

1 ENGROSSED SENATE
2 BILL NO. 888

By: Standridge of the Senate

and

Echols of the House

3
4
5
6 An Act relating to controlled dangerous substances;
7 defining terms; requiring pain management clinics to
8 register with State Board of Medical Licensure and
9 Supervision; providing exemptions; stipulating
10 registration procedures; requiring clinics to
11 designate physician; stipulating procedures for
12 revocation and suspension of registration; limiting
13 period of suspension; requiring new registration
14 application if clinic changes ownership; specifying
15 physician responsibilities; providing facility and
16 physical operations requirements; stipulating certain
17 infection control requirements; providing health and
18 safety requirements; providing certain quality
19 assurance requirements; stipulating certain data
20 collection and reporting requirements; providing that
21 designated physician is responsible for ensuring
22 compliance with all requirements; providing
23 penalties; directing promulgation of rules; amending
24 59 O.S. 2011, Section 355.1, as amended by Section
21, Chapter 230, O.S.L. 2015 (59 O.S. Supp. 2020,
Section 355.1), which relates to dispensation of
dangerous drugs; providing certain limitations on
dispensation of controlled dangerous substances;
providing exception; providing for codification; 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 State
24 Board of 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 State Board of
12 Medical Licensure and Supervision of the identity of another
13 designated physician for that clinic. The designated physician
14 shall have a full, active and unencumbered license pursuant to
15 Section 480 et seq. or Section 620 et seq. of Title 59 of the
16 Oklahoma Statutes and shall practice at the clinic location for
17 which the physician has assumed responsibility. Failing to have a
18 licensed designated physician practicing at the location of the
19 registered clinic may be the basis for a summary suspension of the
20 clinic registration certificate as described in this section.

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

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

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

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

23
24

1 J. The period of suspension for the registration of a pain
2 management clinic shall be prescribed by the State 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 State Board of
11 Medical Licensure and Supervision as required by this act. Any
12 physician who qualifies to practice medicine in a pain management
13 clinic pursuant to rules adopted by the State Board of Medical
14 Licensure and Supervision may continue to practice medicine in a
15 pain management clinic as long as the physician continues to meet
16 the qualifications prescribed in the rules. A physician who
17 violates this subsection is subject to disciplinary action by his or
18 her appropriate medical 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 State 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 State Board of Medical
23 Licensure and Supervision, in writing, within ten (10) calendar days
24

1 after beginning or ending his or her practice at a pain management
2 clinic.

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

6 1. A pain management clinic shall be located and operated at a
7 publicly accessible fixed location and shall:

8 a. display a sign that can be viewed by the public that
9 contains the clinic name, hours of operations and a
10 street address,

11 b. have a publicly listed telephone number and a
12 dedicated phone number to send and receive facsimiles
13 with a facsimile machine that shall be operational
14 twenty-four (24) hours per day,

15 c. have emergency lighting and communications,

16 d. have a reception and waiting area,

17 e. provide a restroom,

18 f. have an administrative area, including room for
19 storage of medical records, supplies and equipment,

20 g. have private patient examination rooms,

21 h. have treatment rooms, if treatment is being provided
22 to the patients, and

23 i. display a printed sign located in a conspicuous place
24 in the waiting room viewable by the public with the

1 name and contact information of the clinic's
2 designated physician and the names of all physicians
3 practicing in the clinic; and

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

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

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

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

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

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

- 22 a. prioritized risks,
- 23 b. limiting unprotected exposure to pathogens,

- 1 c. limiting the transmission of infections associated
2 with procedures performed in the clinic, and
3 d. limiting the transmission of infections associated
4 with the clinic's use of medical equipment, devices
5 and supplies.

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

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

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

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

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

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

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

- 3 a. monitors and evaluates the quality and appropriateness
4 of patient care,
- 5 b. evaluates methods to improve patient care,
- 6 c. identifies and corrects deficiencies within the
7 facility,
- 8 d. alerts the designated physician to identify and
9 resolve recurring problems, and
- 10 e. provides for opportunities to improve the facility's
11 performance and to enhance and improve the quality of
12 care provided to the public; and

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

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

24

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

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

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

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

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-1104 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

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

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-1105 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

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

21 SECTION 6. AMENDATORY 59 O.S. 2011, Section 355.1, as
22 amended by Section 21, Chapter 230, O.S.L. 2015 (59 O.S. Supp. 2020,
23 Section 355.1), is amended to read as follows:

24

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

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

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

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

1 2. No charge is made to the patient; and

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

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

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

14 F. A prescriber who issues a prescription for a controlled
15 dangerous substance shall not dispense the controlled dangerous
16 substance pursuant to such prescription. A prescriber shall not
17 dispense a controlled dangerous substance pursuant to a prescription
18 issued by another prescriber if the dispensing prescriber has a
19 financial interest in the practice of the prescribing prescriber.
20 The restrictions on dispensing of controlled dangerous substances
21 provided by this subsection shall not apply to substance abuse
22 treatment programs or services.

23 SECTION 7. This act shall become effective November 1, 2021.
24

