

HOUSE BILL NO. 435

INTRODUCED BY J. ETCHART

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PROFESSIONAL LICENSE
5 DISCIPLINE; STANDARDIZING MISCONDUCT, SANCTIONS, AND REINSTATEMENT PROVISIONS FOR
6 PROFESSIONAL LICENSES; PROVIDING STANDARDS FOR LICENSEES AND LICENSE APPLICANTS TO
7 REPORT MISCONDUCT; PROVIDING STANDARDS FOR IMMUNITY FROM LIABILITY; REORGANIZING
8 PROVISIONS FOR REPORTS OF LICENSEE MISCONDUCT TO THE BOARD OF MEDICAL EXAMINERS
9 AND THE BOARD OF DENTISTRY; STANDARDIZING UNPROFESSIONAL CONDUCT PROVISIONS FOR
10 ALL BOARDS AND PROGRAMS; ADDING STANDARD FORMS OF MISCONDUCT APPLICABLE TO ALL
11 BOARDS AND PROGRAMS; STANDARDIZING TERMS RELATED TO SANCTIONS FOR BOARDS AND
12 PROGRAMS; REORGANIZING SANCTIONS FOR BOARDS AND PROGRAMS; CLARIFYING THE
13 MAXIMUM AMOUNT OF TIME A BOARD OR PROGRAM MAY ORDER A PROBATIONARY LICENSE
14 THROUGH A SANCTION; REPEALING UNNECESSARY PROVISIONS RELATED TO SANCTIONS FOR
15 BOARDS AND PROGRAMS; STANDARDIZING REINSTATEMENT PROCESSES FOR LICENSING BOARDS
16 AND PROGRAMS; CLARIFYING THAT THE PROCESS OF REINSTATEMENT ONLY APPLIES TO
17 REVOKED LICENSES; REVISING RULEMAKING AUTHORITY; REPEALING DUPLICATIVE PROVISIONS;
18 AMENDING SECTIONS 28-10-103, 37-1-312, 37-1-314, 37-1-316, 37-1-321, 37-1-406, 37-1-408, 37-1-410,
19 37-3-104, 37-3-404, 37-3-405, AND 37-4-313, MCA; AND REPEALING SECTIONS 37-1-105, 37-3-324, 37-3-
20 401, 37-4-312, 37-4-314, 37-11-320, 37-12-323, AND 37-17-314, MCA."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 NEW SECTION. **Section 1. Duty to report actions -- immunity from liability -- reports in**
25 **compliance with rulemaking.** (1) A license applicant shall immediately report to the department any action
26 against the applicant that arises while the application is pending and relates to the applicant's qualifications or
27 fitness to practice the profession or occupation.

28 (2) A licensee shall report to the department any action against the licensee that relates to the

1 licensee's qualifications or fitness to practice the profession or occupation within 30 days of final disposition of
2 the action.

3 (3) A licensee shall report in a timely manner to the department any information gained through
4 personal knowledge that appears to show that another licensee or license applicant UNDER THE SAME BOARD OR
5 PROGRAM has engaged in unprofessional conduct under 37-1-316, 37-1-410, or board or program rule.

6 (4) There is no liability on the part of, and no cause of action may arise against, a licensee who in
7 good faith provides information required in subsection (3) of this section or this title to the department.

8
9 **NEW SECTION. Section 2. Report to board of mental or physical incompetence IMPAIRMENT.** (1)

10 Notwithstanding any provision of state law dealing with confidentiality, each licensee, professional standards
11 review organization, ~~and the Montana medical association, Montana dental association, or any component~~
12 ~~society of either~~ ANY PROFESSIONAL association, and any other person may report to the licensee's respective
13 board that a licensee is physically or mentally impaired by habitual intemperance or excessive use of addictive
14 drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

15 (2) (a) For a licensee licensed under Title 37, chapter 3, information that relates to possible
16 physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol,
17 or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be
18 reported to the appropriate personnel of the medical assistance program established by a board in lieu of
19 reporting directly to the board.

20 (b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a
21 licensee and all facts and documentation in their possession if:

22 (i) the licensee fails or refuses to:

23 (A) comply with a reasonable request that the licensee undergo a mental, physical, or chemical
24 dependency evaluation or a combination of evaluations;

25 (B) undergo a reasonable course of recommended treatment, including reasonable aftercare; or

26 (C) satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

27 (ii) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

28 (3) This section applies to professional standards review organizations only to the extent that the

1 organizations are not prohibited from disclosing information under federal law.

2

3 **Section 3.** Section 28-10-103, MCA, is amended to read:

4 **"28-10-103. Actual versus ostensible agency -- limitation.** (1) An agency is either actual or
5 ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible
6 when the principal intentionally or by want of ordinary care causes a third person to believe another to be the
7 principal's agent when that person is not really employed by the principal.

8 (2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-
9 103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a
10 person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or
11 omission occurred.

12 (3) (a) Subsection (2) is not applicable unless the health care provider has instituted a policy or
13 practice requiring persons providing independent professional services to have insurance of a type and in the
14 amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other
15 similar health care facility rules or regulations. The insurance provided for in this subsection must be in effect
16 for the period of time during which a medical malpractice action must be brought as provided in 27-2-205.

17 (b) Failure of a health care provider providing independent professional services to comply with a
18 policy or practice implementing subsection (3)(a) constitutes unprofessional conduct pursuant to 37-1-
19 316(1)(e)(1)(s) and 37-2-304."

20

21 **Section 4.** Section 37-1-312, MCA, is amended to read:

22 **"37-1-312. Sanctions -- stay -- costs -- stipulations.** (1) ~~Upon~~ On a decision that a licensee or
23 license applicant has ~~violated this part or is unable to practice with reasonable skill and safety due to a physical~~
24 ~~or mental condition~~ committed unprofessional conduct as provided in 37-1-316, or ~~upon~~ on stipulation of the
25 parties as ~~provided in subsection (3)~~, the board may issue an order providing for one or any combination of the
26 following sanctions that are necessary to protect the public:

27 (a) revocation of the license;

28 (b) suspension of the license for a fixed or indefinite term;

- 1 (c) compliance with the conditions of probation for a period not to exceed 3 years;
- 2 ~~(e)(d)~~ restriction or limitation of the practice;
- 3 ~~(d)(e)~~ monitoring of the practice by a supervisor approved by the disciplining authority;
- 4 (f) satisfactory completion of a specific program of remedial education or treatment;
- 5 ~~(e)~~ monitoring of the practice by a supervisor approved by the disciplining authority;
- 6 (g) payment of a fine not to exceed \$5,000 for each violation. Fines must be deposited in the state
- 7 general fund.
- 8 (h) denial of a license application or issuance of the license for a probationary period not to exceed
- 9 3 years;
- 10 ~~(f)(i)~~ censure or reprimand, ~~either public or private;~~
- 11 ~~(g)~~ compliance with conditions of probation for a designated period of time;
- 12 ~~(h)~~ payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state
- 13 general fund.
- 14 ~~(i)~~ denial of a license application;
- 15 (j) refund of costs and fees billed to and collected from a consumer; or
- 16 (k) other appropriate action.

17 (2) A sanction may be totally or partly stayed by the board. ~~To determine which sanctions are~~
18 ~~appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public.~~
19 ~~Only after the determination has been made may the board consider and include in the order any requirements~~
20 ~~designed to rehabilitate the licensee or license applicant.~~

21 (3) The licensee or license applicant may enter into a stipulated agreement resolving potential or
22 pending charges that includes one or more of the sanctions in this section. The stipulation is an informal
23 disposition for the purposes of 2-4-603.

24 ~~(4)~~ A licensee shall surrender a suspended or revoked license to the board within 24 hours after
25 receiving notification of the suspension or revocation by mailing it or delivering it personally to the board."

27 **Section 5.** Section 37-1-314, MCA, is amended to read:

28 **"37-1-314. Reinstatement.** (1) A Unless a board orders a permanent revocation, a licensee whose

1 license has been ~~suspended or revoked under this part~~ may petition the board for reinstatement after an
2 interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or
3 order reinstatement and impose the terms and conditions as provided in 37-1-312.

4 (2) ____ The board may require the successful completion of an examination as a condition of
5 reinstatement and may treat a licensee whose license has been ~~revoked or suspended~~ as a new applicant for
6 the purposes of establishing the requisite licensure qualifications of licensure."

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8 **Section 6.** Section 37-1-316, MCA, is amended to read:

9 **"37-1-316. Unprofessional conduct.** (1) The following is unprofessional conduct for a licensee or
10 license applicant governed by this part:

11 (a) subject to Title 37, chapter 1, part 2, having a conviction, including a conviction following a plea
12 of nolo contendere, of a crime relating to or committed during the course of the person's the practice of the
13 profession or occupation or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an
14 appeal is pending;

15 (b) engaging in conduct listed as a sexual crime as provided in Title 45, chapter 5, part 5,
16 regardless of whether the conduct occurred during or is related to the licensee's profession or occupation;

17 (c) engaging in conduct in the profession or occupation found to be a violation of the Montana
18 Human Rights Act, Title 49, chapter 2;

19 (b)(d) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to
20 licensure or certification;

21 (e)(e) fraud, misrepresentation, deception, or concealment of a material fact in applying for or
22 assisting in securing a license or license renewal or in taking an examination required for licensure;

23 (d)(f) signing or issuing, in the licensee's professional capacity, a document or statement that the
24 licensee knows or reasonably ought to know contains a false or misleading statement;

25 (e)(g) a misleading, deceptive, false, or fraudulent advertisement or other representation in the
26 conduct of the profession or occupation;

27 (f)(h) offering, giving, or promising anything of value or benefit to a federal, state, or local
28 government employee or official for the purpose of influencing the employee or official to circumvent a federal,

1 state, or local law, rule, or ordinance governing the licensee's profession or occupation;

2 ~~(g)(i)~~ denial, suspension, revocation, probation, fine, surrender during investigation or in lieu of
3 discipline, or other license restriction or discipline ~~against a licensee by a state, province, territory, or Indian~~
4 ~~tribal government or the federal government~~ court, government agency, or private licensing or credentialing
5 entity if the action is not on appeal, not under judicial review, or has not been satisfied. For the purposes of this
6 section, a revoked license or certificate is not satisfied unless it is reinstated.

7 ~~(h)(j)~~ failure to comply with a term, condition, or limitation of a license by final order of a board;

8 ~~(i)(k)~~ revealing confidential information obtained as the result of a professional relationship without
9 the prior consent of the recipient of services, except as authorized or required by law;

10 ~~(j)(l)~~ use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter
11 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional
12 duties;

13 ~~(k)(m)~~ having a physical or mental disability that renders the licensee or license applicant unable to
14 practice the profession or occupation with reasonable skill and safety;

15 ~~(l)(n)~~ engaging in conduct in the course of one's practice while suffering from a contagious or
16 infectious disease involving serious risk to public health or without taking adequate precautions, including but
17 not limited to informed consent, protective gear, or cessation of practice;

18 ~~(m)(o)~~ misappropriating property or funds from a client or workplace or failing to comply with a board
19 rule regarding the accounting and distribution of a client's property or funds;

20 ~~(n)(p)~~ interference with an audit, investigation, inspection, or disciplinary proceeding by failure to
21 respond or cooperate, willful misrepresentation of facts, ~~by the use of threats or harassment against or~~
22 inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other
23 legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to
24 prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

25 ~~(o)(q)~~ assisting in the unlicensed practice of a profession or occupation or allowing another person or
26 organization to practice or offer to practice by use of the licensee's license, or practicing while the licensee's
27 license is in an inactive status;

28 ~~(p)(r)~~ failing to report the institution of or final action on a malpractice action, including a final decision

1 on appeal, against the licensee or of an action against the licensee by a:

2 (i) peer review committee;

3 (ii) professional association; or

4 (iii) local, state, federal, territorial, provincial, or Indian tribal government;

5 ~~(q)~~(s) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice
6 implementing 28-10-103(3)(a);

7 ~~(r)~~(t) conduct that does not meet the generally accepted standards of practice. A certified copy of a
8 malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act
9 or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to
10 prove conduct that does not meet generally accepted standards.

11 ~~(s)~~(u) the sole use of any electronic means, including teleconferencing, to obtain the information
12 required for the written certification and accompanying statements used to apply for a registry identification card
13 pursuant to Title 16, chapter 12, part 5-; or

14 (v) violating a federal, state, or local law or rule relating to the conduct of the profession or
15 occupation.

16 (2) Notwithstanding the provisions of this section or any other provision of this title governing
17 unprofessional conduct of a licensee or a license applicant under this title, it is not unprofessional conduct for a
18 licensee or a license applicant under this title to engage in the exercise of rights protected under the free
19 exercise clause or the free speech clause of the Montana constitution or the United States constitution."

20

21 **Section 7.** Section 37-1-321, MCA, is amended to read:

22 **"37-1-321. Authority to administratively suspend license.** (1) A board, the department if
23 authorized by the board, or the department for programs without a board may administratively suspend a
24 license when:

25 (a) an audit of continuing education, certification, or other qualifications necessary for continued
26 licensure demonstrates that the licensee is noncompliant with requirements established by the board or by the
27 department for a program;

28 (b) the licensee fails to respond to a board or department audit as provided in subsection (1)(a);

1 (c) the department receives notice of insufficient funds in the account used by the licensee to pay
2 for an administrative fee or a board fee or fine;

3 (d) the department has reasonable grounds to believe the licensee did not possess the
4 qualifications for initial issuance of the license; or

5 (e) a licensee fails to comply with the terms of a final order imposed pursuant to 37-1-312 or 37-1-
6 405.

7 (2) ~~Upon~~ On identifying one or more of the deficiencies listed in subsection (1), the department
8 shall inform the licensee in writing and provide the licensee 60 days from the date of the correspondence to
9 cure the deficiency.

10 (3) If the licensee fails to cure the deficiency as provided in subsection (2), a board, the
11 department if authorized by the board, or the department for programs without a board may administratively
12 suspend the license without additional notice or opportunity for hearing.

13 (4) (a) The administrative suspension remains in effect until:

14 (i) a board, the department if authorized by the board, or the department for programs without a
15 board determines the licensee has cured the deficiency; or

16 (ii) the license terminates as provided in 37-1-141.

17 (b) An administratively suspended license that is not renewed lapses, expires, or terminates as
18 provided in 37-1-141.

19 (5) A licensee may not use a protected title or practice the licensed profession or occupation while
20 the license is administratively suspended.

21 (6) To reinstate the administratively suspended license, a licensee must pay ~~an administrative a~~
22 ~~fee established by the department by rule~~ and submit information necessary to cure the deficiencies as
23 determined in the discretion of the department. The board or program may require successful completion of an
24 examination or other demonstration of the applicant's competency and may reinstate the license or impose
25 terms and conditions as provided in 37-1-312.

26 (7) Instead of an administrative suspension, the department may refer the deficiencies
27 demonstrated in subsection (1) for disciplinary proceedings as provided in 37-1-309 or 37-1-403, as applicable.
28 A board or the department may not proceed against a licensee for the same act or failure to act under both an

1 administrative suspension as provided in this section and a disciplinary proceeding as provided in 37-1-309 or
2 37-1-403."

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4 **Section 8.** Section 37-1-406, MCA, is amended to read:

5 **"37-1-406. Sanctions -- stay -- costs -- stipulations.** (1) ~~Upon~~ On a decision that a licensee or
6 license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical
7 or mental condition ~~committed unprofessional conduct as provided in 37-1-402 or administrative rule,~~ or ~~upon~~
8 on stipulation of the parties, ~~as provided in subsection (4),~~ the department may issue an order providing for one
9 or any combination of the following sanctions that are necessary to protect the public:

- 10 (a) revocation of the license;
- 11 (b) suspension of the license for a fixed or indefinite term;
- 12 (c) compliance with the conditions of probation for a period not to exceed 3 years;
- 13 ~~(e)(d)~~ restriction or limitation of the practice;
- 14 (e) monitoring of the practice by a supervisor approved by the disciplining authority;
- 15 ~~(d)(f)~~ satisfactory completion of a specific program of remedial education or treatment;
- 16 (g) payment of a fine not to exceed \$5,000 for each violation;
- 17 (h) denial of a license application or issuance of the license for a probationary period not to exceed
18 3 years;
- 19 ~~(e)~~ monitoring of the practice by a supervisor approved by the disciplining authority;
- 20 ~~(f)(i)~~ censure or reprimand, ~~either public or private;~~
- 21 ~~(g)~~ compliance with conditions of probation for a designated period of time;
- 22 ~~(h)~~ payment of a fine not to exceed \$1,000 for each violation;
- 23 ~~(i)~~ denial of a license application;
- 24 (j) refund of costs and fees billed to and collected from a consumer; or
- 25 (k) other appropriate action.
- 26 (2) Any fine collected by the department as a result of disciplinary actions must be deposited in the
27 state general fund.
- 28 (3) A sanction may be totally or partly stayed by the department. ~~To determine which sanctions are~~

1 appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the
2 public. Only after the determination has been made may the department consider and include in the order any
3 requirements designed to rehabilitate the licensee or license applicant.

4 (4) The licensee or license applicant may enter into a stipulated agreement resolving potential or
5 pending charges that includes one or more of the sanctions in this section. The stipulation is an informal
6 disposition for the purposes of 2-4-603.

7 (5) ~~— A licensee shall surrender a suspended or revoked license to the department within 24 hours
8 after receiving notification of the suspension or revocation by mailing the license or delivering it personally to
9 the department."~~

10

11 **Section 9.** Section 37-1-408, MCA, is amended to read:

12 **"37-1-408. Reinstatement.** ~~A~~ (1) Unless the department orders a permanent revocation, a licensee
13 whose license has been suspended or revoked under this part may petition the department for reinstatement
14 after an interval set by the department in the order. The department may hold a hearing on the petition and may
15 deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312.

16 (2) _____ The department may require the successful completion of an examination as a condition of
17 reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for
18 the purposes of establishing the requisite licensure qualifications of licensure."

19

20 **Section 10.** Section 37-1-410, MCA, is amended to read:

21 **"37-1-410. Unprofessional conduct.** (1) The following is unprofessional conduct for a licensee or
22 license applicant in a profession or occupation governed by this part:

23 (a) ~~being convicted, subject to Title 37, chapter 1, part 2, having a conviction,~~ including a
24 conviction following a plea of nolo contendere ~~and regardless of a pending appeal,~~ of a crime relating to or
25 committed during the course of practicing the person's the practice of the profession or occupation or involving
26 violence, the use or sale of drugs, fraud, deceit, or theft, ~~whether or not an appeal is pending;~~

27 (b) _____ engaging in conduct listed as a sexual crime as provided in Title 45, chapter 5, part 5,
28 regardless of whether the conduct occurred during or is related to the licensee's profession or occupation;

- 1 (c) engaging in conduct in the profession or occupation found to be a violation of the Montana
2 Human Rights Act, Title 49, chapter 2;
- 3 ~~(b)~~(d) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to
4 licensure or certification;
- 5 ~~(c)~~(e) ~~committing~~ fraud, misrepresentation, deception, or concealment of a material fact in applying
6 for or assisting in securing a license or license renewal or in taking an examination required for licensure;
- 7 ~~(d)~~(f) signing or issuing, in the licensee's professional capacity, a document or statement that the
8 licensee knows or reasonably ought to know contains a false or misleading statement;
- 9 ~~(e)~~(g) ~~making a~~ misleading, deceptive, false, or fraudulent advertisement or other representation in
10 the conduct of the profession or occupation;
- 11 ~~(f)~~(h) offering, giving, or promising anything of value or benefit to a federal, state, or local
12 government employee or official for the purpose of influencing the employee or official to circumvent a federal,
13 state, or local law, rule, or ordinance governing the licensee's profession or occupation;
- 14 ~~(g)~~(i) ~~receiving a denial, suspension, revocation, probation, fine, surrender during investigation in lieu~~
15 ~~of discipline, or other license restriction or discipline against a licensee by a state, province, territory, or Indian~~
16 ~~tribal government or the federal government by a court, government agency, or private licensing or~~
17 ~~credentialing entity if the action is not on appeal or, not under judicial review, or has been satisfied; For the~~
18 purposes of this section, a revoked license or certificate is not satisfied unless it is reinstated.
- 19 ~~(h)~~(j) ~~failing failure~~ to comply with a term, condition, or limitation of a license by final order of the
20 department;
- 21 ~~(i)~~(k) having a physical or mental disability that renders the licensee or license applicant unable to
22 practice the profession or occupation with reasonable skill and safety;
- 23 ~~(j)~~(l) misappropriating property or funds from a client or workplace or failing to comply with the
24 department's rule regarding the accounting and distribution of a client's property or funds;
- 25 ~~(k)~~(m) ~~interfering interference~~ with an audit, investigation, inspection, or disciplinary proceeding by
26 failure to respond or cooperate, willful misrepresentation of facts, ~~failure to respond to department inquiries~~
27 ~~regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or~~
28 inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other

1 legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent
2 a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

3 ~~(h)(n)~~ assisting in the unlicensed practice of a profession or occupation or allowing another person or
4 organization to practice or offer to practice the profession or occupation by use of the licensee's license, or
5 practicing while the licensee's license is in an inactive status;

6 ~~(m)(o)~~ using use of alcohol, an illegal a habit-forming drug, or a dangerous drug controlled substance,
7 as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the
8 performance of licensed professional duties; ~~or~~

9 ~~(p)~~ revealing confidential information obtained as the result of a professional relationship without
10 the prior consent of the recipient of services, except as authorized or required by law;

11 ~~(q)~~ engaging in the practice while suffering from a contagious or infectious disease involving
12 serious risk to public health or without taking adequate precautions, including but not limited to informed
13 consent, protective gear, or cessation of practice;

14 ~~(r)~~ violating a federal, state, or local law or rule relating to the conduct of the profession or
15 occupation; or

16 ~~(n)(s)~~ exhibiting conduct that does not meet generally accepted standards of practice. A certified
17 copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or
18 omission occurring ~~within~~ during the scope and course of the practice ~~and the course of the practice is~~
19 ~~considered~~ is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted
20 standards.

21 (2) Notwithstanding the provisions of this section or any other provision of this title governing
22 unprofessional conduct of a licensee or a license applicant under this title, it is not unprofessional conduct for a
23 licensee or a license applicant under this title to engage in the exercise of rights protected under the free
24 exercise clause or the free speech clause of the Montana constitution or the United States constitution."
25

26 **Section 11.** Section 37-3-104, MCA, is amended to read:

27 **"37-3-104. Medical assistants -- guidelines.** (1) The board shall adopt guidelines by administrative
28 rule for:

1 (a) the performance of administrative and clinical tasks by a medical assistant that are allowed to
2 be delegated by a physician, physician assistant, or podiatrist, including the administration of medications; and

3 (b) the level of physician, physician assistant, or podiatrist supervision required for a medical
4 assistant when performing specified administrative and clinical tasks delegated by a physician, physician
5 assistant, or podiatrist. However, the board shall adopt a rule requiring onsite supervision of a medical assistant
6 by a physician, physician assistant, or podiatrist for invasive procedures, administration of medication, or allergy
7 testing.

8 (2) The physician, physician assistant, or podiatrist who is supervising the medical assistant is
9 responsible for:

10 (a) ensuring that the medical assistant is competent to perform clinical tasks and meets the
11 requirements of the guidelines;

12 (b) ensuring that the performance of the clinical tasks by the medical assistant is in accordance
13 with the board's guidelines and good medical practice; and

14 (c) ensuring minimum educational requirements for the medical assistant.

15 (3) The board may hold the supervising physician, physician assistant, or podiatrist responsible in
16 accordance with ~~37-1-410~~ 37-1-316 or 37-3-323 for any acts of or omissions by the medical assistant acting in
17 the ordinary course and scope of the assigned duties."
18

19 **Section 12.** Section 37-3-404, MCA, is amended to read:

20 **"37-3-404. Immunity of person providing information.** A person, organization, association, society,
21 or health care facility which in good faith provides information to the state board of medical examiners as
22 required by ~~37-3-401~~, ~~37-3-402~~, or 37-3-403 is not subject to suit for civil damages as a result thereof."
23

24 **Section 13.** Section 37-3-405, MCA, is amended to read:

25 **"37-3-405. Suspension of license or privilege for failure to report.** The willful failure of any person,
26 organization, association, society, or health care facility to comply with ~~37-3-401~~, ~~37-3-402~~, or 37-3-403 is
27 grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the
28 agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to

1 exceed 1 month."

2

3 **Section 14.** Section 37-4-313, MCA, is amended to read:

4 **"37-4-313. Compelling licensee evaluation.** The board has the right to compel an evaluation of a
5 licensee, after notice to the licensee and a hearing if requested by the licensee, based on information reported
6 pursuant to ~~37-4-312~~ [section 2]. The evaluation must be conducted at a facility authorized to conduct
7 evaluations under a program referred to in 37-4-311."

8

9 NEW SECTION. **Section 15. Repealer.** The following sections of the Montana Code Annotated are
10 repealed:

- 11 37-1-105. Reporting disciplinary actions against licensees.
- 12 37-3-324. Reconsideration and review of actions of board.
- 13 37-3-401. Report of incompetence or unprofessional conduct.
- 14 37-4-312. Report of incompetence or unprofessional conduct.
- 15 37-4-314. Immunity of person providing information.
- 16 37-11-320. Duty to report violations -- immunity from liability.
- 17 37-12-323. Reconsideration of board action -- fee for restoration of license.
- 18 37-17-314. Immunity from liability.

19

20 NEW SECTION. **Section 16. Directions to code commissioner.** Sections 37-3-402, 37-3-403, 37-
21 3-404, and 37-3-405 are intended to be renumbered and codified as a new part in Title 37, chapter 2, with
22 [section 2].

23

24 NEW SECTION. **Section 17. Codification instruction.** (1) [Section 1] is intended to be codified as
25 an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section
26 1].

27 (2) [Section 2] is intended to be codified as a new part in Title 37, chapter 2, and the provisions of
28 Title 37, chapter 2, apply to [section 2].

1

- END -