

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3004

By: West (Rick)

AS INTRODUCED

An Act relating to controlled dangerous substances; defining terms; requiring pain management clinics to register with State Board of Medical Licensure and Supervision; providing exemptions; stipulating registration procedures; requiring clinics to designate physician; providing for the denial, revocation, or suspension of registration under certain circumstances; defining term; requiring facility operations to cease when registration is revoked or suspended; requiring removal of signage; prohibiting person from applying to operate pain management clinic for certain period of time after revocation; limiting period of suspension; requiring new registration application if clinic changes ownership; prohibiting physicians from practicing medicine in unregistered pain management clinics; providing for disciplinary action for violations; limiting who may prescribe controlled dangerous substances at registered pain management clinics; prohibiting the dispensation of controlled dangerous substances at pain management clinics; specifying physician responsibilities; providing facility and physical operations requirements; stipulating certain infection control requirements; providing safety requirements for buildings, grounds, and equipment of clinics; providing certain quality assurance requirements; stipulating certain data collection and reporting requirements; providing for the accessibility of certain data and reports; providing penalties; directing promulgation of rules; providing for codification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 2-1111 of Title 63, unless there
4 is created a duplication in numbering, reads as follows:

5 As used in this act:

6 1. "Board eligible" means successful completion of an
7 anesthesia, physical medicine and rehabilitation, rheumatology, or
8 neurology residency program approved by the Accreditation Council
9 for Graduate Medical Education or the American Osteopathic
10 Association for a period of six (6) years from successful completion
11 of such residency program;

12 2. "Chronic nonmalignant pain" means pain unrelated to cancer
13 which persists beyond the usual course of disease or the injury that
14 is the cause of the pain or more than ninety (90) calendar days
15 after surgery; and

16 3. "Pain management clinic" or "clinic" means any publicly or
17 privately owned facility:

18 a. that advertises in any medium for any type of pain
19 management services, and

20 b. where in any month a majority of patients are
21 prescribed opioids, benzodiazepines, barbiturates, or
22 carisoprodol for the treatment of chronic nonmalignant
23 pain.

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SECTION 2. NEW LAW

A new section of law to be codified in the Oklahoma Statutes as Section 2-1112 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each pain management clinic shall register with the State Board of Medical Licensure and Supervision unless:

1. The majority of the physicians who provide services in the clinic primarily provide surgical services;

2. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

3. The clinic does not prescribe controlled dangerous substances for the treatment of pain;

4. The clinic is wholly owned and operated by one or more board-eligible or board-certified anesthesiologists, physiatrists, rheumatologists, or neurologists; or

5. The clinic is wholly owned and operated by a physician multispecialty practice where one or more board-eligible or board-certified medical specialists, who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education or who are also certified in pain medicine by the American Board of Pain Medicine or a board approved by the American Board of Physician Specialties, the American Association of Physician Specialists, or the American Osteopathic Association,

1 perform interventional pain procedures of the type routinely billed
2 using surgical codes.

3 B. Each clinic location shall be registered separately
4 regardless of whether the clinic is operated under the same business
5 name or management as another clinic.

6 C. As a part of registration, a clinic shall designate a
7 physician who is responsible for complying with all requirements
8 related to registration and operation of the clinic in compliance
9 with this act. Within ten (10) calendar days after termination of a
10 designated physician, the clinic shall notify the State Board of
11 Medical Licensure and Supervision of the identity of another
12 designated physician for that clinic. The designated physician
13 shall have a full, active, and unencumbered license pursuant to
14 Section 480 et seq. or Section 620 et seq. of Title 59 of the
15 Oklahoma Statutes and shall practice at the clinic location for
16 which the physician has assumed responsibility. Failing to have a
17 licensed designated physician practicing at the location of the
18 registered clinic may be the basis for a summary suspension of the
19 clinic registration certificate as described in this section.

20 D. The State Board of Medical Licensure and Supervision shall
21 deny registration to any pain management clinic owned by or with any
22 contractual or employment relationship with a physician:

23 1. Whose Drug Enforcement Administration number has ever been
24 revoked;

1 2. Whose application for a license to prescribe, dispense, or
2 administer a controlled substance has been denied for disciplinary
3 action by the appropriate medical regulatory board of the physician;
4 or

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

11 E. If the State Board of Medical Licensure and Supervision
12 finds that a pain management clinic is owned, directly or
13 indirectly, by a person meeting any criteria listed in subsection D
14 of this section, the State Board of Medical Licensure and
15 Supervision shall revoke the certificate of registration previously
16 issued by the State Board of Medical Licensure and Supervision. As
17 determined by rule, the State Board of Medical Licensure and
18 Supervision may grant an exemption to denying a registration or
19 revoking a previously issued registration if more than five (5)
20 years have elapsed since adjudication. As used in this section, the
21 term "convicted" includes an adjudication of guilt following a plea
22 of guilty or nolo contendere or the forfeiture of a bond when
23 charged with a crime.

1 F. If the registration of a pain management clinic is revoked
2 or suspended, the designated physician of the pain management
3 clinic, the owner or lessor of the pain management clinic property,
4 the manager, and the proprietor shall cease to operate the facility
5 as a pain management clinic as of the effective date of the
6 suspension or revocation.

7 G. If a pain management clinic registration is revoked or
8 suspended, the designated physician of the pain management clinic,
9 the owner or lessor of the clinic property, the manager or the
10 proprietor shall be responsible for removing all signs and symbols
11 identifying the premises as a pain management clinic.

12 H. If the clinic's registration is revoked, any person named in
13 the registration documents of the pain management clinic, including
14 persons owning or operating the pain management clinic, shall not,
15 as an individual or as a part of a group, apply to operate a pain
16 management clinic for one (1) year after the date the registration
17 is revoked.

18 I. The period of suspension for the registration of a pain
19 management clinic shall be prescribed by the State Board of Medical
20 Licensure and Supervision but shall not exceed one (1) year.

21 J. A change of ownership of a registered pain management clinic
22 requires submission of a new registration application.
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SECTION 3. NEW LAW

A new section of law to be codified

in the Oklahoma Statutes as Section 2-1113 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A physician shall not practice medicine in a pain management clinic if the clinic is not registered with the State Board of Medical Licensure and Supervision as required by this act. Any physician who qualifies to practice medicine in a pain management clinic pursuant to rules adopted by the appropriate medical regulatory board of the physician may continue to practice medicine in a pain management clinic as long as the physician continues to meet the qualifications prescribed in the rules. A physician who violates this subsection is subject to disciplinary action by the appropriate medical regulatory board of the physician.

B. Only a physician licensed pursuant to Section 480 et seq. or Section 620 et seq. of Title 59 of the Oklahoma Statutes may prescribe a controlled dangerous substance on the premises of a registered pain management clinic. No person shall dispense any controlled dangerous substance on the premises of a pain management clinic.

C. A physician, a physician assistant, or an Advanced Practice Registered Nurse shall perform a physical examination of a patient on the same day that the physician prescribes a controlled dangerous substance to a patient at a pain management clinic.

1 D. A physician authorized to prescribe controlled dangerous
2 substances who practices at a pain management clinic is responsible
3 for maintaining the control and security of his or her prescription
4 blanks and any other method used for prescribing a controlled
5 dangerous substance pain medication. The physician shall notify, in
6 writing, the State Board of Medical Licensure and Supervision within
7 twenty-four (24) hours following any theft or loss of a prescription
8 blank or breach of any other method for prescribing pain medication.

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

18 F. Each physician practicing in a pain management clinic is
19 responsible for ensuring compliance with the facility and physical
20 operations requirements. A pain management clinic shall:

21 1. Be located and operated at a publicly accessible fixed
22 location;

23 2. Display a sign that can be viewed by the public that
24 contains the clinic name, hours of operation, and a street address;

1 3. Have a publicly listed telephone number and a dedicated
2 phone number to send and receive facsimiles;

3 4. Have a reception and waiting area;

4 5. Provide a restroom;

5 6. Have private patient examination rooms;

6 7. Have treatment rooms, if treatment is being provided to the
7 patients; and

8 8. Display a printed sign located in a conspicuous place in the
9 waiting room, viewable by the public, with the name and contact
10 information of the clinic's designated physician and the names of
11 all physicians practicing in the clinic.

12 The provisions of this section do not excuse a physician from
13 providing any treatment or performing any medical duty without the
14 proper equipment and materials as required by the standard of care.
15 This section does not supersede the level of care, skill, or
16 treatment recognized in general law related to health care
17 licensure.

18 G. Each physician practicing in a pain management clinic is
19 responsible for ensuring compliance with the following infection
20 control requirements:

21 1. The clinic shall maintain equipment and supplies to support
22 infection prevention and control activities;

23 2. The clinic shall identify infection risks based on the
24 following:

- a. geographic location, community, and population served,
- b. the care, treatment, and services it provides, and
- c. an analysis of its infection surveillance and control data; and

3. The clinic shall maintain written infection-prevention policies and procedures that address the following:

- a. prioritized risks,
- b. limiting unprotected exposure to pathogens,
- c. limiting the transmission of infections associated with procedures performed in the clinic, and
- d. limiting the transmission of infections associated with the clinic's use of medical equipment, devices, and supplies.

H. Each physician practicing in a pain management clinic is responsible for ensuring that the clinic, including its grounds, buildings, furniture, appliances, and equipment is structurally sound, in good repair, clean, and free from health and safety hazards.

I. The designated physician is responsible for ensuring compliance with the following quality assurance requirements:

1. Each pain management clinic shall have an ongoing quality assurance program that objectively and systematically:

- a. monitors and evaluates the quality and appropriateness of patient care,

- b. evaluates methods to improve patient care,
- c. identifies and corrects deficiencies within the facility,
- d. alerts the designated physician to identify and resolve recurring problems, and
- e. provides opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public; and

2. The designated physician shall establish a quality assurance program that includes the following components:

- a. the identification, investigation, and analysis of the frequency and causes of adverse incidents to patients,
- b. the identification of trends or patterns of incidents,
- c. the development of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients, and
- d. the documentation of these functions and periodic review no less than quarterly of such information by the designated physician.

J. The designated physician is responsible for ensuring compliance with the following data collection and reporting requirements:

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

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

- 7 a. the number of new and repeat patients seen and treated
8 at the clinic who are prescribed controlled dangerous
9 substance medications for the treatment of chronic
10 nonmalignant pain,
- 11 b. the number of patients discharged due to drug abuse,
- 12 c. the number of patients discharged due to drug
13 diversion, and
- 14 d. the number of patients treated at the clinic whose
15 domicile is located somewhere other than in this
16 state. A patient's domicile is the patient's fixed or
17 permanent home to which he or she intends to return
18 even though he or she may temporarily reside
19 elsewhere.

20 K. The data and reports specified in subsection J of this
21 section shall be accessible to the Oklahoma State Bureau of
22 Narcotics and Dangerous Drugs Control.

1 SECTION 4. NEW LAW

2 A new section of law to be codified
3 in the Oklahoma Statutes as Section 2-1114 of Title 63, unless there
4 is created a duplication in numbering, reads as follows:

5 A. The State Board of Medical Licensure and Supervision may
6 impose an administrative fine on a clinic of up to Five Thousand
7 Dollars (\$5,000.00) per violation for violating the requirements of
8 this act or the rules of the State Board of Medical Licensure and
9 Supervision. In determining whether a penalty is to be imposed, and
10 in fixing the amount of the fine, the State Board of Medical
11 Licensure and Supervision shall consider the following factors:

12 1. The gravity of the violation, including the probability that
13 death or serious physical or emotional harm to a patient has
14 resulted, or could have resulted, from the pain management clinic's
15 actions or the actions of the physician, the severity of the action
16 or potential harm and the extent to which the provisions of the
17 applicable laws or rules were violated;

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

20 3. Whether there were any previous violations at the pain
21 management clinic; and

22 4. The financial benefits that the pain management clinic
23 derived from committing or continuing to commit the violation.

24 B. Each day a violation continues after the date fixed for
termination of the violation as ordered by the State Board of

1 Medical Licensure and Supervision constitutes an additional,
2 separate, and distinct violation.

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

8 D. An owner or designated physician of a pain management clinic
9 who concurrently operates an unregistered pain management clinic is
10 subject to an administrative fine of Five Thousand Dollars
11 (\$5,000.00) per day.

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

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-1115 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

19 All affected agencies and boards shall promulgate such rules as
20 are necessary to implement the provisions of this act.

21 SECTION 6. This act shall become effective November 1, 2022.

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23 58-2-8754 GRS 12/30/21
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