

HOUSE BILL NO. 128

INTRODUCED BY JOHNSON, WEEDING, STICKNEY, KNAPP, STANG

BY REQUEST OF THE BOARD OF MEDICAL EXAMINERS

IN THE HOUSE

JANUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
JANUARY 12, 1989	FIRST READING.
JANUARY 25, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 26, 1989	PRINTING REPORT.
JANUARY 27, 1989	SECOND READING, DO PASS AS AMENDED.
JANUARY 28, 1989	ENGROSSING REPORT.
JANUARY 30, 1989	THIRD READING, PASSED. AYES, 85; NOES, 14.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
MARCH 13, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 14, 1989	SECOND READING, CONCURRED IN.
MARCH 16, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 17, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 128
2 INTRODUCED BY John Johnm... Stuckey Roger Knapp
3 BY REQUEST OF THE BOARD OF MEDICAL EXAMINERS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD
6 OF MEDICAL EXAMINERS TO IMPOSE A FINE; AND AMENDING SECTION
7 37-3-323, MCA."
8

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

10 **Section 1.** Section 37-3-323, MCA, is amended to read:

11 "37-3-323. Revocation or suspension of license --
12 probation -- fine. (1) The board may make an investigation
13 whenever it is brought to its attention that there is reason
14 to suspect that a person having a license or certificate to
15 practice medicine in this state:

16 (a) is mentally or physically unable to safely engage
17 in the practice of medicine, has procured his license to
18 practice medicine by fraud or misrepresentation or through
19 mistake, has been declared incompetent by a court of
20 competent jurisdiction and thereafter has not been lawfully
21 declared competent, or has a condition which impairs his
22 intellect or judgment to the extent that it incapacitates
23 him for the safe performance of professional duties;

24 (b) has been guilty of unprofessional conduct;

25 (c) has practiced medicine while his license was

1 suspended or revoked;

2 (d) has had his license suspended or revoked by any
3 licensing authority for reasons other than nonpayment of
4 fees; or

5 (e) while under probation has violated its terms.

6 (2) The investigation shall be for the purpose of
7 determining the probability of the existence of these
8 conditions or the commission of these offenses and may
9 include requiring the person to submit to a physical
10 examination or a mental examination, or both, by a physician
11 or physicians selected by the board if it appears to be in
12 the best interests of the public that this evaluation be
13 secured. The board may examine and scrutinize the hospital
14 records and reports of a licensee as part of the
15 examination, and copies of these shall be released to the
16 board on written request. If the board has reasonable cause
17 to believe that this probability exists, the department
18 shall mail to the person at his last address of record with
19 the department a specification of the charges against him,
20 together with a written notice of the time and place of the
21 hearing on such charges, advising him that he may be present
22 in person and by counsel if he so desires to offer evidence
23 and be heard in his defense. The time fixed for the hearing
24 may not be less than 30 days from the date of mailing the
25 notice.

1 (3) A person, including a member of the board, may
 2 file a sworn complaint with the department against a person
 3 having a license to practice medicine in this state charging
 4 him with the commission of any of the offenses set forth in
 5 37-3-322 or with any of the offenses or conditions set forth
 6 in subsection (1) of this section, which complaint shall set
 7 forth a specification of the charges. When the complaint is
 8 filed, the department shall mail a copy to the person
 9 accused at his last address of record with the department,
 10 together with a written citation of the time and place of
 11 the hearing on it.

12 (4) At the hearing the board shall adopt a resolution
 13 finding him guilty or not guilty of the matters charged. If
 14 the board finds that the offenses or conditions referred to
 15 in 37-3-322 or subsection (1) of this section do not exist
 16 with respect to the person or if he is found not guilty, the
 17 board shall dismiss the charges or complaint. If the board
 18 finds that the offenses or conditions referred to in
 19 37-3-322 or in subsection (1) of this section do exist and
 20 the person is found guilty, the board shall:

21 (a) revoke his license;

22 (b) suspend his right to practice for a period not
 23 exceeding 1 year;

24 (c) suspend its judgment of revocation on the terms
 25 and conditions to be determined by the board;

1 (d) place him on probation; or

2 (e) impose a fine, not to exceed \$500 an incident; or

3 ~~(e)~~(f) take any other action in relation to
 4 disciplining him as the board in its discretion considers
 5 proper.

6 (5) In a case of revocation, suspension, or probation,
 7 the department shall enter in its records the facts of the
 8 action and of subsequent action of the board with respect to
 9 it.

10 (6) On the expiration of the term of suspension, the
 11 licensee shall be reinstated by the board if he furnishes
 12 the board with evidence that he is then of good moral
 13 character and conduct and restored to good health and that
 14 he has not practiced medicine in this state during the term
 15 of suspension. If the evidence fails to establish to the
 16 satisfaction of the board that the holder is then of good
 17 moral character and conduct or restored to good health or if
 18 the evidence shows he has practiced medicine in this state
 19 during the term of suspension, the board shall revoke the
 20 license at a hearing with notice and the procedure provided
 21 in subsection (1) of this section. The revocation is final
 22 and absolute.

23 (7) If a person holding a license to practice medicine
 24 under this chapter is by a final order or adjudication of a
 25 court of competent jurisdiction adjudged to be mentally

1 incompetent or seriously mentally ill or addicted to the use
2 of narcotics, his license may be suspended by the board. The
3 suspension continues until the licensee is found or adjudged
4 by the court to be restored to reason or cured or until he
5 is discharged as restored to reason or cured and his
6 professional competence has been proven to the satisfaction
7 of the board.

8 (8) The remedies and method of enforcement of this
9 part as provided for in this section are concurrent and in
10 addition to the other remedies provided in this part."

11 NEW SECTION. Section 2. Extension of authority. Any
12 existing authority to make rules on the subject of the
13 provisions of [this act] is extended to the provisions of
14 [this act].

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

HOUSE BILL NO. 128

INTRODUCED BY JOHNSON, WEEDING, STICKNEY, KNAPP, STANG

BY REQUEST OF THE BOARD OF MEDICAL EXAMINERS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF MEDICAL EXAMINERS TO IMPOSE A FINE; AND AMENDING SECTION 37-3-323, MCA."

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

Section 1. Section 37-3-323, MCA, is amended to read:

"37-3-323. Revocation or suspension of license -- probation -- fine. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was

suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or
 (e) impose a fine, not to exceed \$500 an incident; or
 (f) take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally

1 incompetent or seriously mentally ill or addicted to the use
2 of narcotics, his license may be suspended by the board. The
3 suspension continues until the licensee is found or adjudged
4 by the court to be restored to reason or cured or until he
5 is discharged as restored to reason or cured and his
6 professional competence has been proven to the satisfaction
7 of the board.

8 (8) A FINE IMPOSED UNDER THIS SECTION MUST BE
9 DEPOSITED IN THE BOARD'S EARMARKED REVENUE ACCOUNT FOR THE
10 USE OF THE BOARD.

11 ~~(8)~~(9) The remedies and method of enforcement of this
12 part as provided for in this section are concurrent and in
13 addition to the other remedies provided in this part."

14 NEW SECTION. Section 2. Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

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