

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1278

AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 25-14-1-1.5, AS AMENDED BY P.L.103-2011, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.5. The following definitions apply throughout this article:

- (1) "Agency" refers to the Indiana professional licensing agency established by IC 25-1-5-3.
- (2) "Board" refers to the state board of dentistry established under this chapter.
- (3) "Deep sedation" means a drug induced depression of consciousness during which cardiovascular function is usually maintained and the individual may:
 - (A) not be easily aroused;
 - (B) be able to respond purposefully following repeated or painful stimulation;
 - (C) have an impaired ability to independently maintain ventilatory function;
 - (D) require assistance in maintaining a patent airway; and
 - (E) have inadequate spontaneous ventilation.
- (4) "Dental assistant" means a qualified dental staff member, other than a licensed dental hygienist, who assists a licensed dentist with patient care while working under the dentist's direct

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supervision.

(5) "Direct supervision" means that a licensed dentist is physically present in the facility when patient care is provided by the dental assistant.

(6) "Enteral route of administration" means a technique of administering an agent so that it is absorbed through the gastrointestinal tract or oral mucosa.

(7) "General anesthesia" means a drug induced loss of consciousness during which cardiovascular function may be impaired and the individual:

(A) is not arousable, even by painful stimulation;

(B) often has an impaired ability to independently maintain ventilatory function;

(C) often requires assistance in maintaining a patent airway; and

(D) may require positive pressure ventilation because of depressed spontaneous ventilation or drug induced depression of neuromuscular function.

(8) "INSPECT program" means the Indiana scheduled prescription electronic collection and tracking program established by IC 25-1-13-4.

~~(8)~~ (9) "Moderate sedation" means a drug induced depression of consciousness during which cardiovascular function is usually maintained and the individual:

(A) responds purposefully to verbal commands, either alone or with light tactile stimulation;

(B) does not require intervention to maintain a patent airway; and

(C) has adequate spontaneous ventilation.

~~(9)~~ (10) "Parenteral route of administration" means a technique of administering an agent by intravenous or intramuscular injection so that it bypasses the gastrointestinal tract.

SECTION 2. IC 25-14-1-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 23.5. A dentist may include a report from the INSPECT program in a patient's medical file. Any disclosure or release of a patient's medical file must be in compliance with IC 35-48-7-11.1.**

SECTION 3. IC 25-22.5-1-1.1, AS AMENDED BY P.L.158-2013, SECTION 283, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.1. As used in this article:

(a) "Practice of medicine or osteopathic medicine" means any one

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- (1) or a combination of the following:
- (1) Holding oneself out to the public as being engaged in:
 - (A) the diagnosis, treatment, correction, or prevention of any disease, ailment, defect, injury, infirmity, deformity, pain, or other condition of human beings;
 - (B) the suggestion, recommendation, or prescription or administration of any form of treatment, without limitation;
 - (C) the performing of any kind of surgical operation upon a human being, including tattooing (except for providing a tattoo as defined in IC 35-45-21-4(a)), in which human tissue is cut, burned, or vaporized by the use of any mechanical means, laser, or ionizing radiation, or the penetration of the skin or body orifice by any means, for the intended palliation, relief, or cure; or
 - (D) the prevention of any physical, mental, or functional ailment or defect of any person.
 - (2) The maintenance of an office or a place of business for the reception, examination, or treatment of persons suffering from disease, ailment, defect, injury, infirmity, deformity, pain, or other conditions of body or mind.
 - (3) Attaching the designation "doctor of medicine", "M.D.", "doctor of osteopathy", "D.O.", "osteopathic medical physician", "physician", "surgeon", or "physician and surgeon", either alone or in connection with other words, or any other words or abbreviations to a name, indicating or inducing others to believe that the person is engaged in the practice of medicine or osteopathic medicine (as defined in this section).
 - (4) Providing diagnostic or treatment services to a person in Indiana when the diagnostic or treatment services:
 - (A) are transmitted through electronic communications; and
 - (B) are on a regular, routine, and nonepisodic basis or under an oral or written agreement to regularly provide medical services.

In addition to the exceptions described in section 2 of this chapter, a nonresident physician who is located outside Indiana does not practice medicine or osteopathy in Indiana by providing a second opinion to a licensee or diagnostic or treatment services to a patient in Indiana following medical care originally provided to the patient while outside Indiana.

 - b) "Board" refers to the medical licensing board of Indiana.
 - c) "Diagnose or diagnosis" means to examine a patient, parts of a patient's body, substances taken or removed from a patient's body, or



materials produced by a patient's body to determine the source or nature of a disease or other physical or mental condition, or to hold oneself out or represent that a person is a physician and is so examining a patient. It is not necessary that the examination be made in the presence of the patient; it may be made on information supplied either directly or indirectly by the patient.

(d) "Drug or medicine" means any medicine, compound, or chemical or biological preparation intended for internal or external use of humans, and all substances intended to be used for the diagnosis, cure, mitigation, or prevention of diseases or abnormalities of humans, which are recognized in the latest editions published of the United States Pharmacopoeia or National Formulary, or otherwise established as a drug or medicine.

(e) "Licensee" means any individual holding a valid unlimited license issued by the board under this article.

(f) "Prescribe or prescription" means to direct, order, or designate the use of or manner of using a drug, medicine, or treatment, by spoken or written words or other means.

(g) "Physician" means any person who holds the degree of doctor of medicine or doctor of osteopathy or its equivalent and who holds a valid unlimited license to practice medicine or osteopathic medicine in Indiana.

(h) "Medical school" means a nationally accredited college of medicine or of osteopathic medicine approved by the board.

(i) "Physician assistant" means an individual who:

- (1) is supervised by a physician;
- (2) graduated from an approved physician assistant program described in IC 25-27.5-2-2;
- (3) passed the examination administered by the National Commission on Certification of Physician Assistants (NCCPA) and maintains certification; and
- (4) has been licensed by the physician assistant committee under IC 25-27.5.

(j) "Agency" refers to the Indiana professional licensing agency under IC 25-1-5.

(k) "INSPECT program" means the Indiana scheduled prescription electronic collection and tracking program established by IC 25-1-13-4.

SECTION 4. IC 25-22.5-13-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 7. A physician may include a report from the INSPECT program in a patient's medical file. Any**

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disclosure or release of a patient's medical file must be in compliance with IC 35-48-7-11.1.

SECTION 5. IC 25-23-1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 1.5. As used in this chapter, "INSPECT program" means the Indiana scheduled prescription electronic collection and tracking program established by IC 25-1-13-4.**

SECTION 6. IC 25-23-1-19.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 19.9. (a) This section does not apply to certified registered nurse anesthetists.**

(b) An advanced practice nurse may include a report from the INSPECT program in a patient's medical file. Any disclosure or release of a patient's medical file must be in compliance with IC 35-48-7-11.1.

SECTION 7. IC 25-26-21-6, AS ADDED BY P.L.122-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 6. (a) A person seeking to provide home medical equipment services in Indiana shall apply to the board for a license in the manner prescribed by the board.**

(b) A provider shall do the following:

(1) Comply with:

- (A) federal and state law; and**
- (B) regulatory requirements;**

for home medical equipment services.

(2) Maintain a physical facility and medical equipment inventory in Indiana.

(3) Purchase and maintain in an amount determined by the board:

- (A) product liability insurance; and**
- (B) professional liability insurance;**

and maintain proof of the insurance coverage.

(4) Establish procedures to ensure that an employee or a contractor of the provider who is engaged in the following home medical equipment activities receives annual training:

- (A) Delivery.**
- (B) Orientation of a patient in the use of home medical equipment.**
- (C) Reimbursement assistance.**
- (D) Maintenance.**
- (E) Repair.**
- (F) Cleaning and inventory control.**
- (G) Administration of home medical equipment services.**

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The provider shall maintain documentation of the annual training received by each employee or contractor.

(5) Maintain clinical records on a customer receiving home medical equipment services.

(6) Establish home medical equipment maintenance and personnel policies.

(7) Provide home medical equipment emergency maintenance services available twenty-four (24) hours a day.

(8) Comply with the rules adopted by the board under this chapter.

(c) An out-of-state provider may obtain a license to provide home medical equipment services in Indiana on the basis of reciprocity if:

(1) the out-of-state provider possesses a valid license granted by another state;

(2) the legal standards for licensure in the other state are comparable to the standards under this chapter; and

(3) the other state extends reciprocity to providers licensed in Indiana.

However, if the requirements for licensure under this chapter are more restrictive than the standards of the other state, the out-of-state provider must comply with the additional requirements of this chapter to obtain a reciprocal license under this chapter.

SECTION 8. IC 25-26-21-8, AS AMENDED BY P.L.105-2008, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) A provider must be licensed by the board before the provider may provide home medical equipment services. If a provider provides home medical equipment services from more than one (1) location in Indiana, the provider must obtain a license under this chapter for each location.

(b) An applicant shall submit the application to the board on a form adopted by the board. The nonrefundable application fee set by the board must be submitted with the application. The fee must be deposited in the state general fund.

(c) If the board determines that the applicant:

(1) meets the standards set forth by the board; and

(2) has satisfied the requirements under this chapter and the requirements established by the board by rule;

the board shall notify the applicant in writing that the license is being issued to the applicant. The license is effective on the applicant's receipt of the written notification.

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(d) A license issued under this chapter expires biennially on a date established by the agency under IC 25-1-5-4. An entity that is licensed under this chapter shall display the license or a copy of the license on the licensed premises.

(e) A license lapses without any action by the board if an application for renewal has not been filed and the required fee has not been paid by the established biennial renewal date.

(f) If a license under this chapter has been expired for not more than three (3) years, the license may be reinstated by the board if the holder of the license meets the requirements of IC 25-1-8-6(c).

(g) If a license under this chapter has been expired for more than three (3) years, the license may be reinstated by the board if the holder of the license meets the requirements for reinstatement under IC 25-1-8-6(d).

(h) The board may adopt rules that permit an out-of-state provider to obtain a license on the basis of reciprocity if:

- (1) the out-of-state provider possesses a valid license granted by another state;
- (2) the legal standards for licensure in the other state are comparable to the standards under this chapter; and
- (3) the other state extends reciprocity to providers licensed in Indiana.

However, if the requirements for licensure under this chapter are more restrictive than the standards of the other state, the out-of-state provider must comply with the additional requirements of this chapter to obtain a reciprocal license under this chapter.

SECTION 9. IC 25-27.5-2-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 7.5. "INSPECT program" means the Indiana scheduled prescription electronic collection and tracking program established by IC 25-1-13-4.**

SECTION 10. IC 25-27.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 4.5. A physician assistant may include a report from the INSPECT program in a patient's medical file. Any disclosure or release of a patient's medical file must be in compliance with IC 35-48-7-11.1.**

SECTION 11. IC 25-29-1-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 10.5. "INSPECT program" means the Indiana scheduled prescription electronic collection and tracking program established by IC 25-1-13-4.**

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SECTION 12. IC 25-29-1-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 17. A podiatrist may include a report from the INSPECT program in a patient's medical file. Any disclosure or release of a patient's medical file must be in compliance with IC 35-48-7-11.1.**

SECTION 13. IC 35-48-7-11.1, AS AMENDED BY P.L.201-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11.1. (a) Information received by the INSPECT program under section 8.1 of this chapter is confidential.

(b) The board shall carry out a program to protect the confidentiality of the information described in subsection (a). The board may disclose the information to another person only under subsection (c), (d), or (g).

(c) The board may disclose confidential information described in subsection (a) to any person who is authorized to engage in receiving, processing, or storing the information.

(d) Except as provided in subsections (e) and (f), the board may release confidential information described in subsection (a) to the following persons:

(1) A member of the board or another governing body that licenses practitioners and is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.

(2) An investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general, who is engaged in:

- (A) an investigation;
- (B) an adjudication; or
- (C) a prosecution;

of a violation under any state or federal law that involves a controlled substance.

(3) A law enforcement officer who is an employee of:

- (A) a local, state, or federal law enforcement agency; or
- (B) an entity that regulates controlled substances or enforces controlled substances rules or laws in another state;

that is certified to receive controlled substance prescription drug information from the INSPECT program.

(4) A practitioner or practitioner's agent certified to receive information from the INSPECT program.

(5) A controlled substance monitoring program in another state with which Indiana has established an interoperability agreement.

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(6) The state toxicologist.

(7) A certified representative of the Medicaid retrospective and prospective drug utilization review program.

(8) A substance abuse assistance program for a licensed health care provider who:

(A) has prescriptive authority under IC 25; and

(B) is participating in the assistance program.

(9) An individual who holds a valid temporary medical permit issued under IC 25-22.5-5-4 or **a temporary fellowship permit issued under IC 25-22.5-5-4.6.**

(10) Beginning July 1, 2016, a county coroner conducting a medical investigation of the cause of death.

(e) Information provided to an individual under:

(1) subsection (d)(3) is limited to information:

(A) concerning an individual or proceeding involving the unlawful diversion or misuse of a schedule II, III, IV, or V controlled substance; and

(B) that will assist in an investigation or proceeding; and

(2) subsection (d)(4) may be released only for the purpose of:

(A) providing medical or pharmaceutical treatment; or

(B) evaluating the need for providing medical or pharmaceutical treatment to a patient.

(f) Before the board releases confidential information under subsection (d), the applicant must be approved by the INSPECT program in a manner prescribed by the board.

(g) The board may release to:

(1) a member of the board or another governing body that licenses practitioners;

(2) an investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general; or

(3) a law enforcement officer who is:

(A) authorized by the state police department to receive controlled substance prescription drug information; and

(B) approved by the board to receive the type of information released;

confidential information generated from computer records that identifies practitioners who are prescribing or dispensing large quantities of a controlled substance.

(h) The information described in subsection (g) may not be released until it has been reviewed by:

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(1) a member of the board who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data; or

(2) the board's designee;

and until that member or the designee has certified that further investigation is warranted. However, failure to comply with this subsection does not invalidate the use of any evidence that is otherwise admissible in a proceeding described in subsection (i).

(i) An investigator or a law enforcement officer receiving confidential information under subsection (c), (d), or (g) may disclose the information to a law enforcement officer or an attorney for the office of the attorney general for use as evidence in the following:

(1) A proceeding under IC 16-42-20.

(2) A proceeding under any state or federal law that involves a controlled substance.

(3) A criminal proceeding or a proceeding in juvenile court that involves a controlled substance.

(j) The board may compile statistical reports from the information described in subsection (a). The reports must not include information that identifies any practitioner, ultimate user, or other person administering a controlled substance. Statistical reports compiled under this subsection are public records.

(k) Except as provided in IC 25-22.5-13, this section may not be construed to require a practitioner to obtain information about a patient from the data base.

(l) A practitioner **who checks the INSPECT program for the available data on a patient** is immune from civil liability for an injury, death, or loss to a person solely due to a practitioner:

(1) seeking or not seeking information from the INSPECT program; **and**

(2) in good faith using the information for the treatment of the patient.

The civil immunity described in this subsection does not extend to a practitioner if the practitioner receives information directly from the INSPECT program and then negligently misuses this information. This subsection does not apply to an act or omission that is a result of gross negligence or intentional misconduct.

(m) The board may review the records of the INSPECT program. If the board determines that a violation of the law may have occurred, the board shall notify the appropriate law enforcement agency or the relevant government body responsible for the licensure, regulation, or discipline of practitioners authorized by law to prescribe controlled



substances.

(n) A practitioner who in good faith discloses information based on a report from the INSPECT program to a law enforcement agency is immune from criminal or civil liability. A practitioner that discloses information to a law enforcement agency under this subsection is presumed to have acted in good faith.

(o) A practitioner's agent may act as a delegate and check INSPECT program reports on behalf of the practitioner.

(p) A patient may access a report from the INSPECT program that has been included in the patient's medical file by a practitioner.

SECTION 14. IC 35-48-7-11.5, AS AMENDED BY P.L.109-2015, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11.5. (a) Each board described in IC 25-0.5-11-1 that regulates a health care provider that prescribes or dispenses prescription drugs shall do the following:

(1) Establish prescribing norms and dispensing guidelines that, if ~~violated,~~ **exceeded,** justify the unsolicited dissemination of exception reports under section 11.1(d) of this chapter **not later than December 1, 2016.**

(2) Provide the information determined in subdivision (1) to the board.

(b) The exception reports that are disseminated based on the prescribing norms and dispensing guidelines established under subsection (a) must comply with the following requirements:

(1) A report of prescriptive activity of a practitioner to the practitioner's professional licensing board designee when the practitioner deviates from the dispensing guidelines or the prescribing norms for the prescribing of a controlled substance within a particular drug class.

(2) A reporting of recipient activity to the practitioners who prescribed or dispensed the controlled substance when the recipient deviates from the dispensing guidelines of a controlled substance within a particular drug class.

(c) The board designee may, at the designee's discretion, forward the exception report under subsection (b)(2) to ~~only the following a law enforcement agency~~ for purposes of an investigation.

(1) ~~A law enforcement agency:~~

(2) ~~The attorney general:~~

(d) The board designee may, at the designee's discretion, forward the exception report under subsection (b)(1) to the attorney general for purposes of an investigation.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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