

1 *Senate* BILL NO. *146*
 2 INTRODUCED BY *Hentley*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE PRACTICE
 5 OF MEDICINE AS THE PARTNER, AGENT, OR EMPLOYEE OF OR IN
 6 JOINT VENTURE WITH A LICENSED PSYCHOLOGIST, LICENSED SOCIAL
 7 WORKER, OR LICENSED PROFESSIONAL COUNSELOR; AND AMENDING
 8 SECTION 37-3-322, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 37-3-322, MCA, is amended to read:

12 **"37-3-322. Unprofessional conduct.** As used in this
 13 chapter, "unprofessional conduct" means:

14 (1) resorting to fraud, misrepresentation, or deception
 15 in applying for or in securing a license or in taking the
 16 examination provided for in this chapter;

17 (2) performing abortion contrary to law;

18 (3) obtaining a fee or other compensation, either
 19 directly or indirectly, by the misrepresentation that a
 20 manifestly incurable disease, injury, or condition of a
 21 person can be cured;

22 (4) employing abusive billing practices;

23 (5) directly or indirectly giving or receiving a fee,
 24 commission, rebate, or other compensation for professional
 25 services not actually rendered. This prohibition does not

1 preclude the legal functioning of lawful professional
 2 partnerships, corporations, or associations.

3 (6) willful disobedience of the rules of the board;

4 (7) conviction of an offense involving moral turpitude
 5 or conviction of a felony involving moral turpitude, and the
 6 judgment of the conviction, unless pending on appeal, is
 7 conclusive evidence of unprofessional conduct;

8 (8) commission of an act of sexual abuse, misconduct,
 9 or exploitation related to the licensee's practice of
 10 medicine;

11 (9) administering, dispensing, or prescribing a
 12 narcotic or hallucinatory drug, as defined by the federal
 13 food and drug administration or successors, otherwise than
 14 in the course of legitimate or reputable professional
 15 practice;

16 (10) conviction or violation of a federal or state law
 17 regulating the possession, distribution, or use of a
 18 narcotic or hallucinatory drug, as defined by the federal
 19 food and drug administration, and the judgment of
 20 conviction, unless pending on appeal, is conclusive evidence
 21 of unprofessional conduct;

22 (11) habitual intemperance or excessive use of narcotic
 23 drugs, alcohol, or any other drug or substance to the extent
 24 that the use impairs the user physically or mentally;

25 (12) conduct unbecoming a person licensed to practice



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1 medicine or detrimental to the best interests of the public
2 as defined by rule of the board;

3 (13) conduct likely to deceive, defraud, or harm the
4 public;

5 (14) making a false or misleading statement regarding
6 the licensee's skill or the effectiveness or value of the
7 medicine, treatment, or remedy prescribed by the licensee or
8 at the licensee's direction in the treatment of a disease or
9 other condition of the body or mind;

10 (15) resorting to fraud, misrepresentation, or deception
11 in the examination or treatment of a person or in billing or
12 reporting to a person, company, institution, or
13 organization;

14 (16) use of a false, fraudulent, or deceptive statement
15 in any document connected with the practice of medicine;

16 (17) practicing medicine under a false or assumed name;

17 (18) testifying in court on a contingency basis;

18 (19) conspiring to misrepresent or willfully
19 misrepresenting medical conditions improperly to increase or
20 decrease a settlement, award, verdict, or judgment;

21 (20) aiding or abetting in the practice of medicine by a
22 person not licensed to practice medicine or a person whose
23 license to practice medicine is suspended;

24 (21) allowing another person or organization to use the
25 licensee's license to practice medicine;

1 (22) malpractice or negligent practice;

2 (23) except as provided in this subsection, practicing
3 medicine as the partner, agent, or employee of or in joint
4 venture with a person who does not hold a license to
5 practice medicine within this state; however, this does not
6 prohibit;

7 (a) the incorporation of an individual licensee or
8 group of licensees as a professional service corporation
9 under Title 35, chapter 4; ~~7-nor-does-it-apply-to~~

10 (b) a single consultation with or a single treatment by
11 a person or persons licensed to practice medicine and
12 surgery in another state or territory of the United States
13 or foreign country; or

14 (c) practicing medicine as the partner, agent, or
15 employee of or in joint venture with a licensed
16 psychologist, licensed social worker, or licensed
17 professional counselor;

18 (24) willfully or negligently violating the
19 confidentiality between physician and patient, except as
20 required by law;

21 (25) failing to report to the board any adverse
22 judgment, settlement, or award arising from a medical
23 liability claim related to acts or conduct similar to acts
24 or conduct that would constitute grounds for action as
25 defined in this section;

1 (26) failing to transfer pertinent and necessary medical
2 records to another physician when requested to do so by the
3 subject patient or by the patient's legally designated
4 representative;

5 (27) failing to furnish to the board or its
6 investigators or representatives information legally
7 requested by the board;

8 (28) failing to cooperate with a lawful investigation
9 conducted by the board;

10 (29) violating or attempting to violate, directly or
11 indirectly, or assisting in or abetting the violation of or
12 conspiring to violate parts 1 through 3 of this chapter or
13 the rules authorized by them;

14 (30) having been subject to disciplinary action of
15 another state or jurisdiction against a license or other
16 authorization to practice medicine, based upon acts or
17 conduct by the licensee similar to acts or conduct that
18 would constitute grounds for action as defined in this
19 section. A certified copy of the record of the action taken
20 by the other state or jurisdiction is evidence of
21 unprofessional conduct.

22 (31) any other act, whether specifically enumerated or
23 not, which, in fact, constitutes unprofessional conduct."

-End-

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

1 SENATE BILL NO. 146
2 INTRODUCED BY KEATING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE PRACTICE
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7 ~~WORKER, OR LICENSED-PROFESSIONAL-COUNSELOR~~ HOSPITAL, MEDICAL
8 ASSISTANCE FACILITY, OR OTHER LICENSED HEALTH CARE PROVIDER;
9 AND AMENDING SECTION 37-3-322, MCA."

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12 **Section 1.** Section 37-3-322, MCA, is amended to read:

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17 examination provided for in this chapter;

18 (2) performing abortion contrary to law;

19 (3) obtaining a fee or other compensation, either
20 directly or indirectly, by the misrepresentation that a
21 manifestly incurable disease, injury, or condition of a
22 person can be cured;

23 (4) employing abusive billing practices;

24 (5) directly or indirectly giving or receiving a fee,
25 commission, rebate, or other compensation for professional

1 services not actually rendered. This prohibition does not
2 preclude the legal functioning of lawful professional
3 partnerships, corporations, or associations.

4 (6) willful disobedience of the rules of the board;

5 (7) conviction of an offense involving moral turpitude
6 or conviction of a felony involving moral turpitude, and the
7 judgment of the conviction, unless pending on appeal, is
8 conclusive evidence of unprofessional conduct;

9 (8) commission of an act of sexual abuse, misconduct,
10 or exploitation related to the licensee's practice of
11 medicine;

12 (9) administering, dispensing, or prescribing a
13 narcotic or hallucinatory drug, as defined by the federal
14 food and drug administration or successors, otherwise than
15 in the course of legitimate or reputable professional
16 practice;

17 (10) conviction or violation of a federal or state law
18 regulating the possession, distribution, or use of a
19 narcotic or hallucinatory drug, as defined by the federal
20 food and drug administration, and the judgment of
21 conviction, unless pending on appeal, is conclusive evidence
22 of unprofessional conduct;

23 (11) habitual intemperance or excessive use of narcotic
24 drugs, alcohol, or any other drug or substance to the extent
25 that the use impairs the user physically or mentally;

SECOND READING



1 (12) conduct unbecoming a person licensed to practice
2 medicine or detrimental to the best interests of the public
3 as defined by rule of the board;

4 (13) conduct likely to deceive, defraud, or harm the
5 public;

6 (14) making a false or misleading statement regarding
7 the licensee's skill or the effectiveness or value of the
8 medicine, treatment, or remedy prescribed by the licensee or
9 at the licensee's direction in the treatment of a disease or
10 other condition of the body or mind;

11 (15) resorting to fraud, misrepresentation, or deception
12 in the examination or treatment of a person or in billing or
13 reporting to a person, company, institution, or
14 organization;

15 (16) use of a false, fraudulent, or deceptive statement
16 in any document connected with the practice of medicine;

17 (17) practicing medicine under a false or assumed name;

18 (18) testifying in court on a contingency basis;

19 (19) conspiring to misrepresent or willfully
20 misrepresenting medical conditions improperly to increase or
21 decrease a settlement, award, verdict, or judgment;

22 (20) aiding or abetting in the practice of medicine by a
23 person not licensed to practice medicine or a person whose
24 license to practice medicine is suspended;

25 (21) allowing another person or organization to use the

1 licensee's license to practice medicine;

2 (22) malpractice or negligent practice;

3 (23) except as provided in this subsection, practicing
4 medicine as the partner, agent, or employee of or in joint
5 venture with a person who does not hold a license to
6 practice medicine within this state; however, this does not
7 prohibit:

8 (a) the incorporation of an individual licensee or
9 group of licensees as a professional service corporation
10 under Title 35, chapter 4; ~~7-nor-does-it-apply-to~~

11 (b) a single consultation with or a single treatment by
12 a person or persons licensed to practice medicine and
13 surgery in another state or territory of the United States
14 or foreign country; or

15 (c) practicing medicine as the partner, agent, or
16 employee of or in joint venture with a licensed
17 psychologist, licensed social worker, or licensed
18 professional counselor; HOSPITAL, MEDICAL ASSISTANCE
19 FACILITY, OR OTHER LICENSED HEALTH CARE PROVIDER. HOWEVER:

20 (I) THE PARTNERSHIP, AGENCY, EMPLOYMENT, OR JOINT
21 VENTURE MUST BE EVIDENCED BY A WRITTEN AGREEMENT CONTAINING
22 LANGUAGE TO THE EFFECT THAT THE RELATIONSHIP CREATED BY THE
23 AGREEMENT MAY NOT AFFECT THE EXERCISE OF THE PHYSICIAN'S
24 INDEPENDENT JUDGMENT IN THE PRACTICE OF MEDICINE;

25 (II) THE PHYSICIAN'S INDEPENDENT JUDGMENT IN THE

1 PRACTICE OF MEDICINE MUST IN FACT BE UNAFFECTED BY THE
2 RELATIONSHIP; AND

3 (III) THE PHYSICIAN MAY NOT BE REQUIRED TO REFER ANY
4 PATIENT TO A PARTICULAR PROVIDER OR SUPPLIER OR TAKE ANY
5 OTHER ACTION THE PHYSICIAN DETERMINES NOT TO BE IN THE
6 PATIENT'S BEST INTEREST.

7 (24) willfully or negligently violating the
8 confidentiality between physician and patient, except as
9 required by law;

10 (25) failing to report to the board any adverse
11 judgment, settlement, or award arising from a medical
12 liability claim related to acts or conduct similar to acts
13 or conduct that would constitute grounds for action as
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15 (26) failing to transfer pertinent and necessary medical
16 records to another physician when requested to do so by the
17 subject patient or by the patient's legally designated
18 representative;

19 (27) failing to furnish to the board or its
20 investigators or representatives information legally
21 requested by the board;

22 (28) failing to cooperate with a lawful investigation
23 conducted by the board;

24 (29) violating or attempting to violate, directly or
25 indirectly, or assisting in or abetting the violation of or

1 conspiring to violate parts 1 through 3 of this chapter or
2 the rules authorized by them;

3 (30) having been subject to disciplinary action of
4 another state or jurisdiction against a license or other
5 authorization to practice medicine, based upon acts or
6 conduct by the licensee similar to acts or conduct that
7 would constitute grounds for action as defined in this
8 section. A certified copy of the record of the action taken
9 by the other state or jurisdiction is evidence of
10 unprofessional conduct.

11 (31) any other act, whether specifically enumerated or
12 not, which, in fact, constitutes unprofessional conduct."

-End-

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6 JOINT VENTURE WITH A LICENSED-PSYCHOLOGIST, LICENSED--SOCIAL
7 WORKER, OR LICENSED-PROFESSIONAL-COUNSELOR HOSPITAL, MEDICAL
8 ASSISTANCE FACILITY, OR OTHER LICENSED HEALTH CARE PROVIDER;
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 37-3-322, MCA, is amended to read:

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24 drugs, alcohol, or any other drug or substance to the extent
25 that the use impairs the user physically or mentally;

THIRD READING



1 (12) conduct unbecoming a person licensed to practice
2 medicine or detrimental to the best interests of the public
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