

HOUSE BILL NO. 253

INTRODUCED BY SPRING, KNAPP

BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE HOUSE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
JANUARY 18, 1989	FIRST READING.
FEBRUARY 11, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1989	PRINTING REPORT.
FEBRUARY 14, 1989	SECOND READING, DO PASS.
FEBRUARY 15, 1989	ENGROSSING REPORT.
FEBRUARY 16, 1989	THIRD READING, PASSED. AYES, 97; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
	FIRST READING.
MARCH 11, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1989	SECOND READING, CONCURRED IN.
MARCH 15, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

MARCH 16, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 253  
2 INTRODUCED BY Rep. Spring Roger Knapp  
3 BY REQUEST OF THE DEPARTMENT OF COMMERCE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
6 DEFINITION OF "UNPROFESSIONAL CONDUCT" FOR PURPOSES OF THE  
7 PRACTICE OF MEDICINE; AND AMENDING SECTION 37-3-322, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 "37-3-322. Unprofessional conduct. As used in this  
12 chapter, "unprofessional conduct" means:

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

16 (2) performing abortion contrary to law;

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

21 (4) employing abusive billing practices;

22 (5) directly or indirectly giving or receiving a fee,  
23 commission, rebate, or other compensation for professional  
24 services not actually and personally rendered. This  
25 prohibition does not preclude the legal functioning of

1 lawful professional partnerships, corporations, or  
2 associations.

3 (4)(6) willful disobedience of the rules of the board;

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

9 (8) commission or conviction of a felony, whether or  
10 not related to the practice of medicine, or the entry of a  
11 guilty or nolo contendere plea to a felony charge;

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

15 (6)(10) administering, dispensing, or prescribing a  
16 narcotic or hallucinatory drug, as defined by the federal  
17 food and drug administration or successors, otherwise than  
18 in the course of legitimate or reputable professional  
19 practice;

20 (7)(11) conviction or violation of a federal or state  
21 law regulating the possession, distribution, or use of a  
22 narcotic or hallucinatory drug, as defined by the federal  
23 food and drug administration, and the judgment of  
24 conviction, unless pending on appeal, is conclusive evidence  
25 of unprofessional conduct;

1       ~~(8)~~(12) habitual intemperance or excessive use of  
2       narcotic drugs, alcohol, or any other drug or substance to  
3       the extent that the use impairs the user physically or  
4       mentally;

5       ~~(9)~~(13) conduct unbecoming a person licensed to  
6       practice medicine or detrimental to the best interests of  
7       the public as defined by rule of the board;

8       (14) conduct likely to deceive, defraud, or harm the  
9       public;

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

15       ~~(10)~~(16) resorting to fraud, misrepresentation, or  
16       deception in the examination or treatment of a person or in  
17       billing or reporting to a person, company, institution, or  
18       organization;

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

21       (18) practicing medicine under a false or assumed name;

22       ~~(11)~~(19) testifying in court on a contingency basis;

23       ~~(12)~~(20) conspiring to misrepresent or willfully  
24       misrepresenting medical conditions improperly to increase or  
25       decrease a settlement, award, verdict, or judgment;

1       ~~(13)~~(21) aiding or abetting in the practice of medicine  
2       by a person not licensed to practice medicine or a person  
3       whose license to practice medicine is suspended;

4       (22) allowing another person or organization to use the  
5       licensee's license to practice medicine;

6       ~~(14)~~(23) gross malpractice or negligent practice;

7       ~~(15)~~(24) practicing medicine as the partner, agent, or  
8       employee of or in joint venture with a person who does not  
9       hold a license to practice medicine within this state;  
10       however, this does not prohibit the incorporation of an  
11       individual licensee or group of licensees as a professional  
12       service corporation under Title 35, chapter 4, nor does this  
13       it apply to a single consultation with or a single treatment  
14       by a person or persons licensed to practice medicine and  
15       surgery in another state or territory of the United States  
16       or foreign country;

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

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

25       (27) failing to transfer pertinent and necessary

1 [this act].

-End-

1 medical records to another physician when requested to do so  
2 by the subject patient or by the patient's legally  
3 designated representative;

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

7 (29) failing to cooperate with a lawful investigation  
8 conducted by the board;

9 {16}(30) violating or attempting to violate, directly  
10 or indirectly, or assisting in or abetting the violation of  
11 or conspiring to violate parts 1 through 3 of this chapter  
12 or the rules authorized by them; or

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

21 {17}(32) any other act, whether specifically enumerated  
22 or not, which, in fact, constitutes unprofessional conduct."

23 NEW SECTION. Section 2. Extension of authority. Any  
24 existing authority to make rules on the subject of the  
25 provisions of [this act] is extended to the provisions of

APPROVED BY COMM. ON  
HUMAN SERVICES AND AGING

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

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taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either  
directly or indirectly, by the misrepresentation that a  
manifestly incurable disease, injury, or condition of a  
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prohibition does not preclude the legal functioning of

lawful professional partnerships, corporations, or  
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~~(4)~~(6) willful disobedience of the rules of the board;

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turpitude or conviction of a felony involving moral  
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conduct;

~~(8)--commission--or--conviction--of--a--felony,--whether--or~~  
~~not--related--to--the--practice--of--medicine,--or--the--entry--of--a~~  
~~guilty--or--nolo--contendere--plea--to--a--felony--charge;~~

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misconduct, or exploitation related to the licensee's  
practice of medicine;

~~(6)~~~~(10)~~(9) administering, dispensing, or prescribing a  
narcotic or hallucinatory drug, as defined by the federal  
food and drug administration or successors, otherwise than  
in the course of legitimate or reputable professional  
practice;

~~(7)~~~~(11)~~(10) conviction or violation of a federal or  
state law regulating the possession, distribution, or use of  
a narcotic or hallucinatory drug, as defined by the federal  
food and drug administration, and the judgment of  
conviction, unless pending on appeal, is conclusive evidence  
of unprofessional conduct;

1        †8†12†(11) habitual intemperance or excessive use of  
 2        narcotic drugs, alcohol, or any other drug or substance to  
 3        the extent that the use impairs the user physically or  
 4        mentally;

5        †9†13†(12) conduct unbecoming a person licensed to  
 6        practice medicine or detrimental to the best interests of  
 7        the public as defined by rule of the board;

8        †14†(13) conduct likely to deceive, defraud, or harm  
 9        the public;

10       †15†(14) making a false or misleading statement  
 11       regarding the licensee's skill or the effectiveness or value  
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22       †18†(17) practicing medicine under a false or assumed  
 23       name;

24       †11†19†(18) testifying in court on a contingency  
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 21 section. A certified copy of the record of the action taken  
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 3 existing authority to make rules on the subject of the  
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