

1 ENGROSSED HOUSE
2 BILL NO. 2764

By: Cox of the House

and

3
4 Crain and Adelson of the
5 Senate

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7
8 An Act relating to professions and occupations;
9 amending 59 O.S. 2001, Sections 353.7, as last
10 amended by Section 17, Chapter 523, O.S.L. 2004,
11 353.11, as last amended by Section 19, Chapter 523,
12 O.S.L. 2004, 353.13, as amended by Section 2, Chapter
13 18, O.S.L. 2005, 353.24, as last amended by Section
14 1, Chapter 40, O.S.L. 2005 and 353.26, as last
15 amended by Section 22, Chapter 523, O.S.L. 2004 (59
16 O.S. Supp. 2007, Sections 353.7, 353.11, 353.13,
17 353.24 and 353.26), which relate to the Oklahoma
18 Pharmacy Act; modifying powers and duties of the
19 Board of Pharmacy; providing for disciplinary
20 actions; providing for payment of certain costs;
21 modifying renewal of registration; modifying
22 management of pharmacy; modifying unlawful acts;
23 modifying basis for revocation, suspension, reprimand
24 or probation; providing that confidential information
is not subject to subpoena or discovery; providing
exception; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 353.7, as
last amended by Section 17, Chapter 523, O.S.L. 2004 (59 O.S. Supp.
2007, Section 353.7), is amended to read as follows:

1 Section 353.7 The Board of Pharmacy shall have the power and
2 duty to:

3 1. Regulate the practice of pharmacy;

4 2. Regulate the sale of drugs, medicines, chemicals and
5 poisons;

6 3. Regulate the dispensing of drugs and medicines in all places
7 where drugs and medicines are compounded or dispensed;

8 4. Enter and inspect, during normal business hours, by its
9 members or by its duly authorized representatives, any and all
10 places, including premises, equipment, contents and records, where
11 drugs, medicines, chemicals or poisons are stored, sold, vended,
12 given away, compounded, dispensed or manufactured;

13 5. Administer oaths in all matters pertaining to the affairs of
14 the Board and to take evidence and compel the attendance of
15 witnesses on questions pertaining to the enforcement of the Oklahoma
16 Pharmacy Act;

17 6. Employ the number of inspectors and/or pharmacist compliance
18 officers necessary to carry out the provisions of the Oklahoma
19 Pharmacy Act at an annual salary to be fixed by the Board, and to
20 authorize necessary expenses. Such inspectors shall have the same
21 powers and authority as that granted to peace officers by the laws
22 of this state for the purpose of enforcing the Oklahoma Pharmacy
23 Act. In addition, such inspectors and compliance officers shall
24 have the authority to confiscate records and the duty to confiscate

1 all drugs, medicines, chemicals or poisons found to be stored, sold,
2 vended, given away, compounded, dispensed or manufactured contrary
3 to the provisions of the Oklahoma Pharmacy Act;

4 7. Prescribe minimum standards with respect to floor space and
5 other physical characteristics of pharmacies, as may be reasonably
6 necessary to the maintenance of professional surroundings and to the
7 protection of the safety and welfare of the public, and to refuse
8 the issuance of new or renewal licenses for failure to comply with
9 such standards;

10 8. Examine and issue appropriate certificates of registration
11 as Doctor of Pharmacy to all applicants whom it shall deem qualified
12 to be such under the provisions of the Oklahoma Pharmacy Act;

13 9. Investigate complaints, hold hearings and subpoena witnesses
14 and records;

15 10. Initiate prosecution;

16 11. Reprimand or place on probation any holder of a
17 certificate, license or permit; suspend or revoke, or take other
18 disciplinary action, certificates, licenses or permits, and levy
19 fines not to exceed One Thousand Dollars (\$1,000.00) for each count
20 for which any holder of a certificate, license or permit has been
21 convicted in Board hearings. Provided, as a condition of corrective
22 disciplinary sanctions, the Board may impose as a condition of any
23 disciplinary action, the payment of costs expended by the Board for
24 any legal fees and costs, including but not limited to staff time,

1 salary and travel expense, witness fees and attorney fees, the Board
2 may require extra continuing education or attendance at a live
3 continuing education program, and may require participation in a
4 rehabilitation program for the impaired. The Board may take such
5 actions singly or in combination, as the nature of the violation
6 requires;

7 12. Adopt and establish rules of professional conduct
8 appropriate to the establishment and maintenance of a high standard
9 of integrity and dignity in the profession of pharmacy. Such rules
10 shall be subject to amendment or repeal by the Board as the need may
11 arise;

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

15 14. Make and publish uniform rules such as may be necessary for
16 carrying out and enforcing the provisions of the Oklahoma Pharmacy
17 Act, Oklahoma drug laws and rules, federal drug laws and
18 regulations, and such other areas as in its discretion may be
19 necessary to protect the health, safety and welfare of the public;

20 15. Establish and collect appropriate fees for licenses,
21 permits, inspections and service provided. Such fees shall be
22 promulgated to implement the provisions of the Oklahoma Pharmacy Act
23 under the provisions of the Administrative Procedures Act; and

24 16. Regulate:

- 1 a. personnel working in a pharmacy, such as interns and
2 supportive personnel, including technicians,
3 b. interns, preceptors and training areas through which
4 the training of applicants in the practice of pharmacy
5 occurs for licensure as a pharmacist, and
6 c. such persons regarding all aspects relating to the
7 handling of drugs, medicines, chemicals and poisons.

8 SECTION 2. AMENDATORY 59 O.S. 2001, Section 353.11, as
9 last amended by Section 19, Chapter 523, O.S.L. 2004 (59 O.S. Supp.
10 2007, Section 353.11), is amended to read as follows:

11 Section 353.11 A. 1. Every ~~registered~~ licensed pharmacist and
12 assistant pharmacist who desires to continue in the profession of
13 pharmacy in this state shall ~~annually, after~~ on or before the
14 ~~expiration of the registration, and on or before~~ the expiration date
15 ~~each year~~, complete a renewal form and remit to the Board of
16 Pharmacy a renewal fee to be fixed by the Board. Upon compliance
17 with the provisions of the Oklahoma Pharmacy Act and payment of such
18 renewal fee, a renewal certificate of registration shall be issued.

19 2. Every registered pharmacist who fails to complete a renewal
20 form and remit the required renewal fee to the Board by the
21 fifteenth day after the expiration of the license shall pay a late
22 fee to be fixed by the Board.

23 B. If any person fails or neglects to procure ~~an annual~~ the
24 renewal registration or permit, as herein required, notice of such

1 failure having been mailed to such person's post office address, the
2 Board may, after the expiration of thirty (30) days following the
3 issue of the notice, deprive the person of his or her registration
4 and all other privileges conferred by the Oklahoma Pharmacy Act. In
5 order to regain registration, it shall be necessary for such person
6 to make application in writing to the Board requesting
7 reinstatement. The Board may require such person to appear before
8 the Board at a regular meeting.

9 SECTION 3. AMENDATORY 59 O.S. 2001, Section 353.13, as
10 amended by Section 2, Chapter 18, O.S.L. 2005 (59 O.S. Supp. 2007,
11 Section 353.13), is amended to read as follows:

12 Section 353.13 A. It shall be unlawful for any person, other
13 than a registered pharmacist or assistant pharmacist, to certify the
14 finished prescription, as defined by the Board of Pharmacy, before
15 delivery to the patient or the patient's agent or care giver.

16 B. It shall be unlawful for any person to institute or manage a
17 pharmacy unless such person shall be a registered pharmacist, or
18 shall place in charge of said pharmacy a registered pharmacist.

19 C. No registered pharmacist shall manage, supervise nor be in
20 charge of more than one pharmacy.

21 D. No pharmacist being requested to sell, furnish or compound
22 any drug, medicine, chemical or other pharmaceutical preparation, by
23 prescription or otherwise, shall substitute or cause to be
24 substituted therefor, without authority of the prescriber or

1 purchaser, any like drug, medicine, chemical or pharmaceutical
2 preparation.

3 E. No proprietor of a pharmacy, or other person, shall permit
4 the practice of pharmacy except by a registered pharmacist or
5 assistant pharmacist.

6 F. No proprietor of a pharmacy, or other person, shall subvert
7 the authority of the pharmacist in charge of the pharmacy by
8 impeding the management of the prescription department in compliance
9 with federal and state pharmacy laws and regulations.

10 G. Nothing in the Oklahoma Pharmacy Act shall prevent
11 veterinary prescription drugs from being shipped directly from a
12 wholesaler or distributor to a client; provided, such drugs may be
13 supplied to the client on the order of an Oklahoma licensed
14 veterinarian and only when a valid veterinarian-client-patient
15 relationship exists.

16 1. ~~Prescriptions dispensed~~ Drugs delivered pursuant to the
17 provisions of this subsection shall not be required to be certified
18 by a pharmacist prior to being ~~dispensed~~ sold by a wholesaler or
19 distributor.

20 2. It shall be a violation of state law for an owner or their
21 authorized agent to acquire or use any prescription drug other than
22 according to the label and/or outside of a valid veterinarian-client
23 -patient relationship (VCPR);

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1 3. It shall be a violation of state law for a wholesaler or
2 distributor to sell a prescription labeled drug to an owner or their
3 authorized agent without a valid VCPR in place; and

4 4. Compliance of this act as it relates to veterinary
5 prescription labeled drugs shall be done in accordance with and
6 pursuant to rules that shall be promulgated by the Oklahoma State
7 Board of Veterinary Medical Examiners and in consultation with the
8 State Veterinarian in accordance with state law.

9 SECTION 4. AMENDATORY 59 O.S. 2001, Section 353.24, as
10 last amended by Section 1, Chapter 40, O.S.L. 2005 (59 O.S. Supp.
11 2007, Section 353.24), is amended to read as follows:

12 Section 353.24 It shall be unlawful for any person, firm or
13 corporation to:

14 1. Forge or increase the quantity of drug in any prescription,
15 or to present a prescription bearing forged, fictitious or altered
16 information or to possess any drug secured by such forged,
17 fictitious or altered prescription;

18 2. Sell, offer for sale, barter or give away any unused
19 quantity of drugs obtained by prescription, except through a program
20 pursuant to the Utilization of Unused Prescription Medications Act
21 or as otherwise provided by the Board of Pharmacy;

22 3. Sell, offer for sale, barter or give away any drugs damaged
23 by fire, water, or other causes without first obtaining the written
24 approval of the Board or the State Department of Health;

1 4. Enter into any arrangement whereby prescription orders are
2 received, or prescriptions are delivered at a place other than the
3 pharmacy in which they ~~are~~ were filled, compounded ~~and~~ or
4 dispensed. However, nothing in this paragraph shall prevent a
5 pharmacist or an employee of the pharmacy from personally receiving
6 a prescription or delivering a legally filled prescription at a
7 residence, office or place of employment of the patient for whom the
8 prescription was written. Provided further, the provisions of this
9 paragraph shall not apply to any Department of Mental Health and
10 Substance Abuse Services employee or any person whose facility
11 contracts with the Department of Mental Health and Substances Abuse
12 Services whose possession of any dangerous drug, as defined in
13 Section 353.1 of this title, is for the purpose of delivery of a
14 mental health consumer's medicine to the consumer's home or
15 residence. Nothing in this paragraph shall prevent veterinary
16 prescription drugs from being shipped directly from a wholesaler or
17 distributor to a client; provided, such drugs may be dispensed only
18 on prescription of a licensed veterinarian and only when an existing
19 veterinary-client-patient relationship exists;

20 5. Sell, offer for sale or barter or buy any professional
21 samples except through a program pursuant to the Utilization of
22 Unused Prescription Medications Act. For purpose of this paragraph,
23 "professional samples" means complimentary drugs packaged in
24 accordance with federal and state statutes and regulations and

1 provided to a licensed practitioner free of charge by manufacturers
2 or distributors for the purpose of being distributed free of charge
3 in such package by the licensed practitioner to a patient;

4 6. Refuse to permit or otherwise prevent members of the Board
5 or such representatives thereof from entering and inspecting any and
6 all places, including premises, equipment, contents, and records,
7 where drugs, medicine, chemicals or poisons are stored, sold,
8 vended, given away, compounded, dispensed or manufactured; ~~or~~

9 7. Possess dangerous drugs without a valid prescription or a
10 valid license to possess such drugs; provided, however, this
11 provision shall not apply to any Department of Mental Health and
12 Substance Abuse Services employee or any person whose facility
13 contracts with the Department of Mental Health and Substances Abuse
14 Services whose possession of any dangerous drug, as defined in
15 Section 353.1 of this title, is for the purpose of delivery of a
16 mental health consumer's medicine to the consumer's home or
17 residence; or

18 8. Knowingly violating a Board Order or an Agreed Order with
19 the Board.

20 SECTION 5. AMENDATORY 59 O.S. 2001, Section 353.26, as
21 last amended by Section 22, Chapter 523, O.S.L. 2004 (59 O.S. Supp.
22 2007, Section 353.26), is amended to read as follows:

23 Section 353.26 A. The Board of Pharmacy may:
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1 1. Revoke or suspend any certificate, license or permit issued
2 pursuant to the Oklahoma Pharmacy Act or reprimand or place on
3 probation any holder of a certificate, license, or permit who:

4 a. violates any provision of the Oklahoma Pharmacy Act,

5 b. violates any of the provisions of the Uniform

6 Controlled Dangerous Substances Act,

7 c. has been convicted of a felony or has pleaded guilty

8 or no contest to a felony,

9 d. engages in the practice of pharmacy while

10 incapacitated or abuses intoxicating liquors or other

11 chemical substances,

12 e. conducts himself or herself in a manner likely to

13 lower public esteem for the profession of pharmacy,

14 f. ~~has had his or her license placed on probation,~~

15 ~~suspended, or revoked, has been reprimanded~~ been

16 disciplined by another State Board of Pharmacy or has

17 ~~had another disciplinary action by another state~~ or

18 federal entity,

19 g. has been legally adjudged to be not mentally

20 competent, or

21 h. exercises conduct and habits inconsistent with the

22 rules of professional conduct established by the

23 Board; and

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

4 B. The Board, its employees, or other agents shall keep
5 confidential information obtained during an investigation into
6 violations of the Oklahoma Pharmacy Act; provided, however, such
7 information may be introduced by the state in administrative
8 proceedings before the Board.

9 C. To ensure the confidentiality of such information ~~for the~~
10 ~~protection of the affected individual or entity~~, the information
11 obtained shall not be deemed to be a record as that term is defined
12 in the Oklahoma Open Records Act, nor shall such information be
13 subject to subpoena or discovery in any civil or criminal
14 proceedings, except that the Board may give such information to law
15 enforcement and other state licensing agencies as necessary and
16 appropriate discharge of the Board's duties and only under
17 circumstances that ensure against unauthorized access to such
18 information.

19 D. 1. The Board, upon a sworn complaint filed with its
20 Director, and after giving at least ten (10) days' written notice by
21 registered or certified mail of the filing of such complaint to the
22 person accused therein of the date and place of a hearing thereon,
23 to which notice shall be attached a statement of the charges
24 contained in the complaint, is hereby authorized and empowered, if

1 the Board finds that the allegations of the complaint are supported
2 by the evidence rendered at the hearing to, by written order, revoke
3 permanently or suspend for a designated period, the certificate,
4 license or permit of the person charged in the complaint or to
5 reprimand or place such person on probation.

6 2. The Board may, upon written application therefor and in the
7 exercise of its official discretion, cancel the order.

8 3. A person whose certificate, license or permit has been
9 revoked or suspended or who has been reprimanded or placed on
10 probation or fined may appeal such Board order pursuant to the
11 Administrative Procedures Act.

12 E. A person, other than a pharmacy technician, whose license or
13 permit has been suspended by the Board or by operation of law shall
14 pay a reinstatement fee not to exceed One Hundred Dollars (\$100.00)
15 as a condition of reinstatement of the license.

16 SECTION 6. This act shall become effective November 1, 2008.

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1 Passed the House of Representatives the 10th day of March, 2008.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2008.

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9 Presiding Officer of the Senate
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