

1 ENGROSSED SENATE
2 BILL NO. 242

By: Standridge of the Senate

and

3
4 Caldwell (Chad) of the
House

5
6 An Act relating to controlled dangerous substances;
7 providing definitions; requiring clinics to register
8 with Board of Medical Licensure and Supervision;
9 providing exemptions; setting forth registration
10 procedures; requiring clinics to designate physician;
11 setting forth procedures for revocation and
12 suspension of registration; limiting period of
13 suspension; requiring new registration application if
14 clinic changes ownership; setting forth physician
15 responsibilities; setting forth facility and physical
16 operations requirements; setting forth certain
17 infection control requirements; setting forth health
18 and safety requirements; setting forth certain
19 quality assurance requirements; setting forth certain
20 data collection and reporting requirements; providing
21 that designated physician is responsible for ensuring
22 compliance with all requirements; providing
23 penalties; amending 63 O.S. 2011, Section 2-312,
24 which relates to authority to prescribe, administer
or dispense controlled dangerous substances;
prohibiting dispensing of controlled dangerous
substances by certain practitioner; providing
exceptions; clarifying language; directing
promulgation of rules; providing for codification;
providing for noncodification; and providing an
effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2-1101 of Title 63, unless there
is created a duplication in numbering, reads as follows:

1 As used in this act:

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

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

12 3. "Pain-management clinic" or "clinic" means any publicly or
13 privately owned facility:

14 a. that advertises in any medium for any type of pain-
15 management services, or

16 b. where in any month a majority of patients are
17 prescribed opioids, benzodiazepines, barbiturates, or
18 carisoprodol for the treatment of chronic nonmalignant
19 pain.

20 SECTION 2. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-1102 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

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

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

3 2. The clinic is owned by a publicly held corporation whose
4 shares are traded on a national exchange or on the over-the-counter
5 market and whose total assets at the end of the corporation's most
6 recent fiscal quarter exceeded Fifty Million Dollars
7 (\$50,000,000.00);

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

11 4. The clinic does not prescribe controlled dangerous
12 substances for the treatment of pain;

13 5. The clinic is owned by a corporate entity exempt from
14 federal taxation under 26 U.S.C., Section 501(c) (3) (1954);

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

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

1 Specialists or the American Osteopathic Association, perform
2 interventional pain procedures of the type routinely billed using
3 surgical codes.

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

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

21 D. The Board of Medical Licensure and Supervision shall deny
22 registration to any clinic that is not fully owned by a physician
23 licensed pursuant to Section 480 et seq. or Section 620 et seq. of
24 Title 59 of the Oklahoma Statutes or group of physicians, each of

1 whom is licensed pursuant to Section 480 et seq. or Section 620 et
2 seq. of Title 59 of the Oklahoma Statutes.

3 E. The Board of Medical Licensure and Supervision shall deny
4 registration to any pain-management clinic owned by or with any
5 contractual or employment relationship with a physician:

6 1. Whose Drug Enforcement Administration number has ever been
7 revoked;

8 2. Whose application for a license to prescribe, dispense or
9 administer a controlled substance has been denied by any
10 jurisdiction;

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

17 F. If the Board of Medical Licensure and Supervision finds that
18 a pain-management clinic does not meet the requirement of subsection
19 D of this section or is owned, directly or indirectly, by a person
20 meeting any criteria listed in subsection E of this section, the
21 Board of Medical Licensure and Supervision shall revoke the
22 certificate of registration previously issued by the Board of
23 Medical Licensure and Supervision. As determined by rule, the Board
24 of Medical Licensure and Supervision may grant an exemption to

1 denying a registration or revoking a previously issued registration
2 if more than ten (10) years have elapsed since adjudication. As
3 used in this section, the term "convicted" includes an adjudication
4 of guilt following a plea of guilty or nolo contendere or the
5 forfeiture of a bond when charged with a crime.

6 G. If the registration of a pain-management clinic is revoked
7 or suspended, the designated physician of the pain-management
8 clinic, the owner or lessor of the pain-management clinic property,
9 the manager and the proprietor shall cease to operate the facility
10 as a pain-management clinic as of the effective date of the
11 suspension or revocation.

12 H. If a pain-management clinic registration is revoked or
13 suspended, the designated physician of the pain-management clinic,
14 the owner or lessor of the clinic property, the manager or the
15 proprietor is responsible for removing all signs and symbols
16 identifying the premises as a pain-management clinic.

17 I. If the clinic's registration is revoked, any person named in
18 the registration documents of the pain-management clinic, including
19 persons owning or operating the pain-management clinic, shall not,
20 as an individual or as a part of a group, apply to operate a pain-
21 management clinic for five (5) years after the date the registration
22 is revoked.

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1 J. The period of suspension for the registration of a pain-
2 management clinic shall be prescribed by the Board of Medical
3 Licensure and Supervision, but shall not exceed one (1) year.

4 K. A change of ownership of a registered pain-management clinic
5 requires submission of a new registration application.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2-1103 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A physician shall not practice medicine in a pain-management
10 clinic if the clinic is not registered with the Board of Medical
11 Licensure and Supervision as required by this act. Any physician
12 who qualifies to practice medicine in a pain-management clinic
13 pursuant to rules adopted by the Board of Medical Licensure and
14 Supervision may continue to practice medicine in a pain-management
15 clinic as long as the physician continues to meet the qualifications
16 set forth in the rules. A physician who violates this subsection is
17 subject to disciplinary action by his or her appropriate medical
18 regulatory board.

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

1 C. A physician, a physician assistant or an Advanced Practice
2 Registered Nurse shall perform a physical examination of a patient
3 on the same day that the physician prescribes a controlled substance
4 to a patient at a pain-management clinic. If the physician
5 prescribes more than a seventy-two-hour dose of controlled dangerous
6 substances for the treatment of chronic nonmalignant pain, the
7 physician shall document in the patient's record the reason for
8 prescribing that quantity.

9 D. A physician authorized to prescribe controlled dangerous
10 substances who practices at a pain-management clinic is responsible
11 for maintaining the control and security of his or her prescription
12 blanks and any other method used for prescribing controlled
13 dangerous substance pain medication. The physician shall notify, in
14 writing, the Board of Medical Licensure and Supervision within
15 twenty-four (24) hours following any theft or loss of a prescription
16 blank or breach of any other method for prescribing pain medication.

17 E. The designated physician of a pain-management clinic shall
18 notify the applicable board in writing of the date of termination of
19 employment within ten (10) calendar days after terminating his or
20 her employment with a pain-management clinic that is required to be
21 registered pursuant to this act. Each physician practicing in a
22 pain-management clinic shall advise the Board of Medical Licensure
23 and Supervision, in writing, within ten (10) calendar days after
24 beginning or ending his or her practice at a pain-management clinic.

1 F. Each physician practicing in a pain-management clinic is
2 responsible for ensuring compliance with the following facility and
3 physical operations requirements:

4 1. A pain-management clinic shall be located and operated at a
5 publicly accessible fixed location and shall:

- 6 a. display a sign that can be viewed by the public that
7 contains the clinic name, hours of operations, and a
8 street address,
- 9 b. have a publicly listed telephone number and a
10 dedicated phone number to send and receive facsimiles
11 with a facsimile machine that shall be operational
12 twenty-four (24) hours per day,
- 13 c. have emergency lighting and communications,
- 14 d. have a reception and waiting area,
- 15 e. provide a restroom,
- 16 f. have an administrative area, including room for
17 storage of medical records, supplies and equipment,
- 18 g. have private patient examination rooms,
- 19 h. have treatment rooms, if treatment is being provided
20 to the patients, and
- 21 i. display a printed sign located in a conspicuous place
22 in the waiting room viewable by the public with the
23 name and contact information of the clinic's

1 designated physician and the names of all physicians
2 practicing in the clinic; and

3 2. This section does not excuse a physician from providing any
4 treatment or performing any medical duty without the proper
5 equipment and materials as required by the standard of care. This
6 section does not supersede the level of care, skill or treatment
7 recognized in general law related to health care licensure.

8 G. Each physician practicing in a pain-management clinic is
9 responsible for ensuring compliance with the following infection
10 control requirements:

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

13 2. The clinic shall identify infection risks based on the
14 following:

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

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

- 21 a. prioritized risks,
- 22 b. limiting unprotected exposure to pathogens,
- 23 c. limiting the transmission of infections associated
24 with procedures performed in the clinic, and

1 d. limiting the transmission of infections associated
2 with the clinic's use of medical equipment, devices
3 and supplies.

4 H. Each physician practicing in a pain-management clinic is
5 responsible for ensuring compliance with the following health and
6 safety requirements:

7 1. The clinic, including its grounds, buildings, furniture,
8 appliances and equipment shall be structurally sound, in good
9 repair, clean and free from health and safety hazards;

10 2. The clinic shall have evacuation procedures in the event of
11 an emergency, which shall include provisions for the evacuation of
12 disabled patients and employees;

13 3. The clinic shall have a written facility-specific disaster
14 plan setting forth actions that will be taken in the event of clinic
15 closure due to unforeseen disasters and shall include provisions for
16 the protection of medical records; and

17 4. Each clinic shall have at least one employee on the premises
18 during patient care hours who is certified in basic life support and
19 is trained in reacting to accidents and medical emergencies until
20 emergency medical personnel arrive.

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

23 1. Each pain-management clinic shall have an ongoing quality
24 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 for 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 Board of Medical Licensure
3 and Supervision; and

4 2. The designated physician shall also report to the Board of
5 Medical Licensure and Supervision, in writing, on a quarterly basis
6 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 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-1104 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The Board of Medical Licensure and Supervision may impose an
24 administrative fine on a clinic of up to Five Thousand Dollars

1 (\$5,000.00) per violation for violating the requirements of this act
2 or the rules of the Board of Medical Licensure and Supervision. In
3 determining whether a penalty is to be imposed, and in fixing the
4 amount of the fine, the Board of Medical Licensure and Supervision
5 shall consider the following factors:

6 1. The gravity of the violation, including the probability that
7 death or serious physical or emotional harm to a patient has
8 resulted, or could have resulted, from the pain-management clinic's
9 actions or the actions of the physician, the severity of the action
10 or potential harm and the extent to which the provisions of the
11 applicable laws or rules were violated;

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

14 3. Whether there were any previous violations at the pain-
15 management clinic; and

16 4. The financial benefits that the pain-management clinic
17 derived from committing or continuing to commit the violation.

18 B. Each day a violation continues after the date fixed for
19 termination of the violation as ordered by the Board of Medical
20 Licensure and Supervision constitutes an additional, separate and
21 distinct violation.

22 C. The Board of Medical Licensure and Supervision may impose a
23 fine and, in the case of an owner-operated pain-management clinic,
24 revoke or deny a pain-management clinic's registration, if the

1 clinic's designated physician knowingly and intentionally
2 misrepresents actions taken to correct a violation.

3 D. An owner or designated physician of a pain-management clinic
4 who concurrently operates an unregistered pain-management clinic is
5 subject to an administrative fine of Five Thousand Dollars
6 (\$5,000.00) per day.

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

11 SECTION 5. AMENDATORY 63 O.S. 2011, Section 2-312, is
12 amended to read as follows:

13 Section 2-312. A. A physician, podiatrist, optometrist or a
14 dentist who has complied with the registration requirements of the
15 Uniform Controlled Dangerous Substances Act, in good faith and in
16 the course of such person's professional practice only, may
17 prescribe and administer controlled dangerous substances pursuant to
18 the provisions of Section 355.2 of Title 59 of the Oklahoma
19 Statutes, or may cause the same to be administered by medical or
20 paramedical personnel acting under the direction and supervision of
21 the physician, podiatrist, optometrist or dentist, ~~and only may~~ but
22 shall not dispense controlled dangerous substances except samples
23 pursuant to the provisions of Sections ~~355,~~ 355.1 and 355.2 of Title
24 59 of the Oklahoma Statutes. A sample of a particular controlled

1 dangerous substance may be dispensed to a patient one time in an
2 amount not to exceed an amount necessary for thirty (30) days. The
3 restrictions on dispensing controlled dangerous substances set forth
4 in this subsection shall not apply to substance abuse treatment
5 programs or services.

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

13 C. An advanced practice nurse who is recognized to prescribe by
14 the Oklahoma Board of Nursing as an advanced registered nurse
15 practitioner, clinical nurse specialist or certified nurse-midwife,
16 who is subject to medical direction by a supervising physician,
17 pursuant to Section 567.3a of Title 59 of the Oklahoma Statutes, and
18 who has complied with the registration requirements of the Uniform
19 Controlled Dangerous Substances Act, in good faith and in the course
20 of professional practice only, may prescribe and administer Schedule
21 III, IV and V controlled dangerous substances.

22 D. An advanced practice nurse who is recognized to order,
23 select, obtain and administer drugs by the Oklahoma Board of Nursing
24 as a certified registered nurse anesthetist pursuant to Section

1 353.1b of Title 59 of the Oklahoma Statutes and who has complied
2 with the registration requirements of the Uniform Controlled
3 Dangerous Substances Act, in good faith and in the course of such
4 practitioner's professional practice only, may order, select, obtain
5 and administer Schedules II through V controlled dangerous
6 substances in a preanesthetic preparation or evaluation; anesthesia
7 induction, maintenance or emergence; or postanesthesia care setting
8 only. A certified registered nurse anesthetist may order, select,
9 obtain and administer such drugs only during the perioperative or
10 periobstetrical period.

11 E. A physician assistant who is recognized to prescribe by the
12 State Board of Medical Licensure and Supervision under the medical
13 direction of a supervising physician, pursuant to subsection D of
14 Section 519.6 of Title 59 of the Oklahoma Statutes, and who has
15 complied with the registration requirements of the Uniform
16 Controlled Dangerous Substances Act, in good faith and in the course
17 of professional practice only, may prescribe and administer Schedule
18 II through V controlled dangerous substances.

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

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

23 SECTION 7. This act shall become effective November 1, 2019.

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1 Passed the Senate the 13th day of March, 2019.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

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8 _____
9 Presiding Officer of the House
10 of Representatives