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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 Section 481.0755 to read as follows:

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;

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

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

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

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

15 (8) for a drug under a research protocol;

16 (9) by a prescriber who is employed by or is practicing
17 a health care profession at a health-related institution, as
18 defined by Section 62.161, Education Code, as added by Chapter 448
19 (H.B. 7), Acts of the 84th Legislature, 2015;

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

23 (11) under circumstances in which the practitioner has
24 the present ability to submit an electronic prescription but
25 reasonably determines that it would be impractical for the patient
26 to obtain the drugs prescribed under the electronic prescription in
27 a timely manner and that a delay would adversely impact the

1 patient's medical condition.

2 (c) The board shall adopt rules establishing a process by
3 which a practitioner may request and receive a waiver under
4 Subsection (b)(10), not to exceed one year, from the requirement to
5 use electronic prescribing. The board shall adopt rules
6 establishing the eligibility for a waiver, including:

7 (1) economic hardship;

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

10 (3) other exceptional circumstances demonstrated by
11 the practitioner.

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

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

19 (f) The board shall enforce this section.

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

22 (a) The board may not permit any person to have access to
23 information submitted to the board under Section 481.074(q) or
24 481.075 except:

25 (1) the board, the Texas Medical Board, the Texas
26 Department of Licensing and Regulation, with respect to the
27 regulation of podiatrists [~~State Board of Podiatric Medical~~

1 ~~Examiners~~], the State Board of Dental Examiners, the State Board of
2 Veterinary Medical Examiners, the Texas Board of Nursing, or the
3 Texas Optometry Board for the purpose of:

- 4 (A) investigating a specific license holder; or
- 5 (B) monitoring for potentially harmful
6 prescribing or dispensing patterns or practices under Section
7 [481.0762](#);

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

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

18 (4) a medical examiner conducting an investigation;

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

23 (A) a pharmacist or a pharmacy technician, as
24 defined by Section [551.003](#), Occupations Code, acting at the
25 direction of a pharmacist; or

26 (B) a practitioner who:

27 (i) is a physician, dentist, veterinarian,

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

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

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

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

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

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

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

1 information is disclosed.

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

8 SECTION 3. Section [481.0766](#), Health and Safety Code, is
9 amended by adding Subsection (c) to read as follows:

10 (c) The board shall make the information reported under
11 Subsection (a) available to the State Board of Veterinary Medical
12 Examiners for the purpose of routine inspections and
13 investigations.

14 SECTION 4. Subchapter C, Chapter [481](#), Health and Safety
15 Code, is amended by adding Sections [481.0767](#) and [481.0768](#) to read as
16 follows:

17 Sec. [481.0767](#). ADVISORY COMMITTEE. (a) The board shall
18 establish an advisory committee to make recommendations regarding
19 information submitted to the board and access to that information
20 under Sections [481.074](#), [481.075](#), [481.076](#), and [481.0761](#), including
21 recommendations for:

22 (1) operational improvements to the electronic system
23 that stores the information, including implementing best practices
24 and improvements that address system weaknesses and workflow
25 challenges;

26 (2) resolutions to identified data concerns;

27 (3) methods to improve data accuracy, integrity, and

1 security and to reduce technical difficulties; and

2 (4) the addition of any new data set or service to the
3 information submitted to the board or the access to that
4 information.

5 (b) The board shall appoint the following members to the
6 advisory committee:

7 (1) a physician licensed in this state who practices
8 in pain management;

9 (2) a physician licensed in this state who practices
10 in family medicine;

11 (3) a physician licensed in this state who performs
12 surgery;

13 (4) a physician licensed in this state who practices
14 in emergency medicine at a hospital;

15 (5) a physician licensed in this state who practices
16 in psychiatry;

17 (6) an oral and maxillofacial surgeon;

18 (7) a physician assistant or advanced practice
19 registered nurse to whom a physician has delegated the authority to
20 prescribe or order a drug;

21 (8) a pharmacist working at a chain pharmacy;

22 (9) a pharmacist working at an independent pharmacy;

23 (10) an academic pharmacist; and

24 (11) two representatives of the health information
25 technology industry, at least one of whom is a representative of a
26 company whose primary line of business is electronic medical
27 records.

1 (c) Members of the advisory committee serve three-year
2 terms. Each member shall serve until the member's replacement has
3 been appointed.

4 (d) The advisory committee shall annually elect a presiding
5 officer from its members.

6 (e) The advisory committee shall meet at least two times a
7 year and at the call of the presiding officer or the board.

8 (f) A member of the advisory committee serves without
9 compensation but may be reimbursed by the board for actual expenses
10 incurred in performing the duties of the advisory committee.

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

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

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

22 SECTION 5. Section 801.307, Occupations Code, is amended by
23 adding Subsection (a-1) to read as follows:

24 (a-1) The board by rule shall require a veterinarian to
25 complete two hours of continuing education related to opioid abuse
26 and controlled substance diversion, inventory, and security every
27 two years to renew a license to practice veterinary medicine.

1 SECTION 6. Section 481.003(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) The director may adopt rules to administer and enforce
4 this chapter, other than Sections 481.073, 481.074, 481.075,
5 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764,
6 481.0765, [~~and~~] 481.0766, 481.0767, and 481.0768. The board may
7 adopt rules to administer Sections 481.073, 481.074, 481.075,
8 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764,
9 481.0765, [~~and~~] 481.0766, 481.0767, and 481.0768.

10 SECTION 7. Section 481.128(a), Health and Safety Code, is
11 amended to read as follows:

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

14 (1) distributes, delivers, administers, or dispenses
15 a controlled substance in violation of Subchapter C [~~Sections~~
16 ~~481.070-481.075~~];

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

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

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

27 (5) delivers or possesses a counterfeit official

1 prescription form;

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

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

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

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

12 SECTION 8. Section 481.129(a), Health and Safety Code, is
13 amended to read as follows:

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

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

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

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

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

27 (5) possesses, obtains, or attempts to possess or

1 obtain a controlled substance or an increased quantity of a
2 controlled substance:

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

5 (B) through use of a fraudulent prescription
6 form; ~~or~~

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

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

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

15 SECTION 9. Section 554.051(a-1), Occupations Code, is
16 amended to read as follows:

17 (a-1) The board may adopt rules to administer Sections
18 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762,
19 481.0763, 481.0764, 481.0765, ~~and~~ 481.0766, 481.0767, and
20 481.0768, Health and Safety Code.

21 SECTION 10. Section 565.003, Occupations Code, is amended
22 to read as follows:

23 Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING
24 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless
25 compliance would violate the pharmacy or drug statutes or rules in
26 the state in which the pharmacy is located, the board may discipline
27 an applicant for or the holder of a nonresident pharmacy license if

1 the board finds that the applicant or license holder has failed to
2 comply with:

3 (1) Subchapter C, Chapter 481 [~~Section 481.074 or~~
4 ~~481.075~~], Health and Safety Code;

5 (2) Texas substitution requirements regarding:

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

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

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

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

15 (4) any board rule adopted under Section 554.051(a)
16 and determined by the board to be applicable under Section
17 554.051(b).

18 SECTION 11. Sections 481.076(a-3), (a-4), and (a-5), Health
19 and Safety Code, are repealed.

20 SECTION 12. To the extent of any conflict, this Act prevails
21 over another Act of the 86th Legislature, Regular Session, 2019,
22 relating to nonsubstantive additions to and corrections in enacted
23 codes.

24 SECTION 13. Section 481.0755, Health and Safety Code, as
25 added by this Act, applies only to a prescription issued on or after
26 the effective date of this Act.

27 SECTION 14. Section 481.0768(a), Health and Safety Code, as

1 added by this Act, applies only to conduct that occurs on or after
2 the effective date of this Act.

3 SECTION 15. Section 801.307(a-1), Occupations Code, as
4 added by this Act, applies only to the renewal of a license to
5 practice veterinary medicine on or after September 1, 2020. The
6 renewal of a license before that date is governed by the law in
7 effect immediately before the effective date of this Act, and the
8 former law is continued in effect for that purpose.

9 SECTION 16. This Act takes effect September 1, 2019.