

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1124

By: Yen of the Senate

and

Derby of the House

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9
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11 COMMITTEE SUBSTITUTE

12 [pain-management clinics - register with State Board
13 of Medical Licensure and Supervision - registration
14 requirements and procedures - effective date]

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

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2-1000 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 As used in this act:

22 1. "Board eligible" means successful completion of an
23 anesthesia, physical medicine and rehabilitation, rheumatology or
24 neurology residency program approved by the Accreditation Council

1 for Graduate Medical Education or the American Osteopathic
2 Association for a period of six (6) years from successful completion
3 of such residency program;

4 2. "Chronic nonmalignant pain" means pain unrelated to cancer
5 which persists beyond the usual course of disease or the injury that
6 is the cause of the pain or more than ninety (90) calendar days
7 after surgery;

8 3. "Group of physicians" means a medical practice comprised of
9 two or more physicians, each of whom is licensed pursuant to the
10 Oklahoma Allopathic Medical and Surgical Licensure and Supervision
11 Act or the Oklahoma Osteopathic Medicine Act;

12 4. "Health care provider" means a person who is licensed,
13 certified or otherwise authorized by the laws of this state to
14 practice a health care or healing arts profession or who administers
15 health care in the ordinary course of business;

16 5. "Pain-management clinic" or "clinic" means any facility:
17 a. that advertises in any medium for any type of pain-
18 management services, or
19 b. where in any month a majority of patients are
20 prescribed opioids, benzodiazepines, barbiturates or
21 carisoprodol for the treatment of chronic nonmalignant
22 pain; and

23 6. "Physician" means a medical doctor or doctor of osteopathy
24 licensed pursuant to the Oklahoma Allopathic Medical and Surgical

1 Licensure and Supervision Act or the Oklahoma Osteopathic Medicine
2 Act.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-1001 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Each pain-management clinic shall register with the State
7 Board of Medical Licensure and Supervision.

8 B. Each clinic location shall be registered separately
9 regardless of whether the clinic is operated under the same business
10 name or management as another clinic.

11 C. As a part of registration, a clinic shall designate a
12 physician who is responsible for complying with all requirements
13 related to registration and operation of the clinic in compliance
14 with this act. Within ten (10) calendar days after termination of a
15 designated physician, the clinic shall notify the State Board of
16 Medical Licensure and Supervision of the identity of another
17 designated physician for that clinic. The designated physician
18 shall have a full, active and unencumbered license pursuant to the
19 Oklahoma Allopathic Medical and Surgical Licensure and Supervision
20 Act or the Oklahoma Osteopathic Medicine Act and shall practice at
21 the clinic location for which the physician has assumed
22 responsibility. Failing to have a licensed designated physician
23 practicing at the location of the registered clinic may be the basis
24

1 for a summary suspension of the clinic registration certificate as
2 described in this section.

3 D. The State Board of Medical Licensure and Supervision shall
4 deny registration to any clinic that is not fully owned by a
5 physician, group of physicians or a hospital or health care system
6 that includes the provision of hospital services.

7 E. The State Board of Medical Licensure and Supervision shall
8 deny registration to any pain-management clinic owned by or with any
9 contractual or employment relationship with a physician:

10 1. Whose Drug Enforcement Administration number has ever been
11 revoked;

12 2. Whose application for a license to prescribe, dispense or
13 administer a controlled substance has been denied by any
14 jurisdiction; or

15 3. Who has been convicted of or pleaded guilty or nolo
16 contendere to, regardless of adjudication, an offense that
17 constitutes a felony for receipt of illicit or diverted drugs,
18 including a controlled substance listed in Schedule I, II, III, IV
19 or V of the Uniform Controlled Dangerous Substances Act, in this
20 state, any other state or the United States.

21 F. If the State Board of Medical Licensure and Supervision
22 finds that a pain-management clinic does not meet the requirement of
23 subsection D of this act or is owned, directly or indirectly, by a
24 person meeting any criteria listed in subsection E of this act, the

1 State Board of Medical Licensure and Supervision shall revoke the
2 certificate of registration previously issued by the State Board of
3 Medical Licensure and Supervision. As determined by rule, the State
4 Board of Medical Licensure and Supervision may grant an exemption to
5 denying a registration or revoking a previously issued registration
6 if more than ten (10) years have elapsed since adjudication. As
7 used in this section, the term "convicted" includes an adjudication
8 of guilt following a plea of guilty or nolo contendere or the
9 forfeiture of a bond when charged with a crime.

10 G. The State Board of Medical Licensure and Supervision may
11 revoke the clinic's certificate of registration and prohibit all
12 physicians associated with that pain-management clinic from
13 practicing at that clinic location based upon an annual inspection
14 and evaluation of the factors described in Section 4 of this act.

15 H. If the registration of a pain-management clinic is revoked
16 or suspended, the designated physician of the clinic, the owner or
17 lessor of the clinic property, the manager and the proprietor shall
18 cease to operate the facility as a clinic as of the effective date
19 of the suspension or revocation.

20 I. If a pain-management clinic registration is revoked or
21 suspended, the designated physician of the clinic, the owner or
22 lessor of the clinic property, the manager or the proprietor is
23 responsible for removing all signs and symbols identifying the
24 premises as a clinic.

1 J. Upon the effective date of the suspension or revocation, the
2 designated physician of the pain-management clinic shall advise the
3 State Board of Medical Licensure and Supervision of the disposition
4 of the medicinal drugs located on the premises. The disposition is
5 subject to the supervision and approval of the State Board of
6 Medical Licensure and Supervision. Medicinal drugs that are
7 purchased or held by a clinic that is not registered may be deemed
8 adulterated pursuant to Section 1-1401 et seq. of Title 63 of the
9 Oklahoma Statutes.

10 K. If the pain-management clinic's registration is revoked, any
11 person named in the registration documents of the clinic, including
12 persons owning or operating the clinic, shall not, as an individual
13 or as a part of a group, apply to operate a clinic for five (5)
14 years after the date the registration is revoked.

15 L. The period of suspension for the registration of a pain-
16 management clinic shall be prescribed by the State Board of Medical
17 Licensure and Supervision, but shall not exceed one (1) year.

18 M. A change of ownership of a registered pain-management clinic
19 requires submission of a new registration application.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-1002 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 A. A physician shall not practice medicine and other health
24 care providers shall not provide services in a pain-management

1 clinic if the clinic is not registered with the State Board of
2 Medical Licensure and Supervision as required by this act. Any
3 physician or other health care provider who qualifies to provide
4 health care services in a clinic pursuant to rules adopted by the
5 State Board of Medical Licensure and Supervision may continue to
6 provide services at the clinic as long as the physician or other
7 health care provider continues to meet the qualifications set forth
8 in the rules. A physician or other health care provider who
9 violates this subsection is subject to disciplinary action by his or
10 her appropriate medical regulatory or licensure board.

11 B. Only a physician may dispense medication or prescribe a
12 controlled dangerous substance on the premises of a registered pain-
13 management clinic.

14 C. A physician, a physician assistant or an advanced practice
15 registered nurse shall perform a physical examination of a patient
16 on the same day that the physician prescribes a controlled substance
17 to a patient at a pain-management clinic. If the physician
18 prescribes more than a seventy-two-hour dose of controlled dangerous
19 substances for the treatment of chronic nonmalignant pain, the
20 physician must document in the patient's record the reason for
21 prescribing that quantity.

22 D. A physician authorized to prescribe controlled dangerous
23 substances who practices at a pain-management clinic is responsible
24 for maintaining the control and security of his or her prescription

1 pads and any other method used for prescribing controlled dangerous
2 substance pain medication. The physician shall notify, in writing,
3 the State Board of Medical Licensure and Supervision within twenty-
4 four (24) hours following any theft or loss of a prescription pad or
5 breach of any other method for prescribing controlled dangerous
6 substance pain medication.

7 E. The designated physician of a pain-management clinic shall
8 notify the applicable board in writing of the date of termination of
9 employment within ten (10) calendar days after terminating his or
10 her employment with a clinic that is required to be registered
11 pursuant to this act. Each physician and health care provider
12 practicing in a clinic shall advise the State Board of Medical
13 Licensure and Supervision, in writing, within ten (10) calendar days
14 after beginning or ending his or her practice at a clinic.

15 F. Each physician and health care provider practicing in a
16 pain-management clinic is responsible for ensuring compliance with
17 the following facility and physical operations requirements:

18 1. A clinic shall be located and operated at a publicly
19 accessible fixed location and shall:

20 a. display a sign that can be viewed by the public that
21 contains the clinic name, hours of operations and a
22 street address,

23 b. have a publicly listed telephone number and a
24 dedicated phone number to send and receive facsimiles

1 with a facsimile machine that shall be operational
2 twenty-four (24) hours per day,

- 3 c. have emergency lighting and communications,
- 4 d. have a reception and waiting area,
- 5 e. provide a restroom,
- 6 f. have an administrative area, including room for
7 storage of medical records, supplies and equipment,
- 8 g. have private patient examination rooms,
- 9 h. have treatment rooms, if treatment is being provided
10 to the patients, and
- 11 i. display a printed sign located in a conspicuous place
12 in the waiting room viewable by the public with the
13 name and contact information of the clinic's
14 designated physician and the names of all physicians
15 and health care providers practicing in the clinic;
16 and

17 2. This section does not excuse a physician or health care
18 provider from providing any treatment or performing any medical duty
19 without the proper equipment and materials as required by the
20 standard of care. This section does not supersede the level of
21 care, skill or treatment recognized in general law related to health
22 care licensure.

23 G. Each physician and health care provider providing services
24 in a pain-management clinic is responsible for ensuring compliance

1 with the infection control, health and safety and quality assurance
2 requirements established by the State Board of Medical Licensure and
3 Supervision.

4 H. Each pain-management clinic shall have at least one employee
5 on the premises during patient-care hours who is certified in basic
6 life support and is trained in reacting to accidents and medical
7 emergencies until emergency medical personnel arrive.

8 I. The designated physician is responsible for ensuring
9 compliance with the following data collection and reporting
10 requirements:

11 1. The designated physician for each pain-management clinic
12 shall report all adverse incidents to the State Board of Medical
13 Licensure and Supervision; and

14 2. The designated physician shall also report to the State
15 Board of Medical Licensure and Supervision, in writing, on a
16 quarterly basis the following data:

17 a. the number of new and repeat patients seen and treated
18 at the clinic who are prescribed controlled dangerous
19 substance medications for the treatment of chronic,
20 nonmalignant pain,

21 b. the number of patients referred for substance use
22 disorder treatment, which includes information as to
23 whether the person was discharged from treatment,
24

- 1 c. the number of patients discharged due to drug
2 diversion, and
- 3 d. the number of patients treated at the pain clinic
4 whose domicile is located somewhere other than in this
5 state. A patient's domicile is the patient's fixed or
6 permanent home to which he or she intends to return
7 even though he or she may temporarily reside
8 elsewhere.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2-1003 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 A. An authorized representative of the State Board of Medical
13 Licensure and Supervision shall inspect all pain-management clinics
14 annually, including a review of the patient records to ensure they
15 comply with this act and the rules of the State Board of Medical
16 Licensure and Supervision adopted pursuant to Section 5 of this act
17 unless the clinic is accredited by a nationally recognized
18 accrediting agency approved by the State Board of Medical Licensure
19 and Supervision.

20 B. During an onsite inspection, the authorized representative
21 of the State Board of Medical Licensure and Supervision shall make a
22 reasonable attempt to discuss each violation with the owner or
23 designated physician of the pain-management clinic before issuing a
24 formal written notification.

1 C. Any action taken to correct a violation shall be documented
2 in writing by the owner or designated physician of the pain-
3 management clinic and verified by follow-up visits by the authorized
4 representative of the State Board of Medical Licensure and
5 Supervision.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2-1004 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The State Board of Medical Licensure and Supervision shall
10 adopt rules necessary to administer the registration and inspection
11 of pain-management clinics which establish the specific
12 requirements, procedures, forms and fees.

13 B. The State Board of Medical Licensure and Supervision shall
14 adopt rules setting forth training requirements for all pain-
15 management clinic health care practitioners who are not regulated by
16 another board.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2-1005 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The State Board of Medical Licensure and Supervision may
21 impose an administrative fine on a pain-management clinic of up to
22 Five Thousand Dollars (\$5,000.00) per violation for violating the
23 requirements of this act or the rules of the State Board of Medical
24 Licensure and Supervision. In determining whether a penalty is to

1 be imposed, and in fixing the amount of the fine, the State Board of
2 Medical Licensure and Supervision shall consider the following
3 factors:

4 1. The gravity of the violation, including the probability that
5 death or serious physical or emotional harm to a patient has
6 resulted, or could have resulted, from the clinic's actions or the
7 actions of the physician, the severity of the action or potential
8 harm and the extent to which the provisions of the applicable laws
9 or rules were violated;

10 2. What actions, if any, the owner or designated physician took
11 to correct the violations;

12 3. Whether there were any previous violations at the clinic;
13 and

14 4. The financial benefits that the clinic derived from
15 committing or continuing to commit the violation.

16 B. Each day a violation continues after the date fixed for
17 termination of the violation as ordered by the State Board of
18 Medical Licensure and Supervision constitutes an additional,
19 separate and distinct violation.

20 C. The State Board of Medical Licensure and Supervision may
21 impose a fine and, in the case of an owner-operated pain-management
22 clinic, revoke or deny a clinic's registration, if the clinic's
23 designated physician knowingly and intentionally misrepresents
24 actions taken to correct a violation.

1 D. An owner or designated physician of a pain-management clinic
2 who concurrently operates an unregistered clinic is subject to an
3 administrative fine of Five Thousand Dollars (\$5,000.00) per day.

4 E. If the owner of a pain-management clinic that requires
5 registration fails to apply to register the clinic upon a change of
6 ownership and operates the clinic under the new ownership, the owner
7 is subject to a fine of Five Thousand Dollars (\$5,000.00).

8 SECTION 7. This act shall become effective November 1, 2018.

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10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/16/2018 - DO
11 PASS, As Amended.

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