

CS for EHB 2715

THE STATE SENATE
Monday, April 8, 2002

Committee Substitute for
ENGROSSED
House Bill No. 2715

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2715 - By:
STANLEY, GLOVER and PIATT of the House and ROBINSON of the Senate.

[professions and occupations - Oklahoma Pharmacy Act -
State Board of Pharmacy - codification -
emergency]

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 353.1, as
amended by Section 19 of Enrolled House Bill No. 2924 of the 2nd
Session of the 48th Oklahoma Legislature, is amended to read as
follows:

Section 353.1 For the purposes of the Oklahoma Pharmacy Act,
~~Section 353 et seq. of this title:~~

1. "Pharmacy" means a place regularly licensed by the ~~Oklahoma~~
~~State~~ Board of Pharmacy in which prescriptions, drugs, medicines,
chemicals and poisons are compounded or dispensed;

2. "Doctor of Pharmacy" means a person registered by the
~~Oklahoma State~~ Board of Pharmacy to engage in the practice of
pharmacy. The terms "pharmacist" and "Doctor of Pharmacy" shall be
interchangeable and shall have the same meaning wherever they appear

1 in the Oklahoma Statutes and the rules promulgated by the Board of
2 Pharmacy;

3 3. "Drugs" means all medicinal substances and preparations
4 recognized by the United States Pharmacopoeia and National
5 Formulary, or any revision thereof, and all substances and
6 preparations intended for external and internal use in the cure,
7 diagnosis, mitigation, treatment or prevention of disease in humans
8 and all substances and preparations, other than food, intended to
9 affect the structure or any function of the body of a human;

10 4. "Medicine" means any drug or combination of drugs which has
11 the property of curing, preventing, treating, diagnosing or
12 mitigating diseases, or which is used for that purpose;

13 5. "Poison" means any substance which when introduced into the
14 system, either directly or by absorption, produces violent, morbid
15 or fatal changes, or which destroys living tissue with which such
16 substance comes into contact;

17 6. "Chemical" means any medicinal substance, whether simple or
18 compound or obtained through the process of the science and art of
19 chemistry, whether of organic or inorganic origin;

20 7. "Prescription" means and includes any order for drug or
21 medical supplies written or signed, or transmitted by word of mouth,
22 telephone or other means of communication by a licensed practitioner
23 of allopathic or osteopathic medicine, including physician

1 assistants under the supervision of a licensed physician, dentistry,
2 optometry certified by the Board of Examiners in Optometry,
3 podiatry, or veterinary medicine, licensed by law to prescribe such
4 drugs and medical supplies intended to be filled, compounded, or
5 dispensed by a pharmacist;

6 8. "Filled prescription" means a packaged prescription
7 medication to which a label has been affixed, which shall contain
8 such information as is required by the Oklahoma Pharmacy Act;

9 9. "Nonprescription drugs" means medicines or drugs which are
10 sold without a prescription and which are prepackaged for use by the
11 consumer and labeled in accordance with the requirements of the
12 statutes and regulations of this state and the federal government.
13 Such items shall also include medical and dental supplies, and
14 bottled or nonbulk chemicals which are sold or offered for sale to
15 the general public, if such articles or preparations meet the
16 requirements of the Federal Food, Drug and Cosmetic Act, 21
17 U.S.C.A., Section 321 et seq.;

18 10. "Hospital" means any institution licensed by this state for
19 the care and treatment of patients;

20 11. "Person" means every individual, copartnership, corporation
21 or association, unless the context otherwise requires;

22 12. "Board" or "State Board" means the ~~Oklahoma~~ State Board of
23 Pharmacy;

1 13. "Administer" means the direct application of a drug,
2 whether by injection, inhalation, ingestion or any other means, to
3 the body of a patient;

4 14. "Dispense" includes sell, distribute, leave with, give
5 away, dispose of, deliver, or supply;

6 15. "Wholesaler" or "Distributor" means a person engaged in the
7 business of distributing dangerous drugs or medicines at wholesale
8 to pharmacies, hospitals, practitioners, government agencies, or
9 other lawful drug outlets permitted to sell or use drugs or
10 medicines, or as authorized in subsection G of Section 353.13 of
11 this title;

12 16. "Dangerous drug", "legend drug" or "prescription drug"
13 means a drug which, under federal law, is required, prior to being
14 dispensed or delivered, to be labeled with either of the following
15 statements: (i) "Caution: Federal law prohibits dispensing without
16 prescription", or (ii) "Caution: Federal law restricts this drug to
17 use by or on the order of a licensed veterinarian", or a drug which
18 is required by any applicable federal or state law or regulation to
19 be dispensed on prescription only or is restricted to use by
20 practitioners only;

21 17. "Manufacturer" means a person engaged in the manufacturing
22 of drugs;

23 18. "Practice of pharmacy" means:

- 1 a. the interpretation and evaluation of prescription
2 orders,
- 3 b. the compounding, dispensing, administering and
4 labeling of drugs and devices, except labeling by a
5 manufacturer, packer or distributor of nonprescription
6 drugs and commercially packaged legend drugs and
7 devices,
- 8 c. the participation in drug selection and drug
9 utilization reviews,
- 10 d. the proper and safe storage of drugs and devices and
11 the maintenance of proper records thereof,
- 12 e. the responsibility for advising by counseling and
13 providing information, where professionally necessary
14 or where regulated, of therapeutic values, content,
15 hazards and use of drugs and devices,
- 16 f. the offering or performing of those acts, services,
17 operations, or transactions necessary in the conduct,
18 operation, management and control of a pharmacy, and
- 19 g. the provision of those acts or services that are
20 necessary to provide pharmaceutical care;

21 19. "Drug outlet" means all pharmacies, wholesalers,
22 manufacturers, or wherever dangerous drugs are stored, and

1 facilities which are engaged in dispensing, delivery or distribution
2 of dangerous drugs;

3 20. "Manufacturing" means the production, preparation,
4 propagation, compounding, conversion, or processing of a device or a
5 drug, either directly or indirectly by extraction from substances of
6 natural origin or independently by means of chemical or biological
7 synthesis and includes any packaging or repackaging of the
8 substances or labeling or relabeling of its container, and the
9 promotion and marketing of such drugs or devices. The term
10 "manufacturing" also includes the preparation and promotion of
11 commercially available products from bulk compounds for resale by
12 pharmacies, practitioners or other persons;

13 21. "Assistant pharmacist" means any person presently licensed
14 as an assistant pharmacist in the State of Oklahoma by the Board
15 pursuant to Section 353.10 of this title and for the purposes of
16 this act shall be considered the same as a pharmacist, except where
17 otherwise specified;

18 22. "Packager" means any person, firm, or corporation, except a
19 pharmacy, who transfers dangerous drugs including, but not limited
20 to, compressed medical gases from one container to another of any
21 type;

22 23. "Continuing professional education" means professional,
23 pharmaceutical education in the general areas of the socioeconomic

1 and legal aspects of health care; the properties and actions of
2 drugs and dosage forms; and the etiology, characteristics and
3 therapeutics of the diseased state;

4 24. "Accredited program" means those seminars, classes,
5 meetings, work projects and other educational courses approved by
6 the Board for purposes of continuing professional education;

7 25. "Supervising physician" means an individual holding a
8 current license to practice as a physician from the State Board of
9 Medical Licensure and Supervision, pursuant to the provisions of
10 Section 481 et seq. of this title, or the State Board of Osteopathic
11 Examiners, pursuant to the provisions of Section 620 et seq. of this
12 title, who supervises an advanced practice nurse as defined in
13 Section 567.3a of this title, and who is not in training as an
14 intern, resident, or fellow. To be eligible to supervise an
15 advanced practice nurse, such physician shall remain in compliance
16 with the rules promulgated by the State Board of Medical Licensure
17 and Supervision or the State Board of Osteopathic Examiners; ~~and~~

18 26. "Compounding" means the preparation, mixing, assembling,
19 packaging, or labeling of a drug or device:

20 a. as the result of a practitioner's prescription drug
21 order or initiative based on the
22 practitioner/patient/pharmacist relationship in the
23 course of professional practice, or

1 b. for the purpose of, or incident to, research,
2 teaching, or chemical analysis and not for sale or
3 dispensing.

4 Compounding also includes the preparation of drugs or devices in
5 anticipation of prescription drug orders based on routine, regularly
6 observed prescribing patterns; and

7 27. "Standing order" means an order that establishes
8 parameters for a patient drug regimen issued by a physician
9 authorized to practice medicine pursuant to the Oklahoma Allopathic
10 Medical and Surgical Licensure and Supervision Act or the Oklahoma
11 Osteopathic Medicine Act.

12 SECTION 2. AMENDATORY 59 O.S. 2001, Section 353.7, is
13 amended to read as follows:

14 Section 353.7 The State Board of Pharmacy shall have the ~~powers~~
15 power and ~~duties~~ duty to:

- 16 1. Regulate the practice of pharmacy;
- 17 2. Regulate the sale of drugs, medicines, chemicals and
18 poisons;
- 19 3. Regulate the dispensing of drugs and medicines in all places
20 where drugs and medicines are compounded or dispensed;
- 21 4. Enter and inspect, by its members or by its duly authorized
22 representatives, any and all places, including premises, equipment,
23 contents and records, where drugs, medicines, chemicals or poisons

1 are stored, sold, vended, given away, compounded, dispensed or
2 manufactured;

3 5. Administer oaths in all matters pertaining to the affairs of
4 the Board and to take evidence and compel the attendance of
5 witnesses on questions pertaining to the enforcement of the Oklahoma
6 Pharmacy Act;

7 6. Employ the number of inspectors necessary to carry out the
8 provisions of the Oklahoma Pharmacy Act at an annual salary to be
9 fixed by the Board, and to authorize necessary expenses. Such
10 inspectors shall have the same powers and authority as that granted
11 to peace officers by the laws of this state for the purpose of
12 enforcing the Oklahoma Pharmacy Act. In addition, such inspectors
13 shall have the authority and the duty to confiscate all drugs,
14 medicines, chemicals or poisons found to be stored, sold, vended,
15 given away, compounded, dispensed or manufactured contrary to the
16 provisions of the Oklahoma Pharmacy Act;

17 ~~6.~~ 7. Prescribe minimum standards with respect to floor space
18 and other physical characteristics of pharmacies, as may be
19 reasonably necessary to the maintenance of professional surroundings
20 and to the protection of the safety and welfare of the public, and
21 to refuse the issuance of new or renewal licenses for failure to
22 comply with such standards;

1 ~~7.~~ 8. Examine and issue appropriate certificates of
2 registration as Doctor of Pharmacy to all applicants whom it shall
3 deem qualified to be such under the provisions of the Oklahoma
4 Pharmacy Act;

5 ~~8.~~ 9. Investigate complaints, hold hearings and subpoena
6 witnesses and records;

7 ~~9.~~ 10. Initiate prosecution;

8 ~~10.~~ 11. Reprimand or place on probation any holder of a
9 certificate, license or permit; suspend or revoke certificates,
10 licenses or permits, and levy fines not to exceed ~~Five Hundred~~
11 ~~Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) for each count
12 for which any holder of a certificate, license or permit has been
13 convicted in Board hearings. Provided, as a condition of corrective
14 disciplinary sanctions, the Board may require extra continuing
15 education or attendance at a live continuing education program, and
16 may require participation in a rehabilitation program for the
17 impaired. The Board may take such actions singly or in combination,
18 as the nature of the violation requires;

19 ~~11.~~ 12. Adopt and establish rules of professional conduct
20 appropriate to the establishment and maintenance of a high standard
21 of integrity and dignity in the profession of pharmacy. Such rules
22 shall be subject to amendment or repeal by the Board as the need may
23 arise;

1 ~~12.~~ 13. Perform such other duties, exercise such other powers
2 and employ such other personnel as the provisions and enforcement of
3 the Oklahoma Pharmacy Act may require; and

4 ~~13.~~ 14. Make and publish uniform rules such as may be necessary
5 for carrying out and enforcing the provisions of the Oklahoma
6 Pharmacy Act, Oklahoma drug laws and rules, federal drug laws and
7 regulations, and such other areas as in its discretion may be
8 necessary to protect the health, safety and welfare of the public.

9 SECTION 3. AMENDATORY 59 O.S. 2001, Section 353.11, is
10 amended to read as follows:

11 Section 353.11 A. Every registered pharmacist and assistant
12 pharmacist who desires to continue in the profession of pharmacy in
13 this state shall annually, after the expiration of the ~~first year of~~
14 registration, and on or before the ~~first day of July of~~ expiration
15 date each year, ~~pay~~ complete a renewal form and remit to the Board a
16 renewal fee to be fixed by the Board. ~~Such renewal fee shall not~~
17 ~~exceed Seventy-five Dollars (\$75.00).~~ Upon compliance with the
18 provisions of the Oklahoma Pharmacy Act and payment of such renewal
19 fee, a renewal certificate of registration shall be issued.

20 B. If any person fails or neglects to procure ~~his~~ an annual
21 registration or permit, as herein required, notice of such failure
22 having been mailed to ~~his~~ such person's post office address, the
23 Board may, after the expiration of thirty (30) days following the

1 issue of ~~said~~ the notice, deprive ~~him~~ the person of his or her
2 registration and all other privileges conferred by the Oklahoma
3 Pharmacy Act. In order to regain registration, it shall be
4 necessary for such person to make application in writing to the
5 Board requesting reinstatement. The Board may require such person
6 to appear before the Board at a regular meeting.

7 SECTION 4. AMENDATORY 59 O.S. 2001, Section 353.26, is
8 amended to read as follows:

9 Section 353.26 A. The Board of Pharmacy is specifically
10 granted the power to:

11 1. Revoke or suspend any certificate, license or permit issued
12 pursuant to the Oklahoma Pharmacy Act or reprimand or place on
13 probation any holder of a certificate, license, or permit who:

- 14 a. violates any provision of the Oklahoma Pharmacy Act,
- 15 b. violates any of the provisions of Sections 2-101 et
16 seq. of Title 63 of the Oklahoma Statutes or the
17 Uniform Controlled Dangerous Substances Act,
- 18 c. has been convicted of a felony,
- 19 d. engages in the practice of pharmacy while
20 incapacitated or abuses intoxicating liquors or other
21 chemical substances,
- 22 e. conducts himself or herself in a manner likely to
23 lower public esteem for the profession of pharmacy,

1 f. has had his or her license placed on probation,
2 suspended, or revoked or has been reprimanded by
3 another State Board of Pharmacy,

4 g. has been legally adjudged to be not mentally
5 competent, or

6 h. exercises conduct and habits inconsistent with the
7 rules of professional conduct established by the
8 Board; and

9 2. Levy administrative fines not to exceed ~~Five Hundred Dollars~~
10 ~~(\$500.00)~~ One Thousand Dollars (\$1,000.00) for each count of which
11 any holder of a certificate, license, or permit has been convicted
12 in Board hearings.

13 B. The Board, its employees, or other agents shall keep
14 confidential information obtained during an investigation into
15 violations of the Oklahoma Pharmacy Act; provided, however, such
16 information may be introduced by the state in administrative
17 proceedings before the Board.

18 C. To ensure the confidentiality of such information for the
19 protection of the affected individual or entity, the information
20 obtained shall not be deemed to be a record as that term is defined
21 in the Oklahoma Open Records Act.

22 D. 1. The Board, upon a sworn complaint filed with its
23 Director, and after giving at least ten (10) days' written notice by

1 registered or certified mail of the filing of such complaint to the
2 person accused therein of the date and place of a hearing thereon,
3 to which notice shall be attached a statement of the charges
4 contained in the complaint, is hereby authorized and empowered, if
5 ~~it~~ the Board finds that the allegations of the complaint are
6 supported by the evidence rendered at the hearing to, by written
7 order, revoke permanently or suspend for a designated period, the
8 certificate, license or permit of the person charged in the
9 complaint or to reprimand or place such person on probation ~~said~~
10 ~~person~~.

11 2. The Board may, upon written application therefor and in the
12 exercise of its official discretion, cancel ~~said~~ the order.

13 3. A person whose certificate, license or permit has been
14 revoked or suspended or who has been reprimanded or placed on
15 probation or fined may appeal such Board order pursuant to the
16 Administrative Procedures Act.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 353.30 of Title 59, unless there
19 is created a duplication in numbering, reads as follows:

20 The use of agreements and standing orders in the practice of
21 pharmacy shall be acceptable within the rules established by the
22 State Board of Pharmacy.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 353.31 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A pharmacist who has completed a requisite course of training,
5 as approved by the State Board of Pharmacy in consultation with the
6 Board of Medical Licensure and Supervision and the State Board of
7 Osteopathic Examiners, may administer immunizations.

8 SECTION 7. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

12 COMMITTEE REPORT BY: COMMITTEE ON HUMAN RESOURCES, dated 4-4-02 - DO
13 PASS, As Amended.