SECOND REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 717

97TH GENERAL ASSEMBLY

5284H.02C D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 338.010, 338.020, 338.059, and 338.220, RSMo, and to enact in lieu thereof six new sections relating to the licensing of certain professions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 338.010, 338.020, 338.059, and 338.220, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 316.267, 338.010, 338.020, 338.059, 338.165, and 338.220, to read as follows:

316.267. No employee or employer primarily engaged in the practice of combing, braiding, or curling hair without the use of potentially harmful chemicals shall be subject to the provisions of chapter 329 while working in conjunction with any licensee for public amusement or entertainment venue as defined in this chapter.

338.010. 1. The "practice of pharmacy" means the interpretation, implementation, and evaluation of medical prescription orders, including any legend drugs under 21 U.S.C. Section 353; receipt, transmission, or handling of such orders or facilitating the dispensing of such orders; the designing, initiating, implementing, and monitoring of a medication therapeutic plan as defined by the prescription order so long as the prescription order is specific to each patient for care by a pharmacist; the compounding, dispensing, labeling, and administration of drugs and devices pursuant to medical prescription orders and administration of viral influenza, pneumonia, shingles**, hepatitis A, hepatitis B, diphtheria, tetanus, pertussis,** and meningitis vaccines by written protocol authorized by a physician for persons twelve years of age or older as authorized by rule or the administration of pneumonia, shingles, **hepatitis A, hepatitis B, diphtheria, tetanus, pertussis,** and meningitis vaccines by written protocol authorized by a physician for a specific patient as authorized by rule; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of drugs and devices and

EXPLANATION — Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

the maintenance of proper records thereof; consultation with patients and other health care practitioners, and veterinarians and their clients about legend drugs, about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy. No person shall engage in the practice of pharmacy unless he is licensed under the provisions of this chapter. This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct supervision of a pharmacist from assisting the pharmacist in any of his or her duties. This assistance in no way is intended to relieve the pharmacist from his or her responsibilities for compliance with this chapter and he or she will be responsible for the actions of the auxiliary personnel acting in his or her assistance. This chapter shall also not be construed to prohibit or interfere with any legally registered practitioner of medicine, dentistry, or podiatry, or veterinary medicine only for use in animals, or the practice of optometry in accordance with and as provided in sections 195.070 and 336.220 in the compounding, administering, prescribing, or dispensing of his or her own prescriptions.

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

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

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

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

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

7. The state board of registration for the healing arts, under section 334.125, and the state board of pharmacy, under section 338.140, shall jointly promulgate rules regulating the use of protocols for prescription orders for medication therapy services and administration of viral influenza vaccines. Such rules shall require protocols to include provisions allowing for timely communication between the pharmacist and the referring physician, and any other patient protection provisions deemed appropriate by both boards. In order to take effect, such rules shall

be approved by a majority vote of a quorum of each board. Neither board shall separately promulgate rules regulating the use of protocols for prescription orders for medication therapy services and administration of viral influenza vaccines. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

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

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

10. Nothing in this section shall be construed to allow a pharmacist to make a therapeutic substitution of a pharmaceutical prescribed by a physician unless authorized by the written protocol or the physician's prescription order.

11. "Veterinarian", "doctor of veterinary medicine", "practitioner of veterinary medicine", "DVM", "VMD", "BVSe", "BVMS", "BSe (Vet Science)", "VMB", "MRCVS", or an equivalent title means a person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine or holds an Educational Commission for Foreign Veterinary Graduates (EDFVG) certificate issued by the American Veterinary Medical Association (AVMA).

12. In addition to other requirements established by the joint promulgation of rules by the board of pharmacy and the state board of registration for the healing arts:

(1) A pharmacist shall administer vaccines in accordance with treatment guidelines established by the Centers for Disease Control and Prevention (CDC);

(2) A pharmacist who is administering a vaccine shall request a patient to remain in the pharmacy a safe amount of time after administering the vaccine to observe any adverse reactions. Such pharmacist shall have adopted emergency treatment protocols;

(3) In addition to other requirements by the board, a pharmacist shall receive additional training as required by the board and evidenced by receiving a certificate from the board upon completion, and shall display the certification in his or her pharmacy where vaccines are delivered.

13. A pharmacist shall provide a written report within fourteen days of administration of a vaccine to the patient's primary health care provider, if provided by the patient, containing:

(1) The identity of the patient;

(2) The identity of the vaccine or vaccines administered;

(3) The route of administration;

(4) The anatomic site of the administration;

(5) The dose administered; and

(6) The date of administration.

338.020. **1.** Every person who shall hereafter desire to be licensed as a pharmacist shall file with the board of pharmacy an application setting forth his name and age, the place, or places, at which and the time spent in the study of the science and art of pharmacy, and the practical experience which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the board of pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration.

2. So long as the person involved does not represent or hold himself or herself out as a pharmacist licensed to practice in this state, a Missouri pharmacist license shall not be required for a legally qualified pharmacist serving in the armed forces of the United States, or a legally qualified pharmacist employed by the government of the United States or any bureau, division, or agency thereof, who is engaged in the practice of pharmacy while in the discharge of his or her official duties.

338.059. 1. It shall be the duty of a licensed pharmacist or a physician to affix or have affixed by someone under the pharmacist's or physician's supervision a label to each and every container provided to a consumer in which is placed any prescription drug upon which is typed or written the following information:

(1) The date the prescription is filled;

(2) The sequential number **or other unique identifier**;

(3) The patient's name;

(4) The prescriber's directions for usage;

(5) The prescriber's name;

(6) The name and address of the pharmacy;

(7) The exact name and dosage of the drug dispensed;

(8) There may be one line under the information provided in subdivisions (1) to (7) of this subsection stating "Refill" with a blank line or squares following or the words "No Refill";

(9) When a generic substitution is dispensed, the name of the manufacturer or an abbreviation thereof shall appear on the label or in the pharmacist's records as required in section 338.100.

2. The label of any drug which is sold at wholesale in this state and which requires a prescription to be dispensed at retail shall contain the name of the manufacturer, expiration date, if applicable, batch or lot number and national drug code.

338.165. 1. As used in this section, the following terms mean:

(1) "Board", the Missouri board of pharmacy;

(2) "Hospital", a hospital as defined in section 197.020;

(3) "Hospital clinic or facility", a clinic or facility under the common control, management, or ownership of the same hospital or hospital system;

(4) "Medical staff committee", the committee or other body of a hospital or hospital system responsible for formulating policies regarding pharmacy services and medication management;

(5) "Medication order", an order for a legend drug or device that is:

(a) Authorized or issued by an authorized prescriber acting within the scope of his or her professional practice or pursuant to a protocol or standing order approved by the medical staff committee; and

(b) To be distributed or administered to the patient by a health care practitioner or lawfully authorized designee at a hospital or a hospital clinic or facility;

(6) "Patient", an individual receiving medical diagnosis, treatment, or care at a hospital or a hospital clinic or facility.

2. The department of health and senior services shall have sole authority and responsibility for the inspection and licensure of hospitals as provided by chapter 197 including, but not limited to, all parts, services, functions, support functions, and activities which contribute directly or indirectly to patient care of any kind whatsoever. However, the board may inspect a class B pharmacy or any portion thereof that is not under the inspection authority vested in the department of health and senior services by chapter 197 to determine compliance with this chapter or the rules of the board. This section shall not be construed to bar the board from conducting an investigation pursuant to a public or

governmental complaint to determine compliance by an individual licensee or registrant of the board with any applicable provisions of this chapter or the rules of the board.

3. The department of health and senior services shall have authority to promulgate rules in conjunction with the board governing medication distribution and the provision of medication therapy services by a pharmacist at or within a hospital. Rules may include, but are not limited to, medication management, preparation, compounding, administration, storage, distribution, packaging and labeling. Until such rules are jointly promulgated, hospitals shall comply with all applicable state law and department of health and senior services rules governing pharmacy services and medication management in hospitals. The rulemaking authority granted herein to the department of health and senior services shall not include the dispensing of medication by prescription.

4. All pharmacists providing medication therapy services shall obtain a certificate of medication therapeutic plan authority as provided by rule of the board. Medication therapy services may be provided by a pharmacist for patients of a hospital pursuant to a protocol with a physician as required by section 338.010 or pursuant to a protocol approved by the medical staff committee. However, the medical staff protocol shall include a process whereby an exemption to the protocol for a patient may be granted for clinical efficacy should the patient's physician make such request. The medical staff protocol shall also include an appeals process to request a change in specific protocol based on medical evidence presented by a physician on staff.

5. Medication may be dispensed by a class A hospital pharmacy located in a hospital to a hospital patient for use or administration.

6. A drug distributor license shall not be required to transfer medication from a class B hospital pharmacy to a hospital clinic or facility for patient care or treatment.

7. Medication dispensed by a class A pharmacy located in a hospital to a hospital patient for use or administration outside of the hospital under a medical staff-approved protocol for medication therapy shall be dispensed only by a prescription order for medication therapy from an individual physician for a specific patient.

8. Medication dispensed by a hospital to a hospital patient for use or administration outside of the hospital shall be labeled as provided by rule promulgated by the department of health and senior services and the board including, medication distributed for administration by or under the supervision of a health care practitioner at a hospital clinic or facility.

9. This section shall not be construed to preempt any law or rule governing controlled substances.

10. Any rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall only become effective if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be invalid and void.

11. The board shall appoint an advisory committee to review and make recommendations to the board on the merit of all rules and regulations to be jointly promulgated by the board and the department of health and senior services pursuant to the joint rulemaking authority granted by this section. The advisory committee shall consist of:

(1) Two representatives designated by the Missouri Hospital Association, one of whom shall be a pharmacist;

(2) One pharmacist designated by the Missouri Society of Health System Pharmacists;

(3) One pharmacist designated by the Missouri Pharmacy Association;

(4) One pharmacist designated by the department of health and senior services from a hospital with a licensed bed count that does not exceed fifty beds or from a critical access hospital as defined by the department of social services for purposes of MO HealthNet reimbursement;

(5) One pharmacist designated by the department of health and senior services from a hospital with a licensed bed count that exceeds two hundred beds; and

(6) One pharmacist designated by the board with experience in the provision of hospital pharmacy services.

12. Nothing in this section shall be construed to limit the authority of a licensed health care provider to prescribe, administer, or dispense medications and treatments within the scope of their professional practice.

338.220. 1. It shall be unlawful for any person, copartnership, association, corporation or any other business entity to open, establish, operate, or maintain any pharmacy as defined by statute without first obtaining a permit or license to do so from the Missouri board of pharmacy. A permit shall not be required for an individual licensed pharmacist to perform nondispensing activities outside of a pharmacy, as provided by the rules of the board. A permit shall not be required for an individual licensed pharmacist to administer drugs, vaccines, and biologicals by

protocol, as permitted by law, outside of a pharmacy. The following classes of pharmacy permits or licenses are hereby established:

(1) Class A: Community/ambulatory;

(2) Class B: Hospital **[**outpatient**]** pharmacy;

(3) Class C: Long-term care;

(4) Class D: Nonsterile compounding;

(5) Class E: Radio pharmaceutical;

(6) Class F: Renal dialysis;

(7) Class G: Medical gas;

(8) Class H: Sterile product compounding;

(9) Class I: Consultant services;

(10) Class J: Shared service;

(11) Class K: Internet;

(12) Class L: Veterinary;

(13) Class M: Specialty (bleeding disorder);

(14) Class N: Automated dispensing system (health care facility);

(15) Class O: Automated dispensing system (ambulatory care);

(16) Class P: Practitioner office/clinic.

2. Application for such permit or license shall be made upon a form furnished to the applicant; shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration; and shall be accompanied by a permit or license fee. The permit or license issued shall be renewable upon payment of a renewal fee. Separate applications shall be made and separate permits or licenses required for each pharmacy opened, established, operated, or maintained by the same owner.

3. All permits, licenses or renewal fees collected pursuant to the provisions of sections 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board of pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general assembly.

4. Class L: veterinary permit shall not be construed to prohibit or interfere with any legally registered practitioner of veterinary medicine in the compounding, administering, prescribing, or dispensing of their own prescriptions, or medicine, drug, or pharmaceutical product to be used for animals.

5. Except for any legend drugs under 21 U.S.C. Section 353, the provisions of this section shall not apply to the sale, dispensing, or filling of a pharmaceutical product or drug used for treating animals.

6. A "class B hospital pharmacy" shall be defined as a pharmacy owned, managed, or operated by a hospital as defined by section 197.020 or a clinic or facility under common control, management, or ownership of the same hospital or hospital system. This section shall not be construed to require a class B hospital pharmacy permit or license for hospitals solely providing services within the practice of pharmacy under the jurisdiction of, and the licensure granted by, the department of health and senior services under chapter 197.

7. Upon application to the board, any hospital that holds a pharmacy permit or license on the effective date of this section shall be entitled to obtain a class B pharmacy permit or license without fee, provided such application shall be submitted to the board on or before January 1, 2015.

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