

By: Perry

S.B. No. 160

A BILL TO BE ENTITLED

AN ACT

relating to the furnishing by pharmacists and dispensing by physicians of certain medications.

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

SECTION 1. Section 483.001(11), Health and Safety Code, is amended to read as follows:

(11) "Practice of pharmacy" has the meaning assigned by Section 551.003, Occupations Code ~~[means:~~

~~[(A) provision of those acts or services necessary to provide pharmaceutical care,~~

~~[(B) interpretation and evaluation of prescription drug orders or medication orders,~~

~~[(C) participation in drug and device selection as authorized by law, drug administration, drug regimen review, or drug or drug-related research,~~

~~[(D) provision of patient counseling,~~

~~[(E) responsibility for:~~

~~[(i) dispensing of prescription drug orders or distribution of medication orders in the patient's best interest,~~

~~[(ii) compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged prescription drugs and devices,~~

1 ~~[(iii) proper and safe storage of drugs and~~
2 ~~devices; or~~
3 ~~[(iv) maintenance of proper records for~~
4 ~~drugs and devices. In this subdivision, "device" has the meaning~~
5 ~~assigned by Subtitle J, Title 3, Occupations Code; or~~
6 ~~[(F) performance of a specific act of drug~~
7 ~~therapy management for a patient delegated to a pharmacist by a~~
8 ~~written protocol from a physician licensed by the state under~~
9 ~~Subtitle B, Title 3, Occupations Code].~~

10 SECTION 2. Section [157.002](#)(f), Occupations Code, is amended
11 to read as follows:

12 (f) Subsections (b) and (c) do not authorize a physician or
13 a person acting under the supervision of a physician to keep a
14 pharmacy, advertised or otherwise, for the retail sale of dangerous
15 drugs, other than as authorized under Section [158.003](#) or [158.004](#),
16 without complying with the applicable laws relating to the
17 dangerous drugs.

18 SECTION 3. Subchapter C, Chapter [157](#), Occupations Code, is
19 amended by adding Section 157.102 to read as follows:

20 Sec. 157.102. DELEGATION TO PHARMACIST TO FURNISH CERTAIN
21 DRUGS. (a) In this section:

22 (1) "Acute condition" means a condition or disease
23 that begins abruptly, intensifies rapidly, and is generally not
24 long-lasting.

25 (2) "Pharmacist" has the meaning assigned by Section
26 [551.003](#).

27 (3) "Waived clinical laboratory test" means a clinical

1 laboratory test that is classified as waived under federal
2 regulations issued under the Clinical Laboratory Improvement
3 Amendments of 1988 (42 U.S.C. Section 263a).

4 (4) "Written protocol" means a physician's written
5 order, standing medical order, standing delegation order, or other
6 order or protocol as defined by rule of the board.

7 (b) Notwithstanding any other law, a pharmacist may furnish
8 to a patient a prescription drug:

9 (1) as provided by a physician's written protocol, to
10 treat an acute condition that is identified through performance of
11 one of the following tests, if the test is a waived clinical
12 laboratory test:

13 (A) a rapid strep test or rapid antigen detection
14 test used in the identification of group A streptococcus (GAS);

15 (B) a rapid influenza diagnostic test used in the
16 identification of influenza types A and B; or

17 (C) a rapid molecular or antigen detection test
18 used in the identification of the SARS-CoV-2 (COVID-19) virus; or

19 (2) the furnishing of which is authorized by an
20 emergency rule adopted under an executive order or emergency
21 authorization.

22 (c) The board shall adopt rules jointly with the Texas State
23 Board of Pharmacy to establish the minimum content of the written
24 protocol required under Subsection (b). The written protocol may
25 permit a pharmacist to furnish a prescription drug to a patient
26 without an established physician-patient relationship.

27 (d) A written protocol under this section must require

1 notice to the patient's primary care physician, as identified by
2 the patient if the patient has a primary care physician, and
3 prescribe the period for providing the notice and the form of the
4 notice, in accordance with prevailing practices for the provision
5 of notice to a patient's primary care physician. The period for
6 providing the notice may not be later than the 14th day after the
7 date the drug is furnished by the pharmacist.

8 (e) The board and the Texas State Board of Pharmacy shall
9 enter into a memorandum of understanding regarding the regulation
10 of pharmacists who furnish prescription drugs to patients under
11 this section. The memorandum of understanding must be adopted by
12 rule and provide that:

13 (1) a pharmacist who furnishes prescription drugs to a
14 patient under this section is subject only to the disciplinary
15 authority of the Texas State Board of Pharmacy; and

16 (2) an inspection of the practice location of a
17 pharmacist who furnishes prescription drugs to a patient under this
18 section must be conducted by the Texas State Board of Pharmacy.

19 SECTION 4. Chapter 158, Occupations Code, is amended by
20 adding Section 158.004 to read as follows:

21 Sec. 158.004. DISPENSING OF CERTAIN DRUGS. (a) In this
22 section, "acute condition" and "waived clinical laboratory test"
23 have the meanings assigned by Section 157.102.

24 (b) Notwithstanding any other law, a physician may dispense
25 to the physician's patient a prescription drug:

26 (1) to treat an acute condition that is identified
27 through performance of one of the following tests, if the test is a

1 waived clinical laboratory test:

2 (A) a rapid strep test or rapid antigen detection
3 test used in the identification of group A streptococcus (GAS);

4 (B) a rapid influenza diagnostic test used in the
5 identification of influenza types A and B; or

6 (C) a rapid molecular or antigen detection test
7 used in the identification of the SARS-CoV-2 (COVID-19) virus;

8 (2) that is an antibiotic; or

9 (3) the dispensing of which is authorized by an
10 emergency rule adopted under an executive order or emergency
11 authorization.

12 (c) The board and the Texas State Board of Pharmacy shall
13 enter into a memorandum of understanding regarding the regulation
14 of physicians who dispense prescription drugs to the physicians'
15 patients under this section. The memorandum of understanding must
16 be adopted by rule and provide that:

17 (1) a physician who dispenses prescription drugs to
18 the physician's patient under this section is subject only to the
19 disciplinary authority of the board; and

20 (2) an inspection of the practice location of a
21 physician who dispenses prescription drugs to the physician's
22 patient under this section must be conducted by the board.

23 SECTION 5. Section 551.003(33), Occupations Code, is
24 amended to read as follows:

25 (33) "Practice of pharmacy" means:

26 (A) providing an act or service necessary to
27 provide pharmaceutical care;

1 (B) interpreting or evaluating a prescription
2 drug order or medication order;

3 (C) participating in drug or device selection as
4 authorized by law, and participating in drug administration, drug
5 regimen review, or drug or drug-related research;

6 (D) providing patient counseling;

7 (E) being responsible for:

8 (i) dispensing a prescription drug order or
9 distributing a medication order;

10 (ii) compounding or labeling a drug or
11 device, other than labeling by a manufacturer, repackager, or
12 distributor of a nonprescription drug or commercially packaged
13 prescription drug or device;

14 (iii) properly and safely storing a drug or
15 device; or

16 (iv) maintaining proper records for a drug
17 or device;

18 (F) performing for a patient a specific act of
19 drug therapy management delegated to a pharmacist by a written
20 protocol from a physician licensed in this state in compliance with
21 Subtitle B; ~~or~~

22 (G) administering an immunization or vaccination
23 under a physician's written protocol; or

24 (H) furnishing a prescription drug to a patient
25 under a physician's written protocol under Section 157.102.

26 SECTION 6. Section 551.004(b), Occupations Code, is amended
27 to read as follows:

1 (b) This subtitle does not prevent a practitioner from:

2 (1) administering a drug to a patient of the
3 practitioner; or

4 (2) dispensing a prescription drug to a patient as
5 provided by Section 158.004.

6 SECTION 7. Subchapter B, Chapter 562, Occupations Code, is
7 amended by adding Section 562.058 to read as follows:

8 Sec. 562.058. TRAINING REQUIRED TO FURNISH CERTAIN DRUGS.

9 (a) A pharmacist may not furnish a prescription drug under Section
10 157.102 unless the pharmacist has completed a training program that
11 is approved by the board and is relevant to the condition treated by
12 the drug.

13 (b) The board shall adopt rules jointly with the Texas
14 Medical Board to establish the minimum content of the training
15 program required under Subsection (a).

16 SECTION 8. Section 563.051(d), Occupations Code, is amended
17 to read as follows:

18 (d) This section does not authorize a physician or a person
19 acting under the supervision of a physician to keep a pharmacy,
20 advertised or otherwise, for the retail sale of dangerous drugs,
21 other than as authorized under Section 158.003 or 158.004, without
22 complying with the applicable laws relating to the dangerous drugs.

23 SECTION 9. Not later than January 1, 2024, the Texas State
24 Board of Pharmacy and the Texas Medical Board shall adopt the rules
25 required under Sections 157.102, 158.004, and 562.058, Occupations
26 Code, as added by this Act.

27 SECTION 10. This Act takes effect September 1, 2023.