

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 239

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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 25-1-10.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

**Chapter 10.3. Health Care Provider Advertising**

**Sec. 1. This chapter does not apply to an advertisement communicated or disseminated before January 1, 2023. However, an advertisement that was prepared or created before January 1, 2023, may not be disseminated after December 31, 2022, unless the advertisement complies with the requirements set forth in section 7 of this chapter.**

**Sec. 2. (a) As used in this chapter, "advertisement" means any printed, electronic, or oral statement:**

- (1) that is communicated or disseminated to the general public;**
- (2) that:**
  - (A) is intended to encourage a person to use a practitioner's professional services; or**
  - (B) for commercial purposes, names a practitioner in connection with the practice, profession, or institution in which the practitioner is employed, volunteers, or provides health care services; and**



(3) that the practitioner or the practitioner's group practice has control over the preparation, communication, or dissemination of the statement.

(b) The term includes the communication or dissemination as described in subsection (a) of any other communication or statement used in the course of business for the purpose of promoting a practitioner's services offered to the public.

(c) The term does not include the following:

(1) Office building placards.

(2) Exterior building signage that was in place before January 1, 2023.

Sec. 3. As used in this chapter, "deceptive or misleading information" means any information that misrepresents or falsely describes a practitioner's:

(1) profession;

(2) skills;

(3) training;

(4) expertise;

(5) educational degree;

(6) board certification; or

(7) license.

Sec. 3.5. As used in this chapter, "educational degree" means the degree awarded to the practitioner by a college or university in the practitioner's profession, which may be used under the scope of the practitioner's license, including use of its acronym.

Sec. 4. As used in this chapter, "license" has the meaning set forth in IC 25-1-2-6.

Sec. 5. (a) As used in this chapter, except as provided in subsection (b), "practitioner" means an individual who holds a license issued by a board described in IC 25-0.5-11, including a certificate of registration issued under IC 25-20.

(b) The term does not include a veterinarian licensed under IC 25-38.1.

Sec. 6. As used in this chapter, "profession" means the name or title of the profession of which a practitioner is a member, as specifically allowed for use by individuals who hold a license, license by endorsement, certificate, or registration from a board described in IC 25-0.5-11 under the board's governing statute or rules. The term does not include the license or educational degree of a practitioner.

Sec. 7. (a) An advertisement that includes a practitioner's name must prominently state the profession or license held by the



**practitioner.**

**(b) A written advertisement that includes a practitioner's name must prominently set forth the profession or license held by the practitioner in a font size and style that makes the information readily apparent to the reader.**

**(c) An advertisement must not include any deceptive or misleading information.**

**(d) Subject to subsection (e), a practitioner who communicates or disseminates to the general public an advertisement that violates this section is subject to disciplinary sanctions under IC 25-1-9 by the board that issued the practitioner's license.**

**(e) Nothing in this section prevents an advertisement using the practitioner's title or designation associated with the practitioner's educational degree if the advertisement meets the requirements of subsection (a).**

SECTION 2. IC 25-22.5-1-1.1, AS AMENDED BY P.L.28-2019, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1.1. As used in this article:

(a) "Practice of medicine or osteopathic medicine" means any one (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"; to a name,



either alone or in connection with other words, **the designation or term:**

- (A) "doctor of medicine";
- (B) "M.D.";
- (C) "doctor of osteopathy";
- (D) "D.O.";
- (E) "physician";
- (F) "osteopath";
- (G) "osteopathic medical physician";
- (H) "surgeon";
- (I) "physician and surgeon";
- (J) "anesthesiologist";
- (K) "cardiologist";
- (L) "dermatologist";
- (M) "endocrinologist";
- (N) "gastroenterologist";
- (O) "gynecologist";
- (P) "hematologist";
- (Q) "internist";
- (R) "laryngologist";
- (S) "nephrologist";
- (T) "neurologist";
- (U) "obstetrician";
- (V) "oncologist";
- (W) "ophthalmologist";
- (X) "orthopedic surgeon";
- (Y) "orthopedist";
- (Z) "otologist";
- (AA) "otolaryngologist";
- (BB) "otorhinolaryngologist";
- (CC) "pathologist";
- (DD) "pediatrician";
- (EE) "primary care physician";
- (FF) "proctologist";
- (GG) "psychiatrist";
- (HH) "radiologist";
- (II) "rheumatologist";
- (JJ) "rhinologist";
- (KK) "urologist";
- (LL) "medical doctor";
- (MM) "family practice physician"; or
- (NN) "physiatrist".



**This subdivision does not apply to a practitioner if the practitioner has a special area of practice and the practitioner uses the following format: "[The name or title of the practitioner's profession] specializing in [name of specialty]".**

**(4) Nothing in subdivision (3) prevents the following:**

**(A) A practitioner from using the name or title of the practitioner's profession that is allowed under the practitioner's practice act or under a law in the Indiana Code.**

**(B) A practitioner who is a chiropractor (as defined in IC 25-10-1-1) and who has attained diplomate status in a chiropractic specialty area recognized by the American Chiropractic Association, International Chiropractic Association, or International Academy of Clinical Neurology before July 1, 2025, from using a designation or term included in subdivision (3) in conjunction with the name or title of the practitioner's profession.**

**(C) A practitioner who is a dentist licensed under IC 25-14-1 and who has completed a dental anesthesiology residency recognized by the American Dental Board of Anesthesiology before July 1, 2025, from using a designation or term included in subdivision (3) in conjunction with the name or title of the practitioner's profession.**

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) (5) 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 and in accordance with IC 25-1-9.3.

(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~~ **has a collaborative agreement with 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 3. IC 25-22.5-1-2, AS AMENDED BY P.L.180-2018, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. (a) This article, as it relates to the unlawful or



unauthorized practice of medicine or osteopathic medicine, does not apply to any of the following:

- (1) A student in training in a medical school approved by the board, or while performing duties as an intern or a resident in a hospital under the supervision of the hospital's staff or in a program approved by the medical school.
- (2) A person who renders service in case of emergency where no fee or other consideration is contemplated, charged, or received.
- (3) A paramedic (as defined in IC 16-18-2-266), an advanced emergency medical technician (as defined in IC 16-18-2-6.5), an emergency medical technician (as defined in IC 16-18-2-112), or a person with equivalent certification from another state who renders advanced life support (as defined in IC 16-18-2-7), or basic life support (as defined in IC 16-18-2-33.5):
  - (A) during a disaster emergency declared by the governor under IC 10-14-3-12 in response to an act that the governor in good faith believes to be an act of terrorism (as defined in IC 35-31.5-2-329); and
  - (B) in accordance with the rules adopted by the Indiana emergency medical services commission or the disaster emergency declaration of the governor.
- (4) Commissioned medical officers or medical service officers of the armed forces of the United States, the United States Public Health Service, and medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana.
- (5) An individual who is not a licensee who resides in another state or country and is authorized to practice medicine or osteopathic medicine there, who is called in for consultation by an individual licensed to practice medicine or osteopathic medicine in Indiana.
- (6) A person administering a domestic or family remedy to a member of the person's family.
- (7) A member of a church practicing the religious tenets of the church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a physician.
- (8) A school corporation and a school employee who acts under IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).
- (9) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the



- direction and supervision of the chiropractor under IC 25-10-1-13.
- (10) A dental hygienist practicing the dental hygienist's profession under IC 25-13.
- (11) A dentist practicing the dentist's profession under IC 25-14.
- (12) A hearing aid dealer practicing the hearing aid dealer's profession under IC 25-20.
- (13) A nurse practicing the nurse's profession under IC 25-23. However, a certified registered nurse anesthetist (as defined in IC 25-23-1-1.4) may administer anesthesia if the certified registered nurse anesthetist acts under the direction of and in the immediate presence of a physician.
- (14) An optometrist practicing the optometrist's profession under IC 25-24.
- (15) A pharmacist practicing the pharmacist's profession under IC 25-26.
- (16) A physical therapist practicing the physical therapist's profession under IC 25-27.
- (17) A podiatrist practicing the podiatrist's profession under IC 25-29.
- (18) A psychologist practicing the psychologist's profession under IC 25-33.
- (19) A speech-language pathologist or audiologist practicing the pathologist's or audiologist's profession under IC 25-35.6.
- (20) An employee of a physician or group of physicians who performs an act, a duty, or a function that is customarily within the specific area of practice of the employing physician or group of physicians, if the act, duty, or function is performed under the direction and supervision of the employing physician or a physician of the employing group within whose area of practice the act, duty, or function falls. An employee may not make a diagnosis or prescribe a treatment and must report the results of an examination of a patient conducted by the employee to the employing physician or the physician of the employing group under whose supervision the employee is working. An employee may not administer medication without the specific order of the employing physician or a physician of the employing group. Unless an employee is licensed or registered to independently practice in a profession described in subdivisions (9) through (18), nothing in this subsection grants the employee independent practitioner status or the authority to perform patient services in an independent practice in a profession.
- (21) A hospital licensed under IC 16-21 or IC 12-25.





(22) A health care organization whose members, shareholders, or partners are individuals, partnerships, corporations, facilities, or institutions licensed or legally authorized by this state to provide health care or professional services as:

- (A) a physician;
- (B) a psychiatric hospital;
- (C) a hospital;
- (D) a health maintenance organization or limited service health maintenance organization;
- (E) a health facility;
- (F) a dentist;
- (G) a registered or licensed practical nurse;
- (H) a certified nurse midwife or a certified direct entry midwife;
- (I) an optometrist;
- (J) a podiatrist;
- (K) a chiropractor;
- (L) a physical therapist; or
- (M) a psychologist.

(23) A physician assistant practicing the physician assistant profession under IC 25-27.5.

(24) A physician providing medical treatment under section 2.1 of this chapter.

(25) An attendant who provides attendant care services (as defined in IC 16-18-2-28.5).

(26) A personal services attendant providing authorized attendant care services under IC 12-10-17.1.

(27) A respiratory care practitioner practicing the practitioner's profession under IC 25-34.5.

(b) A person described in subsection (a)(9) through (a)(18) is not excluded from the application of this article if:

- (1) the person performs an act that an Indiana statute does not authorize the person to perform; and
- (2) the act qualifies in whole or in part as the practice of medicine or osteopathic medicine.

(c) An employment or other contractual relationship between an entity described in subsection (a)(21) through (a)(22) and a licensed physician does not constitute the unlawful practice of medicine or osteopathic medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed physician. However, if the direction or control is done by the entity under IC 34-30-15 (or IC 34-4-12.6 before its repeal), the entity



is excluded from the application of this article as it relates to the unlawful practice of medicine or osteopathic medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-21. A physician licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-42-19-11 through IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of medicine or osteopathic medicine under this chapter.

(e) A person described in subsection (a)(8) shall not be authorized to dispense contraceptives or birth control devices.

**(f) Nothing in this section allows a person to use words or abbreviations that indicate or induce an individual to believe that the person is engaged in the practice of medicine or osteopathic medicine.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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