

CHAPTER 17

S.B. No. 137

An Act relating to the procedure for filing triplicate prescription forms for certain prescriptions, the information required on triplicate prescriptions for controlled substances, the circumstances under which unused prescription forms must be returned to the Department of Public Safety, the period for which patient information is retained, and the expiration date of the triplicate prescription provisions; amending the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), by amending Section 3.08 and Subsections (a), (c), (f), and (j), Section 3.09; and by repealing Subsection (l), Section 3.09; and repealing Sections 9 and 29, Chapter 570, Acts of 67th Legislature, Regular Session, 1981, and Section 29, Chapter 425, Acts of the 68th Legislature, Regular Session, 1983.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 3.08, Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.08. PRESCRIPTIONS. (a) No controlled substance in Schedule II may be dispensed or administered without the written prescription of a practitioner on a form that meets the requirements of and is filled in by the practitioner in accordance with Section 3.09 of this Act, except that:

"(1) in emergency situations, as defined by rule of the director, Schedule II *controlled substances* [~~drugs~~] may be dispensed or administered upon *the* oral or telephonically communicated prescription of a practitioner, reduced promptly to writing by the pharmacy or, [(in the case of an emergency authorization to administer,)] the person administering the Schedule II *controlled substance* [~~drug~~], *who* [~~which~~] shall include in the written record of the oral or telephonically communicated prescription the name, address, and Federal Drug Enforcement Administration number of the prescribing practitioner, all information required to be provided by the practitioner under Subsection (c) of Section 3.09 of this Act, and all information required to be provided by the dispensing pharmacist under Subsection (e) of Section 3.09 of this Act and shall send a copy of the written record to the Department of Public Safety within 30 days from the date the prescription is filled; and

"(2) a *medication order* [~~prescription~~] written for a patient who is admitted to a hospital at the time the *medication order* [~~prescription~~] is written and filled is not required to be on a form that meets the requirements of Section 3.09 of this Act, and the provisions of Section 3.09 of this Act *do not apply to those medication orders* [~~are not applicable to such prescriptions~~]. [~~No prescription for a Schedule II substance may be refilled.~~]

"(b) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, shall not be dispensed without a written, oral, or telephonically communicated prescription of a practitioner. A prescription for a Schedule III or IV drug shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

"(c) A telephonically communicated prescription of a practitioner under this subchapter may be communicated only by the practitioner or by an agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone. Such telephonically communicated prescriptions shall be reduced promptly to writing by the pharmacy and filed and retained in conformity with this subchapter. The written designation of an agent authorized to communi-

cate prescriptions shall be maintained in the usual place of business of the practitioner and shall be available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Department of Public Safety.

“(d) *Not later than 72 hours after authorizing an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause a written prescription, completed in accordance with Section 3.09 of this Act, to be delivered to the dispensing pharmacy. The written prescription may be delivered to the pharmacy in person or by mail. If the prescription is delivered by mail, the envelope must be postmarked during the 72-hour period after the prescription was authorized. On receipt of the prescription, the dispensing pharmacy shall file the transcription of the telephonically communicated prescription, written under Subsection (c) of this section, and the pharmacy copy. The pharmacy shall send to the Department of Public Safety the department’s copy not later than the 30th day after the date the prescription was filled.*

“(e) Upon request from a pharmacist, the practitioner shall furnish a copy of the ~~such~~ written designation of an agent authorized under Subsection (c) of this section to communicate prescriptions on behalf of the ~~such~~ practitioner. Nothing herein shall be construed as to relieve such a practitioner or his designated agent from the requirements of Section 40 of the Texas Pharmacy Act (Article 4542a-1, Vernon’s Texas Civil Statutes), and the ~~such~~ practitioner shall be personally responsible for the actions of the ~~for such~~ designated agent in communicating prescriptions to a pharmacist.

“(f) ~~(e)~~ A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07, of this Act, may not be dispensed without the prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner other than a pharmacy, and a prescription for the substances may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

“(g) A ~~(f) No~~ prescription for a Schedule II controlled substance may not ~~narcoctic drugs shall~~ be filled after the end of the second day following the day on which the prescription was issued. A prescription for a Schedule II controlled substance may not be refilled.

“(h) ~~(g)~~ A practitioner, as defined by Section 1.02(24)(A) of this Act, may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under his direction and supervision except for a valid medical purpose and in the course of professional practice.

“(i) ~~(h)~~ No person may administer or dispense a controlled substance in Schedule I, except as otherwise authorized by this Act.”

SECTION 2. Section 3.09, Texas Controlled Substances Act (Article 4476-15, Vernon’s Texas Civil Statutes), is amended by amending Subsections (a), (c), (f), and (j) and repealing Subsection (l) to read as follows:

“(a) Except as otherwise provided in Subsection (a) of Section 3.08 of this Act, each prescription for a controlled substance in Schedule II must be recorded on a prescription form that meets the requirements of Subsection (b) of this section and that is issued to practitioners at cost by the Department of Public Safety. No more than one such prescription shall be recorded on each form. Before delivering forms to a practitioner, the department shall print on the forms the name, address, *valid Department of Public Safety registration number*, and *valid Federal Drug Enforcement Administration [federal drug enforcement administration]* number of the practitioner.”

“(c) Except for oral prescriptions prescribed under Subsection (a) of Section 3.08 of this Act, the prescribing practitioner shall:

“(1) *legibly fill in, or direct a designated agent to legibly fill in*, on all three copies of the form in the space provided:

“(A) the date the prescription is written;

“(B) the drug prescribed, the dosage, and instructions for use; and

“(C) the name, address, and age of the patient (or, in the case of an animal, its owner) for whom the controlled substance is prescribed;

“(2) sign copies 1 and 2 of the form and give them to the person authorized to receive the prescription; and

“(3) retain Copy 3 of the form with his records for a period of not less than two years from the date the prescription is written.”

“(f) *Not later than the seventh day after the date a practitioner’s Department of Public Safety registration number, Federal Drug Enforcement Administration number, or license to practice has been suspended, canceled, denied, surrendered, or revoked, the practitioner shall return to the*

department all forms in the practitioner's possession that are issued under Subsection (a) of this section and have not been used for prescriptions. [A practitioner in possession of prescription forms issued under Subsection (a) of Section 3.09 of this Act whose license to practice or federal drug enforcement administration number is suspended or revoked shall within seven days after the suspension or revocation becomes effective return to the department all of such forms which have not been used to issue prescriptions.]"

"(j) Each identity of a patient [an individual] which is submitted to the Department of Public Safety pursuant to this section shall be removed from the system for retrieval of such information and shall be destroyed and rendered irretrievable not later than the end of the 12th [sixth] calendar month following the month in which the [such] identity was entered into the system for retrieval [submitted to the department]; provided that the patient [an individual] identity which is necessary for use in a specific ongoing investigation conducted in accordance with this section may be retained in the system until the end of the month in which the necessity for retention of the [such] identity ends. The department shall issue a report *semiannually, based on the state fiscal year, [at least quarterly]* to the Legislative Budget Board certifying that the provisions of this subsection have been complied with and setting forth in detail the results of monthly audits showing that identities have been removed from the system and rendered irretrievable in compliance with this subsection. Failure to comply with any provision of this subsection shall be corrected as soon as practicable after discovery, and any person responsible for failure to comply with this subsection shall be subject to disciplinary action for such failure, including but not limited to dismissal."

"[(4) On or before September 1, 1984, the Texas State Board of Medical Examiners, the Texas State Board of Podiatry Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the State Board of Pharmacy, and the Department of Public Safety shall jointly submit a public report to the attorney general on the effectiveness of the triplicate program. Such report shall include, for each of the years 1982 and 1983, and for the first six-month period of 1984:

"[(1) the number of triplicate blanks issued;

"[(2) the number of lost or stolen triplicate blanks;

"[(3) the number of indictments, convictions, and peer review proceedings attributable to the triplicate program;

"[(4) the cost of administering the program; and

"[(5) such other information as the reporting agencies shall deem appropriate.]"

SECTION 3. Section 9, Chapter 570, Acts of the 67th Legislature, Regular Session, 1981, and Section 29, Chapter 425, Acts of the 68th Legislature, Regular Session, 1983, are repealed.

SECTION 4. The Department of Public Safety shall issue the first report required to be filed after the effective date of this Act by Subsection (j), Section 3.09, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), on the basis of the first half of the fiscal year 1985-1986.

SECTION 5. This Act takes effect September 1, 1985, and applies to prescriptions written on or after that date. A prescription written before that date is subject to the law in effect when the prescription was written, and the former law is continued in effect for that purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on February 4, 1985, by a viva-voce vote; passed the House on March 21, 1985, by a non-record vote.

Approved: April 3, 1985

Effective: August 26, 1985