

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 1033

By: Daniels

AS INTRODUCED

An Act relating to opioid drugs; amending 59 O.S. 2011, Section 509, as amended by Section 2, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018, Section 509), which relates to unprofessional conduct; modifying definition; amending 63 O.S. 2011, Section 2-309D, as last amended by Section 4, Chapter 175, O.S.L. 2018 (63 O.S. Supp. 2018, Section 2-309D), which relates to central repository; modifying provision related to disciplinary action; amending Section 5, Chapter 175, O.S.L. 2018 (63 O.S. Supp. 2018, Section 2-309I), which relates to prescription limits and rules for opioid drugs; deleting and modifying certain requirements related to prescriptions; modifying applicability of section; updating statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, as amended by Section 2, Chapter 175, O.S.L. 2018 (59 O.S. Supp. 2018, Section 509), is amended to read as follows:

Section 509. The words "unprofessional conduct" as used in Sections 481 through 518.1 of this title are hereby declared to include, but shall not be limited to, the following:

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

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

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

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

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

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

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

- 15 a. the antinarcotic or prohibition laws and regulations
16 of the federal government,
17 b. the laws of this state, or
18 c. State Board of Health rules;

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

21 9. The commission of any act which is a violation of the
22 criminal laws of any state when such act is connected with the
23 physician's practice of medicine. A complaint, indictment or
24 confession of a criminal violation shall not be necessary for the
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1 enforcement of this provision. Proof of the commission of the act
2 while in the practice of medicine or under the guise of the practice
3 of medicine shall be unprofessional conduct;

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

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

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

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

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

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

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

16 16. a. Prescribing, dispensing or administering of controlled
17 substances or narcotic drugs in excess of the amount
18 considered good medical practice, or

19 b. prescribing, dispensing or administering controlled
20 substances or narcotic drugs without medical need in
21 accordance with pertinent licensing board standards,
22 ~~or~~

1 ~~e. prescribing, dispensing or administering opioid drugs~~
2 ~~in excess of the maximum dosage authorized under~~
3 ~~Section 5 of this act;~~

4 17. Engaging in physical conduct with a patient which is sexual
5 in nature, or in any verbal behavior which is seductive or sexually
6 demeaning to a patient;

7 18. Failure to maintain an office record for each patient which
8 accurately reflects the evaluation, treatment, and medical necessity
9 of treatment of the patient;

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

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

21 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-309D, as
22 last amended by Section 4, Chapter 175, O.S.L. 2018 (63 O.S. Supp.
23 2018, Section 2-309D), is amended to read as follows:
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1 Section 2-309D. A. The information collected at the central
2 repository pursuant to the Anti-Drug Diversion Act shall be
3 confidential and shall not be open to the public. Access to the
4 information shall be limited to:

5 1. Peace officers certified pursuant to Section 3311 of Title
6 70 of the Oklahoma Statutes who are employed as investigative agents
7 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
8 Control;

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

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

- 13 a. Board of Podiatric Medical Examiners,
- 14 b. Board of Dentistry,
- 15 c. State Board of Pharmacy,
- 16 d. State Board of Medical Licensure and Supervision,
- 17 e. State Board of Osteopathic Examiners,
- 18 f. State Board of Veterinary Medical Examiners,
- 19 g. Oklahoma Health Care Authority,
- 20 h. Department of Mental Health and Substance Abuse
21 Services,
- 22 i. Board of Examiners in Optometry,
- 23 j. Board of Nursing,
- 24 k. Office of the Chief Medical Examiner, and

1 1. State Board of Health;

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

4 5. Medical practitioners employed by the United States
5 Department of Veterans Affairs, the United States Military, or other
6 federal agencies treating patients in this state; and

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

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

21 C. This section shall not prevent the disclosure, at the
22 discretion of the Director of the Oklahoma State Bureau of Narcotics
23 and Dangerous Drugs Control, of statistical information gathered
24 from the central repository to the general public which shall be

1 limited to types and quantities of controlled substances dispensed
2 and the county where dispensed.

3 D. 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 prescription-monitoring-program
6 information to prescription-monitoring programs of other states
7 provided a reciprocal data-sharing agreement is in place.

8 E. The Department of Mental Health and Substance Abuse Services
9 and the State Department of Health may utilize the information in
10 the central repository for statistical, research, substance abuse
11 prevention, or educational purposes, provided that consumer
12 confidentiality is not compromised.

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

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

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

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

- 18 (1) to medical practitioners who prescribe the
19 controlled substances set forth in subparagraph a
20 of this paragraph for hospice or end-of-life
21 care, or
- 22 (2) for a prescription of a controlled substance set
23 forth in subparagraph a of this paragraph that is
24 issued by a practitioner for a patient residing

1 in a nursing facility as defined by Section 1-
2 1902 of this title, provided that the
3 prescription is issued to a resident of such
4 facility.

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

9 4. ~~The failure of a registrant to access and check the central~~
10 ~~repository as required under state or federal law or regulation~~
11 ~~shall be grounds for the licensing board of the registrant to take~~
12 ~~disciplinary action against the registrant~~ The appropriate licensing
13 board may take disciplinary action against a registrant who fails to
14 access and check the central repository as required under state or
15 federal law, federal regulation or administrative rule.

16 H. The State Board of Podiatric Examiners, the State Board of
17 Dentistry, the State Board of Medical Licensure and Supervision, the
18 State Board of Examiners in Optometry, the State Board of Nursing,
19 the State Board of Osteopathic Examiners and the State Board of
20 Veterinary Medical Examiners shall have the sole responsibility for
21 enforcement of the provisions of subsection G of this section.
22 Nothing in this section shall be construed so as to permit the
23 Director of the State Bureau of Narcotics and Dangerous Drugs
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1 Control to assess administrative fines provided for in Section 2-304
2 of this title.

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

20 J. Information regarding fatal and nonfatal overdoses, other
21 than statistical information as required by Section 2-106 of this
22 title, shall be completely confidential. Access to this information
23 shall be strictly limited to the Director of the Oklahoma State
24 Bureau of Narcotics and Dangerous Drugs Control or designee, the

1 Chief Medical Examiner, state agencies and boards provided in
2 subsection A of this section, and the registrant that enters the
3 information. Registrants shall not be liable to any person for a
4 claim of damages for information reported pursuant to the provisions
5 of Section 2-105 of this title.

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

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

20 M. The Oklahoma State Bureau of Narcotics and Dangerous Drugs
21 is authorized to provide unsolicited notification to the licensing
22 board of a pharmacist or practitioner if a patient has received one
23 or more prescriptions for controlled substances in quantities or
24 with a frequency inconsistent with generally recognized standards of

1 safe practice or if a practitioner or prescriber has exhibited
2 prescriptive behavior consistent with generally recognized standards
3 indicating potentially problematic prescribing patterns. An
4 unsolicited notification to the licensing board of the practitioner
5 pursuant to this section:

- 6 1. Is confidential;
- 7 2. May not disclose information that is confidential pursuant
8 to this section; and
- 9 3. May be in a summary form sufficient to provide notice of the
10 basis for the unsolicited notification.

11 SECTION 3. AMENDATORY Section 5, Chapter 175, O.S.L.
12 2018 (63 O.S. Supp. 2018, Section 2-309I), is amended to read as
13 follows:

14 Section 2-309I. A. A practitioner shall not issue an initial
15 prescription for an opioid drug which is a prescription drug in a
16 quantity exceeding a seven-day supply for treatment of acute pain
17 for an adult patient, or a seven-day supply for treatment of acute
18 pain for a patient under the age of eighteen (18) years old. ~~Any~~
19 ~~prescription for acute pain pursuant to this subsection shall be for~~
20 ~~the lowest effective dose of immediate-release opioid drug.~~

21 B. Prior to issuing an initial prescription of a Schedule II
22 controlled dangerous substance or any opioid drug that is a
23 prescription drug in a course of treatment for acute or chronic
24 pain, a practitioner shall:

1 1. Take and document the results of a thorough medical history,
2 including the experience of the patient with nonopioid medication
3 and nonpharmacological pain-management approaches and substance
4 abuse history;

5 2. Conduct, as appropriate, and document the results of a
6 physical examination;

7 3. Develop a treatment plan with particular attention focused
8 on determining the cause of pain of the patient;

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

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

15 6. In the case of a patient under the age of eighteen (18)
16 years old, enter into a patient-provider agreement with a parent or
17 guardian of the patient; and

18 7. In the case of a patient who is a pregnant woman, enter into
19 a patient-provider agreement with the patient.

20 C. No less than seven (7) days after issuing the initial
21 prescription pursuant to subsection A of this section, the
22 practitioner, after ~~consultation~~ communicating with the patient, may
23 issue a subsequent prescription for the drug to the patient in a
24 quantity not to exceed seven (7) days, provided that:

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

3 2. The practitioner determines the prescription is necessary
4 and appropriate to the treatment needs of the patient and documents
5 the rationale for the issuance of the subsequent prescription; and

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

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

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

21 2. The reasons why the prescription is necessary;

22 3. Alternative treatments that may be available; and

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

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

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

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

20 1. Review, at a minimum of every three (3) months, the course
21 of treatment, any new information about the etiology of the pain,
22 and the progress of the patient toward treatment objectives and
23 document the results of that review;

1 2. ~~Assess the patient prior to every renewal~~ At a minimum of
2 every three (3) months, assess the patient to determine whether the
3 patient is experiencing problems associated with physical and
4 psychological dependence and document the results of that
5 assessment;

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

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

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

16 G. This section shall not apply to a prescription for a patient
17 who is at least sixty (60) years of age, currently in active
18 treatment for cancer, receiving hospice care from a licensed hospice
19 or palliative care, or is a resident of a long-term care facility,
20 or to any medications that are being prescribed for use in the
21 treatment of substance abuse or opioid dependence.

22 H. Every policy, contract or plan delivered, issued, executed
23 or renewed in this state, or approved for issuance or renewal in
24 this state by the Insurance Commissioner, and every contract

1 purchased by the Employees Group Insurance Division of the Office of
2 Management and Enterprise Services, on or after ~~the effective date~~
3 ~~of this act~~ November 1, 2018, that provides coverage for
4 prescription drugs subject to a copayment, coinsurance or deductible
5 shall charge a copayment, coinsurance or deductible for an initial
6 prescription of an opioid drug prescribed pursuant to this section
7 that is either:

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

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

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

20 1. A patient requiring opioid treatment for more than three (3)
21 months;

22 2. A patient who is prescribed benzodiazepines and opioids
23 together; or
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3. A patient who is prescribed a dose of opioids that exceeds
one hundred (100) morphine equivalent doses.

SECTION 4. This act shall become effective November 1, 2019.

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