

SECOND REGULAR SESSION

SENATE BILL NO. 711

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR McKENNA.

Read 1st time January 12, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2671.02I

AN ACT

To amend chapter 324, RSMo, by adding thereto fourteen new sections relating to the regulation of certain medical personnel, with penalty provisions.

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

Section A. Chapter 324, RSMo, is amended by adding thereto fourteen new sections, to be known as sections 324.300, 324.303, 324.306, 324.309, 324.312, 324.315, 324.318, 324.321, 324.324, 324.327, 324.330, 324.333, 324.336 and 324.338, to read as follows:

324.300. As used in sections 324.300 to 324.338, the following terms mean:

- (1) "Board", the board of ionizing radiation technology created in section 324.303;**
- (2) "Department", the department of economic development;**
- (3) "Director", the director of the division of professional registration;**
- (4) "Division", the division of professional registration;**
- (5) "Ionizing radiation", X-rays, gamma rays, alpha and beta particles;**
- (6) "Licensed practitioner", a chiropractic physician licensed pursuant to chapter 331, RSMo, a dentist licensed pursuant to chapter 332, RSMo, a medical or osteopathic physician licensed pursuant to chapter 334, RSMo, or a podiatrist licensed pursuant to chapter 330, RSMo;**
- (7) "Nuclear medicine technologist", a person certified by the division to use radionuclides on human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner;**
- (8) "Nuclear medicine technology", the use of radionuclides on human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner;**
- (9) "Radiation physicist", a person who is certified by the American Board of Radiology, American Board of Medical Physics or American Board of Science and**

Nuclear Medicine in radiological physics or one of the subspecialties of radiological physics or is eligible for such certification, or who possesses qualifications acceptable to the division;

(10) "Radiation therapist", a person certified by the division to use ionizing radiation on human beings for therapeutic purposes under the supervision of a licensed practitioner;

(11) "Radiographer", a person certified by the division to use ionizing radiation on human beings for diagnostic purposes under the supervision of a licensed practitioner;

(12) "Radiography", the use of ionizing radiation on human beings for diagnostic purposes;

(13) "Radiologic technologist", a person certified by the division in one or more recognized specialties for the use or assisting in the application of ionizing radiation on human beings, including nuclear medicine technology, radiation therapy technology, and radiography, under the supervision of a licensed practitioner;

(14) "Radiologic technology", the use of ionizing radiation on human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

324.303. 1. The "Board of Ionizing Radiation Technology" is hereby created in the department of economic development. It shall advise the division of professional registration in the development of rules issued pursuant to the provision of sections 324.300 to 324.338. The board shall consist of nine members to be appointed by the governor with the advice and consent of the senate, as follows:

(1) Two physicians licensed pursuant to chapter 334, RSMo, one of whom is board certified by the American Board of Radiology and one of whom is board certified by the American Osteopathic Board of Radiology;

(2) One radiation physicist;

(3) One nuclear medicine technologist certified by the American Registry of Radiologic Technologists or the Nuclear Medicine Technology Certification Board;

(4) Two radiographers registered by the American Registry of Radiologic Technologists;

(5) One radiation therapist certified by the American Registry of Radiologic Technologists; and

(6) Two public members.

2. The members of the board shall be entitled to receive actual and necessary travel expenses, and compensation at the rate of fifty dollars per day, while attending meetings or discharging the actual duties of the board.

3. The appropriate professional association or society may submit a list of potential members of allied health professions for consideration by the

governor. Except for the appointment of the first board, every radiologic technologist appointed to the board shall be certified by the division.

4. Each member of the board shall be a resident of this state at the time of appointment and for one year immediately preceding. All members of the board other than the public members shall have actively practiced the requisite profession for a period of at least three years prior to appointment.

5. The following board members shall serve an initial term of four years: a nuclear medicine technologist; a radiation physicist; a radiographer registered by the American Registry of Radiologic Technologists; and one physician licensed pursuant to chapter 334, RSMo, who is board certified by the American Board of Radiology. The following board members shall serve an initial term of three years: a radiographer certified by the American Registry of Radiologic Technologists; one physician licensed pursuant to chapter 334, RSMo, who is board certified by the American Osteopathic Board of Radiology; and one public member. The following members shall serve an initial term of two years: a radiation therapist certified by the American Registry of Radiologic Technologists; and one public member. All succeeding terms of office shall be four years.

6. Appointments to the board after the initial appointment and appointments to fill vacancies shall be made in the same manner as the initial appointments. Appointments to fill vacancies shall be for only the unexpired portion of the term vacated. A board member who is appointed to fill a vacancy and serves more than half of an unexpired term shall be considered to have served a full term. No member shall serve for more than two consecutive terms.

7. The public members shall be at the time of such member's appointment a citizen of the United States; a resident of this state for a period of at least one year and a registered voter; a person who is not and never was a member of any profession certified or regulated pursuant to sections 324.300 to 324.338 or pursuant to chapter 330, RSMo, chapter 331, RSMo, chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services named in this subsection or certified pursuant to sections 324.300 to 324.338, or an activity or organization directly related to any profession herein named or certified under sections 324.300 to 324.338. The duties of the public members shall not include the determination of the technical requirements to be met for certification or whether any person meets such technical requirements or of the technical competence or technical judgment of a candidate for certification.

324.306. 1. The board shall meet in Jefferson City and organize within thirty days following the appointment of the members and elect a chairman who shall be one

of the members of the board.

2. The board shall meet at least once a year thereafter at a time and place designated by the chairman. Special meetings may be held at other times and places on the written notice of the chairman designating the time, place and purpose of any such meeting. Such notice shall be mailed to all members of the board by the division of professional registration at least five days prior to such special meeting. Five members of the board shall constitute a quorum for the transaction of the business of the board. A vote of five of the members present and voting shall prevail on any question.

3. The division shall be responsible for all staffing.

324.309. 1. The division shall issue a certificate to applicants who meet the minimum education and training standards established by the board.

2. Certification of an applicant by a national certifying organization shall be accepted as proof of competency by the division if that organization's standards for certification are deemed by the board to meet the minimum standards established by the board.

3. Certificates shall be issued for each of the following categories:

(1) "General radiography", which term refers to the intentional administration of ionizing radiation and related patient care activities including, radiographic contrast administration, under the direction of a licensed practitioner on any or all body organs, systems or structures for health reasons;

(2) "Limited radiography", which term refers to the intentional administration of ionizing radiation to only certain specific parts of the body for health reasons. Categories of limited radiography shall be established by the division with the approval of the board;

(3) Radiation therapy;

(4) Nuclear medicine technology.

4. The certificate shall state prominently upon its face the area of specialty for which it was issued.

5. An applicant shall not be certified until the applicant has first submitted satisfactory evidence of the following to the division that:

(1) At the time of application the applicant is eighteen years of age or older;

(2) The applicant has successfully completed secondary schooling or its equivalent; and

(3) The applicant meets one of the following standards for education and certification:

(a) The applicant has successfully completed the minimum requirements as provided in rules established pursuant to section 324.312;

(b) The applicant is a radiologic technologist who has been employed in that capacity within two years preceding the applicant's application for certification and holds a valid certification issued by another agency or organization which certifies radiologic technologists. Such certification shall have been issued on the basis of qualifications and an examination deemed by the board to be reasonably equivalent to the standards established by the division pursuant to the provisions of sections 324.300 to 324.338.

6. Not later than one year after the effective date of initial rules and regulations promulgated to implement sections 324.300 to 324.338, an applicant for certification shall be issued a certificate without examination provided that:

(1) The applicant is of good moral character;
(2) The applicant is eighteen years of age or older;
(3) The applicant has successfully completed secondary schooling or its equivalency; and

(4) The applicant has been engaged in the practice of radiologic technology in the specialty or specialties for which application is made for a period of at least two years immediately preceding the effective date of initial rules and regulations promulgated to implement sections 324.300 to 324.338, and the division has independent evidence of the applicant's competence in those specialties.

7. A certificate issued pursuant to this section shall be for the specialty or specialties appropriate to the applicant's previous experience.

8. Any person who uses radiography after July 1, 1999, shall apply for certification.

324.312. 1. The board shall establish minimum standards by rule for the training, education and continuing education of radiologic technologists.

2. Regulations shall be equivalent to those of existing national organizations which certify persons for a specialty of radiologic technology in those specialties where such organizations exist.

3. In issuing its regulations, the board may provide for separate training and education standards for the various types of limited radiography established by the board.

4. If there is an existing national organization which certifies persons for a specialty of radiologic technology, the board shall consider the requirements for continuing education of the certifying organization when establishing such rules in conformity with such certifying organization's requirements. The board shall give advance notice of not less than one year before increasing the number of required hours of continuing education for a particular specialty or category.

324.315. The director of the division is authorized to adopt those rules that are

reasonable and necessary to accomplish the limited duties specifically delegated within sections 324.300 to 324.338. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 324.300 to 324.338 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, 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 the effective date of this section shall be invalid and void.

324.318. The division shall establish application fees and examination and reexamination fees and renewal fees as authorized by sections 324.300 to 324.338 by rule. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expenses of administering sections 324.300 to 324.338. All persons once certified shall pay, on or before the certification renewal date, a renewal certificate fee and shall present to the division satisfactory evidence of the completion of the required continuing education. A notice that the renewal fee will be due on the renewal date shall, on or before the first day of the month immediately preceding the renewal date, be mailed to all certificate holders. Each certificate holder shall display in the certificate holder's place of employment in a conspicuous place the renewal certificate together with the original certification. Failure by the certificate holder to pay the renewal fee on or before the renewal date shall operate as a forfeiture of the right of the certificate holder to practice the certificate holder's specialty in the state of Missouri, except that a certificate holder may be reinstated by the division, upon payment of all fees due, including penalties assessed by the division. Failure of the certificate holder to receive the renewal form shall not relieve the certificate holder of the duty to renew the certification and pay fees required by sections 324.300 to 324.338.

324.321. 1. The board may examine applicants on the subjects and according to methods deemed by the division to be most appropriate and practical to test the applicants' qualifications to safely and effectively use or assist in the use of ionizing radiation on human beings in one or more of the certified specialties. National standardized examinations approved by the board may be required of applicants in lieu of or in conjunction with any other examination which the division may require. The board may establish norms of achievement of all examinations necessary for a passing grade.

2. If the division deems it necessary to hold examinations other than national standardized examinations, such examination shall be held at least once every six months at such times and places the division may determine. The division shall give

an applicant written notice of the applicant's success or failure within a reasonable time after the examination is completed. An applicant who fails to pass the examination may apply for reexamination. The results of such examination shall not be made available for public distribution and the person taking the examination shall be informed whether the applicant passed or failed such examination.

324.324. 1. The division may issue a temporary permit to any person whose application for certification or renewal is pending, subject to the rules of the division.

2. A temporary permit shall be valid for six months after its issuance or until the permittee fails to pass the required examination, whichever first occurs. No temporary permit shall be renewed more than once.

3. The division may authorize a period not to exceed six months after the effective date of sections 324.300 to 324.338, to allow persons to obtain temporary permits.

324.327. 1. The division may refuse any certification or permit required pursuant to sections 324.300 to 324.338 for one or any combination of causes stated in subsection 2 of this section. The division shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The division may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, and may refuse to issue or renew a certificate or permit to any holder of a certificate or permit required by sections 324.300 to 324.338 or any person who has failed to renew or has surrendered such person's certification for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to safely use or direct the use of ionizing radiation to human beings;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any person certified or regulated pursuant to sections 324.300 to 324.338, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certification or permit issued pursuant to sections 324.300 to 324.338 or in obtaining permission to take any examination given or required pursuant to sections 324.300 to 324.338;

(4) Impersonation of a licensed practitioner;

(5) Assisting or enabling any person to violate any provision of sections 324.300 to 324.338 or of any lawful rule adopted pursuant to sections 324.300 to 324.338;

(6) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any specialty certified or regulated by sections 324.300 to 324.338;

(7) Disciplinary action against the holder of a certificate or other right to practice any specialty regulated by sections 324.300 to 324.338 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(8) A person is finally adjudged incapacitated or incompetent by a court of competent jurisdiction;

(9) Assisting or enabling any person to practice or offer to practice any specialty certified or regulated by sections 324.300 to 324.338 who is not certified and currently eligible to practice pursuant to sections 324.300 to 324.338;

(10) Issuance of certification based on material mistake of fact;

(11) Failure to display a valid certificate if so required in sections 324.300 to 324.338 or any rule promulgated pursuant to such sections;

(12) Violation of any professional trust or confidence;

(13) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(14) Engaging in any practice beyond the scope of the person's certification or temporary permit.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the division may, singly or in combination:

(1) Censure or place the person named in the complaint on probation on such terms and conditions as the division deems appropriate for a period not to exceed five years;

(2) Suspend certification for a period not to exceed three years;

(3) Revoke certification.

324.330. 1. No person may use ionizing radiation on a human being for any purpose unless that person is certified by the division or has been issued a temporary permit by the division except that licensed practitioners, dental hygienists licensed pursuant to chapter 332, RSMo, dental assistants certified by the certifying board of the American Dental Assistants Association, and students enrolled in and attending a school or college of medicine, osteopathy, dentistry, chiropractic, podiatry,

radiography, dental hygiene, dental assistant training, nuclear medicine technology, or radiation therapy technology approved by the division, are exempted from the provisions of this subsection.

2. No person may use the title "radiographer", "radiation therapist", "nuclear medicine technologist", or any other term the use of which would be misleading to the public, or any abbreviation thereof unless certified by the division.

3. The division of professional registration shall maintain a central registry of those who are certified as radiologic technologists pursuant to the provisions of sections 324.300 to 324.338.

324.333. 1. The use or direction of the use of ionizing radiation on human beings by any person who is not certified by the division, other than a person specifically permitted to do so pursuant to subsection 1 of 324.330, is unlawful and is declared to be a menace and a nuisance dangerous to public health and safety and it shall be the duty of the division to investigate any report of such unlawful use of ionizing radiation. The division shall request that such use abate and if upon such a request the use is not abated, the attorney general, on request of the division, shall file an action for injunctive relief in the circuit court of the county in which such unlawful use of ionizing radiation is practiced.

2. On the filing of such an action, the circuit court shall, as soon as possible, hold a hearing and if it determines that an unlawful use of ionizing radiation on human beings is being made shall enjoin such use.

3. Any person who violates the provisions of sections 324.300 to 324.338 is guilty of an infraction.

324.336. 1. All fees payable pursuant to the provisions of sections 324.300 to 324.338 shall be paid to and collected by the division and transmitted to the department of revenue for deposit in the state treasury to the credit of a fund to be known as the "Ionizing Radiation Technology Fund" which is hereby created, and shall be subject to appropriations by the general assembly.

2. All expenses incurred by the division relevant to the provisions of sections 324.300 to 324.338, including the compensation of board members and all employees of the division, shall be paid from the ionizing radiation technology fund subject to appropriation by the general assembly.

3. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriations from the fund for the preceding fiscal year or if the division requires by rule certification renewal less frequently than yearly, then three times the appropriations from the fund for the preceding fiscal year. The amount, if any, in the

fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the fund for the preceding fiscal year.

324.338. Notwithstanding other provisions of the law to the contrary, no licensing activity or other statutory requirements, for any board, committee, council or commission assigned within the division of professional registration, will become effective until expenditures are specifically appropriated for the purpose of conducting the business as required.

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