

By: Hinojosa

S.B. No. 2316

A BILL TO BE ENTITLED

AN ACT

relating to controlled substance prescriptions under the Texas
Controlled Substances Act; creating a criminal offense.

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

SECTION 1. 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,
481.07655, ~~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, 481.07655, ~~and~~ 481.0766, 481.0767, 481.0768, and
481.0769.

SECTION 2. Section 481.076, Health and Safety Code, is
amended by amending Subsection (a) 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~~

1 Veterinary Medical Examiners, the Texas Board of Nursing, or the
2 Texas Optometry Board for the purpose of:

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

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

11 (3) the department on behalf of a law enforcement or
12 prosecutorial official engaged in the administration,
13 investigation, or enforcement of this chapter or another law
14 governing illicit drugs in this state or another state;

15 (4) a medical examiner conducting an investigation;

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

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

23 (B) a practitioner who:

24 (i) is a physician, dentist, veterinarian,
25 podiatrist, optometrist, or advanced practice nurse or is a
26 physician assistant described by Section [481.002](#)(39)(D) or an
27 employee or other agent of a practitioner acting at the direction of

1 a practitioner; and

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

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

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

10 (8) the patient or patient's authorized representative
11 inquiring about the patient's prescription record, including
12 persons who have accessed that record.

13 (a-6) A patient or the patient's authorized representative
14 is entitled to a copy of the patient's prescription record as
15 provided by Subsection (a)(8), including a list of persons who have
16 accessed that record, if the patient or representative submits to
17 the board a completed patient data request form and any supporting
18 documentation required by the board. The board may charge a
19 reasonable fee for providing the copy. The board shall adopt rules
20 to implement this subsection, including rules prescribing the
21 patient data request form, listing the documentation required for
22 receiving a copy of the prescription record, and setting the fee.

23 SECTION 3. Subchapter C, Chapter 481, Health and Safety
24 Code, is amended by adding Sections 481.07655, 481.0767, 481.0768,
25 and 481.0769 to read as follows:

26 Sec. 481.07655. LIMITATION OF LIABILITY. (a) A prescriber
27 or dispenser is not liable in a civil action for damages arising

1 from the failure to access prescription drug information as
2 required or authorized by Section 481.0764 or failure to submit the
3 information to the board as required under Section 481.074(q) or
4 481.075, unless the failure constitutes gross negligence or wilful
5 misconduct and the prescriber or dispenser would be liable to the
6 claimant under other law.

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

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

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

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

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

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

20 (4) a physician licensed in this state who practices
21 in emergency medicine;

22 (5) a dentist licensed in this state who performs oral
23 surgery;

24 (6) a podiatrist licensed in this state;

25 (7) a physician assistant to whom a physician has
26 delegated the authority to prescribe or order a drug;

27 (8) an advanced practice registered nurse to whom a

1 physician has delegated the authority to prescribe or order a drug;

2 (9) a pharmacist working at a chain pharmacy;

3 (10) a pharmacist working at an independent pharmacy;

4 (11) a veterinarian; and

5 (12) an electronic records consultant.

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

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

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

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

16 (g) The advisory committee is abolished and this section
17 expires on September 1, 2023.

18 Sec. 481.0768. CRIMINAL OFFENSES RELATED TO PRESCRIPTION
19 INFORMATION. (a) A person authorized to receive information under
20 Section 481.076(a) commits an offense if the person discloses or
21 uses the information in a manner not authorized by this subchapter
22 or other law.

23 (b) A person requesting information under Section
24 481.076(a-6) commits an offense if the person makes a material
25 misrepresentation or fails to disclose a material fact in the
26 request for information under that subsection.

27 (c) An offense under Subsection (a) is a Class A

1 misdemeanor.

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

4 Sec. 481.0769. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE
5 OF INFORMATION. (a) A regulatory agency that issues a license,
6 certification, or registration to a prescriber or dispenser shall
7 periodically update the administrative penalties, or any
8 applicable disciplinary guidelines concerning the penalties,
9 assessed by that agency for conduct constituting an offense under
10 Section 481.0768(a).

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

13 SECTION 4. Section 554.051, Occupations Code, is amended by
14 amending Subsection (a-1) and adding Subsection (a-2) to read as
15 follows:

16 (a-1) The board may adopt rules to administer Sections
17 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763,
18 481.0764, 481.0765, 481.07655, ~~and~~ 481.0766, 481.0768, and
19 481.0769, Health and Safety Code.

20 (a-2) The board may adopt rules to administer Section
21 481.0767, Health and Safety Code. This subsection expires
22 September 1, 2023.

23 SECTION 5. Section 565.003, Occupations Code, is amended to
24 read as follows:

25 Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING
26 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless
27 compliance would violate the pharmacy or drug statutes or rules in

1 the state in which the pharmacy is located, the board may discipline
2 an applicant for or the holder of a nonresident pharmacy license if
3 the board finds that the applicant or license holder has failed to
4 comply with:

5 (1) Section 481.073, 481.074, [ex] 481.075, 481.076,
6 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655,
7 481.0766, 481.0768, or 481.0769, Health and Safety Code;

8 (2) Texas substitution requirements regarding:

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

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

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

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

18 (4) any board rule adopted under Section 554.051(a)
19 and determined by the board to be applicable under Section
20 554.051(b).

21 SECTION 6. The State Auditor's Office, in accordance with
22 Chapter 321, Government Code, shall audit the Texas State Board of
23 Pharmacy with respect to the information submitted to the board and
24 access to that information under Sections 481.074, 481.075,
25 481.076, and 481.0761, Health and Safety Code. The audit must
26 consider the economy and efficiency and the effectiveness of the
27 systems for submission of and access to the information, including

1 vendor performance and contract management. The audit must be
2 completed not later than December 1, 2024.

3 SECTION 7. Not later than September 1, 2020, each
4 regulatory agency that issues a license, certification, or
5 registration to a prescriber or dispenser shall evaluate and update
6 any administrative penalties and guidelines as provided by Section
7 481.0769, Health and Safety Code, as added by this Act.

8 SECTION 8. Notwithstanding Section 24, Chapter 485 (H.B.
9 2561), Acts of the 85th Legislature, Regular Session, 2017, Section
10 481.0764(a), Health and Safety Code, as added by that Act, applies
11 only to:

12 (1) a prescriber, other than a veterinarian, who
13 issues a prescription for a controlled substance on or after March
14 1, 2020; or

15 (2) a person authorized by law to dispense a
16 controlled substance, other than a veterinarian, who dispenses a
17 controlled substance on or after March 1, 2020.

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