STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3965 By: McEntire

COMMITTEE SUBSTITUTE

An Act relating to physician assistants; amending 59 O.S. 2021, Section 353.1a, which relates to the Oklahoma Pharmacy Act; clarifying which prescriptions for controlled dangerous substances pharmacists may dispense; amending 59 O.S. 2021, Sections 519.2, 519.3, 519.6, 519.11, as amended by Section 1, Chapter 164, O.S.L. 2022, and 521.2 (59 O.S. Supp. 2023, Section 519.11), which relate to the Physician Assistant Act; modifying definitions; increasing the number of Physician Assistant Committee members; clarifying certain requirements for the chair; increasing member requirements for a quorum; adding provisions regarding postgraduate clinical practice; clarifying filing requirements for practice agreements; clarifying language regarding practicing medicine, prescribing drugs, and using medical supplies under a practice agreement; modifying billing and payment authority; amending 63 O.S. 2021, Section 1-317, as amended by Section 1, Chapter 184, O.S.L. 2022 (63 O.S. Supp. 2023, Section 1-317), which relates to the Oklahoma Public Health Code; clarifying the authority of physician assistants to carry out certain functions; amending 63 O.S. 2021, Sections 2-101, as last amended by Section 1, Chapter 375, O.S.L. 2023, and 2-312, as amended by Section 2, Chapter 184, O.S.L. 2022 (63 O.S. Supp. 2023, Sections 2-101 and 2-312), which relate to the Uniform Controlled Dangerous Substances Act; modifying definitions related to physician assistants; clarifying which physician assistants may prescribe and administer certain controlled substances; repealing 59 O.S. 2021, Section 521.4,

which relates to physician supervision and practice agreements; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2021, Section 353.1a, is amended to read as follows:

Section 353.1a A. Prescribing authority shall be allowed, under the medical direction of a supervising physician, for an advanced practice nurse recognized by the Oklahoma Board of Nursing in one of the following categories: advanced registered nurse practitioners, clinical nurse specialists, or certified nurse-midwives. The advanced practice nurse may write or sign, or transmit by word of mouth, telephone or other means of communication an order for drugs or medical supplies that is intended to be filled, compounded, or dispensed by a pharmacist. The supervising physician and the advanced practice nurse shall be identified at the time of origination of the prescription and the name of the advanced practice nurse shall be printed on the prescription label.

B. Pharmacists may dispense prescriptions for non-controlled prescription drugs authorized by an advanced practice nurse or physician assistant, not located in Oklahoma, provided that they are licensed in the state in which they are actively prescribing.

C. Pharmacists may only dispense prescriptions for controlled dangerous substances prescribed by ~~an~~:

1. An advanced practice nurse ~~or physician assistant~~ licensed in the State of Oklahoma and supervised by an Oklahoma-licensed practitioner; or

2. Physician assistant licensed in the State of Oklahoma ~~and supervised by an Oklahoma-licensed practitioner~~.

SECTION 2. AMENDATORY 59 O.S. 2021, Section 519.2, is amended to read as follows:

Section 519.2 As used in the Physician Assistant Act:

1. "Board" means the State Board of Medical Licensure and Supervision;

2. "Committee" means the Physician Assistant Committee;

3. "Practice of medicine" means services which require training in the diagnosis, treatment and prevention of disease, including the use and administration of drugs, and which are performed by physician assistants so long as such services are within the physician assistants' skill~~,~~. For a physician assistant required to practice under supervision of a delegating physician, services form a component of the physician's scope of practice, and are provided with physician supervision, including authenticating by signature any form that may be authenticated by the delegating physician's signature with prior delegation by the physician;

4. ~~"Patient care setting" means and includes, but is not limited to, a physician's office, clinic, hospital, nursing home, extended care facility, patient's home, ambulatory surgical center,~~

~~hospice facility or any other setting authorized by the delegating physician;~~

~~5.~~ "Physician assistant" means a health care professional, qualified by academic and clinical education and licensed by the State Board of Medical Licensure and Supervision, to practice medicine ~~with physician supervision~~ as a physician assistant;

~~6.~~ 5. "Delegating physician" means an individual holding a license in good standing as a physician from the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners, who supervises one or more physician assistants and delegates decision making pursuant to the practice agreement;

~~7.~~ 6. "Supervision" means overseeing or delegating the activities of the medical services rendered by a physician assistant through a practice agreement between a ~~medical doctor or osteopathic~~ delegating physician ~~performing procedures or directly or indirectly involved with the treatment of a patient~~, and the physician assistant working jointly toward a common goal of providing services. Delegation shall be defined by the practice agreement. The physical presence of the delegating physician is not required as long as the delegating physician and physician assistant are or can be easily in contact with each other by telecommunication. At all times a physician assistant required to practice under supervision shall be considered an agent of the delegating physician;

~~8.~~ 7. "Telecommunication" means the use of electronic technologies to transmit words, sounds or images for interpersonal communication, clinical care (telemedicine) and review of electronic health records; and

~~9.~~ 8. "Practice agreement" means a written agreement between a physician assistant and ~~the~~ a delegating physician concerning the scope of practice of the physician assistant to only be determined by the delegating physician and the physician assistant based on the education, training, skills and experience of the physician assistant. The agreement shall involve the joint formulation, discussion and agreement on the methods of supervision and collaboration for diagnosis, consultation and treatment of medical conditions and shall include the scope of and any limitations on prescribing. A practice agreement is required for a physician assistant described in subsection C of Section 4 of this act.

SECTION 3. AMENDATORY 59 O.S. 2021, Section 519.3, is amended to read as follows:

Section 519.3 A. There is hereby created the Physician Assistant Committee, which shall be composed of ~~seven (7)~~ nine (9) members. ~~Three~~ Five members of the Committee shall be physician assistants appointed by the State Board of Medical Licensure and Supervision from a list of qualified individuals submitted by the Oklahoma Academy of Physician Assistants. One member shall be a physician appointed by the Board from its membership. One member

shall be a physician appointed by the Board from a list of qualified individuals submitted by the Oklahoma State Medical Association and who is not a member of the Board. One member shall be a physician appointed by the State Board of Osteopathic Examiners from its membership. One member shall be a physician appointed by the State Board of Osteopathic Examiners from a list of qualified individuals submitted by the Oklahoma Osteopathic Association and who is not a member of said board.

B. The term of office for each member of the Committee shall be five (5) years.

C. The Committee shall meet at least quarterly. At the initial meeting of each calendar year, the Committee members shall elect a chair from the physician assistant members. The chair or his or her designee shall represent the Committee at all meetings of the Board. ~~Four~~ Five members shall constitute a quorum for the purpose of conducting official business of the Committee.

D. The State Board of Medical Licensure and Supervision is hereby granted the power and authority to promulgate rules, which are in accordance with the provisions of Section 519.1 et seq. of this title, governing the requirements for licensure as a physician assistant, as well as to establish standards for training, approve institutions for training, and regulate the standards of practice of a physician assistant after licensure, including the power of revocation of a license.

E. The State Board of Medical Licensure and Supervision is hereby granted the power and authority to investigate all complaints, hold hearings, subpoena witnesses and initiate prosecution concerning violations of Section 519.1 et seq. of this title. When such complaints involve physicians licensed by the State Board of Osteopathic Examiners, the State Board of Osteopathic Examiners shall be officially notified of such complaints.

F. 1. The Committee shall advise the Board on all matters pertaining to the practice of physician assistants.

2. The Committee shall review and make recommendations to the Board on all applications for licensure as a physician assistant and all applications to practice which shall be approved by the Board. When considering applicants for licensure, to establish standards of training or approve institutions for training, the Committee shall include the Director, or designee, of all Physician Assistant educational programs conducted by institutions of higher education in the state as members.

3. The Committee shall assist and advise the Board in all hearings involving physician assistants who are deemed to be in violation of Section 519.1 et seq. of this title or the rules of the Board.

SECTION 4. AMENDATORY 59 O.S. 2021, Section 519.6, is amended to read as follows:

Section 519.6 A. No health care services may be performed by a physician assistant unless a current license is on file with and approved by the State Board of Medical Licensure and Supervision.

B. A physician assistant with six thousand two hundred forty (6,240) or more hours of postgraduate clinical practice experience who has reported those hours to the Board shall not be required to practice under the supervision of a delegating physician.

1. A physician assistant may report the completion of postgraduate clinical practice experience to the Board at any time after completion of at least six thousand two hundred forty (6,240) such hours.

2. Hours earned prior to the enactment of this subsection shall be counted towards the six thousand two hundred forty (6,240) hours.

3. The Board shall maintain, make available, and keep updated, on the Internet website of the Board, a list of physician assistants who have reported completion of six thousand two hundred forty (6,240) or more postgraduate clinical practice experience hours.

4. The Board shall, within ninety (90) days of enactment, prescribe a form for reporting postgraduate clinical practice experience by a physician assistant. The Board shall make available and keep updated on the Internet website of the Board the prescribed form. This reporting form may be filed electronically. The Board shall not charge a fee for reporting hours or filing of the prescribed form.

5. Nothing in this subsection shall prohibit a physician assistant from maintaining a practice agreement; however, such an agreement is not required for a physician assistant with the reported six thousand two hundred forty (6,240) hours of postgraduate clinical practice experience. Provided any practice agreements are subject to the requirements of paragraphs 1, 2, 3, and 4 of subsection C of this section.

6. Nothing in this subsection shall restrict the ability of the Board to require supervision as a part of disciplinary action against the license of a physician assistant.

C. A physician assistant with less than six thousand two hundred forty (6,240) hours of postgraduate clinical practice experience or who has completed six thousand two hundred forty (6,240) hours but has not reported those hours to the Board shall practice under the supervision of a delegating physician with the following requirements:

1. All practice agreements and any amendments shall be filed with the State Board of Medical Licensure and Supervision within ten (10) business days of being executed. Practice agreements may be filed electronically. The State Board of Medical Licensure and Supervision shall not charge a fee for filing practice agreements or amendments of practice agreements.;

~~B.~~ 2. A physician assistant may have practice agreements with multiple allopathic or osteopathic physicians. Each physician shall

be in good standing with the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners~~.~~;

~~C.~~ 3. The delegating physician need not be physically present nor be specifically consulted before each delegated patient care service is performed by a physician assistant, so long as the delegating physician and physician assistant are or can be easily in contact with one another by means of telecommunication. ~~In all patient care settings, the~~ The delegating physician shall provide appropriate methods of participating in health care services provided by the physician assistant including:

a. being responsible for the formulation or approval of all orders and protocols, whether standing orders, direct orders or any other orders or protocols, which direct the delivery of health care services provided by a physician assistant, and periodically reviewing such orders and protocols,

b. regularly reviewing the health care services provided by the physician assistant and any problems or complications encountered,

c. being available physically or through telemedicine or direct telecommunications for consultation, assistance with medical emergencies or patient referral,

d. reviewing a sample of outpatient medical records. Such reviews shall take place at a site agreed upon

between the delegating physician and physician assistant in the practice agreement which may also occur using electronic or virtual conferencing, and

e. that it remains clear that the physician assistant is an agent of the delegating physician; but, in no event shall the delegating physician be an employee of the physician assistant~~.~~;

~~D.~~ 4. In patients with newly diagnosed complex illnesses, the physician assistant shall contact the delegating physician within forty-eight (48) hours of the physician assistant's initial examination or treatment and schedule the patient for appropriate evaluation by the delegating physician as directed by the physician. The delegating physician shall determine which conditions qualify as complex illnesses based on the clinical setting and the skill and experience of the physician assistant.

~~E. 1.~~ D. A physician assistant ~~under the direction of a delegating physician~~ not practicing under a practice agreement may prescribe written and oral prescriptions and orders. The physician assistant not practicing under a practice agreement may prescribe medical supplies, services, and drugs, including controlled medications in Schedules ~~II~~ III through V pursuant to Section 2-312 of Title 63 of the Oklahoma Statutes~~, and medical supplies and services as delegated by the delegating physician and as approved by the State Board of Medical Licensure and Supervision after~~

~~consultation with the State Board of Pharmacy on the Physician Assistant Drug Formulary~~. Physician assistants not practicing under a practice agreement may not dispense drugs, but may request, receive, and sign for professional samples and may distribute professional samples to patients.

~~2. A physician assistant may write an order for a Schedule II drug for immediate or ongoing administration on site. Prescriptions and orders for Schedule II drugs written by a physician assistant must be included on a written protocol determined by the delegating physician and approved by the medical staff committee of the facility or by direct verbal order of the delegating physician. Physician assistants may not dispense drugs, but may request, receive, and sign for professional samples and may distribute professional samples to patients.~~

~~F.~~ E. A physician assistant ~~may perform health care services in patient care settings as authorized by the delegating physician~~ practicing under a practice agreement may prescribe written and oral prescriptions and orders. The physician assistant practicing under a practice agreement may prescribe medical supplies, services, and drugs, including controlled medications in Schedules II through V pursuant to Section 2-312 of Title 63 of the Oklahoma Statutes, written and oral prescriptions and orders only as delegated by the delegating physician and prescriptions and orders for Schedule II drugs written by such physician assistant shall be included on a

written protocol determined by the delegating physician. Physician assistants practicing under a practice agreement may not dispense drugs, but may request, receive, and sign for professional samples and may distribute professional samples to patients. Provided that a physician assistant practicing under a practice agreement may not prescribe any controlled medications in a Schedule that the delegating physician is not registered to prescribe.

~~G.~~ F. Each physician assistant licensed under the Physician Assistant Act shall keep his or her license available for inspection at the primary place of business and shall, when engaged in professional activities, identify himself or herself as a physician assistant.

~~H.~~ G. A physician assistant shall be bound by the provisions contained in Sections 725.1 through 725.5 of ~~Title 59 of the Oklahoma Statutes~~ this title.

SECTION 5. AMENDATORY 59 O.S. 2021, Section 519.11, as amended by Section 1, Chapter 164, O.S.L. 2022 (59 O.S. Supp. 2023, Section 519.11), is amended to read as follows:

Section 519.11 A. Nothing in the Physician Assistant Act shall be construed to prevent or restrict the practice, services or activities of any persons of other licensed professions or personnel supervised by licensed professions in this state from performing work incidental to the practice of their profession or occupation,

if that person does not represent himself or herself as a physician assistant.

B. Nothing stated in the Physician Assistant Act shall prevent any hospital from requiring the physician assistant or the delegating physician to meet and maintain certain staff appointment and credentialing qualifications for the privilege of practicing as, or utilizing, a physician assistant in the hospital.

C. ~~Nothing in the Physician Assistant Act shall be construed to permit a physician assistant to practice medicine or prescribe drugs and medical supplies in this state except when such actions are performed under the supervision and at the direction of a physician or physicians approved by the State Board of Medical Licensure and Supervision.~~

~~D.~~ Nothing herein shall be construed to require licensure under the Physician Assistant Act of a physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant.

~~E.~~ D. Notwithstanding any other provision of law, no one who is not a physician licensed to practice medicine in this state may perform acts restricted to such physicians pursuant to the provisions of Section 1-731 of Title 63 of the Oklahoma Statutes. This paragraph is inseverable.

~~F.~~ E. Nothing in the Physician Assistant Act shall limit the activities of a physician assistant in the performance of their duties if the physician assistant is employed by or under contract with the United States Department of Veterans Affairs or if the physician assistant is employed by, under contract with, or commissioned by one of the uniformed services; provided, the physician assistant must be currently licensed in this state or any other state or currently credentialed as a physician assistant by the United States Department of Veterans Affairs or the applicable uniformed service. Any physician assistant who is employed by or under contract with the United States Department of Veterans Affairs or is employed by, under contract with, or commissioned by one of the uniformed services and practices outside of such employment, contract, or commission shall be subject to the Physician Assistant Act while practicing outside of such employment, contract, or commission. As used in this subsection, "uniformed services" shall have the same meaning as provided by Title 10 of the U.S. Code.

SECTION 6. AMENDATORY 59 O.S. 2021, Section 521.2, is amended to read as follows:

Section 521.2 A. Payment for services within the physician assistant's scope of practice by a health insurance plan shall be made when ordered or performed by the physician assistant, if the same service would have been covered if ordered or performed by a physician. ~~An in-network~~ A physician assistant shall be authorized

to bill for and receive direct payment for the medically necessary services the physician assistant delivers.

B. To ensure accountability and transparency for patients, payers and the health care system, ~~an in-network~~ a physician assistant shall be identified as the rendering professional in the billing and claims process when the physician assistant delivers medical or surgical services to patients.

C. No insurance company or third-party payer shall impose a practice, education, or collaboration requirement that is inconsistent with or more restrictive than existing physician assistant state laws or regulations.

SECTION 7. AMENDATORY 63 O.S. 2021, Section 1-317, as amended by Section 1, Chapter 184, O.S.L. 2022 (63 O.S. Supp. 2023, Section 1-317), is amended to read as follows:

Section 1-317. A. A death certificate for each death which occurs in this state shall be filed with the State Department of Health, within three (3) days after such death.

B. The funeral director shall personally sign the death certificate and shall be responsible for filing the death certificate. If the funeral director is not available, the person acting as such who first assumes custody of a dead body in accordance with Section 1158 of Title 21 of the Oklahoma Statutes shall personally sign and file the death certificate. The personal data shall be obtained from the next of kin or the best qualified

person or source available. The certificate shall be completed as to personal data and delivered to the attending physician or the medical examiner responsible for completing the medical certification portion of the certificate of death within twenty-four (24) hours after the death. No later than July 1, 2012, the personal data, and no later than July 1, 2017, the medical certificate portion, shall be entered into the prescribed electronic system provided by the State Registrar of Vital Statistics and the information submitted to the State Registrar of Vital Statistics. The resultant certificate produced by the electronic system shall be provided to the physician or medical examiner for medical certification within twenty-four (24) hours after the death.

C. The medical certification shall be completed and signed within forty-eight (48) hours after death by the physician, physician assistant, or advanced practice registered nurse in charge of the patient's care for the illness or condition which resulted in death, except when inquiry as to the cause of death is required by Section 938 of this title. No later than July 1, 2017, the medical certification portion of certificate data shall be entered into the prescribed electronic system provided by the State Registrar of Vital Statistics and the information submitted to the State Registrar of Vital Statistics.

D. In the event that the physician, physician assistant, or advanced practice registered nurse in charge of the patient's care

for the illness or condition which resulted in death is not in attendance at the time of death, the medical certification shall be completed and signed within forty-eight (48) hours after death by the physician, physician assistant, or advanced practice registered nurse in attendance at the time of death, except:

1. When the patient is under hospice care at the time of death, the medical certification may be signed by the hospice's medical director; and

2. When inquiry as to the cause of death is required by Section 938 of this title.

Provided, that such certification, if signed by other than the attending physician, physician assistant, or advanced practice registered nurse, shall note on the face the name of the attending physician, physician assistant, or advanced practice registered nurse and that the information shown is only as reported.

E. A certifier completing cause of death on a certificate of death who knows that a lethal drug, overdose or other means of assisting suicide within the meaning of Sections 3141.2 through 3141.4 of this title caused or contributed to the death shall list that means among the chain of events under cause of death or list it in the box that describes how the injury occurred. If such means is in the chain of events under cause of death or in the box that describes how the injury occurred, the certifier shall indicate "suicide" as the manner of death.

F. The authority of a physician assistant subject to subsection C of Section 4 of this act to carry out the functions described in this section shall be governed by the practice agreement as provided by Section 519.6 of Title 59 of the Oklahoma Statutes.

SECTION 8. AMENDATORY 63 O.S. 2021, Section 2-101, as last amended by Section 1, Chapter 375, O.S.L. 2023 (63 O.S. Supp. 2023, Section 2-101), is amended to read as follows:

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

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

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

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

2. "Agent" means a peace officer appointed by and who acts on behalf of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or

contract carrier, public warehouser or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act;

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

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

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

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

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

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

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

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

11. "Dispense" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for such distribution. "Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject;

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

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

14. "Drug" means articles:

a. recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them,

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

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

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

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

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

16. "Home care agency" means any sole proprietorship, partnership, association, corporation, or other organization which

administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence;

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

18. "Hospice" means a centrally administered, nonprofit or for-profit, medically directed, nurse-coordinated program which provides a continuum of home and inpatient care for the terminally ill patient and the patient's family. Such term shall also include a centrally administered, nonprofit or for-profit, medically directed, nurse-coordinated program if such program is licensed pursuant to the provisions of the Uniform Controlled Dangerous Substances Act. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need, regardless of ability to pay. "Class A" Hospice refers to Medicare-certified hospices. "Class B" refers to all other providers of hospice services;

19. "Imitation controlled substance" means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made, would lead a reasonable person to believe that the substance is a

controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an imitation controlled substance, the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an imitation controlled substance:

a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect,

b. statements made to the recipient that the substance may be resold for inordinate profit,

c. whether the substance is packaged in a manner normally 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 synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

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

a. the mature stalks of such plant or fiber produced from such stalks,

b. oil or cake made from the seeds of such plant, including cannabidiol derived from the seeds of the marijuana plant,

c. any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), including cannabidiol derived from mature stalks, fiber, oil or cake,

d. the sterilized seed of such plant which is incapable of germination,

e. for any person participating in a clinical trial to administer cannabidiol for the treatment of severe forms of epilepsy pursuant to Section 2-802 of this 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 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 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 not more than three-tenths of one percent (0.3%) on a dry-weight basis which shall only be grown pursuant to the Oklahoma Industrial Hemp Program and may be shipped intrastate and interstate;

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

25. "Mid-level practitioner" means an Advanced Practice Registered Nurse as defined and within parameters specified in Section 567.3a of Title 59 of the Oklahoma Statutes, or a certified animal euthanasia technician as defined in Section 698.2 of Title 59 of the Oklahoma Statutes, or an animal control officer registered by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control under subsection B of Section 2-301 of this title within the parameters of such officer's duties under Sections 501 through 508 of Title 4 of the Oklahoma Statutes;

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

a. opium, coca leaves and opiates,

b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates,

c. cocaine, its salts, optical and geometric isomers, and salts of isomers,

d. ecgonine, its derivatives, their salts, isomers and salts of isomers, and

e. a substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except

that the words narcotic drug as used in Section 2-101 et seq. of this title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

27. "Opiate" or "opioid" means any Schedule II, III, IV or V substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. The terms do not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). The terms do include the racemic and levorotatory forms;

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

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

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

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

32. "Practitioner" means:

a. (1) a medical doctor or osteopathic physician,

(2) a dentist,

(3) a podiatrist,

(4) an optometrist,

(5) a veterinarian,

(6) ~~a physician assistant or~~ an Advanced Practice Registered Nurse under the supervision of a licensed medical doctor or osteopathic physician; or a physician assistant,

(7) a scientific investigator, or

(8) any other person,

licensed, registered or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state, or

b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a

controlled dangerous substance in the course of professional practice or research in this state;

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

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

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

36. "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or fashioned specifically for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act including, but not limited to:

a. kits used, intended for use, or fashioned specifically for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a

controlled dangerous substance or from which a controlled dangerous substance can be derived,

b. kits used, intended for use, or fashioned specifically for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances,

c. isomerization devices used, intended for use, or fashioned specifically for use in increasing the potency of any species of plant which is a controlled dangerous substance,

d. testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances,

e. scales and balances used, intended for use, or fashioned specifically for use in weighing or measuring controlled dangerous substances,

f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or fashioned specifically for use in cutting controlled dangerous substances,

g. separation gins and sifters used, intended for use, or fashioned specifically for use in removing twigs and

seeds from, or in otherwise cleaning or refining, marijuana,

h. blenders, bowls, containers, spoons and mixing devices used, intended for use, or fashioned specifically for use in compounding controlled dangerous substances,

i. capsules, balloons, envelopes and other containers used, intended for use, or fashioned specifically for use in packaging small quantities of controlled dangerous substances,

j. containers and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,

k. hypodermic syringes, needles and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,

l. objects used, intended for use, or fashioned specifically for use in ingesting, inhaling or otherwise introducing marijuana, 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 marijuana 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

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

provided, however, the term drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for

ornamentation in which no detectable amount of an illegal substance is found or pipes designed and used solely for smoking tobacco, traditional pipes of an American Indian tribal religious ceremony, antique pipes that are thirty (30) years of age or older, or drug testing strips possessed by a person for purposes of determining the presence of fentanyl or a fentanyl-related compound;

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

(1) the chemical structure of which is substantially similar to the chemical structure of a controlled dangerous substance in Schedule I or II,

(2) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled dangerous substance in Schedule I or II, or

(3) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the

central nervous system of a controlled dangerous substance in Schedule I or II.

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

c. "Synthetic controlled substance" does not include:

(1) a controlled dangerous substance,

(2) any substance for which there is an approved new drug application,

(3) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person under the provisions of Section 505 of the Federal Food, Drug and Cosmetic Act, Title 21 of the United States Code, Section 355, to the extent conduct with respect to such substance is pursuant to such exemption, or

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

d. Prima facie evidence that a substance containing salvia divinorum has been enhanced, concentrated or

chemically or physically altered shall give rise to a rebuttable presumption that the substance is a synthetic controlled substance;

38. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marijuana, specifically including any tetrahydrocannabinols derived from industrial hemp;

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

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

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

42. "Acute pain" means pain, whether resulting from disease, accidental or intentional trauma or other cause, that the practitioner reasonably expects to last only a short period of time. Acute pain does not include chronic pain, pain being treated as part

of cancer care, hospice or other end-of-life care, or pain being treated as part of palliative care;

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

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

a. has never previously been issued a prescription for the drug or its pharmaceutical equivalent in the past year, or

b. requires a prescription for the drug or its pharmaceutical equivalent due to a surgical procedure or new acute event and has previously had a prescription for the drug or its pharmaceutical equivalent within the past year.

When determining whether a patient was previously issued a prescription for a drug or its pharmaceutical equivalent, the practitioner shall consult with the patient and review the medical record and prescription monitoring information of the patient;

45. "Patient-provider agreement" means a written contract or agreement that is executed between a practitioner and a patient,

prior to the commencement of treatment for chronic pain using an opioid drug as a means to:

a. explain the possible risk of development of physical or psychological dependence in the patient and prevent the possible development of addiction,

b. document the understanding of both the practitioner and the patient regarding the patient-provider agreement of the patient,

c. establish the rights of the patient in association with treatment and the obligations of the patient in relation to the responsible use, discontinuation of use, and storage of opioid drugs, including any restrictions on the refill of prescriptions or the acceptance of opioid prescriptions from practitioners,

d. identify the specific medications and other modes of treatment, including physical therapy or exercise, relaxation or psychological counseling, that are included as a part of the patient-provider agreement,

e. specify the measures the practitioner may employ to monitor the compliance of the patient including, but not limited to, random specimen screens and pill counts, and

f. delineate the process for terminating the agreement, including the consequences if the practitioner has

reason to believe that the patient is not complying with the terms of the agreement. Compliance with the "consent items" shall constitute a valid, informed consent for opioid therapy. The practitioner shall be held harmless from civil litigation for failure to treat pain if the event occurs because of nonadherence by the patient with any of the provisions of the patient-provider agreement;

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

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

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

SECTION 9. AMENDATORY 63 O.S. 2021, Section 2-312, as amended by Section 2, Chapter 184, O.S.L. 2022 (63 O.S. Supp. 2023, Section 2-312), is amended to read as follows:

Section 2-312. A. A physician, podiatrist, optometrist or a dentist who has complied with the registration requirements of the Uniform Controlled Dangerous Substances Act, in good faith and in the course of such person's professional practice only, may prescribe and administer controlled dangerous substances, or may cause the same to be administered by medical or paramedical personnel acting under the direction and supervision of the physician, podiatrist, optometrist or dentist, and only may dispense controlled dangerous substances pursuant to the provisions of Sections 355.1 and 355.2 of Title 59 of the Oklahoma Statutes.

B. A veterinarian who has complied with the registration requirements of the Uniform Controlled Dangerous Substances Act, in good faith and in the course of the professional practice of the veterinarian only, and not for use by a human being, may prescribe, administer, and dispense controlled dangerous substances and may cause them to be administered by an assistant or orderly under the direction and supervision of the veterinarian.

C. An advanced practice nurse who is recognized to prescribe by the Oklahoma Board of Nursing as an advanced registered nurse

practitioner, clinical nurse specialist or certified nurse-midwife, who is subject to medical direction by a supervising physician, pursuant to Section 567.3a of Title 59 of the Oklahoma Statutes, and who has complied with the registration requirements of the Uniform Controlled Dangerous Substances Act, in good faith and in the course of professional practice only, may prescribe and administer Schedule III, IV and V controlled dangerous substances.

D. An advanced practice nurse who is recognized to order, select, obtain and administer drugs by the Oklahoma Board of Nursing as a certified registered nurse anesthetist pursuant to Section 353.1b of Title 59 of the Oklahoma Statutes and who has complied with the registration requirements of the Uniform Controlled Dangerous Substances Act, in good faith and in the course of such practitioner's professional practice only, may order, select, obtain and administer Schedules II through V controlled dangerous substances in a preanesthetic preparation or evaluation; anesthesia induction, maintenance or emergence; or postanesthesia care setting only. A certified registered nurse anesthetist may order, select, obtain and administer such drugs only during the perioperative or periobstetrical period.

E. A physician assistant who is recognized to prescribe by the State Board of Medical Licensure and Supervision under ~~the medical direction of a supervising physician, pursuant to~~ Section 519.6 of Title 59 of the Oklahoma Statutes, and who has complied with the

registration requirements of the Uniform Controlled Dangerous Substances Act, in good faith and in the course of professional practice only, may prescribe and administer Schedule II through V controlled dangerous substances subject to the restrictions in Section 519.6 of Title 59 of the Oklahoma Statutes.

SECTION 10. REPEALER 59 O.S. 2021, Section 521.4, is hereby repealed.

SECTION 11. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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