

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 699

By: Griffin

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6 AS INTRODUCED

7 An Act relating to the Anti-Drug Diversion Act;
8 amending 63 O.S. 2011, Section 2-304, which relates
9 to denial, revocation, and suspension of certain
10 licenses; prohibiting Director of Oklahoma Bureau of
11 Narcotics and Dangerous Drugs Control from assessing
12 certain fee; amending 63 O.S. 2011, Section 2-309D,
13 as last amended by Section 22, Chapter 293, O.S.L.
14 2014 (63 O.S. Supp. 2014, Section 2-309D), which
15 relates to central repository information; expanding
16 access to repository information to certain persons;
17 deleting certain limitation; prohibiting certain
18 agencies from having access to certain information;
19 permitting certain persons to access certain
20 information; expanding types of investigations or
21 prosecutions for which information may be accessed;
22 permitting certain agencies to use certain
23 information for certain purposes; permitting
24 registrant access to certain information for certain
purposes; permitting disclosure of patient history
for certain purposes; requiring registrants or staff
to access central repository for certain purposes;
providing that certain duty shall not affect certain
standards of care; requiring notation of repository
access; waiving requirement for certain
prescriptions; providing exemption for certain
entity; directing enforcement responsibility to
certain state entities; prohibiting assessment of
certain fees; requiring Director of Oklahoma Bureau
of Narcotics and Dangerous Drugs Control or designee
to provide monthly report; directing distribution of
report; providing standards for report; requiring
Bureau to issue certain notice; providing exclusive
jurisdiction to licensing boards; expanding scope of
information that shall be confidential; providing
access to repository information to certain boards

1 and agencies; directing Bureau to provide procedures
2 for access to repository information; requiring
3 Bureau to issue notice to applicable licensing board
4 in the event of certain investigations; making
5 references gender neutral; and providing an effective
6 date.

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

7 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-304, is
8 amended to read as follows:

9 Section 2-304. A. A registration, pursuant to Section 2-303 of
10 this title, to manufacture, distribute, dispense, prescribe,
11 administer or use for scientific purposes a controlled dangerous
12 substance shall be limited, conditioned, denied, suspended or
13 revoked by the Director upon a finding that the registrant:

14 1. Has materially falsified any application filed pursuant to
15 ~~this act~~ the Uniform Controlled Dangerous Substance Act or required
16 by ~~this act~~ the Uniform Controlled Dangerous Substance Act;

17 2. Has been found guilty of, entered a plea of guilty, or
18 entered a plea of nolo contendere to a misdemeanor relating to any
19 substance defined herein as a controlled dangerous substance or any
20 felony under the laws of any state or the United States;

21 3. Has had his or her federal registration retired, suspended,
22 or revoked by a competent federal authority and is no longer
23 authorized by federal law to manufacture, distribute, dispense,
24

1 prescribe, administer or use for scientific purposes controlled
2 dangerous substances;

3 4. Has failed to maintain effective controls against the
4 diversion of controlled dangerous substances to unauthorized persons
5 or entities;

6 5. Has prescribed, dispensed or administered a controlled
7 dangerous substance from schedules other than those specified in his
8 or her state or federal registration;

9 6. Has had a restriction, suspension, revocation, limitation,
10 condition, or probation placed on his or her professional license or
11 certificate or practice as a result of a proceeding pursuant to the
12 general statutes;

13 7. Is abusing or, within the past five (5) years, has abused or
14 excessively used drugs or controlled dangerous substances;

15 8. Has prescribed, sold, administered, or ordered any
16 controlled substance for an immediate family member, himself or
17 herself; provided that this shall not apply to a medical emergency
18 when no other doctor is available to respond to the emergency;

19 9. Has possessed, used, prescribed, dispensed or administered
20 drugs or controlled dangerous substances for other than legitimate
21 medical or scientific purposes or for purposes outside the normal
22 course of his or her professional practice;

23 10. Has been under the influence of alcohol or another
24 intoxicating substance which adversely affected the central nervous

1 system, vision, hearing or other sensory or motor functioning to
2 such degree the person was impaired during the performance of his or
3 her job; or

4 11. Has violated any federal law relating to any controlled
5 substances, any provision of the Uniform Controlled Dangerous
6 Substances Act, ~~Section 2-101 et seq. of this title,~~ or any rules of
7 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

8 B. In the event the Director suspends or revokes a registration
9 granted under Section 2-303 of this title, all controlled dangerous
10 substances owned or possessed by the registrant pursuant to such
11 registration at the time of denial or suspension or the effective
12 date of the revocation order, as the case may be, may in the
13 discretion of the Director be impounded and preserved. No
14 disposition may be made of substances impounded and preserved until
15 the time for taking an appeal has elapsed or until all appeals have
16 been concluded unless a court, upon application therefor, orders the
17 sale of perishable substances and the deposit of the proceeds of the
18 sale with the court. Upon a revocation order becoming final, all
19 such controlled dangerous substances shall be forfeited to the
20 state.

21 C. The Drug Enforcement Administration shall promptly be
22 notified of all orders suspending or revoking registration and all
23 forfeitures of controlled dangerous substances.

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1 D. In lieu of or in addition to any other remedies available to
2 the Director, if a finding is made that a registrant has committed
3 any act in violation of federal law relating to any controlled
4 substance, any provision of the Uniform Controlled Dangerous
5 Substances Act, ~~Section 2-101 et seq. of this title~~, or any rules of
6 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,
7 the Director is hereby authorized to assess an administrative
8 penalty not to exceed Two Thousand Dollars (\$2,000.00) for each such
9 act. The provisions of this subsection shall not apply to
10 violations of subsection G of Section 2 of this act. Nothing in
11 this section shall be construed so as to permit the Director of the
12 State Bureau of Narcotics and Dangerous Drugs to assess
13 administrative fines for violations of the provisions of subsection
14 G of Section 2 of this act.

15 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-309D, as
16 last amended by Section 22, Chapter 293, O.S.L. 2014 (63 O.S. Supp.
17 2014, Section 2-309D), is amended to read as follows:

18 Section 2-309D. A. The information collected at the central
19 repository pursuant to the Anti-Drug Diversion Act shall be
20 confidential and shall not be open to the public. Access to the
21 information shall be limited to:

22 1. Peace officers certified pursuant to Section 3311 of Title
23 70 of the Oklahoma Statutes who are employed as investigative agents
24

1 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
2 Control;

3 2. The United States Drug Enforcement Administration Diversion
4 Group Supervisor;

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

- 7 a. Board of Podiatric Medical Examiners,
- 8 b. Board of Dentistry,
- 9 c. State Board of Pharmacy,
- 10 d. State Board of Medical Licensure and Supervision,
- 11 e. State Board of Osteopathic Examiners,
- 12 f. State Board of Veterinary Medical Examiners,
- 13 g. Oklahoma Health Care Authority,
- 14 h. Department of Mental Health and Substance Abuse
15 Services, and
- 16 i. State Board of Health,
- 17 j. Board of Examiners in Optometry,
- 18 k. Board of Nursing, and
- 19 l. Office of the Chief Medical Examiner;

20 ~~provided, however, that the executive director or chief investigator~~
21 ~~of each of these boards shall be limited to access to information~~
22 ~~relevant to licensees of the employing board of such executive~~
23 ~~director or chief investigator;~~

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

3 ~~5. The Department of Mental Health and Substance Abuse Services~~
4 ~~and the State Department of Health for statistical, research,~~
5 ~~substance abuse prevention or educational purposes provided that the~~
6 ~~consumer's confidentiality is not compromised~~ Medical practitioners
7 employed by the United States Veterans Affairs Administration, the
8 United States Military, or other federal agencies treating patients
9 in this state; and

10 6. At the discretion of the Director of the Oklahoma Bureau of
11 Narcotics and Dangerous Drugs Control, medical practitioners and
12 their staff, including those employed by the federal government
13 within this state.

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

23 C. This section shall not prevent the disclosure, at the
24 discretion of the Director of the Oklahoma State Bureau of Narcotics

1 and Dangerous Drugs Control, of statistical information gathered
2 from the central repository to the general public which shall be
3 limited to types and quantities of controlled substances dispensed
4 and the county where dispensed.

5 D. This section shall not prevent the disclosure, at the
6 discretion of the Director of the Oklahoma State Bureau of Narcotics
7 and Dangerous Drugs Control, of prescription-monitoring-program
8 information to prescription-monitoring programs of other states
9 provided a reciprocal data-sharing agreement is in place.

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

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

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

1 2. Prior to prescribing or authorizing for refill of a Schedule
2 II or III controlled dangerous drug to a patient of record,
3 registrants or members of their medical or administrative staff
4 shall access and verify the information in the central repository to
5 assess medical necessity and the possibility that the patient may be
6 unlawfully obtaining prescription drugs in violation of the Uniform
7 Controlled Dangerous Substance Act. Such duty to access and check
8 shall not alter or otherwise amend appropriate medical standards of
9 care. The registrant or medical provider shall note in the patient
10 file that the central repository has been checked and may maintain a
11 copy of the information. There shall be no requirement to access
12 and check the information in the central repository for
13 prescriptions for hospice or end-of-life care, or prescriptions
14 issued by a nursing facility as defined by Section 1-1902 of Title
15 63 of Oklahoma Statutes, provided that the prescription is issued to
16 a resident of such facility. The provisions of this subsection
17 shall not apply to registrants licensed by the State Board of
18 Veterinary Medical Examiners.

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

23 G. H. The State Board of Podiatric Examiners, the State Board
24 of Dentistry, the State Board of Medical Licensure and Supervision,

1 the State Board of Examiners in Optometry, the State Board of
2 Nursing, and the State Board of Osteopathic Examiners shall have the
3 sole responsibility for enforcement of the provisions of subsection
4 G of this section. Nothing in this section shall be construed so as
5 to permit the Director of the State Bureau of Narcotics and
6 Dangerous Drugs to assess administrative fines provided for in
7 Section 2-304 of this title.

8 I. The Director of the State Bureau of Narcotics and Dangerous
9 Drugs Control, or a designee thereof, shall provide a monthly list
10 to the Directors of the State Board of Podiatric Examiners, the
11 State Board of Dentistry, the State Board of Medical Licensure and
12 Supervision, the State Board of Examiners in Optometry, the State
13 Board of Nursing and the State Board of Osteopathic Examiners, of
14 the top twenty (20) prescribers of controlled dangerous substances
15 within their respective areas of jurisdiction. Upon discovering
16 that a registrant is prescribing outside the limitations of their
17 licensure or outside of drug registration rules or applicable state
18 laws, the respective licensing board shall be notified by the Bureau
19 in writing. Such notifications may be considered complaints for the
20 purpose of investigations or other actions by the respective
21 licensing board. Licensing boards shall have exclusive jurisdiction
22 to take action against a licensee for a violation of subsection F of
23 this section.

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1 ~~G.~~ J. Information regarding fatal and nonfatal overdoses, other
2 than statistical information as required by Section 2-106 of this
3 title, shall be completely confidential. Access to this information
4 shall be strictly limited to the Director of the Oklahoma State
5 Bureau of Narcotics and Dangerous Drugs Control or designee, the
6 Chief Medical Examiner, state agencies and boards provided in
7 subsection A of this section, and the registrant that enters the
8 information. Registrants shall not be liable to any person for a
9 claim of damages for information reported pursuant to the provisions
10 of Section 2-105 of this title.

11 K. The Director of the Oklahoma State Bureau of Narcotics and
12 Dangerous Drugs Control shall provide adequate means and procedures
13 allowing access to central repository information for registrants
14 lacking direct computer access.

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

1 M. In the event the Oklahoma State Bureau of Narcotics and
2 Dangerous Drugs Control elects to investigate a medical practitioner
3 concerning the prescription or authorization of a controlled
4 dangerous substance, the licensing board with applicable
5 jurisdiction over such practitioner shall be immediately notified by
6 the Bureau.

7 SECTION 3. This act shall become effective November 1, 2015.

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