



5284H02.01F

SB 717

House _____ Amendment NO. _____

Lichtenegger Offered By Dist. 146

1 AMEND House Committee Substitute for Senate Bill No. 717, Page 1, Section 316.267, Line 4, by
2 inserting after all of said section and line the following:

3
4 "334.100. 1. The board may refuse to issue or renew any certificate of registration or
5 authority, permit or license required pursuant to this chapter for one or any combination of causes
6 stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons
7 for the refusal and shall advise the applicant of the applicant's right to file a complaint with the
8 administrative hearing commission as provided by chapter 621. As an alternative to a refusal to
9 issue or renew any certificate, registration or authority, the board may, at its discretion, issue a
10 license which is subject to probation, restriction or limitation to an applicant for licensure for any
11 one or any combination of causes stated in subsection 2 of this section. The board's order of
12 probation, limitation or restriction shall contain a statement of the discipline imposed, the basis
13 therefor, the date such action shall become effective, and a statement that the applicant has thirty
14 days to request in writing a hearing before the administrative hearing commission. If the board
15 issues a probationary, limited or restricted license to an applicant for licensure, either party may file a
16 written petition with the administrative hearing commission within thirty days of the effective date
17 of the probationary, limited or restricted license seeking review of the board's determination. If no
18 written request for a hearing is received by the administrative hearing commission within the
19 thirty-day period, the right to seek review of the board's decision shall be considered as waived.

20 2. The board may cause a complaint to be filed with the administrative hearing commission
21 as provided by chapter 621 against any holder of any certificate of registration or authority, permit or
22 license required by this chapter or any person who has failed to renew or has surrendered the person's
23 certificate of registration or authority, permit or license for any one or any combination of the
24 following causes:

25 (1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an
26 extent that such use impairs a person's ability to perform the work of any profession licensed or
27 regulated by this chapter;

28 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or
29 nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any
30 offense reasonably related to the qualifications, functions or duties of any profession licensed or
31 regulated pursuant to this chapter, for any offense involving fraud, dishonesty or an act of violence,
32 or for any offense involving moral turpitude, whether or not sentence is imposed;

33 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
34 registration or authority, permit or license issued pursuant to this chapter or in obtaining permission
35 to take any examination given or required pursuant to this chapter;

36 (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional

Action Taken _____ Date _____

1 conduct in the performance of the functions or duties of any profession licensed or regulated by this
2 chapter, including, but not limited to, the following:

3 (a) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud,
4 deception or misrepresentation; willfully and continually overcharging or overtreating patients; or
5 charging for visits to the physician's office which did not occur unless the services were contracted
6 for in advance, or for services which were not rendered or documented in the patient's records;

7 (b) Attempting, directly or indirectly, by way of intimidation, coercion or deception, to
8 obtain or retain a patient or discourage the use of a second opinion or consultation;

9 (c) Willfully and continually performing inappropriate or unnecessary treatment, diagnostic
10 tests or medical or surgical services;

11 (d) Delegating professional responsibilities to a person who is not qualified by training, skill,
12 competency, age, experience or licensure to perform such responsibilities;

13 (e) Misrepresenting that any disease, ailment or infirmity can be cured by a method,
14 procedure, treatment, medicine or device;

15 (f) Performing or prescribing medical services which have been declared by board rule to be
16 of no medical or osteopathic value;

17 (g) Final disciplinary action by any professional medical or osteopathic association or
18 society or licensed hospital or medical staff of such hospital in this or any other state or territory,
19 whether agreed to voluntarily or not, and including, but not limited to, any removal, suspension,
20 limitation, or restriction of the person's license or staff or hospital privileges, failure to renew such
21 privileges or license for cause, or other final disciplinary action, if the action was in any way related
22 to unprofessional conduct, professional incompetence, malpractice or any other violation of any
23 provision of this chapter;

24 (h) Signing a blank prescription form; or dispensing, prescribing, administering or otherwise
25 distributing any drug, controlled substance or other treatment without sufficient examination
26 including failing to establish a valid physician-patient relationship pursuant to section 334.108, or for
27 other than medically accepted therapeutic or experimental or investigative purposes duly authorized
28 by a state or federal agency, or not in the course of professional practice, or not in good faith to
29 relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, except as
30 authorized in section 334.104;

31 (i) Exercising influence within a physician-patient relationship for purposes of engaging a
32 patient in sexual activity;

33 (j) Being listed on any state or federal sexual offender registry;

34 (k) Terminating the medical care of a patient without adequate notice or without making
35 other arrangements for the continued care of the patient;

36 (l) Failing to furnish details of a patient's medical records to other treating physicians or
37 hospitals upon proper request; or failing to comply with any other law relating to medical records;

38 (m) Failure of any applicant or licensee to cooperate with the board during any investigation;

39 (n) Failure to comply with any subpoena or subpoena duces tecum from the board or an
40 order of the board;

41 (o) Failure to timely pay license renewal fees specified in this chapter;

42 (p) Violating a probation agreement, order, or other settlement agreement with this board or
43 any other licensing agency;

44 (q) Failing to inform the board of the physician's current residence and business address;

45 (r) Advertising by an applicant or licensee which is false or misleading, or which violates
46 any rule of the board, or which claims without substantiation the positive cure of any disease, or
47 professional superiority to or greater skill than that possessed by any other physician. An applicant
48 or licensee shall also be in violation of this provision if the applicant or licensee has a financial

1 interest in any organization, corporation or association which issues or conducts such advertising;

2 (s) Any other conduct that is unethical or unprofessional involving a minor;

3 (5) Any conduct or practice which is or might be harmful or dangerous to the mental or
4 physical health of a patient or the public; or incompetency, gross negligence or repeated negligence
5 in the performance of the functions or duties of any profession licensed or regulated by this chapter.
6 For the purposes of this subdivision, "repeated negligence" means the failure, on more than one
7 occasion, to use that degree of skill and learning ordinarily used under the same or similar
8 circumstances by the member of the applicant's or licensee's profession;

9 (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any
10 person to violate, any provision of this chapter or chapter 324, or of any lawful rule or regulation
11 adopted pursuant to this chapter or chapter 324;

12 (7) Impersonation of any person holding a certificate of registration or authority, permit or
13 license or allowing any person to use his or her certificate of registration or authority, permit, license
14 or diploma from any school;

15 (8) Revocation, suspension, restriction, modification, limitation, reprimand, warning,
16 censure, probation or other final disciplinary action against the holder of or applicant for a license or
17 other right to practice any profession regulated by this chapter by another state, territory, federal
18 agency or country, whether or not voluntarily agreed to by the licensee or applicant, including, but
19 not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse,
20 or discontinuing or limiting the practice of medicine while subject to an investigation or while
21 actually under investigation by any licensing authority, medical facility, branch of the Armed Forces
22 of the United States of America, insurance company, court, agency of the state or federal
23 government, or employer;

24 (9) A person is finally adjudged incapacitated or disabled by a court of competent
25 jurisdiction;

26 (10) Assisting or enabling any person to practice or offer to practice any profession licensed
27 or regulated by this chapter who is not registered and currently eligible to practice pursuant to this
28 chapter; or knowingly performing any act which in any way aids, assists, procures, advises, or
29 encourages any person to practice medicine who is not registered and currently eligible to practice
30 pursuant to this chapter. A physician who works in accordance with standing orders or protocols or
31 in accordance with the provisions of section 334.104 shall not be in violation of this subdivision;

32 (11) Issuance of a certificate of registration or authority, permit or license based upon a
33 material mistake of fact;

34 (12) Failure to display a valid certificate or license if so required by this chapter or any rule
35 promulgated pursuant to this chapter;

36 (13) Violation of the drug laws or rules and regulations of this state, including but not
37 limited to any provision of chapter 195, any other state, or the federal government;

38 (14) Knowingly making, or causing to be made, or aiding, or abetting in the making of, a
39 false statement in any birth, death or other certificate or document executed in connection with the
40 practice of the person's profession;

41 (15) Knowingly making a false statement, orally or in writing to the board;

42 (16) Soliciting patronage in person or by agents or representatives, or by any other means or
43 manner, under the person's own name or under the name of another person or concern, actual or
44 pretended, in such a manner as to confuse, deceive, or mislead the public as to the need or necessity
45 for or appropriateness of health care services for all patients, or the qualifications of an individual
46 person or persons to diagnose, render, or perform health care services;

47 (17) Using, or permitting the use of, the person's name under the designation of "Doctor",
48 "Dr.", "M.D.", or "D.O.", or any similar designation with reference to the commercial exploitation of

1 any goods, wares or merchandise;

2 (18) Knowingly making or causing to be made a false statement or misrepresentation of a
3 material fact, with intent to defraud, for payment pursuant to the provisions of chapter 208 or chapter
4 630 or for payment from Title XVIII or Title XIX of the federal Medicare program;

5 (19) Failure or refusal to properly guard against contagious, infectious or communicable
6 diseases or the spread thereof; maintaining an unsanitary office or performing professional services
7 under unsanitary conditions; or failure to report the existence of an unsanitary condition in the office
8 of a physician or in any health care facility to the board, in writing, within thirty days after the
9 discovery thereof;

10 (20) Any candidate for licensure or person licensed to practice as a physical therapist, paying
11 or offering to pay a referral fee or, notwithstanding section 334.010 to the contrary, practicing or
12 offering to practice professional physical therapy independent of the prescription and direction of a
13 person licensed and registered as a physician and surgeon pursuant to this chapter, as a dentist
14 pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as an advanced practice registered
15 nurse under chapter 335, or any licensed and registered physician, dentist, podiatrist, or advanced
16 practice registered nurse practicing in another jurisdiction, whose license is in good standing.
17 Furthermore, the physician, dentist, podiatrist, or advanced practice registered nurse shall provide
18 the patient with a prescription which may be taken to any facility selected by the patient;

19 (21) Any candidate for licensure or person licensed to practice as a physical therapist,
20 treating or attempting to treat ailments or other health conditions of human beings other than by
21 professional physical therapy and as authorized by sections 334.500 to 334.620;

22 (22) Any person licensed to practice as a physician or surgeon, requiring, as a condition of
23 the physician-patient relationship, that the patient receive prescribed drugs, devices or other
24 professional services directly from facilities of that physician's office or other entities under that
25 physician's ownership or control. A physician shall provide the patient with a prescription which
26 may be taken to [the] any facility selected by the patient and a physician knowingly failing to
27 disclose to a patient on a form approved by the advisory commission for professional physical
28 therapists as established by section 334.625 which is dated and signed by a patient or guardian
29 acknowledging that the patient or guardian has read and understands that the physician has a
30 pecuniary interest in a physical therapy or rehabilitation service providing prescribed treatment and
31 that the prescribed treatment is available on a competitive basis. This subdivision shall not apply to a
32 referral by one physician to another physician within a group of physicians practicing together;

33 (23) A pattern of personal use or consumption of any controlled substance unless it is
34 prescribed, dispensed or administered by another physician who is authorized by law to do so;

35 (24) Habitual intoxication or dependence on alcohol, evidence of which may include more
36 than one alcohol-related enforcement contact as defined by section 302.525;

37 (25) Failure to comply with a treatment program or an aftercare program entered into as part
38 of a board order, settlement agreement or licensee's professional health program;

39 (26) Revocation, suspension, limitation, probation, or restriction of any kind whatsoever of
40 any controlled substance authority, whether agreed to voluntarily or not, or voluntary termination of
41 a controlled substance authority while under investigation;

42 (27) For a physician to operate, conduct, manage, or establish an abortion facility, or for a
43 physician to perform an abortion in an abortion facility, if such facility comes under the definition of
44 an ambulatory surgical center pursuant to sections 197.200 to 197.240, and such facility has failed to
45 obtain or renew a license as an ambulatory surgical center.

46 3. Collaborative practice arrangements, protocols and standing orders shall be in writing and
47 signed and dated by a physician prior to their implementation.

48 4. After the filing of such complaint before the administrative hearing commission, the

1 proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by
2 the administrative hearing commission that the grounds, provided in subsection 2 of this section, for
3 disciplinary action are met, the board may, singly or in combination, warn, censure or place the
4 person named in the complaint on probation on such terms and conditions as the board deems
5 appropriate for a period not to exceed ten years, or may suspend the person's license, certificate or
6 permit for a period not to exceed three years, or restrict or limit the person's license, certificate or
7 permit for an indefinite period of time, or revoke the person's license, certificate, or permit, or
8 administer a public or private reprimand, or deny the person's application for a license, or
9 permanently withhold issuance of a license or require the person to submit to the care, counseling or
10 treatment of physicians designated by the board at the expense of the individual to be examined, or
11 require the person to attend such continuing educational courses and pass such examinations as the
12 board may direct.

13 5. In any order of revocation, the board may provide that the person may not apply for
14 reinstatement of the person's license for a period of time ranging from two to seven years following
15 the date of the order of revocation.

16 All stay orders shall toll this time period.

17 6. Before restoring to good standing a license, certificate or permit issued pursuant to this
18 chapter which has been in a revoked, suspended or inactive state for any cause for more than two
19 years, the board may require the applicant to attend such continuing medical education courses and
20 pass such examinations as the board may direct.

21 7. In any investigation, hearing or other proceeding to determine a licensee's or applicant's
22 fitness to practice, any record relating to any patient of the licensee or applicant shall be discoverable
23 by the board and admissible into evidence, regardless of any statutory or common law privilege
24 which such licensee, applicant, record custodian or patient might otherwise invoke. In addition, no
25 such licensee, applicant, or record custodian may withhold records or testimony bearing upon a
26 licensee's or applicant's fitness to practice on the ground of privilege between such licensee,
27 applicant or record custodian and a patient."; and

28
29 Further amend said bill by amending the title, enacting clause, and intersectional references
30 accordingly.

