STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1948 By: Cox

AS INTRODUCED

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. In lieu of or in addition to any other remedies available to the Director, if a finding is made that a registrant has committed any act in violation of federal law relating to any controlled substance, any provision of the Uniform Controlled Dangerous Substances Act~~, Section 2-101 et seq. of this title~~, or any rules of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Director is hereby authorized to assess an administrative penalty not to exceed Two Thousand Dollars ($2,000.00) for each such act. The provisions of this subsection shall not apply to violations of subsection G of Section 2 of this act. Nothing in this section shall be construed so as to permit the Director of the

State Bureau of Narcotics and Dangerous Drugs Control to assess administrative fines for violations of the provisions of subsection G of Section 2 of this act.

SECTION 2. AMENDATORY 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), is amended to read as follows:

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

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

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

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

a. Board of Podiatric Medical Examiners,

b. Board of Dentistry,

c. State Board of Pharmacy,

d. State Board of Medical Licensure and Supervision,

e. State Board of Osteopathic Examiners,

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.

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

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

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

E. The Department of Mental Health and Substance Abuse Services and the State Department of Health may utilize the information in the central repository for statistical, research, substance abuse

prevention, or educational purposes, provided that consumer confidentiality is not compromised.

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

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

2. a. Prior to prescribing or authorizing for refill, if one hundred eighty (180) days have elapsed prior to the previous access and check, of opiates, synthetic opiates, semisynthetic opiates, benzodiazephine or carisoprodol to a patient of record, registrants or members of their medical or administrative staff shall access the information in the central repository to assess medical necessity and the possibility that the patient may be unlawfully obtaining prescription drugs in violation of the Uniform Controlled Dangerous Substance Act. The duty to access and check shall not alter or otherwise amend appropriate medical standards

of care. The registrant or medical provider shall note in the patient file that the central repository has been checked and may maintain a copy of the information.

b. The requirements set forth in subsection A of this section shall not apply:

(1) to medical practitioners who are members of a health information organization and who access and use a monthly report. Such report shall include any controlled substance set forth in subparagraph a of this paragraph which has been prescribed to the practitioner's patient, the name of the prescriber, the location of the pharmacy where dispensed, and the patient's clinical context. For purposes of this subsection, a "health information organization" shall be composed of a broadly representative governance inclusive of providers, patients, payers, employers, tribes, public health, and safety net providers, and which has a demonstrated capacity to protect the privacy and security of patient information in accordance with federal and state requirements, to integrate data from multiple clinical and administrative

sources and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, to calculate the required reporting with clinical context, and to deliver it securely to the practitioner,

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

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

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

~~G.~~ H. The State Board of Podiatric Examiners, the State Board of Dentistry, the State Board of Medical Licensure and Supervision, the State Board of Examiners in Optometry, the State Board of Nursing, and the State Board of Osteopathic Examiners shall have the

sole responsibility for enforcement of the provisions of subsection G of this section. Nothing in this section shall be construed so as to permit the Director of the State Bureau of Narcotics and Dangerous Drugs Control to assess administrative fines provided for in Section 2-304 of this title.

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

J. Information regarding fatal and nonfatal overdoses, other than statistical information as required by Section 2-106 of this title, shall be completely confidential. Access to this information

shall be strictly limited to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or designee, the Chief Medical Examiner, state agencies and boards provided in subsection A of this section, and the registrant that enters the information. Registrants shall not be liable to any person for a claim of damages for information reported pursuant to the provisions of Section 2-105 of this title.

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

~~H.~~ L. Upon completion of an investigation in which it is determined that a death was caused by an overdose, either intentionally or unintentionally, of a controlled dangerous substance, the medical examiner shall be required to report the decedent's name and date of birth to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be required to maintain a database containing the classification of medical practitioners who prescribed or authorized controlled dangerous substances pursuant to this subsection.

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

55-1-6588 AM 01/22/15