall be absolutely privileged and confidential.**

31           **5. All records and proceedings of the committee which pertain or refer to a licensee**  
32 **who may be, or who actually is, impaired shall be privileged and confidential and shall be**  
33 **used by the committee and its members only in the exercise of the proper function of the**  
34 **committee and shall not be considered public records under chapter 610, RSMo, and shall**  
35 **only be subject to discovery or introduction as evidence in any civil, criminal, or**  
36 **administrative proceedings except as provided in subsection 6 of this section.**

37           **6. The committee may disclose information relative to an impaired licensee only**  
38 **when:**

39           **(1) It is essential to disclose the information to further the intervention, treatment,**  
40 **or rehabilitation needs of the impaired licensee and only to those persons or organization**  
41 **with a need to know;**

42           **(2) Its release is authorized in writing by the impaired licensee;**

43           **(3) The committee is required to make a report to the board;**

44           **(4) The information is subject to a court order.**

45           **7. In lieu of the pursuing discipline against a licensee for violating one or more**  
46 **causes stated in subsection 2 of section 338.055, the board may enter into a diversion**  
47 **agreement with a licensee to refer the licensee to the committee under such terms and**  
48 **conditions as are agreed to by the board and licensee. The board shall enter into no more**  
49 **than two diversion agreements with any individual licensee. If the licensee violates a term**  
50 **or condition of a diversion agreement entered into under this section, the board may elect**  
51 **to pursue discipline against the licensee under chapter 621, RSMo, for the original conduct**  
52 **that resulted in the diversion agreement, or for any subsequent violation of subsection 2**  
53 **of section 338.055. While the licensee participates in the committee, the time limitations**  
54 **of section 620.154, RSMo, shall toll under subsection 7 of section 620.154, RSMo. All**  
55 **records pertaining to diversion agreements are confidential and may only be released**  
56 **under subdivision (7) of subsection 14 of section 620.010, RSMo.**

57           **8. The committee shall report to the board the name of any licensee who fails to**  
58 **enter treatment within forty-eight hours following the provider's determination that the**  
59 **pharmacist needs treatment or any failure by a licensee to comply with the terms of a**  
60 **treatment contract during inpatient or outpatient treatment or aftercare or report a**  
61 **licensee who resumes the practice of pharmacy before the treatment provider has made a**

62 clear determination that the pharmacist is capable of practicing according to acceptable  
63 and prevailing standards.

64       **9. The board may disclose information and records to the committee to assist the**  
65 **committee in the identification, intervention, treatment, and rehabilitation of any licensee**  
66 **who may be impaired by reason of illness, substance abuse, or as the result of any physical**  
67 **or mental condition. The committee shall keep all information and records provided by**  
68 **the board confidential to the extent the board is required to treat the information and**  
69 **records as closed to the public under chapter 620, RSMo.**

70       **10. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
71 **that is created under the authority delegated in this section shall become effective only if**  
72 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
73 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
74 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**  
75 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**  
76 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
77 **adopted after August 28, 2007, shall be invalid and void.**

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