

THE HOUSE OF REPRESENTATIVES
Monday, February 25, 2008

House Bill No. 2764

HOUSE BILL NO. 2764 - By: COX of the House and ____ of the Senate.

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 353.7, as last amended by Section 17, Chapter 523, O.S.L. 2004, 353.11, as last amended by Section 19, Chapter 523, O.S.L. 2004, 353.13, as amended by Section 2, Chapter 18, O.S.L. 2005, 353.24, as last amended by Section 1, Chapter 40, O.S.L. 2005 and 353.26, as last amended by Section 22, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Sections 353.7, 353.11, 353.13, 353.24 and 353.26), which relate to the Oklahoma Pharmacy Act; modifying powers and duties of the Board of Pharmacy; providing for disciplinary actions; providing for payment of certain costs; modifying renewal of registration; modifying management of pharmacy; modifying unlawful acts; modifying basis for revocation, suspension, reprimand 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:

- 1 SECTION 1. AMENDATORY 59 O.S. 2001, Section 353.7, as last amended by
2 Section 17, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 353.7), is amended to
3 read as follows:
- 4 Section 353.7 The Board of Pharmacy shall have the power and duty to:
- 5 1. Regulate the practice of pharmacy;
 - 6 2. Regulate the sale of drugs, medicines, chemicals and poisons;
 - 7 3. Regulate the dispensing of drugs and medicines in all places where drugs and
8 medicines are compounded or dispensed;

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

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

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

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

- 1 8. Examine and issue appropriate certificates of registration as Doctor of Pharmacy
2 to all applicants whom it shall deem qualified to be such under the provisions of the
3 Oklahoma Pharmacy Act;
- 4 9. Investigate complaints, hold hearings and subpoena witnesses and records;
- 5 10. Initiate prosecution;
- 6 11. Reprimand or place on probation any holder of a certificate, license or permit;
7 suspend or revoke, or take other disciplinary action, certificates, licenses or permits, and
8 levy fines not to exceed One Thousand Dollars (\$1,000.00) for each count for which any
9 holder of a certificate, license or permit has been convicted in Board hearings. Provided,
10 as a condition of corrective disciplinary sanctions, the Board may impose as a condition of
11 any disciplinary action, the payment of costs expended by the Board for any legal fees
12 and costs, including but not limited to staff time, salary and travel expense, witness fees
13 and attorney fees, the Board may require extra continuing education or attendance at a
14 live continuing education program, and may require participation in a rehabilitation
15 program for the impaired. The Board may take such actions singly or in combination, as
16 the nature of the violation requires;
- 17 12. Adopt and establish rules of professional conduct appropriate to the
18 establishment and maintenance of a high standard of integrity and dignity in the
19 profession of pharmacy. Such rules shall be subject to amendment or repeal by the
20 Board as the need may arise;

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

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

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

11 16. Regulate:

- 12 a. personnel working in a pharmacy, such as interns and supportive
13 personnel, including technicians,
14 b. interns, preceptors and training areas through which the training of
15 applicants in the practice of pharmacy occurs for licensure as a
16 pharmacist, and
17 c. such persons regarding all aspects relating to the handling of drugs,
18 medicines, chemicals and poisons.

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

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

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

11 B. If any person fails or neglects to procure ~~an annual~~ the renewal registration or
12 permit, as herein required, notice of such failure having been mailed to such person's
13 post office address, the Board may, after the expiration of thirty (30) days following the
14 issue of the notice, deprive the person of his or her registration and all other privileges
15 conferred by the Oklahoma Pharmacy Act. In order to regain registration, it shall be
16 necessary for such person to make application in writing to the Board requesting
17 reinstatement. The Board may require such person to appear before the Board at a
18 regular meeting.

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

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

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

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

9 D. No pharmacist being requested to sell, furnish or compound any drug, medicine,
10 chemical or other pharmaceutical preparation, by prescription or otherwise, shall
11 substitute or cause to be substituted therefor, without authority of the prescriber or
12 purchaser, any like drug, medicine, chemical or pharmaceutical preparation.

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

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

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

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

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

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

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

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

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

18 1. Forge or increase the quantity of drug in any prescription, or to present a
19 prescription bearing forged, fictitious or altered information or to possess any drug
20 secured by such forged, fictitious or altered prescription;

1 2. Sell, offer for sale, barter or give away any unused quantity of drugs obtained by
2 prescription, except through a program pursuant to the Utilization of Unused
3 Prescription Medications Act or as otherwise provided by the Board of Pharmacy;
4 3. Sell, offer for sale, barter or give away any drugs damaged by fire, water, or
5 other causes without first obtaining the written approval of the Board or the State
6 Department of Health;
7 4. Enter into any arrangement whereby prescription orders are received, or
8 prescriptions are delivered at a place other than the pharmacy in which they ~~are~~ were
9 filled, compounded ~~and~~ or dispensed. However, nothing in this paragraph shall prevent
10 a pharmacist or an employee of the pharmacy from personally receiving a prescription or
11 delivering a legally filled prescription at a residence, office or place of employment of the
12 patient for whom the prescription was written. Provided further, the provisions of this
13 paragraph shall not apply to any Department of Mental Health and Substance Abuse
14 Services employee or any person whose facility contracts with the Department of Mental
15 Health and Substances Abuse Services whose possession of any dangerous drug, as
16 defined in Section 353.1 of this title, is for the purpose of delivery of a mental health
17 consumer's medicine to the consumer's home or residence. Nothing in this paragraph
18 shall prevent veterinary prescription drugs from being shipped directly from a
19 wholesaler or distributor to a client; provided, such drugs may be dispensed only on
20 prescription of a licensed veterinarian and only when an existing veterinary-client-
21 patient relationship exists;

1 5. Sell, offer for sale or barter or buy any professional samples except through a
2 program pursuant to the Utilization of Unused Prescription Medications Act. For
3 purpose of this paragraph, “professional samples” means complimentary drugs packaged
4 in accordance with federal and state statutes and regulations and provided to a licensed
5 practitioner free of charge by manufacturers or distributors for the purpose of being
6 distributed free of charge in such package by the licensed practitioner to a patient;

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

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

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

22 Section 353.26 A. The Board of Pharmacy may:

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

- 4 a. violates any provision of the Oklahoma Pharmacy Act,
- 5 b. violates any of the provisions of the Uniform Controlled Dangerous
6 Substances Act,
- 7 c. has been convicted of a felony or has pleaded guilty or no contest to a
8 felony,
- 9 d. engages in the practice of pharmacy while incapacitated or abuses
10 intoxicating liquors or other chemical substances,
- 11 e. conducts himself or herself in a manner likely to lower public esteem
12 for the profession of pharmacy,
- 13 f. has ~~had his or her license placed on probation, suspended, or revoked,~~
14 ~~has been reprimanded~~ been disciplined by another ~~State Board of~~
15 ~~Pharmacy or has had another disciplinary action by another state or~~ or
16 federal entity,
- 17 g. has been legally adjudged to be not mentally competent, or
- 18 h. exercises conduct and habits inconsistent with the rules of professional
19 conduct established by the Board; and

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

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

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

12 D. 1. The Board, upon a sworn complaint filed with its Director, and after giving at
13 least ten (10) days' written notice by registered or certified mail of the filing of such
14 complaint to the person accused therein of the date and place of a hearing thereon, to
15 which notice shall be attached a statement of the charges contained in the complaint, is
16 hereby authorized and empowered, if the Board finds that the allegations of the
17 complaint are supported by the evidence rendered at the hearing to, by written order,
18 revoke permanently or suspend for a designated period, the certificate, license or permit
19 of the person charged in the complaint or to reprimand or place such person on
20 probation.

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

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

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02-21-08 - DO
9 PASS.