

HEALTH AND SAFETY CODE CHAPTER 466. REGULATION OF NARCOTIC DRUG
TREATMENT PROGRAMS

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS

CHAPTER 466. REGULATION OF NARCOTIC DRUG TREATMENT PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 466.001. LEGISLATIVE INTENT. (a) It is the intent of the legislature that the department exercise its administrative powers and regulatory authority to ensure the proper use of approved narcotic drugs in the treatment of narcotic dependent persons.

(b) Treatment of narcotic addiction by permitted treatment programs is recognized as a specialty chemical dependency treatment area using the medical model.

(c) Short-term goals should have an emphasis of personal and public health, crime prevention, reintegration of narcotic addicted persons into the public work force, and social and medical stabilization. Narcotic treatment programs are an important component of the state's effort to prevent the further proliferation of the AIDS virus. Total drug abstinence is recognized as a long-term goal of treatment, subject to medical determination of the medical appropriateness and prognosis of the narcotic addicted person.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.12, eff. Sept. 1, 1999.

Sec. 466.002. DEFINITIONS. In this chapter:

(1) "Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance or detoxification of a person physiologically addicted to the opiate class of drugs.

(2) "Authorized agent" means an employee of the department who is designated by the commissioner to enforce this chapter.

(3) "Board" means the Texas Board of Health.

(4) "Commissioner" means the commissioner of public health.

(5) "Department" means the Texas Department of Health.

(6) "Facility" includes a medical office, an outpatient clinic, a general or special hospital, a community mental health center, and any other location in which a structured narcotic dependency program is conducted.

(7) "Narcotic drug" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.13, eff. Sept. 1, 1999.

Sec. 466.003. EXCLUSION OF COCAINE. Cocaine is excluded for the purpose of this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.004. POWERS AND DUTIES OF BOARD AND DEPARTMENT.

(a) The board shall adopt and the department shall administer and enforce rules to ensure the proper use of approved narcotic drugs in the treatment of narcotic drug-dependent persons, including rules that:

(1) require an applicant or a permit holder to make annual, periodic, and special reports that the department determines are necessary;

(2) require an applicant or permit holder to keep records that the department determines are necessary;

(3) provide for investigations that the department determines are necessary; and

(4) provide for the coordination of the approval of narcotic drug treatment programs by the United States Food and Drug Administration and the United States Drug Enforcement Administration.

(b) The board shall adopt rules for the issuance of permits to operate narcotic drug treatment programs including rules:

(1) governing the submission and review of applications;

(2) establishing the criteria for the issuance and renewal of permits; and

(3) establishing the criteria for the suspension and revocation of permits.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.14, eff. Sept. 1, 1999.

SUBCHAPTER B. PERMIT

Sec. 466.021. PERMIT REQUIRED. A person may not operate a narcotic drug treatment program unless the person has a permit issued under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe, order, or administer a narcotic drug for the purpose of treating drug dependency unless the physician prescribes, orders, or administers an approved narcotic drug for the maintenance or detoxification of drug-dependent persons as part of a program permitted by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.15, eff. Sept. 1, 1999.

Sec. 466.023. APPLICATION FOR PERMIT; FEES. (a) The department shall issue a permit to an applicant who qualifies under rules and standards adopted by the board.

(b) A permit issued under this section is valid until suspended or revoked by the department or surrendered by the permit holder in accordance with board rules.

(c) A person must obtain a permit for each facility that the person operates.

(d) A permit issued by the department is not transferable

from one facility to another facility and must be returned to the department if the permit holder sells or otherwise conveys the facility to another person.

(e) The board by rule shall establish and collect a nonrefundable application fee to defray the cost to the department of processing each application for a permit. The application fee must be submitted with the application. An application may not be considered unless the application is accompanied by the application fee.

(f) The board shall adopt rules that set permit fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

(1) amend permits;

(2) inspect facilities operated by permit holders;

and

(3) implement and enforce this chapter.

(g) Fees collected by the department shall be deposited in the state treasury to the credit of the narcotic treatment permitting fee fund.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.024. PERMIT LIMITATIONS. (a) The department may issue a permit to:

(1) a person constituting a legal entity organized and operating under the laws of this state; or

(2) a physician.

(b) The department may issue a permit to a person other than a physician only if the person provides health care services under the supervision of one or more physicians licensed by the Texas State Board of Medical Examiners.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.025. INSPECTION. (a) An authorized agent may enter the facility of a person who is an applicant for a permit or

who is a permit holder during any hours in which the facility is in operation for the purpose of inspecting the facility to determine:

(1) if the person meets the standards set in the rules of the board for the issuance of a permit; or

(2) if a person who holds a permit is in compliance with this chapter, the standards set in the rules of the board for the operation of a facility, any special provisions contained in the permit, or an order of the commissioner or the department.

(b) The inspection may be conducted without prior notice to the applicant or the permit holder.

(c) The authorized agent shall provide the applicant or permit holder with a copy of the inspection report. An inspection report shall be made a part of the applicant's submission file or the permit holder's compliance record.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The department shall work with representatives from permitted narcotic treatment programs in this state to develop recommendations for a plan to prevent the simultaneous multiple enrollment of persons in narcotic treatment programs. The board may adopt rules to implement these recommendations.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.027. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT.

(a) After notice to an applicant or a permit holder and after the opportunity for a hearing, the department may:

(1) deny an application of the person if the person fails to comply with this chapter or the rules establishing minimum standards for the issuance of a permit adopted under this chapter; or

(2) suspend or revoke the permit of a person who has violated this chapter, an order issued under this chapter, or a minimum standard required for the issuance of a permit.

(b) The board may adopt rules that establish the criteria

for the denial, suspension, or revocation of a permit.

(c) Hearings, appeals from, and judicial review of final administrative decisions under this section shall be conducted according to the contested case provisions of Chapter 2001, Government Code and the board's formal hearing rules.

(d) This section does not prevent the informal reconsideration of a case before the setting of a hearing or before the issuance of the final administrative decision under this section. The program rules must contain provisions establishing the procedures for the initiation and conduct of the informal reconsideration by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER C. ENFORCEMENT

Sec. 466.041. EMERGENCY ORDERS. (a) The commissioner or the commissioner's designee may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a permitted facility or the treatment of patients by the facility staff, in the department's jurisdiction. The order may be issued if the commissioner or the commissioner's designee determines that the treatment of patients by the staff of the permit holder creates or poses an immediate and serious threat to human life or health and other procedures available to the department to remedy or prevent the occurrence of the situation will result in an unreasonable delay.

(b) The commissioner or the commissioner's designee may issue the emergency order, including an emergency order suspending or revoking a permit issued by the department, without notice and hearing, if the commissioner or the commissioner's designee determines that action to be practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code and the board's formal hearing rules.

(d) If an emergency order is issued to suspend or revoke the permit, the department shall ensure that treatment services for the patients are maintained at the same location until appropriate referrals to an alternate treatment program are made.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 466.042. INJUNCTION. (a) The commissioner, the commissioner's designee, or an authorized agent may request the attorney general or a district, county, or municipal attorney to petition the district court for a temporary restraining order to restrain:

(1) a continuing violation of this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter; or

(2) a threat of a continuing violation of this chapter, a rule, or an order or permit.

(b) To request a temporary restraining order, the commissioner, commissioner's designee, or an authorized agent must find that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter and:

(1) the violation or threatened violation creates an immediate threat to the health and safety of the public; or

(2) there is reasonable cause to believe that the permit holder or the staff of the permit holder is party to the diversion of a narcotic drug or drugs in violation of Chapter 481 (Texas Controlled Substances Act).

(c) On finding by the court that a person is violating or threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the court shall grant the injunctive relief warranted by the facts.

(d) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1,

1991.

Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the commissioner may assess an administrative penalty against the person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.044. CRIMINAL PENALTY. (a) A person commits an offense if the person operates a narcotic drug treatment program without a permit issued by the department.

(b) An offense under this section is a Class A misdemeanor.
Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.045. CIVIL PENALTY. (a) If it appears that a person has violated this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the commissioner may request the attorney general or the district, county, or municipal attorney of the municipality or county in which the violation occurred to institute a civil suit for the assessment and recovery of a civil penalty.

(b) The penalty may be in an amount not to exceed \$10,000 for each violation.

(c) In determining the amount of the penalty, the court shall consider:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;

and

- (4) the demonstrated good faith of the person charged.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the General Revenue Fund. A civil penalty recovered in a suit instituted by a local government under this

chapter shall be paid to the local government.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.