H.B. No. 3284

AN ACT
relating to the prescribing and dispensing of controlled substances
under the Texas Controlled Substances Act; authorizing a fee;
providing for administrative penalties; creating criminal
offenses.

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

SECTION 1. Section 481.076, Health and Safety Code, is
amended by amending Subsections (a), (f), (g), and (h) and adding
Subsection (a-6) 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 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); (8) a health care facility certified by the federal
Centers for Medicare and Medicaid Services; or
(9) the patient, the patient's parent or legal
guardian, if the patient is a minor, or the patient's legal
guardian, if the patient is an incapacitated person, as defined by
Section 1002.017(2), Estates Code, inquiring about the patient's
prescription record, including persons who have accessed that
record.

(a-6) A patient, the patient's parent or legal guardian, if
the patient is a minor, or the patient's legal guardian, if the
patient is an incapacitated person, as defined by Section
1002.017(2), Estates Code, is entitled to a copy of the patient's
prescription record as provided by Subsection (a)(9), including a
list of persons who have accessed that record, if a completed
patient data request form and any supporting documentation required
by the board is submitted to the board. The board may charge a
reasonable fee for providing the copy. The board shall adopt rules
to implement this subsection, including rules prescribing the
patient data request form, listing the documentation required for
receiving a copy of the prescription record, and setting the fee.

(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 2. Section 481.0766, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

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

SECTION 3. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.0767, 481.0768, and 481.0769 to read as follows:

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

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

(2) resolutions to identified data concerns;

(3) methods to improve data accuracy, integrity, and security and to reduce technical difficulties; and

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

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

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

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

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

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

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

(6) an oral and maxillofacial surgeon;

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

(8) a pharmacist working at a chain pharmacy;

(9) a pharmacist working at an independent pharmacy;

(10) an academic pharmacist; and

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

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

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

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

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

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.

Sec. 481.0769. CRIMINAL OFFENSES RELATED TO PRESCRIPTION INFORMATION. (a) A person authorized to receive information under Section 481.076(a) commits an offense if the person discloses or uses the information in a manner not authorized by this subchapter or other law.

(b) A person requesting information under Section 481.076(a-6) commits an offense if the person makes a material misrepresentation or fails to disclose a material fact in the request for information under that subsection.

(c) An offense under Subsection (a) is a Class A misdemeanor.

(d) An offense under Subsection (b) is a Class C misdemeanor.

SECTION 4. Section 801.307, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

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

SECTION 5. 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, 481.0764, 481.0765, [and]
481.0766, 481.0767, 481.0768, and 481.0769. The board may adopt
rules to administer Sections 481.073, 481.074, 481.075, 481.076,
481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [and] 481.0766,
481.0767, 481.0768, and 481.0769.

SECTION 6. 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);
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
refuses or fails to maintain security required by
this chapter or a rule adopted under this chapter.

SECTION 7. 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; [↩]
(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 8. 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, 481.076, 481.0761, 481.0762, 481.0763,
481.0764, 481.0765, [and] 481.0766, 481.0767, 481.0768, and
481.0769, Health and Safety Code.

SECTION 9. 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) Subchapter C, Chapter 481 [Section 481.074 or
481.075], Health and Safety Code;
(2) Texas substitution requirements regarding:
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 10. Sections 481.076(a-3), (a-4), and (a-5), Health
and Safety Code, are repealed.

SECTION 11. 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 12. Notwithstanding Section 24, Chapter 485 (H.B.
2561), Acts of the 85th Legislature, Regular Session, 2017, Section
481.0764(a), Health and Safety Code, as added by that Act, applies
only to:

(1) a prescriber, other than a veterinarian, who
issues a prescription for a controlled substance on or after March
1, 2020; or

(2) a person authorized by law to dispense a
controlled substance, other than a veterinarian, who dispenses a
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. Section 801.307(a-1), Occupations Code, as added by this Act, applies only to the renewal of a license to practice veterinary medicine on or after September 1, 2020. The renewal of a license before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 15. This Act takes effect September 1, 2019.
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President of the Senate  Speaker of the House

I certify that H.B. No. 3284 was passed by the House on May 10, 2019, by the following vote: Yeas 136, Nays 3, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3284 on May 24, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3284 on May 26, 2019, by the following vote: Yeas 139, Nays 4, 1 present, not voting.

Chief Clerk of the House
H.B. No. 3284

I certify that H.B. No. 3284 was passed by the Senate, with amendments, on May 22, 2019, by the following vote: Yeas 30, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3284 on May 26, 2019, by the following vote: Yeas 30, Nays 1.

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Secretary of the Senate

APPROVED: ____________________

Date

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Governor