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February 26, 2018

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1446

By: Sykes

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[ opioid drugs - license reregistration -
unprofessional conduct - definitions - central
repository - disclose health risks - guidelines -
pain management agreement - written policy or
policies - codification - noncodification - effective
date ]
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2011, Section 495a.1, is amended to read as follows:

Section 495a.1. A. At regular intervals set by the Board, no less than one time per annum, each licensee licensed by this act shall demonstrate to the Board the licensee's continuing qualification to practice medicine and surgery. The licensee shall apply for license reregistration on a form(s) provided by the Board, which shall be designed to require the licensee to update and/or add to the information in the Board's file relating to the licensee and his or her professional activity. It shall also require the licensee to report to the Board the following information:

1 1. Any action taken against the licensee for acts or conduct
2 similar to acts or conduct described in this act as grounds for
3 disciplinary action by:

- 4 a. any jurisdiction or authority (United States or
5 foreign) that licenses or authorizes the practice of
6 medicine and surgery,
- 7 b. any peer review body,
- 8 c. any health care institution,
- 9 d. any professional medical society or association,
- 10 e. any law enforcement agency,
- 11 f. any court, or
- 12 g. any governmental agency;

13 2. Any adverse judgment, settlement, or award against the
14 licensee arising from a professional liability claim;

15 3. The licensee's voluntary surrender of or voluntary
16 limitation on any license or authorization to practice medicine and
17 surgery in any jurisdiction, including military, public health and
18 foreign;

19 4. Any denial to the licensee of a license or authorization to
20 practice medicine and surgery by any jurisdiction, including
21 military, public health or foreign;

22 5. The licensee's voluntary resignation from the medical staff
23 of any health care institution or voluntary limitation of the
24 licensee's staff privileges at such an institution if that action

1 occurred while the licensee was under formal or informal
2 investigation by the institution or a committee thereof for any
3 reason related to alleged medical incompetence, unprofessional
4 conduct, or mental or physical impairment;

5 6. The licensee's voluntary resignation or withdrawal from a
6 national, state, or county medical society, association, or
7 organization if that action occurred while the licensee was under
8 formal or informal investigation or review by that body for any
9 reason related to possible medical incompetence, unprofessional or
10 unethical conduct, or mental or physical impairment;

11 7. Whether the licensee has abused or has been addicted to or
12 treated for addiction to alcohol or any chemical substance during
13 the previous registration period, unless such person is in a
14 rehabilitation program approved by the Board;

15 8. Whether the licensee has had any physical injury or disease
16 or mental illness during the previous registration period that
17 affected or interrupted his or her practice of medicine and surgery;
18 and

19 9. The licensee's completion of continuing medical education or
20 other forms of professional maintenance and/or evaluation, including
21 specialty board certification or recertification, during the
22 previous registration period.

23 B. The Board may require continuing medical education for
24 license reregistration and require documentation of that education.

1 C. The Board shall require that the licensee receive not less
2 than one hour of education in pain management and opioid use and
3 addiction each year preceding an application for renewal of a
4 license, unless the licensee has demonstrated to the satisfaction of
5 the Board that the licensee does not currently hold a valid federal
6 Drug Enforcement Administration registration number.

7 D. The licensee shall sign and attest to the veracity of the
8 application form for license reregistration. Failure to report
9 fully and correctly shall be grounds for disciplinary action by the
10 Board.

11 ~~D.~~ E. The Board shall establish a system for reviewing
12 reregistration forms. The Board may initiate investigations and
13 disciplinary proceedings based on information submitted by licensees
14 for license reregistration.

15 ~~E.~~ F. Upon a finding by the Board that the licensee is fit to
16 continue to practice medicine and surgery in this state, the Board
17 shall issue to the licensee a license to practice medicine and
18 surgery during the next registration period.

19 SECTION 2. AMENDATORY 59 O.S. 2011, Section 509, is
20 amended to read as follows:

21 Section 509. The words "unprofessional conduct" as used in
22 Sections 481 through 514 of this title are hereby declared to
23 include, but shall not be limited to, the following:

24 1. Procuring, aiding or abetting a criminal operation;

1 2. The obtaining of any fee or offering to accept any fee,
2 present or other form of remuneration whatsoever, on the assurance
3 or promise that a manifestly incurable disease can or will be cured;

4 3. Willfully betraying a professional secret to the detriment
5 of the patient;

6 4. Habitual intemperance or the habitual use of habit-forming
7 drugs;

8 5. Conviction of a felony or of any offense involving moral
9 turpitude;

10 6. All advertising of medical business in which statements are
11 made which are grossly untrue or improbable and calculated to
12 mislead the public;

13 7. Conviction or confession of a crime involving violation of:

14 a. the antinarcotic or prohibition laws and regulations
15 of the federal government,

16 b. the laws of this state, or

17 c. State Board of Health rules;

18 8. Dishonorable or immoral conduct which is likely to deceive,
19 defraud, or harm the public;

20 9. The commission of any act which is a violation of the
21 criminal laws of any state when such act is connected with the
22 physician's practice of medicine. A complaint, indictment or
23 confession of a criminal violation shall not be necessary for the
24 enforcement of this provision. Proof of the commission of the act

1 while in the practice of medicine or under the guise of the practice
2 of medicine shall be unprofessional conduct;

3 10. Failure to keep complete and accurate records of purchase
4 and disposal of controlled drugs or of narcotic drugs;

5 11. The writing of false or fictitious prescriptions for any
6 drugs or narcotics declared by the laws of this state to be
7 controlled or narcotic drugs;

8 12. Prescribing or administering a drug or treatment without
9 sufficient examination and the establishment of a valid physician-
10 patient relationship;

11 13. The violation, or attempted violation, direct or indirect,
12 of any of the provisions of the Oklahoma Allopathic Medical and
13 Surgical Licensure and Supervision Act, either as a principal,
14 accessory or accomplice;

15 14. Aiding or abetting, directly or indirectly, the practice of
16 medicine by any person not duly authorized under the laws of this
17 state;

18 15. The inability to practice medicine with reasonable skill
19 and safety to patients by reason of age, illness, drunkenness,
20 excessive use of drugs, narcotics, chemicals, or any other type of
21 material or as a result of any mental or physical condition. In
22 enforcing this subsection the State Board of Medical Licensure and
23 Supervision may, upon probable cause, request a physician to submit
24 to a mental or physical examination by physicians designated by it.

1 If the physician refuses to submit to the examination, the Board
2 shall issue an order requiring the physician to show cause why the
3 physician will not submit to the examination and shall schedule a
4 hearing on the order within thirty (30) days after notice is served
5 on the physician. The physician shall be notified by either
6 personal service or by certified mail with return receipt requested.
7 At the hearing, the physician and the physician's attorney are
8 entitled to present any testimony and other evidence to show why the
9 physician should not be required to submit to the examination.
10 After a complete hearing, the Board shall issue an order either
11 requiring the physician to submit to the examination or withdrawing
12 the request for examination. The medical license of a physician
13 ordered to submit for examination may be suspended until the results
14 of the examination are received and reviewed by the Board;

15 16. Prescribing, dispensing or administering of controlled
16 substances or narcotic drugs in excess of the amount considered good
17 medical practice, or prescribing, dispensing or administering
18 controlled substances or narcotic drugs without medical need in
19 accordance with published standards, or prescribing, dispensing or
20 administering opioid drugs in excess of the maximum dosage
21 authorized under Section 5 of this act;

22 17. Engaging in physical conduct with a patient which is sexual
23 in nature, or in any verbal behavior which is seductive or sexually
24 demeaning to a patient;

1 18. Failure to maintain an office record for each patient which
2 accurately reflects the evaluation, treatment, and medical necessity
3 of treatment of the patient;

4 19. Failure to provide necessary ongoing medical treatment when
5 a doctor-patient relationship has been established, which
6 relationship can be severed by either party providing a reasonable
7 period of time is granted; or

8 20. Failure to provide a proper and safe medical facility
9 setting and qualified assistive personnel for a recognized medical
10 act, including but not limited to an initial in-person patient
11 examination, office surgery, diagnostic service or any other medical
12 procedure or treatment. Adequate medical records to support
13 diagnosis, procedure, treatment or prescribed medications must be
14 produced and maintained.

15 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2-101, as
16 last amended by Section 1, Chapter 43, O.S.L. 2017 (63 O.S. Supp.
17 2017, Section 2-101), is amended to read as follows:

18 Section 2-101. As used in the Uniform Controlled Dangerous
19 Substances Act:

20 1. "Administer" means the direct application of a controlled
21 dangerous substance, whether by injection, inhalation, ingestion or
22 any other means, to the body of a patient, animal or research
23 subject by:
24

1 a. a practitioner (or, in the presence of the
2 practitioner, by the authorized agent of the
3 practitioner), or

4 b. the patient or research subject at the direction and
5 in the presence of the practitioner;

6 2. "Agent" means a peace officer appointed by and who acts on
7 behalf of the Director of the Oklahoma State Bureau of Narcotics and
8 Dangerous Drugs Control or an authorized person who acts on behalf
9 of or at the direction of a person who manufactures, distributes,
10 dispenses, prescribes, administers or uses for scientific purposes
11 controlled dangerous substances but does not include a common or
12 contract carrier, public warehouser or employee thereof, or a person
13 required to register under the Uniform Controlled Dangerous
14 Substances Act;

15 3. "Board" means the Advisory Board to the Director of the
16 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

17 4. "Bureau" means the Oklahoma State Bureau of Narcotics and
18 Dangerous Drugs Control;

19 5. "Coca leaves" includes cocaine and any compound,
20 manufacture, salt, derivative, mixture or preparation of coca
21 leaves, except derivatives of coca leaves which do not contain
22 cocaine or ecgonine;

23 6. "Commissioner" or "Director" means the Director of the
24 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

1 7. "Control" means to add, remove or change the placement of a
2 drug, substance or immediate precursor under the Uniform Controlled
3 Dangerous Substances Act;

4 8. "Controlled dangerous substance" means a drug, substance or
5 immediate precursor in Schedules I through V of the Uniform
6 Controlled Dangerous Substances Act or any drug, substance or
7 immediate precursor listed either temporarily or permanently as a
8 federally controlled substance. Any conflict between state and
9 federal law with regard to the particular schedule in which a
10 substance is listed shall be resolved in favor of state law;

11 9. "Counterfeit substance" means a controlled substance which,
12 or the container or labeling of which without authorization, bears
13 the trademark, trade name or other identifying marks, imprint,
14 number or device or any likeness thereof of a manufacturer,
15 distributor or dispenser other than the person who in fact
16 manufactured, distributed or dispensed the substance;

17 10. "Deliver" or "delivery" means the actual, constructive or
18 attempted transfer from one person to another of a controlled
19 dangerous substance or drug paraphernalia, whether or not there is
20 an agency relationship;

21 11. "Dispense" means to deliver a controlled dangerous
22 substance to an ultimate user or human research subject by or
23 pursuant to the lawful order of a practitioner, including the
24 prescribing, administering, packaging, labeling or compounding

1 necessary to prepare the substance for such distribution.

2 "Dispenser" is a practitioner who delivers a controlled dangerous
3 substance to an ultimate user or human research subject;

4 12. "Distribute" means to deliver other than by administering
5 or dispensing a controlled dangerous substance;

6 13. "Distributor" means a commercial entity engaged in the
7 distribution or reverse distribution of narcotics and dangerous
8 drugs and who complies with all regulations promulgated by the
9 federal Drug Enforcement Administration and the Oklahoma State
10 Bureau of Narcotics and Dangerous Drugs Control;

11 14. "Drug" means articles:

12 a. recognized in the official United States
13 Pharmacopoeia, official Homeopathic Pharmacopoeia of
14 the United States, or official National Formulary, or
15 any supplement to any of them,

16 b. intended for use in the diagnosis, cure, mitigation,
17 treatment or prevention of disease in man or other
18 animals,

19 c. other than food, intended to affect the structure or
20 any function of the body of man or other animals, and

21 d. intended for use as a component of any article
22 specified in this paragraph;

23 provided, however, the term "drug" does not include devices or their
24 components, parts or accessories;

1 15. "Drug-dependent person" means a person who is using a
2 controlled dangerous substance and who is in a state of psychic or
3 physical dependence, or both, arising from administration of that
4 controlled dangerous substance on a continuous basis. Drug
5 dependence is characterized by behavioral and other responses which
6 include a strong compulsion to take the substance on a continuous
7 basis in order to experience its psychic effects, or to avoid the
8 discomfort of its absence;

9 16. "Home care agency" means any sole proprietorship,
10 partnership, association, corporation, or other organization which
11 administers, offers, or provides home care services, for a fee or
12 pursuant to a contract for such services, to clients in their place
13 of residence;

14 17. "Home care services" means skilled or personal care
15 services provided to clients in their place of residence for a fee;

16 18. "Hospice" means a centrally administered, nonprofit or
17 profit, medically directed, nurse-coordinated program which provides
18 a continuum of home and inpatient care for the terminally ill
19 patient and the patient's family. Such term shall also include a
20 centrally administered, nonprofit or profit, medically directed,
21 nurse-coordinated program if such program is licensed pursuant to
22 the provisions of this act. A hospice program offers palliative and
23 supportive care to meet the special needs arising out of the
24 physical, emotional and spiritual stresses which are experienced

1 during the final stages of illness and during dying and bereavement.
2 This care is available twenty-four (24) hours a day, seven (7) days
3 a week, and is provided on the basis of need, regardless of ability
4 to pay. "Class A" Hospice refers to Medicare certified hospices.
5 "Class B" refers to all other providers of hospice services;

6 19. "Imitation controlled substance" means a substance that is
7 not a controlled dangerous substance, which by dosage unit
8 appearance, color, shape, size, markings or by representations made,
9 would lead a reasonable person to believe that the substance is a
10 controlled dangerous substance. In the event the appearance of the
11 dosage unit is not reasonably sufficient to establish that the
12 substance is an "imitation controlled substance", the court or
13 authority concerned should consider, in addition to all other
14 factors, the following factors as related to "representations made"
15 in determining whether the substance is an "imitation controlled
16 substance":

- 17 a. statements made by an owner or by any other person in
18 control of the substance concerning the nature of the
19 substance, or its use or effect,
- 20 b. statements made to the recipient that the substance
21 may be resold for inordinate profit,
- 22 c. whether the substance is packaged in a manner normally
23 used for illicit controlled substances,

- d. evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities,
- e. prior convictions, if any, of an owner, or any other person in control of the object, under state or federal law related to controlled substances or fraud, and
- f. the proximity of the substances to controlled dangerous substances;

20. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture;

21. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction;

22. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical

1 synthesis. "Manufacturer" includes any person who packages,
2 repackages or labels any container of any controlled dangerous
3 substance, except practitioners who dispense or compound
4 prescription orders for delivery to the ultimate consumer;

5 23. "Marihuana" means all parts of the plant Cannabis sativa
6 L., whether growing or not; the seeds thereof; the resin extracted
7 from any part of such plant; and every compound, manufacture, salt,
8 derivative, mixture or preparation of such plant, its seeds or
9 resin, but shall not include:

- 10 a. the mature stalks of such plant or fiber produced from
11 such stalks,
- 12 b. oil or cake made from the seeds of such plant,
13 including cannabidiol derived from the seeds of the
14 marihuana plant,
- 15 c. any other compound, manufacture, salt, derivative,
16 mixture or preparation of such mature stalks (except
17 the resin extracted therefrom), including cannabidiol
18 derived from mature stalks, fiber, oil or cake,
- 19 d. the sterilized seed of such plant which is incapable
20 of germination,
- 21 e. for any person participating in a clinical trial to
22 administer cannabidiol for the treatment of severe
23 forms of epilepsy pursuant to Section 2-802 of this
24 title, a drug or substance approved by the federal

Food and Drug Administration for use by those participants,

- f. for any person or the parents, legal guardians or caretakers of the person who have received a written certification from a physician licensed in this state that the person has been diagnosed by a physician as having Lennox-Gastaut Syndrome, Dravet Syndrome, also known as Severe Myoclonic Epilepsy of Infancy, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies, spasticity due to multiple sclerosis or due to paraplegia, intractable nausea and vomiting, appetite stimulation with chronic wasting diseases, the substance cannabidiol, a nonpsychoactive cannabinoid, found in the plant Cannabis sativa L. or any other preparation thereof, that has a tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) and that is delivered to the patient in the form of a liquid,
- g. any federal Food and Drug Administration-approved cannabidiol drug or substance, or
- h. industrial hemp, from the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more

1 than three-tenths of one percent (0.3%) on a dry
2 weight basis which shall not be grown anywhere in the
3 State of Oklahoma but may be shipped to Oklahoma
4 pursuant to the provisions of subparagraph e or f of
5 this paragraph;

6 24. "Medical purpose" means an intention to utilize a
7 controlled dangerous substance for physical or mental treatment, for
8 diagnosis, or for the prevention of a disease condition not in
9 violation of any state or federal law and not for the purpose of
10 satisfying physiological or psychological dependence or other abuse;

11 25. "Mid-level practitioner" means an advanced practice nurse
12 as defined and within parameters specified in Section 567.3a of
13 Title 59 of the Oklahoma Statutes, or a certified animal euthanasia
14 technician as defined in Section 698.2 of Title 59 of the Oklahoma
15 Statutes, or an animal control officer registered by the Oklahoma
16 State Bureau of Narcotics and Dangerous Drugs Control under
17 subsection B of Section 2-301 of this title within the parameters of
18 such officer's duty under Sections 501 through 508 of Title 4 of the
19 Oklahoma Statutes;

20 26. "Narcotic drug" means any of the following, whether
21 produced directly or indirectly by extraction from substances of
22 vegetable origin, or independently by means of chemical synthesis,
23 or by a combination of extraction and chemical synthesis:

24 a. opium, coca leaves and opiates,

- 1 b. a compound, manufacture, salt, derivative or
2 preparation of opium, coca leaves or opiates,
3 c. cocaine, its salts, optical and geometric isomers, and
4 salts of isomers,
5 d. ecgonine, its derivatives, their salts, isomers and
6 salts of isomers, and
7 e. a substance, and any compound, manufacture, salt,
8 derivative or preparation thereof, which is chemically
9 identical with any of the substances referred to in
10 subparagraphs a through d of this paragraph, except
11 that the words "narcotic drug" as used in Section 2-
12 101 et seq. of this title shall not include
13 decocainized coca leaves or extracts of coca leaves,
14 which extracts do not contain cocaine or ecgonine;

15 27. "Opiate" means any substance having an addiction-forming or
16 addiction-sustaining liability similar to morphine or being capable
17 of conversion into a drug having such addiction-forming or
18 addiction-sustaining liability. It does not include, unless
19 specifically designated as controlled under the Uniform Controlled
20 Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-
21 methyl-morphinan and its salts (dextromethorphan). It does include
22 its racemic and levorotatory forms;

23 28. "Opium poppy" means the plant of the species *Papaver*
24 *somniferum* L., except the seeds thereof;

1 29. "Peace officer" means a police officer, sheriff, deputy
2 sheriff, district attorney's investigator, investigator from the
3 Office of the Attorney General, or any other person elected or
4 appointed by law to enforce any of the criminal laws of this state
5 or of the United States;

6 30. "Person" means an individual, corporation, government or
7 governmental subdivision or agency, business trust, estate, trust,
8 partnership or association, or any other legal entity;

9 31. "Poppy straw" means all parts, except the seeds, of the
10 opium poppy, after mowing;

11 32. "Practitioner" means:

- 12 a. (1) a medical doctor or osteopathic physician,
13 (2) a dentist,
14 (3) a podiatrist,
15 (4) an optometrist,
16 (5) a veterinarian,
17 (6) a physician assistant under the supervision of a
18 licensed medical doctor or osteopathic physician,
19 (7) a scientific investigator, or
20 (8) any other person,
21 licensed, registered or otherwise permitted to
22 prescribe, distribute, dispense, conduct research with
23 respect to, use for scientific purposes or administer
24

1 a controlled dangerous substance in the course of
2 professional practice or research in this state, or
3 b. a pharmacy, hospital, laboratory or other institution
4 licensed, registered or otherwise permitted to
5 distribute, dispense, conduct research with respect
6 to, use for scientific purposes or administer a
7 controlled dangerous substance in the course of
8 professional practice or research in this state;

9 33. "Production" includes the manufacture, planting,
10 cultivation, growing or harvesting of a controlled dangerous
11 substance;

12 34. "State" means the State of Oklahoma or any other state of
13 the United States;

14 35. "Ultimate user" means a person who lawfully possesses a
15 controlled dangerous substance for the person's own use or for the
16 use of a member of the person's household or for administration to
17 an animal owned by the person or by a member of the person's
18 household;

19 36. "Drug paraphernalia" means all equipment, products and
20 materials of any kind which are used, intended for use, or fashioned
21 specifically for use in planting, propagating, cultivating, growing,
22 harvesting, manufacturing, compounding, converting, producing,
23 processing, preparing, testing, analyzing, packaging, repackaging,
24 storing, containing, concealing, injecting, ingesting, inhaling or

1 otherwise introducing into the human body, a controlled dangerous
2 substance in violation of the Uniform Controlled Dangerous
3 Substances Act including, but not limited to:

- 4 a. kits used, intended for use, or fashioned specifically
5 for use in planting, propagating, cultivating, growing
6 or harvesting of any species of plant which is a
7 controlled dangerous substance or from which a
8 controlled dangerous substance can be derived,
- 9 b. kits used, intended for use, or fashioned specifically
10 for use in manufacturing, compounding, converting,
11 producing, processing or preparing controlled
12 dangerous substances,
- 13 c. isomerization devices used, intended for use, or
14 fashioned specifically for use in increasing the
15 potency of any species of plant which is a controlled
16 dangerous substance,
- 17 d. testing equipment used, intended for use, or fashioned
18 specifically for use in identifying, or in analyzing
19 the strength, effectiveness or purity of controlled
20 dangerous substances,
- 21 e. scales and balances used, intended for use, or
22 fashioned specifically for use in weighing or
23 measuring controlled dangerous substances,

- 1 f. diluents and adulterants, such as quinine
2 hydrochloride, mannitol, mannite, dextrose and
3 lactose, used, intended for use, or fashioned
4 specifically for use in cutting controlled dangerous
5 substances,
- 6 g. separation gins and sifters used, intended for use, or
7 fashioned specifically for use in removing twigs and
8 seeds from, or in otherwise cleaning or refining,
9 marihuana,
- 10 h. blenders, bowls, containers, spoons and mixing devices
11 used, intended for use, or fashioned specifically for
12 use in compounding controlled dangerous substances,
- 13 i. capsules, balloons, envelopes and other containers
14 used, intended for use, or fashioned specifically for
15 use in packaging small quantities of controlled
16 dangerous substances,
- 17 j. containers and other objects used, intended for use,
18 or fashioned specifically for use in parenterally
19 injecting controlled dangerous substances into the
20 human body,
- 21 k. hypodermic syringes, needles and other objects used,
22 intended for use, or fashioned specifically for use in
23 parenterally injecting controlled dangerous substances
24 into the human body,

1. objects used, intended for use, or fashioned specifically for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:
- (1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,
 - (2) water pipes,
 - (3) carburetion tubes and devices,
 - (4) smoking and carburetion masks,
 - (5) roach clips, meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand,
 - (6) miniature cocaine spoons and cocaine vials,
 - (7) chamber pipes,
 - (8) carburetor pipes,
 - (9) electric pipes,
 - (10) air-driven pipes,
 - (11) chillums,
 - (12) bongs, or
 - (13) ice pipes or chillers,
- m. all hidden or novelty pipes, and

1 n. any pipe that has a tobacco bowl or chamber of less
2 than one-half (1/2) inch in diameter in which there is
3 any detectable residue of any controlled dangerous
4 substance as defined in this section or any other
5 substances not legal for possession or use;

6 provided, however, the term "drug paraphernalia" shall not include
7 separation gins intended for use in preparing tea or spice, clamps
8 used for constructing electrical equipment, water pipes designed for
9 ornamentation in which no detectable amount of an illegal substance
10 is found or pipes designed and used solely for smoking tobacco,
11 traditional pipes of an American Indian tribal religious ceremony,
12 or antique pipes that are thirty (30) years of age or older;

13 37. a. "Synthetic controlled substance" means a substance:

- 14 (1) the chemical structure of which is substantially
15 similar to the chemical structure of a controlled
16 dangerous substance in Schedule I or II,
17 (2) which has a stimulant, depressant, or
18 hallucinogenic effect on the central nervous
19 system that is substantially similar to or
20 greater than the stimulant, depressant or
21 hallucinogenic effect on the central nervous
22 system of a controlled dangerous substance in
23 Schedule I or II, or
24

1 (3) with respect to a particular person, which such
2 person represents or intends to have a stimulant,
3 depressant, or hallucinogenic effect on the
4 central nervous system that is substantially
5 similar to or greater than the stimulant,
6 depressant, or hallucinogenic effect on the
7 central nervous system of a controlled dangerous
8 substance in Schedule I or II.

9 b. The designation of gamma butyrolactone or any other
10 chemical as a precursor, pursuant to Section 2-322 of
11 this title, does not preclude a finding pursuant to
12 subparagraph a of this paragraph that the chemical is
13 a synthetic controlled substance.

14 c. "Synthetic controlled substance" does not include:
15 (1) a controlled dangerous substance,
16 (2) any substance for which there is an approved new
17 drug application,
18 (3) with respect to a particular person any
19 substance, if an exemption is in effect for
20 investigational use, for that person under the
21 provisions of Section 505 of the Federal Food,
22 Drug and Cosmetic Act, Title 21 of the United
23 States Code, Section 355, to the extent conduct
24

1 with respect to such substance is pursuant to
2 such exemption, or

3 (4) any substance to the extent not intended for
4 human consumption before such an exemption takes
5 effect with respect to that substance.

6 d. Prima facie evidence that a substance containing
7 salvia divinorum has been enhanced, concentrated or
8 chemically or physically altered shall give rise to a
9 rebuttable presumption that the substance is a
10 synthetic controlled substance;

11 38. "Tetrahydrocannabinols" means all substances that have been
12 chemically synthesized to emulate the tetrahydrocannabinols of
13 marihuana;

14 39. "Isomer" means the optical isomer, except as used in
15 subsections C and F of Section 2-204 of this title and paragraph 4
16 of subsection A of Section 2-206 of this title. As used in
17 subsections C and F of Section 2-204 of this title, "isomer" means
18 the optical, positional or geometric isomer. As used in paragraph 4
19 of subsection A of Section 2-206 of this title, the term "isomer"
20 means the optical or geometric isomer;

21 40. "Hazardous materials" means materials, whether solid,
22 liquid or gas, which are toxic to human, animal, aquatic or plant
23 life, and the disposal of which materials is controlled by state or
24 federal guidelines; ~~and~~

1 41. "Anhydrous ammonia" means any substance that exhibits
2 cryogenic evaporative behavior and tests positive for ammonia;

3 42. "Acute pain" means pain, whether resulting from disease,
4 accidental or intentional trauma, or other cause, that the
5 practitioner reasonably expects to last only a short period of time.
6 "Acute pain" does not include chronic pain, pain being treated as
7 part of cancer care, hospice or other end-of-life care, or pain
8 being treated as part of palliative care;

9 43. "Chronic pain" means pain that persists beyond the usual
10 course of an acute disease or healing of an injury. "Chronic pain"
11 may or may not be associated with an acute or chronic pathologic
12 process that causes continuous or intermittent pain over months or
13 years;

14 44. "Initial prescription" means a prescription issued to a
15 patient who:

16 a. has never previously been issued a prescription for
17 the drug or its pharmaceutical equivalent, or

18 b. was previously issued a prescription for the drug or
19 its pharmaceutical equivalent, but the date on which
20 the current prescription is being issued is more than
21 one year after the date the patient last used or was
22 administered the drug or its equivalent;

23 When determining whether a patient was previously issued a
24 prescription for a drug or its pharmaceutical equivalent, the

1 practitioner shall consult with the patient and review the patient's
2 medical record and prescription monitoring information;

3 45. "Pain management agreement" means a written contract or
4 agreement that is executed between a practitioner and a patient,
5 prior to the commencement of treatment for chronic pain using a
6 Schedule II controlled substance or any opioid drug which is a
7 prescription drug, as a means to:

8 a. prevent the possible development of physical or
9 psychological dependence in the patient,

10 b. document the understanding of both the practitioner
11 and the patient regarding the patient's pain
12 management plan,

13 c. establish the patient's rights in association with
14 treatment, and the patient's obligations in relation
15 to the responsible use, discontinuation of use, and
16 storage of Schedule II controlled dangerous substances,
17 including any restrictions on the refill of
18 prescriptions or the acceptance of Schedule II
19 prescriptions from practitioners,

20 d. identify the specific medications and other modes of
21 treatment, including physical therapy or exercise,
22 relaxation, or psychological counseling, that are
23 included as a part of the pain management plan,
24

1 e. specify the measures the practitioner may employ to
2 monitor the patient's compliance, including but not
3 limited to random specimen screens and pill counts, and
4 f. delineate the process for terminating the agreement,
5 including the consequences if the practitioner has
6 reason to believe that the patient is not complying with
7 the terms of the agreement;

8 46. "Serious illness" means a medical illness or physical
9 injury or condition that substantially affects quality of life for
10 more than a short period of time. "Serious illness" includes, but
11 is not limited to, Alzheimer's disease or related dementias, lung
12 disease, cancer, heart failure, renal failure, liver failure or
13 chronic, unremitting or intractable pain such as neuropathic pain;
14 and

15 47. "Surgical procedure" means a procedure that is performed
16 for the purpose of structurally altering the human body by incision
17 or destruction of tissues as part of the practice of medicine. This
18 term includes the diagnostic or therapeutic treatment of conditions
19 or disease processes by use of instruments such as lasers,
20 ultrasound, ionizing, radiation, scalpels, probes or needles that
21 cause localized alteration or transportation of live human tissue by
22 cutting, burning, vaporizing, freezing, suturing, probing or
23 manipulating by closed reduction for major dislocations or
24

1 fractures, or otherwise altering by any mechanical, thermal, light-
2 based, electromagnetic or chemical means.

3 SECTION 4. AMENDATORY 63 O.S. 2011, Section 2-309D, as
4 last amended by Section 35, Chapter 210, O.S.L. 2016 (63 O.S. Supp.
5 2017, Section 2-309D), is amended to read as follows:

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

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

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

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

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

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

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

5. Medical practitioners employed by the United States Department of Veterans Affairs, 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, designated legal, communications, and analytical employees of the Bureau, and

1 to registrants in furtherance of efforts to guard against the
2 diversion of controlled dangerous substances.

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

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

14 E. The Department of Mental Health and Substance Abuse Services
15 and the State Department of Health may utilize the information in
16 the central repository for statistical, research, substance abuse
17 prevention, or educational purposes, provided that consumer
18 confidentiality is not compromised.

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

24

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

6 2. a. Prior to prescribing or authorizing for refill, if one
7 hundred eighty (180) days have elapsed prior to the
8 previous access and check, of opiates, synthetic
9 opiates, semisynthetic opiates, benzodiazepine or
10 carisoprodol to a patient of record, registrants or
11 members of their medical or administrative staff shall
12 be required until October 31, 2020, to access the
13 information in the central repository to assess
14 medical necessity and the possibility that the patient
15 may be unlawfully obtaining prescription drugs in
16 violation of the Uniform Controlled Dangerous
17 Substances Act. The duty to access and check shall
18 not alter or otherwise amend appropriate medical
19 standards of care. The registrant or medical provider
20 shall note in the patient file that the central
21 repository has been checked and may maintain a copy of
22 the information.

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

- 1 (1) to medical practitioners who prescribe the
2 controlled substances set forth in subparagraph a
3 of this paragraph for hospice or end-of-life
4 care, or
5 (2) for a prescription of a controlled substance set
6 forth in subparagraph a of this paragraph that is
7 issued by a practitioner for a patient residing
8 in a nursing facility as defined by Section 1-
9 1902 of this title, provided that the
10 prescription is issued to a resident of such
11 facility.

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

16 4. The failure of a registrant to access and check the central
17 repository as required under state or federal law or regulation is
18 grounds for the registrant's licensing board to take disciplinary
19 action against the registrant.

20 H. The State Board of Podiatric Examiners, the State Board of
21 Dentistry, the State Board of Medical Licensure and Supervision, the
22 State Board of Examiners in Optometry, the State Board of Nursing,
23 the State Board of Osteopathic Examiners and the State Board of
24 Veterinary Medical Examiners shall have the sole responsibility for

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

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

23 J. Information regarding fatal and nonfatal overdoses, other
24 than statistical information as required by Section 2-106 of this

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

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

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

23 M. The Oklahoma State Bureau of Narcotics and Dangerous Drugs is
24 authorized to provide unsolicited notification to the licensing board

1 of a pharmacist or practitioner if a patient has received one or more
2 prescriptions for controlled substances in quantities or with a
3 frequency inconsistent with generally recognized standards of safe
4 practice, or if a practitioner or prescriber has exhibited
5 prescriptive behavior consistent with generally recognized standards
6 indicating potentially problematic prescribing patterns. An
7 unsolicited notification to a practitioner's licensing board
8 pursuant to this section:

9 1. Is confidential;

10 2. May not disclose information that is confidential
11 pursuant to this section; and

12 3. May be in a summary form sufficient to provide notice of
13 the basis for the unsolicited notification.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 2-309I of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. A practitioner shall not issue an initial prescription for
18 an opioid drug which is a prescription drug in a quantity exceeding a
19 seven-day supply for treatment of acute pain for an adult patient, or
20 a seven-day supply for treatment of acute pain for a patient under
21 the age of eighteen (18). Any prescription for acute pain pursuant to
22 this subsection shall be for the lowest effective dose of immediate-
23 release opioid drug.

1 B. Prior to issuing an initial prescription of a Schedule II
2 controlled dangerous substance or any opioid drug which is a
3 prescription drug in a course of treatment for acute or chronic
4 pain, a practitioner shall:

5 1. Take and document the results of a thorough medical history,
6 including the patient's experience with non-opioid medication and
7 non-pharmacological pain management approaches and substance abuse
8 history;

9 2. Conduct, as appropriate, and document the results of a
10 physical examination;

11 3. Develop a treatment plan, with particular attention focused on
12 determining the cause of the patient's pain;

13 4. Access relevant prescription monitoring information from
14 the central repository pursuant to Section 2-309D of Title 63 of the
15 Oklahoma Statutes;

16 5. Limit the supply of any opioid drug prescribed for acute
17 pain to a duration of no more than seven (7) days as determined by
18 the directed dosage and frequency of dosage; and

19 6. In the case of a patient under the age of eighteen (18) or a
20 patient who is a pregnant woman, enter into a pain management
21 agreement with a parent or guardian of the patient.

22 C. No less than seven (7) days after issuing the initial
23 prescription pursuant to subsection A of this section, the
24 practitioner, after consultation with the patient, may issue a

1 subsequent prescription for the drug to the patient in a quantity not
2 to exceed seven (7) days, provided that:

3 1. The subsequent prescription would not be deemed an initial
4 prescription under this section;

5 2. The practitioner determines the prescription is necessary and
6 appropriate to the patient's treatment needs and documents the
7 rationale for the issuance of the subsequent prescription; and

8 3. The practitioner determines that issuance of the subsequent
9 prescription does not present an undue risk of abuse, addiction or
10 diversion and documents that determination.

11 D. Prior to issuing the initial prescription of a Schedule II
12 controlled dangerous substance or any opioid drug which is a
13 prescription drug in a course of treatment for acute or chronic pain
14 and again prior to issuing the third prescription of the course of
15 treatment, a practitioner shall discuss with the patient, or the
16 patient's parent or guardian if the patient is under eighteen (18)
17 years of age and is not an emancipated minor, the risks associated
18 with the drugs being prescribed, including but not limited to:

19 1. The risks of addiction and overdose associated with opioid
20 drugs and the dangers of taking opioid drugs with alcohol,
21 benzodiazepines and other central nervous system depressants;

22 2. The reasons why the prescription is necessary;

23 3. Alternative treatments that may be available; and
24

1 4. Risks associated with the use of the drugs being prescribed,
2 specifically that opioids are highly addictive, even when taken as
3 prescribed, that there is a risk of developing a physical or
4 psychological dependence on the controlled dangerous substance, and
5 that the risks of taking more opioids than prescribed, or mixing
6 sedatives, benzodiazepines or alcohol with opioids, can result in
7 fatal respiratory depression.

8 The practitioner shall include a note in the patient's medical
9 record that the patient or the patient's parent or guardian, as
10 applicable, has discussed with the practitioner the risks of
11 developing a physical or psychological dependence on the controlled
12 dangerous substance and alternative treatments that may be
13 available. The practitioner's applicable state licensing board
14 shall develop and make available to practitioners guidelines for the
15 discussion required pursuant to this subsection.

16 E. At the time of the issuance of the third prescription for a
17 prescription opioid drug, the practitioner shall enter into a pain
18 management agreement with the patient.

19 F. When a Schedule II controlled dangerous substance or any
20 prescription opioid drug is continuously prescribed for three (3)
21 months or more for chronic pain, the practitioner shall:

22 1. Review, at a minimum of every three (3) months, the course of
23 treatment, any new information about the etiology of the pain, and
24

1 the patient's progress toward treatment objectives and document the
2 results of that review;

3 2. Assess the patient prior to every renewal to determine
4 whether the patient is experiencing problems associated with physical
5 and psychological dependence and document the results of that
6 assessment;

7 3. Periodically make reasonable efforts, unless clinically
8 contraindicated, to either stop the use of the controlled substance,
9 decrease the dosage, try other drugs or treatment modalities in an
10 effort to reduce the potential for abuse or the development of
11 physical or psychological dependence and document with specificity
12 the efforts undertaken;

13 4. Review the central repository information in accordance with
14 Section 2-309D of Title 63 of the Oklahoma Statutes; and

15 5. Monitor compliance with the pain management
16 agreement and any recommendations that the patient seek a
17 referral.

18 G. This section shall not apply to a prescription for a
19 patient who is currently in active treatment for cancer, receiving
20 hospice care from a licensed hospice or palliative care, or is a
21 resident of a long term care facility, or to any medications that are
22 being prescribed for use in the treatment of substance abuse or
23 opioid dependence.

1 H. Every policy, contract or plan delivered, issued, executed
2 or renewed in this state, or approved for issuance or renewal in
3 this State by the Insurance Commissioner, and every contract purchased
4 by the Employees Group Insurance Division of the Office of Management
5 and Enterprise Services, on or after the effective date of this act,
6 that provides coverage for prescription drugs subject to a co-
7 payment, coinsurance or deductible shall charge a co-payment,
8 coinsurance or deductible for an initial prescription of an opioid
9 drug prescribed pursuant to this section that is either:

10 1. Proportional between the cost sharing for a thirty-day supply
11 and the amount of drugs the patient was prescribed; or

12 2. Equivalent to the cost sharing for a full thirty-day supply
13 of the opioid drug, provided that no additional cost sharing may be
14 charged for any additional prescriptions for the remainder of the
15 thirty-day supply.

16 I. Any provider authorized to prescribe opioids shall adopt and
17 maintain a written policy or policies that include execution of a
18 written agreement to engage in an informed consent process between
19 the prescribing provider and qualifying opioid therapy patient. For
20 the purposes of this section, "qualifying opioid therapy patient"
21 means:

22 1. A patient requiring opioid treatment for more than three (3)
23 months;
24

1 2. A patient who is prescribed benzodiazepines and opioids
2 together; or

3 3. A patient who is prescribed a dose of opioids that exceeds
4 ninety (90) morphine equivalent doses.

5 SECTION 6. NEW LAW A new section of law not to be
6 codified in the Oklahoma Statutes reads as follows:

7 A. The Insurance Department shall evaluate the effect of the
8 limits on prescriptions for opioid medication established by this act
9 on the claims paid by health insurance carriers and the out-of-pocket
10 costs, including copayments, coinsurance and deductibles, paid by
11 individual and group health insurance policyholders. On or before
12 January 1, 2020, the Insurance Department shall submit a report on
13 the evaluation, along with any recommended policy and regulatory
14 options that will ensure costs for patients are not increased as a
15 result of new prescribing limitations on the amounts of opioid
16 medications, to the standing committees of the Legislature having
17 jurisdiction over health and human services matters and over
18 insurance and financial services matters. The standing committees of
19 the Legislature having jurisdiction over health and human services
20 matters and the standing committees of the Legislature having
21 jurisdiction over insurance and financial services matters may report
22 out legislation related to the evaluation to the Second Regular
23 Session of the 57th Oklahoma Legislature.

1 B. The Oklahoma State Bureau of Narcotics and Dangerous Drugs
2 shall report to the standing committees of the Legislature having
3 jurisdiction over health and human services matters and over
4 occupational and professional regulation matters, no later than
5 January 31, 2020, with progress on implementing the provisions of
6 this act. The report shall contain, at a minimum, the following
7 information:

8 1. Registration of prescribers and dispensers in the central
9 repository pursuant to Section 2-309A et seq. of Title 63 of the
10 Oklahoma Statutes;

11 2. Data regarding the checking and using of the central
12 repository by data requesters;

13 3. Data from professional boards regarding the implementation
14 of continuing education requirements for prescribers of opioid
15 medication;

16 4. Effects on the prescriber workforce;

17 5. Changes in the numbers of patients taking more than one
18 hundred (100) morphine milligram equivalents of opioid medication
19 per day;

20 6. Data regarding the total quantity of opioid medications
21 prescribed in morphine milligram equivalents;

22 7. Progress on electronic prescribing of opioid medication; and

23 8. Improvements to the central repository through the request
24 for proposals process including feedback from prescribers,

1 dispensers and applicable state licensing boards on those
2 improvements.

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

4 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
5 February 26, 2018 - DO PASS AS AMENDED
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