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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 2639

February 12, 2008

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The bill was read for the first time and referred to the Committee on Health and Human Services

February 25, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

A bill for an act

relating to health; changing provisions for prescribing and filing prescriptions for specific drugs; amending Minnesota Statutes 2006, sections 151.01, subdivision 23; 151.37, subdivision 7; Minnesota Statutes 2007 Supplement, section 151.37, subdivision 2.

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

Section 1. Minnesota Statutes 2006, section 151.01, subdivision 23, is amended to read:

Subd. 23. **Practitioner.** "Practitioner" means a licensed doctor of medicine, licensed doctor of osteopathy duly licensed to practice medicine, licensed doctor of dentistry, licensed doctor of optometry, licensed podiatrist, or licensed veterinarian. For purposes of sections 151.15, subdivision 4, 151.37, subdivision 2, ~~paragraph~~ paragraphs (b) and (e), and 151.461, "practitioner" also means a physician assistant authorized to prescribe, dispense, and administer under chapter 147A, or an advanced practice nurse authorized to prescribe, dispense, and administer under section 148.235.

Sec. 2. Minnesota Statutes 2007 Supplement, section 151.37, subdivision 2, is amended to read:

Subd. 2. **Prescribing and filing.** (a) A licensed practitioner in the course of professional practice only, may prescribe, administer, and dispense a legend drug, and may cause the same to be administered by a nurse, a physician assistant, or medical student or resident under the practitioner's direction and supervision, and may cause a person who is an appropriately certified, registered, or licensed health care professional to prescribe, dispense, and administer the same within the expressed legal scope of the person's practice as defined in Minnesota Statutes. A licensed practitioner may prescribe a legend drug, without reference to a specific patient, by directing a nurse, pursuant to section 148.235,

2.1 subdivisions 8 and 9, physician assistant, or medical student or resident to adhere to
2.2 a particular practice guideline or protocol when treating patients whose condition falls
2.3 within such guideline or protocol, and when such guideline or protocol specifies the
2.4 circumstances under which the legend drug is to be prescribed and administered. An
2.5 individual who verbally, electronically, or otherwise transmits a written, oral, or electronic
2.6 order, as an agent of a prescriber, shall not be deemed to have prescribed the legend drug.
2.7 This paragraph applies to a physician assistant only if the physician assistant meets the
2.8 requirements of section 147A.18.

2.9 (b) A licensed practitioner that dispenses for profit a legend drug that is to be
2.10 administered orally, is ordinarily dispensed by a pharmacist, and is not a vaccine, must
2.11 file with the practitioner's licensing board a statement indicating that the practitioner
2.12 dispenses legend drugs for profit, the general circumstances under which the practitioner
2.13 dispenses for profit, and the types of legend drugs generally dispensed. It is unlawful to
2.14 dispense legend drugs for profit after July 31, 1990, unless the statement has been filed
2.15 with the appropriate licensing board. For purposes of this paragraph, "profit" means (1)
2.16 any amount received by the practitioner in excess of the acquisition cost of a legend drug
2.17 for legend drugs that are purchased in prepackaged form, or (2) any amount received
2.18 by the practitioner in excess of the acquisition cost of a legend drug plus the cost of
2.19 making the drug available if the legend drug requires compounding, packaging, or other
2.20 treatment. The statement filed under this paragraph is public data under section 13.03.
2.21 This paragraph does not apply to a licensed doctor of veterinary medicine or a registered
2.22 pharmacist. Any person other than a licensed practitioner with the authority to prescribe,
2.23 dispense, and administer a legend drug under paragraph (a) shall not dispense for profit.
2.24 To dispense for profit does not include dispensing by a community health clinic when the
2.25 profit from dispensing is used to meet operating expenses.

2.26 (c) A prescription or drug order for ~~a legend drug~~ the following drugs is not
2.27 ~~valid if it is based solely on an online questionnaire~~, unless it can be established that
2.28 the prescription or order was based on a documented patient evaluation, including an
2.29 examination, adequate to establish a diagnosis and identify underlying conditions and
2.30 contraindications to treatment;

2.31 (1) controlled substance drugs listed in section 152.02, subdivisions 3 to 5;

2.32 (2) drugs defined by the Board of Pharmacy as controlled substances pursuant to
2.33 section 152.02, subdivisions 7, 8, and 12;

2.34 (3) muscle relaxants;

2.35 (4) centrally acting analgesics with opioid activity;

2.36 (5) drugs containing butalbital; or

3.1 (6) phosphodiesterase type 5 inhibitors when used to treat erectile dysfunction.

3.2 (d) For the purposes of paragraph (c), the requirement for an examination shall be
3.3 met if an in-person examination has been completed in any of the following circumstances:

3.4 (1) the prescribing practitioner examines the patient at the time the prescription
3.5 or drug order is issued;

3.6 (2) the prescribing practitioner has performed a prior examination of the patient;

3.7 (3) another prescribing practitioner practicing within the same group or clinic as the
3.8 prescribing practitioner has examined the patient;

3.9 (4) a consulting practitioner to whom the prescribing practitioner has referred the
3.10 patient has examined the patient; or

3.11 (5) the referring practitioner has performed an examination in the case of a
3.12 consultant practitioner issuing a prescription or drug order when providing services by
3.13 means of telemedicine.

3.14 (e) Nothing in paragraph (c) or (d) prohibits a licensed practitioner from prescribing
3.15 a drug through the use of a guideline or protocol pursuant to paragraph (a).

3.16 (f) Nothing in this chapter prohibits a licensed practitioner from issuing a
3.17 prescription or dispensing a legend drug according to the Expedited Partner Therapy in the
3.18 Management of Sexually Transmitted Diseases guidance document issued by the United
3.19 States Centers for Disease Control and Prevention.

3.20 (g) Nothing in paragraph (c) or (d) limits prescription, administration, or dispensing
3.21 of legend drugs through a public health clinic or other distribution mechanism approved
3.22 by the commissioner of health or a board of health in order to prevent, mitigate, or treat
3.23 a pandemic illness, infectious disease outbreak, or intentional or accidental release of a
3.24 biological, chemical, or radiological agent.

3.25 (h) No pharmacist employed by, under contract to, or working for a pharmacy
3.26 licensed under section 151.19, subdivision 1, may dispense a legend drug based on a
3.27 prescription which the pharmacist knows, or would reasonably be expected to know,
3.28 is not valid under paragraph (c).

3.29 (i) No pharmacist employed by, under contract to, or working for a pharmacy
3.30 licensed under section 151.19, subdivision 2, may dispense a legend drug to a resident
3.31 of this state, based on a prescription that the pharmacist knows, or would reasonably be
3.32 expected to know, is not valid under paragraph (c).

3.33 Sec. 3. Minnesota Statutes 2006, section 151.37, subdivision 7, is amended to read:

3.34 Subd. 7. **Exclusion for prescriptions.** Nothing in this chapter shall prohibit the
3.35 possession of a legend drug by a person for that person's use when it has been dispensed

4.1 to the person in accordance with a written or oral prescription by a practitioner. Nothing
4.2 in this chapter shall prohibit a person, for whom a legend drug has been dispensed in
4.3 accordance with a written or oral prescription by a practitioner, from designating a family
4.4 member, caregiver, or other individual to handle the legend drug for the purpose of
4.5 assisting the person in obtaining or administering the drug.