

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR

SENATE BILL NO. 195

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Offered February 27, 2007.

Senate Substitute adopted, February 27, 2007.

Taken up for Perfection February 27, 2007. Bill declared Perfected and Ordered Printed.

0110S.02P

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Section A. Sections 338.010 and 338.095, RSMo, are repealed and three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** prescription orders,
3 **including receipt, transmission, or handling of such orders or**
4 **facilitating the dispensing of such orders; the designing, initiating,**
5 **implementing, and monitoring of a medication therapeutic plan as**
6 **defined by the prescription order so long as the prescription order is**
7 **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** prescription orders **and administration of viral**
10 **influenza vaccines by written protocol authorized by a physician for**
11 **persons twelve years of age or older as authorized by rule; the**
12 participation in drug selection according to state law and participation in drug
13 utilization reviews; the proper and safe storage of drugs and devices and the
14 maintenance of proper records thereof; consultation with patients and other
15 health care practitioners about the safe and effective use of drugs and devices;
16 and the offering or performing of those acts, services, operations, or transactions

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

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

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

37 **3.** Nothing in this section shall be construed as to prevent any person,
38 firm or corporation from owning a pharmacy regulated by sections 338.210 to
39 338.315, provided that a licensed pharmacist is in charge of such pharmacy.

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

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

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

49 **7. The state board of registration for the healing arts, under**
50 **section 334.125, RSMo, and the state board of pharmacy, under section**
51 **338.140, shall jointly promulgate rules regulating the use of protocols**
52 **for prescription orders for medication therapy services and**

53 administration of viral influenza vaccines. Such rules shall require
54 protocols to include provisions allowing for timely communication
55 between the pharmacist and the referring physician, and any other
56 patient protection provisions deemed appropriate by both boards. In
57 order to take effect, such rules shall be approved by a majority vote of
58 a quorum of each board. Neither board shall separately promulgate
59 rules regulating the use of protocols for prescription orders for
60 medication therapy services and administration of viral influenza
61 vaccines. Any rule or portion of a rule, as that term is defined in
62 section 536.010, RSMo, that is created under the authority delegated in
63 this section shall become effective only if it complies with and is
64 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
65 section 536.028, RSMo. This section and chapter 536, RSMo, are
66 nonseverable and if any of the powers vested with the general assembly
67 pursuant to chapter 536, RSMo, to review, to delay the effective date,
68 or to disapprove and annul a rule are subsequently held
69 unconstitutional, then the grant of rulemaking authority and any rule
70 proposed or adopted after August 28, 2007, shall be invalid and void.

71 8. The state board of pharmacy may grant a certificate of
72 medication therapeutic plan authority to a licensed pharmacist who
73 submits proof of successful completion of a board-approved course of
74 academic clinical study beyond a bachelor of science in pharmacy,
75 including but not limited to clinical assessment skills, from a nationally
76 accredited college or university, or a certification of equivalence issued
77 by a nationally recognized professional organization and approved by
78 the board of pharmacy.

79 9. Any pharmacist who has received a certificate of medication
80 therapeutic plan authority may engage in the designing, initiating,
81 implementing, and monitoring of a medication therapeutic plan as
82 defined by a prescription order from a physician that is specific to each
83 patient for care by a specific pharmacist.

84 10. Nothing in this section shall be construed to allow a
85 pharmacist to make a therapeutic substitution of a pharmaceutical
86 prescribed by a physician unless authorized by the written protocol or
87 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 shall be an unauthorized practice of pharmacy and hence**
28 **unlawful for any person other than the patient or the patient's**
29 **authorized representative to accept a prescription presented to be**
30 **dispensed unless that person is located on a premises licensed by the**
31 **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**
3 **section.**

4 **2. The board may refuse to issue any certificate of registration**
5 **or authority, permit or license, required under this chapter for one or**
6 **any combination of causes stated in subsection 2 of section 338.055, or**
7 **the board may, as a condition to issuing or renewing any such**

8 certificate of registration or authority, permit or license, require a
9 person to submit himself or herself for identification, intervention,
10 treatment, or rehabilitation by the well-being committee as provided in
11 this section. The board shall notify the applicant in writing of the
12 reasons for the refusal and shall advise the applicant of his or her right
13 to file a complaint with the administrative hearing commission as
14 provided by chapter 621, RSMo.

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

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

40 5. All records and proceedings of the committee which pertain
41 or refer to a licensee who may be, or who actually is, impaired shall be
42 privileged and confidential and shall be used by the committee and its
43 members only in the exercise of the proper function of the committee
44 and shall not be considered public records under chapter 610, RSMo,

45 and shall only be subject to discovery or introduction as evidence in
46 any civil, criminal, or administrative proceedings except as provided
47 in subsection 6 of this section.

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

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

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

54 (3) The committee is required to make a report to the board; or

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

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

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

81 9. The board may disclose information and records to the

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

89 10. Any rule or portion of a rule, as that term is defined in
90 section 536.010, RSMo, that is created under the authority delegated in
91 this section shall become effective only if it complies with and is
92 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
93 section 536.028, RSMo. This section and chapter 536, RSMo, are
94 nonseverable and if any of the powers vested with the general assembly
95 pursuant to chapter 536, RSMo, to review, to delay the effective date,
96 or to disapprove and annul a rule are subsequently held
97 unconstitutional, then the grant of rulemaking authority and any rule
98 proposed or adopted after August 28, 2007, shall be invalid and void.

Bill ✓

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