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Abolishing Obsolete Statutory Functions and the Groups Formed to Perform Such Functions

Colorado General Assembly

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CHAPTER 432

PROFESSIONS AND OCCUPATIONS

MISCELLANEOUS — OBSOLETE STATUTORY FUNCTIONS

HOUSE BILL NO. 1320. BY REPRESENTATIVES Witherspoon, Kirscht, Neale, Traylor, Reeves, Callihan, Castro, DeHerrera, Hilsmeier, Howe, Hudson, Kopel, Larson, Lillpop, Lucero, Orten, and Trimble; also SENATOR Groff.

AN ACT

ABOLISHING OBSOLETE STATUTORY FUNCTIONS AND THE GROUPS FORMED TO PERFORM SUCH FUNCTIONS.

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

Section 1. **Repeal.** 12-30-101 (2), 12-30-103 (2), and 12-30-105, Colorado Revised Statutes 1973, 1978 Repl. Vol., and 22-22-105, 27-11-105, 28-5-506, 28-5-507, 28-5-510, and part 6 of article 5 of title 28, Colorado Revised Statutes 1973, as amended, are repealed.

Section 2. 12-30-103 (1) (d), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

12-30-103. Powers and duties of department. (1) (d) Hold hearings in respect to the investigations made under the provisions of subsection (1) (c) of this section, and subpoena witnesses and documents. ~~Any or all such hearings may be held before the council. Any administrative action to be taken by the department as a result of such hearings shall be taken only after receipt of the recommendations of the council.~~ Prior to issuance of a cease and desist order under section 12-30-108, a hearing shall be held before the council BY THE DEPARTMENT. The person furnishing a sample under section 12-30-104 shall be given due notice of such hearing and an opportunity to be heard.

Section 3. 12-30-108, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

12-30-108. Findings - cease and desist order. (1) Following an investigation or testing of the content or composition of any drug, medicine, compound, or device held out either expressly or impliedly by any individual, person, firm, association, or other entity to be of value in the diagnosis, treatment, alleviation, or cure of cancer and after a hearing as provided in section 12-30-103, the department ~~upon recommendation of the council,~~ may direct

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

that any such individual, person, firm, association, or other entity shall cease and desist any further holding out, either expressly or impliedly, that any such drug, medicine, compound, or device, or any substantially similar drug, medicine, compound, or device, is of value in the diagnosis or treatment of cancer.

(2) In the investigation or testing required by this article to determine the value or lack of value of any drug, medicine, compound, or device in the diagnosis, treatment, or cure of cancer, the department, as it deems necessary or advisable, shall utilize the facilities and findings of its own laboratories or other appropriate laboratories, clinics, hospitals, and nonprofit cancer research institutes recognized by the national cancer institute within this state or the facilities and findings of the federal government or of the national cancer institute. ~~Upon a recommendation by the council, The department shall~~ MAY arrange, by contract, for investigation by and submission to it of findings, conclusions, or opinions of trained scientists in the appropriate departments of universities, medical schools, clinics, hospitals, and nonprofit cancer research institutes recognized by the national cancer institute and the submission to it of findings, conclusions, or opinions of other qualified scientists. Prior to the issuance of a cease and desist order under this section, ~~the council, by the affirmative vote of at least eleven of its members,~~ DEPARTMENT shall make a written finding of fact based on such investigation that the drug, medicine, compound, or device so investigated has been found to be either definitely harmful or of no value in the diagnosis, treatment, alleviation, or cure of cancer, and the department must SHALL be satisfied beyond a reasonable doubt that the written findings of fact are true.

Section 4. 12-30-109 (1), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

12-30-109. Injunction. (1) If an individual, person, firm, association, or other entity, after service upon him or it of a cease and desist order issued by the department under section 12-30-108, persists in prescribing, recommending, or using the drug, medicine, compound, or device described in said cease and desist order, or a substantially similar drug, medicine, compound, or device, the district court in any county, on application of the department and when satisfied by a preponderance of the evidence that the written findings of fact required of the ~~council~~ DEPARTMENT by section 12-30-108 are true, may issue an order to show cause why there should not be issued an injunction or other appropriate order restraining such individual, person, firm, association, or other entity from holding out either expressly or impliedly such drug, medicine, compound, or device, or any substantially similar drug, medicine, compound, or device, as being of a value in the treatment, diagnosis, alleviation, or cure of cancer. After a hearing on such order to show cause, an injunction or other appropriate restraining order may be issued.

Section 5. 12-30-111, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

12-30-111. Reports of investigation. The department, ~~upon recommendation of the council and~~ in accordance with fiscal rules promulgated by the

controller pursuant to the provisions of section 24-30-208, C.R.S. 1973, may publish reports based on its investigation or testing of any drug, medicine, compound, or device prescribed, recommended, or used by any individual, person, firm, association, or other entity; and, when in the opinion of a majority of the members of the council, the use of any drug, medicine, compound, or device constitutes an imminent danger to health or a gross deception of the public, the department may take appropriate steps to publicize the same.

Section 6. 12-30-112, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

12-30-112. Investigation not an endorsement. The investigation or testing of any product shall not be deemed to imply or indicate any endorsement of the qualifications or value of any such product. No person shall make any representation that investigation or testing under this article constitutes any approval or endorsement of his, or its, activities by the council or the department. The investigation or testing of any product shall not be deemed to imply or indicate that such product is useless or harmful, and during testing no person shall make any representation, except to the department, or council, that the product under test is discredited or that it has been found useless or harmful.

Section 7. Transfer of records. Upon the termination of the existence and functions of offices affected by section 1 of this act, all records of such offices shall be transferred to the division of state archives and public records and disposed of pursuant to section 24-80-105, Colorado Revised Statutes 1973.

Section 8. Effective date. This act shall take effect July 1, 1979.

Section 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 7, 1979