

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2064
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Professional Registration and Licensing March 6, 2008 with recommendation that House Committee Substitute for House Bill No. 2064 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

4862L.02C

AN ACT

To repeal sections 334.105, 334.106, 338.013, 338.057, and 338.220, RSMo, and to enact in lieu thereof five new sections relating to the regulation of licensed health care professionals.

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

Section A. Sections 334.105, 334.106, 338.013, 338.057, and 338.220, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 334.105, 334.106,
3 338.013, 338.146, and 338.220, to read as follows:

334.105. 1. Sections 334.105 to 334.107 shall be known and may be cited as the
2 "[Intractable] Pain Treatment Act".

3 2. For purposes of sections 334.105 to 334.107, the following terms mean:

4 (1) "Board", the state board of registration for the healing arts;

5 (2) ["Intractable pain", a pain state in which the cause of pain cannot be removed or
6 otherwise treated and which in the generally accepted course of medical practice no relief or cure
7 of the cause of the pain is possible or none has been found after reasonable efforts that have been
8 documented in the physician's medical records;

9 (3) "Physician", physicians and surgeons licensed pursuant to this chapter by the board;

10 [(4)](3) "Therapeutic purpose", the use of controlled substances in acceptable doses with
11 appropriate indication for the treatment of pain. Any other use is nontherapeutic.

334.106. 1. Notwithstanding any other provision of law to the contrary, a physician may
2 prescribe, administer or dispense controlled substances for a therapeutic purpose to a person

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.

3 diagnosed and treated by a physician for a condition resulting in [intractable pain, if such] **pain**.
4 **The** diagnosis and treatment [has been] **shall be** documented in the physician's medical records.
5 No physician shall be subject to disciplinary action by the board solely for prescribing,
6 administering or dispensing controlled substances when prescribed, administered or dispensed
7 for a therapeutic purpose [for a person diagnosed and treated by a physician for a condition
8 resulting in intractable pain, if such diagnosis and treatment has been documented in the
9 physician's medical records].

10 2. The provisions of subsection 1 of this section shall not apply to those persons being
11 treated by a physician for chemical dependency because of their use of controlled substances not
12 related to the therapeutic purposes of treatment of intractable pain.

13 3. The provisions of subsection 1 of this section provide no authority to a physician to
14 prescribe, administer or dispense controlled substances to a person the physician knows or
15 should know to be using controlled substances which use is not related to the therapeutic
16 purpose.

17 4. Drug dependency or the possibility of drug dependency in and of itself is not a reason
18 to withhold or prohibit the prescribing, administering or dispensing of controlled substances for
19 the therapeutic purpose of treatment of a person for [intractable] pain, nor shall dependency
20 relating solely to such prescribing, administering or dispensing subject a physician to disciplinary
21 action by the board.

338.013. 1. Any person desiring to assist a pharmacist in the practice of pharmacy as
2 defined in this chapter shall apply to the board of pharmacy for registration as a pharmacy
3 technician. Such applicant shall be, at a minimum, legal working age and shall forward to the
4 board the appropriate fee and written application on a form provided by the board. Such
5 registration shall be the sole authorization permitted to allow persons to assist licensed
6 pharmacists in the practice of pharmacy as defined in this chapter.

7 2. The board may refuse to issue a certificate of registration as a pharmacy technician
8 to an applicant that has been adjudicated and found guilty, or has entered a plea of guilty or nolo
9 contendere, of a violation of any state, territory or federal drug law, or to any felony or has
10 violated any provision of subsection 2 of section 338.055. Alternately, the board may issue such
11 person a registration, but may authorize the person to work as a pharmacy technician provided
12 that person adheres to certain terms and conditions imposed by the board. The board shall place
13 on the employment disqualification list the name of an applicant who the board has refused to
14 issue a certificate of registration as a pharmacy technician, or the name of a person who the board
15 has issued a certificate of registration as a pharmacy technician but has authorized to work under
16 certain terms and conditions. The board shall notify the applicant of the applicant's right to file
17 a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

18 3. If an applicant has submitted the required fee and an application for registration to the
19 board of pharmacy, the applicant for registration as a pharmacy technician may assist a licensed
20 pharmacist in the practice of pharmacy as defined in this chapter [for a period of up to ninety
21 days prior to the issuance of a certificate of registration]. The applicant shall keep a copy of the
22 submitted application on the premises where the applicant is employed. [When] **If** the board
23 refuses to issue a certificate of registration as a pharmacy technician to an applicant, the applicant
24 shall immediately cease assisting a licensed pharmacist in the practice of pharmacy.

25 4. A certificate of registration issued by the board shall be conspicuously displayed in
26 the pharmacy or place of business where the registrant is employed.

27 5. Every pharmacy technician who desires to continue to be registered as provided in this
28 section shall, within thirty days before the registration expiration date, file an application for the
29 renewal, accompanied by the fee prescribed by the board. [No registration as provided in this
30 section shall be valid if the registration has expired and has not been renewed as provided in this
31 subsection] **The registration shall lapse and become null and void thirty days following the**
32 **expiration date.**

33 6. The board shall maintain an employment disqualification list. No person whose name
34 appears on the employment disqualification list shall work as a pharmacy technician, except as
35 otherwise authorized by the board. The board may authorize a person whose name appears on
36 the employment disqualification list to work or continue to work as a pharmacy technician
37 provided the person adheres to certain terms and conditions imposed by the board.

38 7. The board may place on the employment disqualification list the name of a pharmacy
39 technician who has been adjudicated and found guilty, or has entered a plea of guilty or nolo
40 contendere, of a violation of any state, territory [of] **or** federal drug law, or to any felony or has
41 violated any provision of subsection 2 of section 338.055.

42 8. After an investigation and a determination has been made to place a person's name on
43 the employment disqualification list, the board shall notify such person in writing mailed to the
44 person's last known address [that]:

45 (1) **That** an allegation has been made against the person, the substance of the allegation
46 and that an investigation has been conducted which tends to substantiate the allegation;

47 (2) **That** such person's name has been added in the employment disqualification list of
48 the board;

49 (3) The consequences to the person of being listed and the length of time the person's
50 name will be on the list; and

51 (4) The person's right to file a complaint with the administrative hearing commission as
52 provided in chapter 621, RSMo.

53 9. The length of time a person's name shall remain on the disqualification list shall be
54 determined by the board.

55 10. No hospital or licensed pharmacy shall knowingly employ any person whose name
56 appears on the employee disqualification list, except that a hospital or licensed pharmacy may
57 employ a person whose name appears on the employment disqualification list but the board has
58 authorized to work under certain terms and conditions. Any hospital or licensed pharmacy shall
59 report to the board any final disciplinary action taken against a pharmacy technician or the
60 voluntary resignation of a pharmacy technician against whom any complaints or reports have
61 been made which might have led to final disciplinary action that can be a cause of action for
62 discipline by the board as provided for in subsection 2 of section 338.055. Compliance with the
63 foregoing sentence may be interposed as an affirmative defense by the employer. Any hospital
64 or licensed pharmacy which reports to the board in good faith shall not be liable for civil
65 damages.

**338.146. 1. The board may issue a cease and desist order to stop a person from
2 engaging or offering to engage in an unauthorized practice. The order shall state the
3 reason for its issuance and give notice of the person's right to request a hearing under
4 chapter 621, RSMo. If within fifteen days after service of the order the subject of the order
5 fails to request a hearing in writing, the cease and desist order shall become final.**

**6 2. The board may enforce its cease and desist order by applying to the circuit court
7 of Cole County, the county in which the conduct occurred, or the county in which the
8 defendant resides for an order upon any person who fails to obey a cease and desist order
9 to show cause why such cease and desist order should not be enforced. Such order and a
10 copy of the application shall be served upon the person in the same manner as a summons
11 in a civil action. If after a hearing the circuit court determines that the cease and desist
12 order should be sustained and enforced, the court shall proceed to enforce the cease and
13 desist order in the same manner as though the order had been issued by the court.**

**14 3. As used in this section, "unauthorized practice" means the practice of pharmacy
15 or wholesale drug distribution by a person or entity who holds no license, certification,
16 registration, or permit from the Missouri board of pharmacy.**

338.220. 1. It shall be unlawful for any person, copartnership, association, corporation
2 or any other business entity to open, establish, operate, or maintain any pharmacy as defined by
3 statute without first obtaining a permit or license to do so from the Missouri board of pharmacy.

**4 A permit shall not be required for an individual licensed pharmacist to perform
5 nondispensing activities outside of a pharmacy, subject to rules established by the board.**

6 The following classes of pharmacy permits or licenses are hereby established:

- 7 (1) Class A: Community/ambulatory;

- 8 (2) Class B: Hospital outpatient pharmacy;
9 (3) Class C: Long-term care;
10 (4) Class D: Nonsterile compounding;
11 (5) Class E: Radio pharmaceutical;
12 (6) Class F: Renal dialysis;
13 (7) Class G: Medical gas;
14 (8) Class H: Sterile product compounding;
15 (9) Class I: Consultant services;
16 (10) Class J: Shared service;
17 (11) Class K: Internet;
18 (12) Class L: Veterinary.

19 2. Application for such permit or license shall be made upon a form furnished to the
20 applicant; shall contain a statement that it is made under oath or affirmation and that its
21 representations are true and correct to the best knowledge and belief of the person signing same,
22 subject to the penalties of making a false affidavit or declaration; and shall be accompanied by
23 a permit or license fee. The permit or license issued shall be renewable upon payment of a
24 renewal fee. Separate applications shall be made and separate permits or licenses required for
25 each pharmacy opened, established, operated, or maintained by the same owner.

26 3. All permits, licenses or renewal fees collected pursuant to the provisions of sections
27 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board of
28 pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the
29 provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general
30 assembly.

31 4. Class L: veterinary permit shall not be construed to prohibit or interfere with any
32 legally registered practitioner of veterinary medicine in the compounding or dispensing of their
33 own prescriptions.

34 5. Notwithstanding any other law to the contrary, the provisions of this section shall not
35 apply to the sale, dispensing, or filling of a pharmaceutical product or drug used for treating
36 animals.

2 [338.057. The board of pharmacy shall publish a list of drug products for
3 which substitution as provided in section 338.056 shall not be permitted. The list
4 of drug products to be included on this list shall be based upon a joint
5 determination made by the department of health and senior services, the state
6 board of registration for the healing arts, and the state board of pharmacy. The
7 board of pharmacy shall publish the list not less often than semiannually, and
shall publish amendments to the list as required.]

✓