

By: Laubenberg

H.B. No. 69

A BILL TO BE ENTITLED

AN ACT

relating to the dispensing of certain drugs by physicians.

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

SECTION 1. Section 158.001, Occupations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Except as provided by Subsection (d), a physician may dispense dangerous drugs to the physician's patients and charge the patients a reasonable fee for dispensing the drugs [~~This section does not permit a physician to operate a retail pharmacy~~] without complying with Chapter 558. Before dispensing a dangerous drug, the physician must notify the patient that the prescription for the dangerous drug may be filled at a pharmacy. A physician may not under this section dispense a Schedule II-V controlled substance as specified under Chapter 481, Health and Safety Code. The board shall adopt rules to establish a procedure for the dispensing of dangerous drugs by a physician.

(d) Subsection (b) does not apply to workers' compensation insurance coverage as defined by Section 401.011, Labor Code.

SECTION 2. Chapter 158, Occupations Code, is amended by adding Section 158.0011 to read as follows:

Sec. 158.0011. DISPENSING OF DANGEROUS DRUGS FOR WORKERS' COMPENSATION INSURANCE COVERAGE IN CERTAIN RURAL AREAS. (a) In this section, "reimbursement for cost" means an additional charge,

1 separate from that imposed for the physician's professional
2 services, that includes the cost of the drug product and all other
3 actual costs to the physician incidental to providing the
4 dispensing service. The term does not include a separate fee
5 imposed for the act of dispensing the drug itself.

6 (b) This section applies to an area located in a county with
7 a population of 5,000 or less, or in a municipality or an
8 unincorporated town with a population of less than 2,500, that is
9 within a 15-mile radius of the physician's office and in which a
10 pharmacy is not located. This section does not apply to a
11 municipality or an unincorporated town that is adjacent to a
12 municipality with a population of 2,500 or more.

13 (c) A physician who practices medicine in an area described
14 by Subsection (b) may:

15 (1) maintain a supply of dangerous drugs in the
16 physician's office to be dispensed in the course of treating the
17 physician's patients; and

18 (2) be reimbursed for the cost of supplying those
19 drugs without obtaining a license under Chapter 558.

20 (d) A physician who dispenses dangerous drugs under
21 Subsection (c) shall:

22 (1) comply with each labeling provision under Subtitle
23 J applicable to that class of drugs; and

24 (2) oversee compliance with packaging and
25 recordkeeping provisions applicable to that class of drugs.

26 (e) A physician who desires to dispense dangerous drugs
27 under this section shall notify both the Texas State Board of

Pharmacy and the board that the physician practices in an area described by Subsection (b). The physician may continue to dispense dangerous drugs in the area until the Texas State Board of Pharmacy determines, after notice and hearing, that the physician no longer practices in an area described by Subsection (b).

SECTION 3. Subtitle B, Title 3, Occupations Code, is amended by adding Chapter 158A to read as follows:

CHAPTER 158A. AUTHORITY OF PHYSICIAN TO PROVIDE ABORTION-INDUCING

DRUGS

Sec. 158A.001. DEFINITIONS. In this chapter:

(1) "Abortion" means the act of using or prescribing an instrument, a medicine, a drug, or any other substance, device, or means with the intent to terminate a clinically diagnosable pregnancy of a woman and with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the woman's unborn child. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion;

(C) remove an ectopic pregnancy; or

(D) treat a maternal disease or illness for which the prescribed drug is indicated.

(2) "Abortion-inducing drug" means a medicine, a drug, or any other substance prescribed or dispensed with the intent of terminating a clinically diagnosable pregnancy of a woman and with

1 knowledge that the termination will, with reasonable likelihood,
2 cause the death of the woman's unborn child. The term includes
3 off-label use of drugs known to have abortion-inducing properties
4 that are prescribed with the intent of causing an abortion,
5 including misoprostol and methotrexate. The term does not include
6 a drug that may be known to cause an abortion but is prescribed for
7 other medical reasons.

8 (3) "Drug label" means a pamphlet accompanying an
9 abortion-inducing drug that:

10 (A) outlines the protocol tested and authorized
11 by the United States Food and Drug Administration and agreed to by
12 the drug company applying for authorization of the drug by that
13 agency; and

14 (B) delineates how a drug is to be used according
15 to approval by that agency.

16 (4) "Gestational age" means the amount of time that
17 has elapsed since the first day of a woman's last menstrual period.

18 (5) "Medical abortion" means the use of
19 abortion-inducing drugs to induce an abortion.

20 (6) "Pregnant" means the female reproductive
21 condition of having an unborn child in a woman's uterus.

22 (7) "Unborn child" means an offspring of human beings
23 from conception until birth.

24 Sec. 158A.002. DISTRIBUTION OF ABORTION-INDUCING DRUG. (a)
25 A person may not knowingly give, sell, dispense, administer,
26 provide, or prescribe an abortion-inducing drug to a pregnant woman
27 for the purpose of inducing an abortion in the pregnant woman or

1 enabling another person to induce an abortion in the pregnant woman
2 unless:

3 (1) the person who gives, sells, dispenses,
4 administers, provides, or prescribes the abortion-inducing drug is
5 a physician; and

6 (2) the provision or prescription of the
7 abortion-inducing drug satisfies the protocol tested and
8 authorized by the United States Food and Drug Administration as
9 outlined in the abortion-inducing drug's drug label.

10 (b) Before the physician gives, sells, dispenses,
11 administers, provides, or prescribes the abortion-inducing drug,
12 the physician must examine the pregnant woman and document, in the
13 woman's medical record, the gestational age and intrauterine
14 location of the pregnancy.

15 (c) The physician who gives, sells, dispenses, administers,
16 provides, or prescribes the abortion-inducing drug shall provide
17 the pregnant woman with a copy of the abortion-inducing drug's drug
18 label.

19 (d) The physician who gives, sells, dispenses, administers,
20 provides, or prescribes the abortion-inducing drug must:

21 (1) have a signed contract with another physician who
22 agrees to treat emergencies arising from use of the drug; and

23 (2) produce the signed contract on demand by the
24 pregnant woman or the board.

25 (e) The physician who gives, sells, dispenses, administers,
26 provides, or prescribes the abortion-inducing drug shall provide
27 the pregnant woman with the name and phone number of:

1 (1) the physician who would treat an emergency arising
2 from use of the drug; and

3 (2) the hospital at which an emergency arising from
4 use of the drug would be treated.

5 (f) A physician who contracts to treat an emergency arising
6 from use of an abortion-inducing drug must have active admitting,
7 gynecological, and surgical privileges at the hospital designated
8 to treat the emergency.

9 (g) The physician who gives, sells, dispenses, administers,
10 provides, or prescribes the abortion-inducing drug or the
11 physician's agent must schedule a follow-up visit for the woman to
12 occur not more than 14 days after the administration of the drug.
13 At the follow-up visit, the physician must:

14 (1) confirm that the pregnancy is completely
15 terminated; and

16 (2) assess the degree of bleeding.

17 (h) The physician who gives, sells, dispenses, administers,
18 provides, or prescribes the abortion-inducing drug or the
19 physician's agent shall make a reasonable effort to ensure that the
20 woman returns for the scheduled appointment. The physician or the
21 physician's agent shall include a brief description of any effort
22 made to comply with this subsection, including the date, time, and
23 name of the person making the effort, in the woman's medical record.

24 (i) If a physician provides an abortion-inducing drug to a
25 pregnant woman for the purpose of inducing an abortion as
26 authorized by this section and the physician knows that the woman
27 experiences a serious adverse event, as defined by the MedWatch

1 Reporting System, during or after using the drug, the physician
2 shall report the event to the United States Food and Drug
3 Administration through the MedWatch Reporting System within three
4 days of the event.

5 Sec. 158A.003. PENALTY. A penalty may not be assessed under
6 this subtitle against a pregnant woman who receives a medical
7 abortion.

8 SECTION 4. Section 164.052(a), Occupations Code, is amended
9 to read as follows:

10 (a) A physician or an applicant for a license to practice
11 medicine commits a prohibited practice if that person:

12 (1) submits to the board a false or misleading
13 statement, document, or certificate in an application for a
14 license;

15 (2) presents to the board a license, certificate, or
16 diploma that was illegally or fraudulently obtained;

17 (3) commits fraud or deception in taking or passing an
18 examination;

19 (4) uses alcohol or drugs in an intemperate manner
20 that, in the board's opinion, could endanger a patient's life;

21 (5) commits unprofessional or dishonorable conduct
22 that is likely to deceive or defraud the public, as provided by
23 Section 164.053, or injure the public;

24 (6) uses an advertising statement that is false,
25 misleading, or deceptive;

26 (7) advertises professional superiority or the
27 performance of professional service in a superior manner if that

1 advertising is not readily subject to verification;

2 (8) purchases, sells, barters, or uses, or offers to
3 purchase, sell, barter, or use, a medical degree, license,
4 certificate, or diploma, or a transcript of a license, certificate,
5 or diploma in or incident to an application to the board for a
6 license to practice medicine;

7 (9) alters, with fraudulent intent, a medical license,
8 certificate, or diploma, or a transcript of a medical license,
9 certificate, or diploma;

10 (10) uses a medical license, certificate, or diploma,
11 or a transcript of a medical license, certificate, or diploma that
12 has been:

13 (A) fraudulently purchased or issued;

14 (B) counterfeited; or

15 (C) materially altered;

16 (11) impersonates or acts as proxy for another person
17 in an examination required by this subtitle for a medical license;

18 (12) engages in conduct that subverts or attempts to
19 subvert an examination process required by this subtitle for a
20 medical license;

21 (13) impersonates a physician or permits another to
22 use the person's license or certificate to practice medicine in
23 this state;

24 (14) directly or indirectly employs a person whose
25 license to practice medicine has been suspended, canceled, or
26 revoked;

27 (15) associates in the practice of medicine with a

1 person:

2 (A) whose license to practice medicine has been
3 suspended, canceled, or revoked; or

4 (B) who has been convicted of the unlawful
5 practice of medicine in this state or elsewhere;

6 (16) performs or procures a criminal abortion, aids or
7 abets in the procuring of a criminal abortion, attempts to perform
8 or procure a criminal abortion, or attempts to aid or abet the
9 performance or procurement of a criminal abortion;

10 (17) directly or indirectly aids or abets the practice
11 of medicine by a person, partnership, association, or corporation
12 that is not licensed to practice medicine by the board;

13 (18) performs an abortion on a woman who is pregnant
14 with a viable unborn child during the third trimester of the
15 pregnancy unless:

16 (A) the abortion is necessary to prevent the
17 death of the woman;

18 (B) the viable unborn child has a severe,
19 irreversible brain impairment; or

20 (C) the woman is diagnosed with a significant
21 likelihood of suffering imminent severe, irreversible brain damage
22 or imminent severe, irreversible paralysis; ~~or~~

23 (19) performs an abortion on an unemancipated minor
24 without the written consent of the child's parent, managing
25 conservator, or legal guardian or without a court order, as
26 provided by Section 33.003 or 33.004, Family Code, authorizing the
27 minor to consent to the abortion, unless the physician concludes

1 that on the basis of the physician's good faith clinical judgment, a
2 condition exists that complicates the medical condition of the
3 pregnant minor and necessitates the immediate abortion of her
4 pregnancy to avert her death or to avoid a serious risk of
5 substantial impairment of a major bodily function and that there is
6 insufficient time to obtain the consent of the child's parent,
7 managing conservator, or legal guardian; or

8 (20) violates Chapter 158A.

9 SECTION 5. Section 551.004(b), Occupations Code, is amended
10 to read as follows:

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

12 (1) administering a drug to a patient of the
13 practitioner; or

14 (2) supplying dangerous drugs to a patient as provided
15 by Section 158.001(b).

16 SECTION 6. Section 158.003, Occupations Code, is repealed.

17 SECTION 7. (a) The Texas Medical Board shall adopt rules
18 to implement Section 158.001(b), Occupations Code, as amended by
19 this Act, not later than December 1, 2011.

20 (b) The changes in law made by Sections 158.001 and 551.004,
21 Occupations Code, as amended by this Act, and Section 158.0011,
22 Occupations Code, as added by this Act, apply to the dispensing of a
23 dangerous drug by a physician on or after December 1, 2011. The
24 dispensing of a dangerous drug before December 1, 2011, is governed
25 by the law in effect immediately before the effective date of this
26 Act, and the former law is continued in effect for that purpose.

27 (c) The changes in law made by Chapter 158A, Occupations

1 Code, as added by this Act, apply only to the provision or
2 prescription of an abortion-inducing drug on or after the effective
3 date of this Act. The provision or prescription of an
4 abortion-inducing drug before the effective date of this Act is
5 governed by the law in effect at the time the drug was provided or
6 prescribed, and the former law is continued in effect for that
7 purpose.

8 SECTION 8. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect on the 91st day after the last day of the
13 legislative session.