



GOV. MSG. NO. 828

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 17, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 17, 2008, the following bill was signed into law:

SB1487 SD2 HD2 CD1

A BILL FOR AN ACT RELATING TO CONTROLLED
SUBSTANCES.
(ACT 186)

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 329, Hawaii Revised Statutes, is
2 amended by adding two new sections to part IV to be
3 appropriately designated and to read as follows:

4 "§329- Administrative penalties. (a) Any person who
5 violates this chapter or any rule adopted by the department
6 pursuant to this chapter shall be fined not more than \$10,000
7 for each separate offense. Any action taken to collect the
8 penalty provided for in this subsection shall be considered a
9 civil action and the fine shall be deposited into the state
10 general fund.

11 (b) The director may impose by order the administrative
12 penalty specified in this section, in addition to any other
13 administrative or judicial remedy provided by this part, or by
14 rules adopted pursuant to this chapter. Factors to be
15 considered in imposing the administrative penalty include:

16 (1) The nature and history of the violation;

17 (2) Any prior violation; and



1 (3) The opportunity, difficulty, and history of corrective
2 action.

3 For any judicial proceeding to recover the administrative
4 penalty imposed, the administrator need only show that notice
5 was given, a hearing was held or the time granted for requesting
6 a hearing has expired without such a request, the administrative
7 penalty was imposed, and the penalty remains unpaid.

8 §329- Injunctive relief. The administrator may
9 institute a civil action in any court of competent jurisdiction
10 for injunctive relief to prevent any violation of this chapter
11 or any rule adopted to implement this chapter. The court shall
12 have powers to grant relief in accordance with the Hawaii rules
13 of civil procedure."

14 SECTION 2. Section 329-1, Hawaii Revised Statutes, is
15 amended by adding two new definitions to be appropriately
16 inserted and to read as follows:

17 "Designated member of the health care team" includes
18 physician assistants, advanced practice registered nurses, and
19 covering physicians who are authorized under state law to
20 prescribe drugs.

21 "Physician-patient relationship" means the collaborative
22 relationship between physicians and their patients. To



1 establish this relationship, the treating physician or the
2 physician's designated member of the health care team, at a
3 minimum shall:

- 4 (1) Personally perform a face-to-face history and physical
5 examination of the patient that is appropriate to the
6 specialty training and experience of the physician or
7 the designated member of the physician's health care
8 team, make a diagnosis and formulate a therapeutic
9 plan, or personally treat a specific injury or
10 condition;
- 11 (2) Discuss with the patient the diagnosis or treatment,
12 including the benefits of other treatment options; and
- 13 (3) Ensure the availability of appropriate follow-up
14 care."

15 SECTION 3. Section 329-18, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) Depressants. Unless listed in another schedule, any
18 material, compound, mixture, or preparation containing any
19 quantity of the following substances having a depressant effect
20 on the central nervous system:

- 21 (1) Any compound, mixture, or preparation containing
22 amobarbital, secobarbital, pentobarbital, or any salt



- 1 thereof and one or more other active medicinal
2 ingredients which are not listed in any schedule;
- 3 (2) Any suppository dosage form containing amobarbital,
4 secobarbital, pentobarbital, or any salt of any of
5 these drugs and approved by the Food and Drug
6 Administration for marketing only as a suppository;
- 7 (3) Any substance that contains any quantity of a
8 derivative of barbituric acid or any salt thereof,
9 including the substance butalbital;
- 10 (4) Chlorhexadol;
- 11 (5) Embutramide (Tributame);
- 12 ~~(+5)~~ (6) Ketamine, its salts, isomers, and salts of
13 isomers, also known as (+ or -)-2-(2-chlorophenyl)-2-
14 (methylamino)-cyclohexanone;
- 15 ~~(+6)~~ (7) Lysergic acid;
- 16 ~~(+7)~~ (8) Lysergic acid amide;
- 17 ~~(+8)~~ (9) Methyprylon;
- 18 ~~(+9)~~ (10) Sulfondiethylmethane;
- 19 ~~(+10)~~ (11) Sulfonethylmethane;
- 20 ~~(+11)~~ (12) Sulfonmethane;



1 [~~(12)~~] (13) Tiletamine/Zolazepam (Telazol, 2-(ethylamino)-2-
2 (-thienyl)-cyclohexanone, flupyrzapon) or any salts
3 thereof; and

4 [~~(13)~~] (14) Gamma hydroxybutyric acid and its salts, isomers,
5 and salts of isomers that are contained in a drug
6 product for which an application has been approved
7 under section 505 of the federal Food, Drug, and
8 Cosmetic Act."

9 SECTION 4. Section 329-38, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (g) to read:

12 "(g) Prescriptions for controlled substances shall be
13 issued only as follows:

14 (1) All prescriptions for controlled substances shall
15 originate from within the [~~State~~] state and be dated
16 as of, and signed on, the day when the prescriptions
17 were issued and shall contain:

18 (A) The first and last name and address of the
19 patient; and

20 (B) The drug name, strength, dosage form, quantity
21 prescribed, and directions for use. Where a
22 prescription is for gamma hydroxybutyric acid,



1 methadone, or buprenorphine, the practitioner
2 shall record as part of the directions for use,
3 the medical need of the patient for the
4 prescription.

5 The controlled substance prescriptions shall be no
6 larger than eight and one-half inches by eleven inches
7 and no smaller than three inches by four inches.

8 A practitioner may sign a prescription in the same
9 manner as the practitioner would sign a check or legal
10 document (e.g., J.H. Smith or John H. Smith) and shall
11 use both words and figures (e.g., alphabetically and
12 numerically as indications of quantity, such as five
13 (5)), to indicate the amount of controlled substance
14 to be dispensed. Where an oral order is not permitted,
15 prescriptions shall be written with ink or indelible
16 pencil or typed, shall be manually signed by the
17 practitioner, and shall include the name, address,
18 telephone number, and registration number of the
19 practitioner. The prescriptions may be prepared by a
20 secretary or agent for the signature of the
21 practitioner, but the prescribing practitioner shall
22 be responsible in case the prescription does not



1 conform in all essential respects to this chapter and
2 any rules adopted pursuant to this chapter. In
3 receiving an oral prescription from a practitioner, a
4 pharmacist shall promptly reduce the oral prescription
5 to writing, which shall include the following
6 information: the drug name, strength, dosage form,
7 quantity prescribed in figures only, and directions
8 for use; the date the oral prescription was received;
9 the full name, DEA registration number, and oral code
10 number of the practitioner; and the name and address
11 of the person for whom the controlled substance was
12 prescribed or the name of the owner of the animal for
13 which the controlled substance was prescribed.

14 A corresponding liability shall rest upon a
15 pharmacist who fills a prescription not prepared in
16 the form prescribed by this section. A pharmacist may
17 add a patient's missing address or change a patient's
18 address on all controlled substance prescriptions
19 after verifying the patient's identification and
20 noting the identification number on the back of the
21 prescription. The pharmacist shall not make changes
22 to the patient's name, the controlled substance being



1 prescribed, the quantity of the prescription, the
2 practitioner's DEA number, or the practitioner's
3 signature;

4 (2) An intern, resident, or foreign-trained physician, or
5 a physician on the staff of a Department of Veterans
6 Affairs facility or other facility serving veterans,
7 exempted from registration under this chapter, shall
8 include on all prescriptions issued by the physician:

9 (A) The registration number of the hospital or other
10 institution; and

11 (B) The special internal code number assigned to the
12 physician by the hospital or other institution in
13 lieu of the registration number of the
14 practitioner required by this section.

15 The hospital or other institution shall forward a copy
16 of this special internal code number list to the
17 department as often as necessary to update the
18 department with any additions or deletions. Failure
19 to comply with this paragraph shall result in the
20 suspension of that facility's privilege to fill
21 controlled substance prescriptions at pharmacies
22 outside of the hospital or other institution. Each



1 written prescription shall have the name of the
2 physician stamped, typed, or hand-printed on it, as
3 well as the signature of the physician;

4 (3) An official exempted from registration shall include on
5 all prescriptions issued by the official:

6 (A) The official's branch of service or agency (e.g.,
7 "U.S. Army" or "Public Health Service"); and

8 (B) The official's service identification number, in
9 lieu of the registration number of the
10 practitioner required by this section. The
11 service identification number for a Public Health
12 Service employee shall be the employee's social
13 security or other government issued
14 identification number.

15 Each prescription shall have the name of the officer
16 stamped, typed, or handprinted on it, as well as the
17 signature of the officer; and

18 (4) A physician assistant registered to prescribe
19 controlled substances under the authorization of a
20 supervising physician shall include on all controlled
21 substance prescriptions issued:



1 (A) The DEA registration number of the supervising
2 physician; and

3 (B) The DEA registration number of the physician
4 assistant.

5 Each written controlled substance prescription issued
6 shall include the printed, stamped, typed, or hand-
7 printed name, address, and phone number of both the
8 supervising physician and physician assistant, and
9 shall be signed by the physician assistant. The
10 medical record of each written controlled substance
11 prescription issued by a physician assistant shall be
12 reviewed and initialed by the physician assistant's
13 supervising physician within seven working days."

14 2. By amending subsections (j), (k), (l), and (m) to read
15 as follows:

16 "(j) A prescription for a schedule II controlled substance
17 may be transmitted by the practitioner or the practitioner's
18 agent to a pharmacy by facsimile equipment; provided that the
19 original written, signed prescription is presented to the
20 pharmacist for review prior to the actual dispensing of the
21 controlled substance, except as noted in [subsection]
22 subsections (k), (l), [~~e~~] and (m). The original prescription



1 shall be maintained in accordance with section 329-36. A
2 prescription for a schedule III, IV, or V controlled substance
3 may be transmitted by the practitioner or the practitioner's
4 agent to a pharmacy by facsimile; provided that:

5 (1) The information shall be communicated only between the
6 prescribing practitioner or the prescriber's
7 authorized agent and the pharmacy of the patient's
8 choice[+]. The original prescription shall be
9 maintained by the practitioner in accordance with
10 section 329-36;

11 (2) The information shall be communicated in a
12 retrievable, recognizable format acceptable to the
13 intended recipient and shall include the physician's
14 oral code designation and the name of the recipient
15 pharmacy;

16 (3) No electronic system, software, or other intervening
17 mechanism or party shall alter the practitioner's
18 prescription, order entry, selection, or intended
19 selection without the practitioner's approval on a per
20 prescription per order basis. Facsimile prescription
21 information shall not be altered by any system,

1 software, or other intervening mechanism or party
2 prior to receipt by the intended pharmacy;

3 (4) The prescription information processing system shall
4 provide for confidentiality safeguards required by
5 federal or state law; and

6 (5) Prescribing practitioners and pharmacists shall
7 exercise prudent and professional judgment regarding
8 the accuracy, validity, and authenticity of any
9 facsimile prescription information. The facsimile
10 shall serve as the original written prescription for
11 purposes of this section and shall be maintained in
12 accordance with section 329-36.

13 (k) A prescription prepared in accordance with subsection
14 (g) written for a narcotic listed in schedule II to be
15 compounded for the direct administration to a patient by
16 parenteral, intravenous, intramuscular, subcutaneous, or
17 intraspinal infusion, but does not extend to the dispensing of
18 oral dosage units of controlled substances, may be transmitted
19 by the practitioner or the practitioner's agent to the pharmacy
20 by facsimile. The original prescription shall be maintained by
21 the practitioner in accordance with section 329-36. The
22 pharmacist shall note on the face of the facsimile prescription



1 in red ink "Home Infusion/IV" and this facsimile shall serve as
2 the original written prescription for purposes of this section
3 and it shall be maintained in accordance with section 329-36.

4 (l) A prescription prepared in accordance with subsection
5 (g) written for a schedule II substance for a patient enrolled
6 in a hospice care program certified or paid for by medicare
7 under Title XVIII or a hospice program that is licensed by the
8 State may be transmitted by the practitioner or the
9 practitioner's agent to the dispensing pharmacy by facsimile.
10 The original prescription shall be maintained by the
11 practitioner in accordance with section 329-36. The
12 practitioner or practitioner's agent shall note on the
13 prescription that the patient is a hospice patient. The
14 pharmacist shall note on the face of the facsimile prescription
15 in red ink "HOSPICE" and this facsimile shall serve as the
16 original written prescription for purposes of this section and
17 it shall be maintained in accordance with section 329-36.

18 (m) A prescription prepared in accordance with subsection
19 (g) written for a schedule II controlled substance for a
20 resident of a state-licensed long-term care facility may be
21 transmitted by the practitioner or the practitioner's agent to
22 the dispensing pharmacy by facsimile. The original prescription



1 shall be maintained by the practitioner in accordance with
2 section 329-36. The pharmacist shall note on the face of the
3 facsimile prescription in red ink "LTCF" and this facsimile
4 shall serve as the original written prescription for purposes of
5 this section and it shall be maintained in accordance with
6 section 329-36."

7 SECTION 5. Section 329-41, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§329-41 Prohibited acts B--penalties.** (a) It is unlawful
10 for any person:

11 (1) Who is subject to part III to distribute, administer,
12 prescribe, or dispense a controlled substance in
13 violation of section 329-38[+] or rules authorized
14 under section 329-31; however, a licensed manufacturer
15 or wholesaler may sell or dispense a controlled
16 substance to a master of a transpacific ship or a
17 person in charge of a transpacific aircraft upon which
18 no physician is regularly employed, for the actual
19 medical needs of persons on board such ship or
20 aircraft when not in port; provided schedule I or II
21 controlled substances shall be sold to the master of
22 such ship or person in charge of such aircraft only in



1 accordance with the provisions set forth in 21 Code of
2 Federal Regulations, Sections 1301, 1305, and 1307,
3 adopted pursuant to Title 21, United States Code,
4 Section 821;

5 (2) Who is a registrant to manufacture a controlled
6 substance not authorized by the registrant's
7 registration or to distribute or dispense a controlled
8 substance not authorized by the registrant's
9 registration to another registrant or another
10 authorized person;

11 (3) To refuse or fail to make available, keep, or furnish
12 any record, notification, order form, prescription,
13 statement, invoice, or information in patient charts
14 relating to the administration, dispensing, or
15 prescribing of controlled substances;

16 (4) To refuse any lawful entry into any premises for any
17 inspection authorized by this chapter;

18 (5) Knowingly to keep or maintain any store, shop,
19 warehouse, dwelling, building, vehicle, boat,
20 aircraft, or other structure or place for the purpose
21 of using these substances or which is used for keeping



1 or selling them in violation of this chapter or
2 chapter 712, part IV; [~~or~~]

3 (6) Who is a practitioner or pharmacist to dispense a
4 controlled substance to any individual not known to
5 the practitioner or pharmacist, without first
6 obtaining proper identification and documenting, by
7 signature on a log book kept by the practitioner or
8 pharmacist, the identity of and the type of
9 identification presented by the individual obtaining
10 the controlled substance. If the individual does not
11 have any form of proper identification, the pharmacist
12 shall verify the validity of the prescription and
13 identity of the patient with the prescriber, or their
14 authorized agent, before dispensing the controlled
15 substance. For the purpose of this section, "proper
16 identification" means government-issued identification
17 containing the photograph, printed name, and signature
18 of the individual obtaining the controlled
19 substance[-];

20 (7) Who is a practitioner to predate or pre-sign
21 prescriptions to facilitate the obtaining or attempted
22 obtaining of controlled substances; or



1 (8) Who is a practitioner to facilitate the issuance or
2 distribution of a written prescription or to issue an
3 oral prescription for a controlled substance when not
4 physically in the State.

5 (b) It shall be unlawful for any person subject to part
6 III of this chapter except a pharmacist, to administer,
7 prescribe, or dispense any controlled substance without a bona
8 fide physician-patient relationship.

9 ~~[(b)]~~ (c) Any person who violates this section is guilty
10 of a class C felony."

11 SECTION 6. Section 329-42, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) It is unlawful for any person knowingly or
14 intentionally:

15 (1) To distribute as a registrant a controlled substance
16 classified in schedule I or II, except pursuant to an
17 order form as required by section 329-37;

18 (2) To use in the course of the manufacture ~~or~~,
19 distribution, administration, or prescribing of a
20 controlled substance a registration number that is
21 fictitious, revoked, suspended, expired, or issued to
22 another person;

- 1 (3) To obtain or attempt to obtain any controlled
2 substance or procure or attempt to procure the
3 administration of any controlled substance:
4 (A) By fraud, deceit, misrepresentation,
5 embezzlement, theft;
6 (B) By the forgery or alteration of a prescription or
7 of any written order;
8 (C) By furnishing fraudulent medical information or
9 the concealment of a material fact;
10 (D) By the use of a false name, patient
11 identification number, or the giving of false
12 address;
13 (E) By the unauthorized use of a physician's oral
14 call-in number; or
15 (F) By the alteration of a prescription by the
16 addition of future refills;
- 17 (4) To furnish false or fraudulent material information
18 in, or omit any material information from, any
19 application, report, or other document required to be
20 kept or filed under this chapter, or any record
21 required to be kept by this chapter;



- 1 (5) To make, distribute, or possess any punch, die, plate,
2 stone, or other thing designed to print, imprint, or
3 reproduce the trademark, trade name, or other
4 identifying mark, imprint, or device of another or any
5 likeness of any of the foregoing upon any drug or
6 container or labeling thereof so as to render the drug
7 a counterfeit substance;
- 8 (6) To misapply or divert to the person's own use or other
9 unauthorized or illegal use or to take, make away
10 with, or secrete, with intent to misapply or divert to
11 the person's own use or other unauthorized or illegal
12 use, any controlled substance that shall have come
13 into the person's possession or under the person's
14 care as a registrant or as an employee of a registrant
15 who is authorized to possess controlled substances or
16 has access to controlled substances by virtue of the
17 person's employment; or
- 18 (7) To make, distribute, possess, or sell any prescription
19 form, whether blank, faxed, computer generated,
20 photocopied, or reproduced in any other manner without
21 the authorization of the licensed practitioner."



1 SECTION 7. Section 329-101, Hawaii Revised Statutes, is
2 amended by amending subsection (f) to read as follows:

3 "(f) Intentional or knowing failure to transmit any
4 information as required by this section shall be a
5 misdemeanor[+] and shall result in the immediate suspension of
6 that pharmacy or practitioner's ability to dispense controlled
7 substance in the state until authorized by the administrator."

8 SECTION 8. Section 329-102, Hawaii Revised Statutes, is
amended by amending subsection (f) to read as follows:

10 "(f) All prescriptions for [~~schedule~~] controlled substances
11 in schedules II through V and other controlled substances
12 designated by the designated state agency that are processed by an
13 out-of-state pharmacy shall conform to reporting and registration
14 requirements adopted by the State, and to any additional rules the
15 department adopts."

16 SECTION 9. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 10. This Act shall take effect on July 1, 2008.

APPROVED this 17 day of JUN, 2008

GOVERNOR OF THE STATE OF HAWAII

