86R11548 JSC-D

By:  Sheffield H.B. No. 3284

A BILL TO BE ENTITLED

AN ACT

relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

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

SECTION 1.  Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.0751 and 481.0755 to read as follows:

Sec. 481.0751.  DISPENSING VETERINARIANS. (a) This section applies to a veterinarian who holds a registration issued by the Federal Drug Enforcement Administration and dispenses Schedule II, III, IV, or V controlled substances directly to the owner or handler of an animal.

(b)  Not later than the 30th day after the date the veterinarian dispenses a controlled substance, the veterinarian shall submit to the board:

(1)  the name, strength, and quantity of the substance dispensed;

(2)  the date the substance was dispensed;

(3)  the name of the animal;

(4)  the species, gender, and actual or estimated date of birth of the animal;

(5)  the name and address of the animal's owner; and

(6)  the name, address, Federal Drug Enforcement Administration number, and telephone number of the veterinarian at the veterinarian's usual place of business.

(c)  A veterinarian shall retain a record of the information submitted to the board under Subsection (b) for a period of not less than two years after the date the substance is dispensed.

(d)  Failure to comply with this section is grounds for disciplinary action by the State Board of Veterinary Medical Examiners.

Sec. 481.0755.  WRITTEN, ORAL, AND TELEPHONICALLY COMMUNICATED PRESCRIPTIONS. (a) Notwithstanding Sections 481.073, 481.074, and 481.075, a person prescribing or dispensing a controlled substance must use the electronic prescription record and may not use a written, oral, or telephonically communicated prescription.

(b)  A prescriber may issue a written, oral, or telephonically communicated prescription for a controlled substance as authorized under this subchapter only if the prescription is issued:

(1)  by a veterinarian;

(2)  in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule;

(3)  by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule;

(4)  when the prescriber and dispenser are the same entity;

(5)  in circumstances in which necessary elements are not supported by the most recent electronic prescription drug software;

(6)  for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;

(7)  for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;

(8)  for a drug under a research protocol;

(9)  by a practitioner who has received a waiver under Subsection (c) from the requirement to use electronic prescribing; or

(10)  under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition.

(c)  The board shall adopt rules establishing a process by which a practitioner may request and receive a waiver under Subsection (b)(9), not to exceed one year, from the requirement to use electronic prescribing. The board shall adopt rules establishing the eligibility for a waiver, including:

(1)  economic hardship;

(2)  technological limitations not reasonably within the control of the practitioner; or

(3)  other exceptional circumstances demonstrated by the practitioner.

(d)  A written, oral, or telephonically communicated prescription must comply with the applicable requirements prescribed by Sections 481.074 and 481.075.

(e)  A dispensing pharmacist who receives a controlled substance prescription in a manner other than electronically is not required to verify that the prescription is exempt from the requirement that it be submitted electronically.

(f)  The board shall enforce this section.

SECTION 2.  Sections 481.076(a), (f), (g), and (h), Health and Safety Code, are amended to read as follows:

(a)  The board may not permit any person to have access to information submitted to the board under Section 481.074(q) or 481.075 except:

(1)  the board, the Texas Medical Board, the Texas Department of Licensing and Regulation, with respect to the regulation of podiatrists [~~State Board of Podiatric Medical Examiners~~], the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas Optometry Board for the purpose of:

(A)  investigating a specific license holder; or

(B)  monitoring for potentially harmful prescribing or dispensing patterns or practices under Section 481.0762;

(2)  an [~~authorized officer or member of the department or~~] authorized employee of the board engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(3)  the department or other [~~on behalf of a~~] law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state, if the board is provided a warrant, subpoena, or other court order compelling the disclosure;

(4)  a medical examiner conducting an investigation;

(5)  provided that accessing the information is authorized under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and regulations adopted under that Act:

(A)  a pharmacist or a pharmacy technician, as defined by Section 551.003, Occupations Code, acting at the direction of a pharmacist; or

(B)  a practitioner who:

(i)  is a physician, dentist, veterinarian, podiatrist, optometrist, or advanced practice nurse or is a physician assistant described by Section 481.002(39)(D) or an employee or other agent of a practitioner acting at the direction of a practitioner; and

(ii)  is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner;

(6)  a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity; [~~or~~]

(7)  one or more states or an association of states with which the board has an interoperability agreement, as provided by Subsection (j); or

(8)  a health care facility certified by the federal Centers for Medicare and Medicaid Services.

(f)  If the board accesses [~~director permits access to~~] information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board [~~director~~] shall notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless the board [~~director~~] determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(g)  If the board provides [~~director permits~~] access to information under Subsection (a)(3) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board [~~director~~] shall notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h)  If the board [~~director~~] withholds notification to an agency under Subsection (f), the board [~~director~~] shall notify the agency of the disclosure of the information and the reason for withholding notification when the board [~~director~~] determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

SECTION 3.  Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.07635, 481.07655, and 481.0768 to read as follows:

Sec. 481.07635.  PRESCRIPTIONS OF OPIOIDS. (a) In this section, "acute pain" means pain with abrupt onset that is caused by an injury or other process that is not ongoing.

(b)  For the initial treatment of acute pain, a prescriber may not issue a prescription for an opioid in an amount that exceeds a 14-day supply.

Sec. 481.07655.  LIMITATION OF LIABILITY. (a) A prescriber or dispenser is not liable in a civil action for damages arising from the failure to access prescription drug information as required or authorized by Section 481.0764 or failure to submit the information to the board as required under Section 481.074(q) or 481.075, unless the failure constitutes gross negligence or wilful misconduct and the prescriber or dispenser would be liable to the claimant under other law.

(b)  This section does not establish a standard of care.

Sec. 481.0768.  ADMINISTRATIVE PENALTY: DISCLOSURE OR USE OF INFORMATION. (a) A person authorized to receive information under Section 481.076(a) may not disclose or use the information in a manner not authorized by this subchapter or other law.

(b)  A regulatory agency that issues a license, certification, or registration to a prescriber or dispenser shall periodically update the administrative penalties, or any applicable disciplinary guidelines concerning the penalties, assessed by that agency for conduct that violates Subsection (a).

(c)  The agency shall set the penalties in an amount sufficient to deter the conduct.

SECTION 4.  Section 481.003(a), Health and Safety Code, is amended to read as follows:

(a)  The director may adopt rules to administer and enforce this chapter, other than Sections 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, and 481.0768. The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.0751, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, and 481.0768.

SECTION 5.  Section 481.128(a), Health and Safety Code, is amended to read as follows:

(a)  A registrant or dispenser commits an offense if the registrant or dispenser knowingly:

(1)  distributes, delivers, administers, or dispenses a controlled substance in violation of Subchapter C [~~Sections 481.070-481.075~~];

(2)  manufactures a controlled substance not authorized by the person's Federal Drug Enforcement Administration registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3)  refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter;

(4)  prints, manufactures, possesses, or produces an official prescription form without the approval of the board;

(5)  delivers or possesses a counterfeit official prescription form;

(6)  refuses an entry into a premise for an inspection authorized by this chapter;

(7)  refuses or fails to return an official prescription form as required by Section 481.075(k);

(8)  refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted by the director or the board; or

(9)  refuses or fails to maintain security required by this chapter or a rule adopted under this chapter.

SECTION 6.  Section 481.129(a), Health and Safety Code, is amended to read as follows:

(a)  A person commits an offense if the person knowingly:

(1)  distributes as a registrant or dispenser a controlled substance listed in Schedule I or II, unless the person distributes the controlled substance as authorized under the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

(2)  uses in the course of manufacturing, prescribing, or distributing a controlled substance a Federal Drug Enforcement Administration registration number that is fictitious, revoked, suspended, or issued to another person;

(3)  issues a prescription bearing a forged or fictitious signature;

(4)  uses a prescription issued to another person to prescribe a Schedule II controlled substance;

(5)  possesses, obtains, or attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance:

(A)  by misrepresentation, fraud, forgery, deception, or subterfuge;

(B)  through use of a fraudulent prescription form; [~~or~~]

(C)  through use of a fraudulent oral or telephonically communicated prescription; or

(D)  through the use of a fraudulent electronic prescription; or

(6)  furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

SECTION 7.  Section 554.051(a-1), Occupations Code, is amended to read as follows:

(a-1)  The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.0751, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, and 481.0768, Health and Safety Code.

SECTION 8.  Section 565.003, Occupations Code, is amended to read as follows:

Sec. 565.003.  ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless compliance would violate the pharmacy or drug statutes or rules in the state in which the pharmacy is located, the board may discipline an applicant for or the holder of a nonresident pharmacy license if the board finds that the applicant or license holder has failed to comply with:

(1)  Section 481.073, 481.074, [~~or~~] 481.075, 481.0751, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.0764, 481.0765, 481.07655, 481.0766, or 481.0768, Health and Safety Code;

(2)  Texas substitution requirements regarding:

(A)  the practitioner's directions concerning generic substitution;

(B)  the patient's right to refuse generic substitution; or

(C)  notification to the patient of the patient's right to refuse substitution;

(3)  any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or

(4)  any board rule adopted under Section 554.051(a) and determined by the board to be applicable under Section 554.051(b).

SECTION 9.  Sections 481.076(a-3), (a-4), and (a-5), Health and Safety Code, are repealed.

SECTION 10.  To the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 11.  Section 481.0751, Health and Safety Code, as added by this Act, applies only to a controlled substance dispensed on or after the effective date of this Act.

SECTION 12.  Sections 481.0755, 481.07635, and 481.07655, Health and Safety Code, as added by this Act, apply only to a prescription issued on or after the effective date of this Act.

SECTION 13.  Section 481.0768(a), Health and Safety Code, as added by this Act, applies only to conduct that occurs on or after the effective date of this Act.

SECTION 14.  This Act takes effect September 1, 2019.