STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1638 By: Jett

AS INTRODUCED

An Act relating to the practice of pharmacy; amending 59 O.S. 2021, Section 353.20.2, which relates to pharmacist discretion; prohibiting pharmacist from refusing to fill valid prescription for specified reason; amending 59 O.S. 2021, Section 355.1, which relates to dispensing of dangerous drugs; prohibiting licensed practitioner from refusing to dispense drug for specified reason; providing penalties; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2021, Section 353.20.2, is amended to read as follows:

Section 353.20.2. A. Except as provided in subsection C of this section, unless the prescriber has specified on the prescription that dispensing a prescription for a maintenance medication in an initial amount followed by periodic refills is medically necessary, a pharmacist may exercise his or her professional judgment to dispense varying quantities of medication per fill-up to the total number of dosage units as authorized by the prescriber on the original prescription including any refills.

B. Subsection A of this section shall not apply to scheduled medications or any medications for which a report is required under the controlled substance database. Dispensing of medication based on refills authorized by the physician on the prescription shall be limited to no more than a ninety-day supply of the medication.

C. 1. A pharmacist may dispense without a prescription one or more devices or medications as medically necessary to prevent the death of or serious harm to the health of a patient if the following conditions are met:

a. the pharmacy which the pharmacist owns or at which the pharmacist is employed has a current record of a prescription for the medication or device prescribed in the name of the patient who is requesting it, but the prescription has expired and a refill requires authorization from the licensed practitioner who issued the prescription and neither the patient nor the pharmacist was able to obtain the refill after reasonable attempts were made to obtain such refill and the pharmacist documents such attempts on a form prescribed by the State Board of Pharmacy,

b. the failure of the pharmacist to dispense the medication or device reasonably could result in the death of or serious harm to the health of the patient,

c. the device or medication is listed on the formulary described in paragraph 4 of this subsection,

d. the patient has been on a consistent medication therapy as demonstrated by records maintained by the pharmacy, and

e. the amount of the medication or device dispensed is for a reasonable amount of time; provided, if the patient or pharmacist is unable to obtain a refill prescription from the patient's licensed practitioner before the amount prescribed to prevent death or serious harm to the health of the patient is depleted, the pharmacist may dispense an additional amount of the medication or device not more than once in an amount consistent with past prescriptions of the patient.

2. The standard of care required of a pharmacist licensed in this state who is acting in accordance with the provisions of this subsection shall be the level and type of care, skill and diligence that a reasonably competent and skilled pharmacist with a similar background and in the same or similar locality would have provided under the circumstance.

3. Any pharmacist licensed in this state who in good faith dispenses one or more medications or devices to a patient pursuant to the provisions of this subsection shall not be liable for any

civil damages or subject to criminal prosecution as a result of any acts or omissions except for committing gross negligence or willful or wanton acts committed in dispensing or failure to dispense the medication or device.

4. The State Board of Pharmacy shall develop and update as necessary an inclusionary formulary of potentially life-saving prescription medications and devices, not to include controlled dangerous substances, for the purposes of this subsection. Such medications and devices shall include but not be limited to:

a. insulin and any devices or supplies necessary for the administration of insulin,

b. glucometers and any devices or supplies necessary for the operation of the glucometer, and

c. rescue inhalers.

5. Dispensing in accordance with this subsection shall be deemed dispensing under a legal prescription for purposes of the Pharmacy Audit Integrity Act, Section 356 et seq. of this title.

D. Upon receipt of a valid Schedule II opioid prescription issued pursuant to the provisions of Section 2-309I of Title 63 of the Oklahoma Statutes, a pharmacist shall fill the prescription to the specified dose, and shall not be permitted to fill a different dosage than what is prescribed. However, the pharmacist maintains the right not to fill the valid opioid prescription.

E. A pharmacist shall not refuse to fill a valid prescription solely on the grounds that the pharmacist believes the patient intends to use the prescribed drug or drugs for off-label use. If the State Board of Pharmacy finds that a pharmacist is in violation of this subsection, the Board shall immediately revoke the license of the pharmacist and fine the pharmacist One Hundred Thousand Dollars ($100,000.00) per occurrence.

SECTION 2. AMENDATORY 59 O.S. 2021, Section 355.1, is amended to read as follows:

Section 355.1. A. Except as provided for in Section 353.1 et seq. of this title, only a licensed practitioner may dispense dangerous drugs to such practitioner's patients, and only for the expressed purpose of serving the best interests and promoting the welfare of such patients. The dangerous drugs shall be dispensed in an appropriate container to which a label has been affixed. Such label shall include the name and office address of the licensed practitioner, date dispensed, name of patient, directions for administration, prescription number, the trade or generic name and the quantity and strength, not meaning ingredients, of the drug therein contained; provided, this requirement shall not apply to compounded medicines. The licensed practitioner shall keep a suitable book, file or record in which shall be preserved for a period of not less than five (5) years a record of every dangerous drug compounded or dispensed by the licensed practitioner.

B. A prescriber desiring to dispense dangerous drugs pursuant to this section shall register annually with the appropriate licensing board as a dispenser, through a regulatory procedure adopted and prescribed by such licensing board.

C. A prescriber who dispenses professional samples to patients shall be exempt from the requirement of subsection B of this section if:

1. The prescriber furnishes the professional samples to the patient in the package provided by the manufacturer;

2. No charge is made to the patient; and

3. An appropriate record is entered in the patient's chart.

D. This section shall not apply to the services provided through the State Department of Health, city/county health departments, or the Department of Mental Health and Substance Abuse Services.

E. This section shall not apply to organizations and services incorporated as state or federal tax-exempt charitable nonprofit entities and/or organizations and services receiving all or part of their operating funds from a local, state or federal governmental entity; provided, such organizations and services shall comply with the labeling and recordkeeping requirements set out in subsection A of this section.

F. A licensed practitioner who dispenses dangerous drugs shall not refuse to dispense a drug solely on the grounds that the

practitioner believes the patient intends to use the drug for off-label use. If the licensing board of a practitioner finds that the practitioner is in violation of this subsection, such board shall, in accordance with the rules of such board, immediately revoke the license of the practitioner and fine the practitioner One Hundred Thousand Dollars ($100,000.00) per occurrence.

SECTION 3. This act shall become effective November 1, 2022.

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