

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,

1 investigation, or enforcement of this chapter or another law
2 governing illicit drugs in this state or another state;

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

9 (4) a medical examiner conducting an investigation;

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

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

17 (B) a practitioner who:

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

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

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

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

4 (8) a health care facility certified by the federal
5 Centers for Medicare and Medicaid Services; or

6 (9) the patient, the patient's parent or legal
7 guardian, if the patient is a minor, or the patient's legal
8 guardian, if the patient is an incapacitated person, as defined by
9 Section 1002.017(2), Estates Code, inquiring about the patient's
10 prescription record, including persons who have accessed that
11 record.

12 (a-6) A patient, the patient's parent or legal guardian, if
13 the patient is a minor, or the patient's legal guardian, if the
14 patient is an incapacitated person, as defined by Section
15 1002.017(2), Estates Code, is entitled to a copy of the patient's
16 prescription record as provided by Subsection (a)(9), including a
17 list of persons who have accessed that record, if a completed
18 patient data request form and any supporting documentation required
19 by the board is submitted to the board. The board may charge a
20 reasonable fee for providing the copy. The board shall adopt rules
21 to implement this subsection, including rules prescribing the
22 patient data request form, listing the documentation required for
23 receiving a copy of the prescription record, and setting the fee.

24 (f) If the board accesses [~~director permits access to~~]
25 information under Subsection (a)(2) relating to a person licensed
26 or regulated by an agency listed in Subsection (a)(1), the board
27 [~~director~~] shall notify and cooperate with that agency regarding

1 the disposition of the matter before taking action against the
2 person, unless the board [~~director~~] determines that notification is
3 reasonably likely to interfere with an administrative or criminal
4 investigation or prosecution.

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

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

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

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

23 SECTION 3. Subchapter C, Chapter 481, Health and Safety
24 Code, is amended by adding Sections 481.0767, 481.0768, and
25 481.0769 to read as follows:

26 Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall
27 establish an advisory committee to make recommendations regarding

1 information submitted to the board and access to that information
2 under Sections 481.074, 481.075, 481.076, and 481.0761, including
3 recommendations for:

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

8 (2) resolutions to identified data concerns;

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

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

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

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

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

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

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

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

26 (6) an oral and maxillofacial surgeon;

27 (7) a physician assistant or advanced practice

1 registered nurse to whom a physician has delegated the authority to
2 prescribe or order a drug;

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

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

5 (10) an academic pharmacist; and

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

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

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

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

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

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

24 (b) A regulatory agency that issues a license,
25 certification, or registration to a prescriber or dispenser shall
26 periodically update the administrative penalties, or any
27 applicable disciplinary guidelines concerning the penalties,

1 assessed by that agency for conduct that violates Subsection (a).

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

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

9 (b) A person requesting information under Section
10 481.076(a-6) commits an offense if the person makes a material
11 misrepresentation or fails to disclose a material fact in the
12 request for information under that subsection.

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

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

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

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

23 SECTION 5. Section 481.003(a), Health and Safety Code, is
24 amended to read as follows:

25 (a) The director may adopt rules to administer and enforce
26 this chapter, other than Sections 481.073, 481.074, 481.075,
27 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [~~and~~]

1 481.0766, 481.0767, 481.0768, and 481.0769. The board may adopt
2 rules to administer Sections 481.073, 481.074, 481.075, 481.076,
3 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [~~and~~] 481.0766,
4 481.0767, 481.0768, and 481.0769.

5 SECTION 6. Section 481.128(a), Health and Safety Code, is
6 amended to read as follows:

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

9 (1) distributes, delivers, administers, or dispenses
10 a controlled substance in violation of Subchapter C [~~Sections~~
11 ~~481.070-481.075~~];

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

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

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

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

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

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

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

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

7 SECTION 7. Section [481.129\(a\)](#), Health and Safety Code, is
8 amended to read as follows:

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

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

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

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

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

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

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

27 (B) through use of a fraudulent prescription

1 form; ~~or~~]

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

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

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

10 SECTION 8. Section 554.051(a-1), Occupations Code, is
11 amended to read as follows:

12 (a-1) The board may adopt rules to administer Sections
13 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763,
14 481.0764, 481.0765, ~~and~~ 481.0766, 481.0767, 481.0768, and
15 481.0769, Health and Safety Code.

16 SECTION 9. Section 565.003, Occupations Code, is amended to
17 read as follows:

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

25 (1) Subchapter C, Chapter 481 [~~Section 481.074 or~~
26 ~~481.075~~], Health and Safety Code;

27 (2) Texas substitution requirements regarding:

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

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

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

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

10 (4) any board rule adopted under Section 554.051(a)
11 and determined by the board to be applicable under Section
12 554.051(b).

13 SECTION 10. Sections 481.076(a-3), (a-4), and (a-5), Health
14 and Safety Code, are repealed.

15 SECTION 11. To the extent of any conflict, this Act prevails
16 over another Act of the 86th Legislature, Regular Session, 2019,
17 relating to nonsubstantive additions to and corrections in enacted
18 codes.

19 SECTION 12. Notwithstanding Section 24, Chapter 485 (H.B.
20 2561), Acts of the 85th Legislature, Regular Session, 2017, Section
21 481.0764(a), Health and Safety Code, as added by that Act, applies
22 only to:

23 (1) a prescriber, other than a veterinarian, who
24 issues a prescription for a controlled substance on or after March
25 1, 2020; or

26 (2) a person authorized by law to dispense a
27 controlled substance, other than a veterinarian, who dispenses a

1 controlled substance on or after March 1, 2020.

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

5 SECTION 14. Section 801.307(a-1), Occupations Code, as
6 added by this Act, applies only to the renewal of a license to
7 practice veterinary medicine on or after September 1, 2020. The
8 renewal of a license before that date is governed by the law in
9 effect immediately before the effective date of this Act, and the
10 former law is continued in effect for that purpose.

11 SECTION 15. This Act takes effect September 1, 2019.

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.

Secretary of the Senate

APPROVED: _____

Date

Governor