

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2460

By: Schwartz

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2001, Sections 2-303, as last amended by
9 Section 61, Chapter 5, O.S.L. 2004, 2-304, 2-309 and
10 2-309B, as last amended by Section 1, Chapter 81,
11 O.S.L. 2007 (63 O.S. Supp. 2007, Sections 2-303 and
12 2-309B), which relate to the Uniform Controlled
13 Dangerous Substances Act; modifying list of factors
14 used in considering the registration of certain
15 applicants; requiring automatic suspension of
16 registration under certain circumstances; allowing
17 applicant to reapply upon change in status; allowing
18 transmission of prescriptions by electronic means;
19 defining term; and providing an effective date.

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

21 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-303, as
22 last amended by Section 61, Chapter 5, O.S.L. 2004 (63 O.S. Supp.
23 2007, Section 2-303), is amended to read as follows:

24 Section 2-303. A. The Director of the Oklahoma State Bureau of
Narcotics and Dangerous Drugs Control shall register an applicant to
manufacture, distribute, dispense, prescribe, administer or use for
scientific purposes controlled dangerous substances included in
Schedules I through V of Section 2-101 et seq. of this title unless

1 the Director determines that the issuance of such registration is
2 inconsistent with the public interest. In determining the public
3 interest, the following factors shall be considered:

4 1. Maintenance of effective controls against diversion of
5 particular controlled dangerous substances and any Schedule I or II
6 substance compounded therefrom into other than legitimate medical,
7 scientific or industrial channels, including examination of the
8 fitness of his or her employees or agents to handle dangerous
9 substances;

10 2. Compliance with applicable state and local law;

11 3. ~~Prior conviction record of applicant under federal or state~~
12 ~~laws relating to the manufacture, distribution or dispensing of such~~
13 ~~substances~~ Has been found guilty of, entered a plea of guilty or
14 nolo contendere to a charge under the Uniform Controlled Dangerous
15 Substances Act or any other state or federal law relating to any
16 substance defined herein as a controlled dangerous substance or any
17 felony under the laws of any state or the United States;

18 4. Furnishing by the applicant false or fraudulent material
19 information in any application filed under Section 2-101 et seq. of
20 this title;

21 5. Past experience in the manufacture, distribution,
22 dispensing, prescribing, administering or use for scientific
23 purposes of controlled dangerous substances, and the existence in
24 the establishment of effective controls against diversion;

1 6. Denial, suspension or revocation of the applicant's federal
2 registration to manufacture, distribute or dispense controlled
3 dangerous substances as authorized by federal law; and

4 7. Such other factors as may be relevant to and consistent with
5 the public health and safety.

6 Nothing herein shall be deemed to require individual licensed
7 pharmacists to register under the provisions of the Uniform
8 Controlled Dangerous Substances Act.

9 B. Registration granted under subsection A of this section
10 shall not entitle a registrant to manufacture, distribute, dispense,
11 prescribe, administer or use for scientific purposes controlled
12 dangerous substances in Schedule I or II other than those specified
13 in the registration.

14 C. Practitioners shall be registered to dispense, prescribe,
15 administer or use for scientific purposes substances in Schedules II
16 through V if they are authorized to carry on their respective
17 activities under the laws of this state. A registration application
18 by a practitioner who wishes to conduct research with Schedule I
19 substances shall be accompanied by evidence of the applicant's
20 federal registration to conduct such activity and shall be referred
21 to the Medical Research Commission for advice. The Medical Research
22 Commission shall promptly advise the Director concerning the
23 qualifications of each practitioner requesting such registration.
24 Registration for the purpose of bona fide research or of use for

1 scientific purposes with Schedule I substances by a practitioner
2 deemed qualified by the Medical Research Commission may be denied
3 only on a ground specified in subsection A of Section 2-304 of this
4 title or if there are reasonable grounds to believe that the
5 applicant will abuse or unlawfully transfer such substances or fail
6 to safeguard adequately such applicant's supply of such substances
7 against diversion from legitimate medical or scientific use.

8 D. 1. The Director shall initially permit persons to register
9 who own or operate any establishment engaged in the manufacture,
10 distribution, dispensing, prescribing, administering or use for
11 scientific purposes of any controlled dangerous substances prior to
12 June 4, 1991, and who are registered or licensed by the state. Fees
13 for registration under this section shall be as follows:

14	Practitioners and		
15	mid-level		
16	practitioners	\$70.00	per year
17			of
18			registration
19	Home Care Agencies,		
20	Hospices & Home		
21	Care Services	\$70.00	annually
22	Distributors	\$100.00	annually
23	Manufacturers	\$200.00	annually
24			

1 Manufacturer, Wholesaler, or
2 Distributor of drug products
3 containing pseudoephedrine or
4 phenylpropanolamine \$100.00 annually

5 2. A registrant shall be required to pay double the amount of
6 the above-listed fee for any renewal of registration received more
7 than sixty (60) days late.

8 3. A Ten Dollar (\$10.00) fee shall be charged for a duplicate
9 registration certificate.

10 E. Compliance by manufacturers and distributors with the
11 provisions of the Federal Controlled Substances Act, 21 U.S.C.,
12 Section 801 et seq., respecting registration, excluding fees, shall
13 be deemed sufficient to qualify for registration under this act.

14 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-304, is
15 amended to read as follows:

16 Section 2-304. A. A registration, pursuant to Section 2-303 of
17 this title, to distribute, dispense, prescribe, administer or use
18 for scientific purposes a controlled dangerous substance shall
19 automatically be suspended upon a suspension, revocation,
20 restriction, limitation or condition of the professional license of
21 the registrant. The registrant may reapply to the Director for a
22 provisional license or for reinstatement upon the change in status
23 of the professional license of the registrant.
24

1 B. A registration, pursuant to Section 2-303 of this title, to
2 manufacture, distribute, dispense, prescribe, administer or use for
3 scientific purposes a controlled dangerous substance shall be
4 limited, conditioned, denied, suspended or revoked by the Director
5 upon a finding that the registrant:

6 1. Has materially falsified any application filed pursuant to
7 this act or required by this act;

8 2. Has been found guilty of, entered a plea of guilty, or
9 entered a plea of nolo contendere to a misdemeanor relating to any
10 substance defined herein as a controlled dangerous substance or any
11 felony under the laws of any state or the United States;

12 3. Has had his federal registration retired, suspended, or
13 revoked by a competent federal authority and is no longer authorized
14 by federal law to manufacture, distribute, dispense, prescribe,
15 administer or use for scientific purposes controlled dangerous
16 substances;

17 4. Has failed to maintain effective controls against the
18 diversion of controlled dangerous substances to unauthorized persons
19 or entities;

20 5. Has prescribed, dispensed or administered a controlled
21 dangerous substance from schedules other than those specified in his
22 or her state or federal registration;

23 6. Has had a restriction, suspension, revocation, limitation,
24 condition, or probation placed on his professional license or

1 certificate or practice as a result of a proceeding pursuant to the
2 general statutes;

3 7. Is abusing or, within the past five (5) years, has abused or
4 excessively used drugs or controlled dangerous substances;

5 8. Has prescribed, sold, administered, or ordered any
6 controlled substance for an immediate family member, himself or
7 herself; provided that this shall not apply to a medical emergency
8 when no other doctor is available to respond to the emergency;

9 9. Has possessed, used, prescribed, dispensed or administered
10 drugs or controlled dangerous substances for other than legitimate
11 medical or scientific purposes or for purposes outside the normal
12 course of his or her professional practice;

13 10. Has been under the influence of alcohol or another
14 intoxicating substance which adversely affected the central nervous
15 system, vision, hearing or other sensory or motor functioning to
16 such degree the person was impaired during the performance of his or
17 her job; or

18 11. Has violated any federal law relating to any controlled
19 substances, any provision of the Uniform Controlled Dangerous
20 Substances Act, ~~Section 2-101 et seq. of this title,~~ or any rules of
21 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

22 B. C. In the event the Director suspends or revokes a
23 registration granted under Section 2-303 of this title, all
24 controlled dangerous substances owned or possessed by the registrant

1 pursuant to such registration at the time of denial or suspension or
2 the effective date of the revocation order, as the case may be, may
3 in the discretion of the Director be impounded and preserved. No
4 disposition may be made of substances impounded and preserved until
5 the time for taking an appeal has elapsed or until all appeals have
6 been concluded unless a court, upon application therefor, orders the
7 sale of perishable substances and the deposit of the proceeds of the
8 sale with the court. Upon a revocation order becoming final, all
9 such controlled dangerous substances shall be forfeited to the
10 state.

11 ~~C.~~ D. The Drug Enforcement Administration shall promptly be
12 notified of all orders suspending or revoking registration and all
13 forfeitures of controlled dangerous substances.

14 ~~D.~~ E. In lieu of or in addition to any other remedies available
15 to the Director, if a finding is made that a registrant has
16 committed any act in violation of federal law relating to any
17 controlled substance, any provision of the Uniform Controlled
18 Dangerous Substances Act, ~~Section 2-101 et seq. of this title,~~ or
19 any rules of the Oklahoma State Bureau of Narcotics and Dangerous
20 Drugs Control, the Director is hereby authorized to assess an
21 administrative penalty not to exceed Two Thousand Dollars
22 (\$2,000.00) for each such act.

23 SECTION 3. AMENDATORY 63 O.S. 2001, Section 2-309, is
24 amended to read as follows:

1 Section 2-309. A. 1. Except for dosages medically required
2 for a period not to exceed forty-eight (48) hours which are
3 administered by or on direction of a practitioner, other than a
4 pharmacist, or medication dispensed directly by a practitioner,
5 other than a pharmacist, to an ultimate user, no controlled
6 dangerous substance included in Schedule II, which is a prescription
7 drug as determined under regulation promulgated by the Board of
8 Pharmacy, may be dispensed without the written prescription of a
9 practitioner; provided, that, in emergency situations, as prescribed
10 by the Board of Pharmacy by regulation, such drug may be dispensed
11 upon oral prescription reduced promptly to writing and filed by the
12 pharmacist in a manner to be prescribed by rules and regulations of
13 the Director.

14 2. The transmission of written prescription by practitioner to
15 dispensing pharmacy by facsimile or electronic transmission with
16 electronic signature is permitted only under the following
17 conditions:

18 a. for Schedule II drugs, the original prescription must
19 be presented and verified against the facsimile at the
20 time the substances are actually dispensed, and the
21 original document must be properly annotated and
22 retained for filing, except:

23 (1) home infusion pharmacy may consider the facsimile
24 to be a "written prescription" as required by

1 this act and as required by Title 21 U.S.C.,
2 Section 829(a). The facsimile copy of the
3 prescription shall be retained as an original
4 prescription, and it must contain all the
5 information required by this act and 21 CFR,
6 Section 1306.05(a), including date issued, the
7 patient's full name and address, and the
8 practitioner's name, address, DEA registration
9 number, and signature. The exception to the
10 regulations for home infusion/IV therapy is
11 intended to facilitate the means by which home
12 infusion pharmacies obtain prescriptions for
13 patients requiring the frequently modified
14 parenteral controlled release administration of
15 narcotic substances, but does not extend to the
16 dispensing of oral dosage units of controlled
17 substances, and

18 (2) the same exception is granted to patients in Long
19 Term Care facilities (LTCF), which are filled by
20 and delivered to the facility by a dispensing
21 pharmacy, and

22 b. for drugs in Schedules III and IV, a facsimile copy of
23 a written, signed prescription transmitted directly by
24

1 the prescribing practitioner to the pharmacy can serve
2 as an original prescription.

3 3. Prescriptions shall be retained in conformity with the
4 requirements of this section and Section 2-307 of this title. No
5 prescription for a Schedule II substance may be refilled.

6 B. 1. Except for dosages medically required for a period not
7 to exceed forty-eight (48) hours which are administered by or on
8 direction of a practitioner, other than a pharmacist, or medication
9 dispensed directly by a practitioner, other than a pharmacist, to an
10 ultimate user, no controlled dangerous substance included in
11 Schedule III or IV, which is a prescription drug as determined under
12 regulation promulgated by the Board of Pharmacy, may be dispensed
13 without a written or oral prescription.

14 2. A written or oral prescription for a controlled dangerous
15 substance in Schedule III or IV may not be filled or refilled more
16 than six (6) months after the date thereof or be refilled more than
17 five times after the date of the prescription, unless renewed by the
18 practitioner.

19 C. No controlled dangerous substance included in Schedule V may
20 be distributed or dispensed other than for a legitimate medical or
21 scientific purpose.

22 D. Except for dosages medically required for a period not to
23 exceed forty-eight (48) hours which are administered by or on
24 direction of a practitioner, other than a pharmacist, or medication

1 dispensed directly by a practitioner, other than a pharmacist, to an
2 ultimate user, tincture opium camphorated, commonly known as
3 paregoric, may not be dispensed without a written or oral
4 prescription. The refilling of a prescription for paregoric shall
5 be unlawful unless permission is granted by the prescriber, either
6 written or oral.

7 E. Whenever it appears to the Director that a drug not
8 considered to be a prescription drug under existing state law or
9 regulation of the Board of Pharmacy should be so considered because
10 of its abuse potential, he shall so advise the Board of Pharmacy and
11 furnish to him all available data relevant thereto.

12 F. "Prescription", as used herein, means a written or oral
13 order by a practitioner to a pharmacist for a controlled dangerous
14 substance for a particular patient, which specifies the date of its
15 issue, and the full name and address of the patient; if the
16 controlled dangerous substance is prescribed for an animal, the
17 species of the animal; the name and quantity of the controlled
18 dangerous substance prescribed; the directions for use; the name and
19 address of the owner of the animal and, if written, the signature of
20 the practitioner.

21 G. No person shall solicit, dispense, receive or deliver any
22 controlled dangerous substance through the mail, unless the ultimate
23 user is personally known to the practitioner and circumstances
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1 clearly indicate such method of delivery is in the best interest of
2 the health and welfare of the ultimate user.

3 SECTION 4. AMENDATORY 63 O.S. 2001, Section 2-309B, as
4 last amended by Section 1, Chapter 81, O.S.L. 2007 (63 O.S. Supp.
5 2007, Section 2-309B), is amended to read as follows:

6 Section 2-309B. For the purposes of the Anti-Drug Diversion
7 Act:

8 1. "Bureau" means the Oklahoma State Bureau of Narcotics and
9 Dangerous Drugs Control;

10 2. "Dispenser" means a person who distributes a Schedule II
11 controlled dangerous substance, but does not include a licensed
12 hospital pharmacy or a licensed nurse or medication aide who
13 administers such a substance at the direction of a licensed
14 physician;

15 3. "Dispenser's registration number" means the dispenser's
16 Oklahoma Bureau of Narcotics and Dangerous Drugs Control
17 registration number or, in the case of a pharmacist, the National
18 Association of Boards of Pharmacy number for the pharmacy where the
19 dispensation is made;

20 4. "Exception report" means an output of data indicating
21 Schedule II controlled dangerous substance dispensation which is
22 outside expected norms for a prescriber practicing a particular
23 specialty or field of health care, for a dispenser doing business in
24 a particular location, or for a recipient;

1 5. "Recipient's identification number" means the unique number
2 contained on a recipient's valid passport, military identification
3 card, driver license, or valid identification card issued pursuant
4 to Section 6-105 of Title 47 of the Oklahoma Statutes or similar
5 statute of another state if the recipient is not a resident of the
6 State of Oklahoma, or, if the recipient is less than eighteen (18)
7 years old and has no such identification, the unique number
8 contained on the recipient's parent's or guardian's valid passport,
9 military identification card, driver license, or valid
10 identification card issued pursuant to Section 6-105 of Title 47 of
11 the Oklahoma Statutes or similar statute of another state if the
12 parent or guardian is not a resident of the State of Oklahoma, or,
13 if the controlled dangerous substance is obtained for an animal, the
14 unique number contained on the animal owner's valid driver license,
15 or valid identification card issued pursuant to Section 6-105 of
16 Title 47 of the Oklahoma Statutes or similar statute of another
17 state if the owner is not a resident of the State of Oklahoma; and

18 6. "Registrant" means a person, persons, corporation or other
19 entity who has been issued by the Director of the Oklahoma State
20 Bureau of Narcotics and Dangerous Drugs Control, a registration
21 pursuant to Section 2-302 of this title; and

22 7. "State" means any state, territory, or possession of the
23 United States, the District of Columbia, or foreign nation.

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SECTION 5. This act shall become effective November 1, 2008.

51-2-9653 GRS 01/10/08