

By: Sheffield

H.B. No. 3284

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

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

20 (2) the date the substance was dispensed;

21 (3) the name of the animal;

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

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

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

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

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

10           Sec. 481.0755. WRITTEN, ORAL, AND TELEPHONICALLY  
11 COMMUNICATED PRESCRIPTIONS. (a) Notwithstanding Sections  
12 481.073, 481.074, and 481.075, a person prescribing or dispensing a  
13 controlled substance must use the electronic prescription record  
14 and may not use a written, oral, or telephonically communicated  
15 prescription.

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

20                   (1) by a veterinarian;

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

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

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

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

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

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

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

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

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

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

- 1           (1) economic hardship;  
2           (2) technological limitations not reasonably within  
3 the control of the practitioner; or  
4           (3) other exceptional circumstances demonstrated by  
5 the practitioner.

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

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

13           (f) The board shall enforce this section.

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

16           (a) The board may not permit any person to have access to  
17 information submitted to the board under Section 481.074(q) or  
18 481.075 except:

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

25                   (A) investigating a specific license holder; or

26                   (B) monitoring for potentially harmful  
27 prescribing or dispensing patterns or practices under Section

1 481.0762;

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

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

12 (4) a medical examiner conducting an investigation;

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

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

20 (B) a practitioner who:

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

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

1 the practitioner;

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

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

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

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

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

23 (h) If the board ~~[director]~~ withholds notification to an  
24 agency under Subsection (f), the board ~~[director]~~ shall notify the  
25 agency of the disclosure of the information and the reason for  
26 withholding notification when the board ~~[director]~~ determines that  
27 notification is no longer likely to interfere with an

1 administrative or criminal investigation or prosecution.

2 SECTION 3. Subchapter C, Chapter 481, Health and Safety  
3 Code, is amended by adding Sections 481.07635, 481.07655, and  
4 481.0768 to read as follows:

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

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

11 Sec. 481.07655. LIMITATION OF LIABILITY. (a) A prescriber  
12 or dispenser is not liable in a civil action for damages arising  
13 from the failure to access prescription drug information as  
14 required or authorized by Section 481.0764 or failure to submit the  
15 information to the board as required under Section 481.074(q) or  
16 481.075, unless the failure constitutes gross negligence or wilful  
17 misconduct and the prescriber or dispenser would be liable to the  
18 claimant under other law.

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

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

6 (a) The director may adopt rules to administer and enforce  
7 this chapter, other than Sections 481.073, 481.074, 481.075,  
8 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.0764,  
9 481.0765, 481.07655, [~~and~~] 481.0766, and 481.0768. The board may  
10 adopt rules to administer Sections 481.073, 481.074, 481.075,  
11 481.0751, 481.0755, 481.076, 481.0761, 481.0762, 481.0763,  
12 481.07635, 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, and  
13 481.0768.

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

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

18 (1) distributes, delivers, administers, or dispenses  
19 a controlled substance in violation of Subchapter C [~~Sections~~  
20 ~~481.070-481.075~~];

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

26 (3) refuses or fails to make, keep, or furnish a  
27 record, report, notification, order form, statement, invoice, or



1 information required by this chapter;

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

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

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

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

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

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

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

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

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

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

27 (3) issues a prescription bearing a forged or

1 fictitious signature;

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

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

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

9 (B) through use of a fraudulent prescription  
10 form; ~~or~~

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

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

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

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

21 (a-1) The board may adopt rules to administer Sections  
22 481.073, 481.074, 481.075, 481.0751, 481.0755, 481.076, 481.0761,  
23 481.0762, 481.0763, 481.07635, 481.0764, 481.0765, 481.07655,  
24 ~~and~~ 481.0766, and 481.0768, Health and Safety Code.

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

27 Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING

1 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless  
2 compliance would violate the pharmacy or drug statutes or rules in  
3 the state in which the pharmacy is located, the board may discipline  
4 an applicant for or the holder of a nonresident pharmacy license if  
5 the board finds that the applicant or license holder has failed to  
6 comply with:

7 (1) Section 481.073, 481.074, [or] 481.075, 481.0751,  
8 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.07635,  
9 481.0764, 481.0765, 481.07655, 481.0766, or 481.0768, Health and  
10 Safety Code;

11 (2) Texas substitution requirements regarding:  
12 (A) the practitioner's directions concerning  
13 generic substitution;

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

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

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

21 (4) any board rule adopted under Section 554.051(a)  
22 and determined by the board to be applicable under Section  
23 554.051(b).

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

26 SECTION 10. To the extent of any conflict, this Act prevails  
27 over another Act of the 86th Legislature, Regular Session, 2019,

1 relating to nonsubstantive additions to and corrections in enacted  
2 codes.

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

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

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

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