ENGROSSED SENATE
BILL NO. 818

By: Rozell, Bell, Brown, Haney, Hooper, Herbert, Leftwich, Long (Lewis), Monson, Muegge, Price, Robinson, Shedrick, Shurden, Weedn, Wilkerson and Horner of the Senate

and

Adair, Anthony, Bastin, Beutler, Bonny, Boyd (Betty), Boyd (Laura), Cozort, Erwin, Gates, Hilliard, Hutchison, Isaac, Kinnamon, Leist, Mass, Monks, Paulk, Reese, Rhoads (Karroll), Steidley, Thompson, Vaughn (George), Voskuhl, Webb, Weese, Wells and York of the House

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 581 and 584, which relate to the practice of optometry and the Oklahoma Pharmacy Act; modifying the definition of the practice of optometry; authorizing the prescribing of certain drugs; prohibiting the dispensing of certain drugs except under certain circumstances; modifying type of pharmaceutical agents authorized for use; clarifying language relating to definitions in the Oklahoma Pharmacy Act; amending Section 22, Chapter 199, O.S.L. 1993 (59 O.S. Supp. 1993, Section 353.13A) and 63 O.S. 1991, Sections 2-101 and 2-312, which relate to the Oklahoma Pharmacy Act and the Uniform Controlled Dangerous Substances Act; authorizing pharmacist to dispense certain drugs for conditions as prescribed by certain optometrists; removing certain prohibitions relating to drugs and

optometrists; authorizing optometrists to prescribe and administer certain controlled dangerous substances; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 581, is amended to read as follows:

Section 581. The practice of optometry is defined to be the science and art of examining the human eye and measurement of the powers of vision by the employment of any means, including the use or furnishing of any self-testing device, the use of any computerized or automatic refracting device, the use of ~~ocular~~ pharmaceutical agents ~~topically applied~~, the diagnosis of conditions of the human eye and the correcting and relief of ocular abnormalities by means including but not limited to prescribing and adaptation of lenses, contact lenses, spectacles, eyeglasses, prisms and the employment of visual training or orthoptics for the aid thereof. The practice of optometry shall also include the prescribing of dangerous drugs and controlled dangerous substances for all schedules specified in the Uniform Controlled Dangerous Substances Act except Schedules I and II for the purpose of diagnosis and treatment of ocular abnormalities. Provided, however, the practice of optometry shall not include the dispensing of drugs. This shall not preclude the dispensing of professional samples to patients.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 584, is amended to read as follows:

Section 584. Every person desiring to commence the practice of optometry after the passage of this act except as hereinafter provided, upon presentation of satisfactory evidence, verified by

oath, that he is more than twenty-one (21) years of age and of good moral character and has ~~had a high school education~~ met the undergraduate requirements and is a graduate of ~~a standard~~ an accredited school of optometry, conferring the degree of Doctor of Optometry or its equivalent, shall, upon application, be examined by the Board of Examiners to determine his or her qualifications, and such examination shall be based upon the subjects taught in the standard schools and colleges of optometry, such as general and ocular pharmacology, anatomy of the eyes, use of the ophthalmoscope, retinoscope and the use of trial lenses, general anatomy, physiology, physics, chemistry, biology, bacteriology, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, clinical optometry, visual field charting and orthoptics, the general laws of optics and refraction, as is essential to the practice of optometry. Every candidate successfully passing such examination shall be registered by the Board as possessing the qualifications as required by Section 581 et seq. of this ~~act~~ title and shall receive from the Board a certificate thereof. Every optometrist desiring to use ~~ocular topical pharmaceutical agents~~ dangerous drugs and controlled dangerous substances as specified in Section 1 of this act shall have satisfactorily completed courses in general and ocular pharmacology at an institution accredited by the Council on Post-Secondary Accreditation or the United States Department of Education. The Board of Examiners in Optometry shall approve such courses and shall certify those qualified by such training to use ~~ocular topical pharmaceutical agents~~ dangerous drugs and controlled dangerous substances as specified in Section 1 of this act. The use of any such ~~topical~~ pharmaceuticals by an optometrist or the obtaining of same by an optometrist shall be unlawful unless said optometrist is in possession of a current certificate as provided in this section. Such optometrist shall furnish evidence to any

pharmacist or other supplier from whom such pharmaceuticals are sought as to his holding a current certificate. The Board may, in its discretion, issue said certificates to practice, to persons otherwise qualified under this act, who have established by legal proof their knowledge of optometry, as shown by previous examination in any state of the Union; provided, the examination in said state was, at the time taken, of an equal standard with that of this state; provided, further, that citizens of this state are by the statutes of said state, admitted to practice on like conditions.

SECTION 3. AMENDATORY Section 22, Chapter 199, O.S.L. 1993 (59 O.S. Supp. 1993, Section 353.13A), is amended to read as follows:

Section 353.13A A. Prescriptions received by other than written communication shall be promptly recorded in writing by the pharmacist. The record made by the pharmacist shall constitute the original prescription to be filled by the pharmacist.

B. 1. Pharmacists may dispense prescriptions for ~~ocular topical pharmaceutical agents~~ dangerous drugs and controlled dangerous substances specified in Section 1 of this act for ocular abnormalities prescribed by qualified optometrists certified by the Board of Examiners in Optometry to use such ~~ocular topical pharmaceutical agents. Nothing in this subsection shall provide for optometrists to be authorized in any way to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes any controlled dangerous substance as defined in paragraph 8 of Section 2-101 of Title 63 of the Oklahoma Statutes~~ dangerous drugs and controlled dangerous substances.

2. All prescriptions issued by certified optometrists shall include the certification number of the optometrist as assigned by the Board of Examiners in Optometry. The Board of Examiners in Optometry shall provide an annual list of all certified optometrists directly to each pharmacy licensed by the Oklahoma State Board of

Pharmacy. Any additions or deletions in certification shall be mailed to all pharmacies in this state within thirty (30) days of such change.

C. A filled prescription label shall include the name and address of the pharmacy of origin, date of filling, name of patient, name of prescriber, directions for administration and prescription number. The label shall also include the trade or generic name, and the quantity and strength of the drug therein contained, except when otherwise directed by the prescriber. This requirement shall not apply to compounded prescriptions or medicines and drugs supplied or delivered directly to patients for consumption on the premises while admitted to any hospital or mental institution.

D. No prescription shall be written in any characters, figures or ciphers other than in the English or Latin language, generally in use among medical and pharmaceutical practitioners.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2-101, is amended to read as follows:

Section 2-101. As used in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title:

1. "Administer" means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research subject by:

a. a practitioner (or, in his presence, by his authorized agent), or

b. the patient or research subject at the direction and in the presence of the practitioner~~.~~;

2. "Agent" means a peace officer appointed by and who acts in behalf of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes

controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act~~.~~;

3. "Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control~~.~~;

4. "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice~~.~~;

5. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine~~.~~;

6. "Commissioner" or "Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control~~.~~;

7. "Control" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act~~.~~;

8. "Controlled dangerous substance" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title~~.~~;

9. "Counterfeit substance" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance~~.~~;

10. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance, whether or not there is an agency relationship~~.~~; 11. "Dispense" means to deliver a controlled

dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for such distribution. "Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject~~.~~;

12. "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance~~.~~;

13. "Distributor" means a person who distributes~~.~~;

14. "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in this paragraph; but does not include devices or their components, parts or accessories~~.~~;

15. "Drug-dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence~~.~~;

16. "Imitation controlled substance" means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made, would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the

dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect~~:~~,

b. statements made to the recipient that the substance may be resold for inordinate profit~~:~~,

c. whether the substance is packaged in a manner normally used for illicit controlled substances~~:~~,

d. evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities~~:~~,

e. prior convictions, if any, of an owner, or any other person in control of the object, under state or federal law related to controlled substances or fraud~~:~~, and

f. the proximity of the substances to controlled dangerous substances~~.~~;

17. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture~~.~~;

18. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction~~.~~;

19. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer~~.~~;

20. "Marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination~~.~~;

21. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of satisfying physiological or psychological dependence or other abuse~~.~~;

22. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. opium, coca leaves and opiates~~,~~,

b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates~~,~~,

c. cocaine, its salts, optical and geometric isomers, and salts of isomers~~.~~,

d. ecgonine, its derivatives, their salts, isomers and salts of isomers~~.~~, and

e. a substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in Section 2-101 et seq. of this ~~act~~ title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine~~.~~;

23. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms~~.~~;

24. "Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof~~.~~;

25. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States~~.~~;

26. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity~~.~~;

27. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing~~.~~;

28. "Practitioner" means:

a. a physician, dentist, podiatrist, optometrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state~~.~~, or

b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state~~.~~;

29. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance~~.~~;

30. "State" means the State of Oklahoma or any other state of the United States~~.~~;

31. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household~~.~~;

32. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act. It includes, but is not limited to:

a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived~~.~~,

b. kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances~~.~~,

c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance~~.~~,

d. testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances~~.~~,

e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances~~.~~,

f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances~~.~~,

g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana~~.~~,

h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances~~.~~,

i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances~~.~~,

j. containers and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body~~;~~,

k. hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body~~;~~, and

l. objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

(1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls~~;~~,

(2) water pipes~~;~~,

(3) carburetion tubes and devices~~;~~,

(4) smoking and carburetion masks~~;~~,

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand~~;~~,

(6) miniature cocaine spoons and cocaine vials~~;~~,

(7) chamber pipes~~;~~,

(8) carburetor pipes~~;~~,

(9) electric pipes~~;~~,

(10) air-driven pipes~~;~~,

(11) chillums~~;~~,

(12) bongs~~;~~, or

(13) ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco~~.~~;

33. "Synthetic controlled substance" means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is a synthetic controlled substance:

a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effect~~.~~,

b. statements made to the recipient that the substance may be resold for an inordinate profit~~.~~,

c. prior convictions, if any, of an owner or any person in control of the substance, under state or federal law related to controlled dangerous substances~~.~~, and

d. the proximity of the substance to any controlled dangerous substance~~.~~;

34. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana~~.~~;

35. "Isomer" means the optical isomer, except as used in subsection C of Section 2-204 of this title and paragraph 4 of subsection A of Section 2-206 of this title. As used in subsection C of Section 2-204 of this title, "isomer" means the optical, positional or geometric isomer. As used in paragraph 4 of subsection A of Section 2-206 of this title, the term "isomer" means the optical or geometric isomer~~.~~; and

36. "Hazardous materials" means materials, whether solid, liquid or gas~~.~~, which are toxic to human, animal, aquatic or plant

life, and the disposal of which materials is controlled by state or federal guidelines.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 2-312, is amended to read as follows:

Section 2-312. A. A physician, podiatrist, optometrist or a dentist who has complied with the registration requirements of Section 2-101 et seq. of this title in good faith and in the course of his professional practice only may prescribe and administer controlled dangerous substances, or he may cause the same to be administered by medical or paramedical personnel acting under his direction and supervision, and only may dispense controlled dangerous substances pursuant to the provisions of Sections ~~4~~ 355 through ~~6~~ 355.2 of ~~this act~~ Title 59 of the Oklahoma Statutes.

B. A veterinarian who has complied with the registration requirements of Section 2-101 et seq. of this title in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense controlled dangerous substances and he may cause them to be administered by an assistant or orderly under his direction and supervision.

SECTION 6. This act shall become effective July 1, 1994.

Passed the Senate the 2nd day of March, 1994.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1994.

Speaker of the House of Representatives