

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1948

By: Cox

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2011, Section 2-304, which relates to denial, revocation and suspension of certain licenses; making references gender neutral; prohibiting director of Oklahoma State Bureau of Narcotics and Dangerous Drugs Control from assessing certain fee; amending 63 O.S. 2011, Section 2-309D, as last amended by Section 22, Chapter 293, O.S.L. 2014 (63 O.S. Supp. 2014, Section 2-309D), which relates to central repository information; expanding access to repository information to certain persons; permitting registrant access to certain information for certain purposes; requiring registrants or staff to access central repository prior to prescribing certain drugs; requiring notation of repository access; providing for exceptions; directing enforcement responsibility to certain state agencies; requiring Director of Oklahoma Bureau of Narcotics and Dangerous Drugs Control to provide monthly list; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-304, is amended to read as follows:

Section 2-304. A. A registration, pursuant to Section 2-303 of this title, to manufacture, distribute, dispense, prescribe,

1 administer or use for scientific purposes a controlled dangerous
2 substance shall be limited, conditioned, denied, suspended or
3 revoked by the Director upon a finding that the registrant:

4 1. Has materially falsified any application filed pursuant to
5 ~~this act~~ the Uniform Controlled Dangerous Substances Act or required
6 by ~~this act~~ the Uniform Controlled Dangerous Substances Act;

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

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

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

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

22 6. Has had a restriction, suspension, revocation, limitation,
23 condition, or probation placed on his or her professional license or
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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. In the event the Director suspends or revokes a registration
23 granted under Section 2-303 of this title, all controlled dangerous
24 substances owned or possessed by the registrant pursuant to such

1 registration at the time of denial or suspension or the effective
2 date of the revocation order, as the case may be, may in the
3 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. 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. In lieu of or in addition to any other remedies available to
15 the Director, if a finding is made that a registrant has committed
16 any act in violation of federal law relating to any controlled
17 substance, any provision of the Uniform Controlled Dangerous
18 Substances Act, ~~Section 2-101 et seq. of this title~~, or any rules of
19 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,
20 the Director is hereby authorized to assess an administrative
21 penalty not to exceed Two Thousand Dollars (\$2,000.00) for each such
22 act. The provisions of this subsection shall not apply to
23 violations of subsection G of Section 2-309D of this title. Nothing
24 in this section shall be construed so as to permit the Director of

1 the State Bureau of Narcotics and Dangerous Drugs Control to assess
2 administrative fines for violations of the provisions of subsection
3 G of Section 2-309D of this title.

4 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-309D, as
5 last amended by Section 22, Chapter 293, O.S.L. 2014 (63 O.S. Supp.
6 2014, Section 2-309D), is amended to read as follows:

7 Section 2-309D. A. The information collected at the central
8 repository pursuant to the Anti-Drug Diversion Act shall be
9 confidential and shall not be open to the public. Access to the
10 information shall be limited to:

11 1. Peace officers certified pursuant to Section 3311 of Title
12 70 of the Oklahoma Statutes who are employed as investigative agents
13 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
14 Control;

15 2. The United States Drug Enforcement Administration Diversion
16 Group Supervisor;

17 3. The executive director or chief investigator, as designated
18 by each board, of the following state boards:

- 19 a. Board of Podiatric Medical Examiners,
- 20 b. Board of Dentistry,
- 21 c. State Board of Pharmacy,
- 22 d. State Board of Medical Licensure and Supervision,
- 23 e. State Board of Osteopathic Examiners,
- 24 f. State Board of Veterinary Medical Examiners,

- g. Oklahoma Health Care Authority,
- h. Department of Mental Health and Substance Abuse Services, and
- i. Board of Examiners in Optometry,
- j. Board of Nursing,
- k. Office of the Chief Medical Examiner, and
- l. State Board of Health;

~~provided, however, that the executive director or chief investigator of each of these boards shall be limited to access to information relevant to licensees of the employing board of such executive director or chief investigator;~~

4. A multicounty grand jury properly convened pursuant to the Multicounty Grand Jury Act; and

~~5. The Department of Mental Health and Substance Abuse Services and the State Department of Health for statistical, research, substance abuse prevention or educational purposes provided that the consumer's confidentiality is not compromised~~ Medical practitioners employed by the United States Veterans Affairs Administration, the United States Military, or other federal agencies treating patients in this state; and

6. At the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, medical practitioners and their staff, including those employed by the federal government in this state.

1 B. This section shall not prevent access, at the discretion of
2 the Director of the Oklahoma State Bureau of Narcotics and Dangerous
3 Drugs Control, to investigative information by peace officers and
4 investigative agents of federal, state, county or municipal law
5 enforcement agencies, district attorneys and the Attorney General in
6 furtherance of criminal, civil or administrative investigations or
7 prosecutions within their respective jurisdictions, and to
8 registrants in furtherance of efforts to guard against the diversion
9 of controlled dangerous substances.

10 C. This section shall not prevent the disclosure, at the
11 discretion of the Director of the Oklahoma State Bureau of Narcotics
12 and Dangerous Drugs Control, of statistical information gathered
13 from the central repository to the general public which shall be
14 limited to types and quantities of controlled substances dispensed
15 and the county where dispensed.

16 D. This section shall not prevent the disclosure, at the
17 discretion of the Director of the Oklahoma State Bureau of Narcotics
18 and Dangerous Drugs Control, of prescription-monitoring-program
19 information to prescription-monitoring programs of other states
20 provided a reciprocal data-sharing agreement is in place.

21 E. The Department of Mental Health and Substance Abuse Services
22 and the State Department of Health may utilize the information in
23 the central repository for statistical, research, substance abuse
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1 prevention, or educational purposes, provided that consumer
2 confidentiality is not compromised.

3 F. Any unauthorized disclosure of any information collected at
4 the central repository provided by the Anti-Drug Diversion Act shall
5 be a misdemeanor. Violation of the provisions of this section shall
6 be deemed willful neglect of duty and shall be grounds for removal
7 from office.

8 ~~F.~~ G. 1. Registrants shall have access to the central
9 repository for the purposes of patient treatment and for
10 determination in prescribing or screening new patients. The
11 patient's history may be disclosed to the patient for the purposes
12 of treatment of information at the discretion of the physician.

13 2. a. Prior to prescribing or authorizing for refill, if one
14 hundred eighty (180) days have elapsed prior to the
15 previous access and check, of opiates, synthetic
16 opiates, semisynthetic opiates, benzodiazepine or
17 carisoprodol to a patient of record, registrants or
18 members of their medical or administrative staff shall
19 be required until October 31, 2020, to access the
20 information in the central repository to assess
21 medical necessity and the possibility that the patient
22 may be unlawfully obtaining prescription drugs in
23 violation of the Uniform Controlled Dangerous
24 Substances Act. The duty to access and check shall

1 not alter or otherwise amend appropriate medical
2 standards of care. The registrant or medical provider
3 shall note in the patient file that the central
4 repository has been checked and may maintain a copy of
5 the information.

6 b. The requirements set forth in subparagraph a of this
7 paragraph shall not apply:

8 (1) to medical practitioners who prescribe the
9 controlled substances set forth in subparagraph a
10 of this paragraph for hospice or end-of-life
11 care, or

12 (2) for a prescription of a controlled substance set
13 forth in subparagraph a of this paragraph that is
14 issued by a practitioner for a patient residing
15 in a nursing facility as defined by Section 1-
16 1902 of this title, provided that the
17 prescription is issued to a resident of such
18 facility.

19 3. Registrants shall not be liable to any person for any claim
20 of damages as a result of accessing or failing to access the
21 information in the central repository and no lawsuit may be
22 predicated thereon.

23 ~~G.~~ H. The State Board of Podiatric Examiners, the State Board
24 of Dentistry, the State Board of Medical Licensure and Supervision,

1 the State Board of Examiners in Optometry, the State Board of
2 Nursing, the State Board of Osteopathic Examiners and the State
3 Board of Veterinary Medical Examiners shall have the sole
4 responsibility for enforcement of the provisions of subsection G of
5 this section. Nothing in this section shall be construed so as to
6 permit the Director of the State Bureau of Narcotics and Dangerous
7 Drugs Control to assess administrative fines provided for in Section
8 2-304 of this title.

9 I. The Director of the Oklahoma State Bureau of Narcotics and
10 Dangerous Drugs Control, or a designee thereof, shall provide a
11 monthly list to the Directors of the State Board of Podiatric
12 Examiners, the State Board of Dentistry, the State Board of Medical
13 Licensure and Supervision, the State Board of Examiners in
14 Optometry, the State Board of Nursing, the State Board of
15 Osteopathic Examiners and the State Board of Veterinary Medical
16 Examiners of the top twenty prescribers of controlled dangerous
17 substances within their respective areas of jurisdiction. Upon
18 discovering that a registrant is prescribing outside the limitations
19 of their licensure or outside of drug registration rules or
20 applicable state laws, the respective licensing board shall be
21 notified by the Bureau in writing. Such notifications may be
22 considered complaints for the purpose of investigations or other
23 actions by the respective licensing board. Licensing boards shall
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1 have exclusive jurisdiction to take action against a licensee for a
2 violation of subsection G of this section.

3 J. Information regarding fatal and nonfatal overdoses, other
4 than statistical information as required by Section 2-106 of this
5 title, shall be completely confidential. Access to this information
6 shall be strictly limited to the Director of the Oklahoma State
7 Bureau of Narcotics and Dangerous Drugs Control or designee, the
8 Chief Medical Examiner, state agencies and boards provided in
9 subsection A of this section, and the registrant that enters the
10 information. Registrants shall not be liable to any person for a
11 claim of damages for information reported pursuant to the provisions
12 of Section 2-105 of this title.

13 ~~H.~~ K. The Director of the Oklahoma State Bureau of Narcotics
14 and Dangerous Drugs Control shall provide adequate means and
15 procedures allowing access to central repository information for
16 registrants lacking direct computer access.

17 L. Upon completion of an investigation in which it is
18 determined that a death was caused by an overdose, either
19 intentionally or unintentionally, of a controlled dangerous
20 substance, the medical examiner shall be required to report the
21 decedent's name and date of birth to the Oklahoma State Bureau of
22 Narcotics and Dangerous Drugs Control. The Oklahoma State Bureau of
23 Narcotics and Dangerous Drugs Control shall be required to maintain
24 a database containing the classification of medical practitioners

1 who prescribed or authorized controlled dangerous substances
2 pursuant to this subsection.

3 SECTION 3. This act shall become effective November 1, 2015.
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