H-1630.1

HOUSE BILL 2106

State of Washington 55th Legislature 1997 Regular Session

By Representative Dyer

Read first time 02/20/97. Referred to Committee on Health Care.

AN ACT Relating to vision care; amending RCW 18.53.010, 69.41.030, and 69.50.101; and adding a new section to chapter 18.130 RCW.

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

Sec. 1. RCW 18.53.010 and 1989 c 36 s 1 are each amended to read as follows:

(1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method including the use of drugs ((~~topically applied to the eye~~)) related to optometry for diagnostic ((~~and~~)) or therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The practice of optometry does not include surgery as defined by the secretary of health, in consultation with, pursuant to the processes of, and in consideration of the findings of the vision care clinical technology committee; and

(c) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

((~~(c)~~)) (d) The prescription and provision of visual therapy, therapeutic aids and other optical devices, and the treatment with ((~~topically applied~~)) drugs by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section; and

((~~(d)~~)) (e) The ascertainment of the perceptive, neural, muscular or pathological condition of the visual system; and

((~~(e)~~)) (f) The adaptation of prosthetic eyes.

(2) Those persons certified by the board for advanced optometric practice for using drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, and for administering topically applied drugs for therapeutic purposes, an additional minimum of seventy-five hours of didactic and clinical instruction, and for administering or prescribing for therapeutic purposes oral, injectable, or other recognized methods of using or prescribing drugs, an additional twenty hours of didactic and clinical instruction, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for diagnostic and therapeutic purposes. Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(3) The board shall establish a schedule of drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board. Drugs included on the schedule shall be limited to analgesics for pain management, antibiotics for systemic disease, and drugs listed in Schedules III through V of the uniform controlled substances act to be administered orally. No drugs listed

in Schedule I of the uniform controlled substances act may be included on the schedule, including steroids. Drugs listed in Schedule II that are included in the schedule must be approved by the secretary of health, in consultation with and pursuant to the processes of the vision care clinical technology advisory committee.

(4) The board shall develop a means of identification and verification of optometrists certified for advanced optometric practice to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section.

(5)(a) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs necessary to treat diseases or conditions of the eye that are within the practice of optometry. The prescription or administration of drugs for any other purpose is not authorized.

(b) The commission shall provide specific guidelines by rule so that licensed optometrists and persons filling their prescriptions have a clear understanding of which drugs and dosage forms are included in this authorization.

(c) No optometrist shall prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition.

(d) Drugs listed in Schedule II of the uniform controlled substances act and administered by injection by a certified optometrist must be administered pursuant to a practice protocol with a sponsoring board-certified ophthalmologist licensed to practice medicine in this state. The protocol must be in writing, signed by the certified optometrist and ophthalmologist, and filed with the secretary of health, the board, and the medical quality assurance commission.

NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130 RCW to read as follows:

(1) It is the intent of the legislature to establish a formal process under which questions involving new technological developments relating to the practice of vision care by licensed optometrists and board-certified ophthalmologists may be reviewed in an objective setting, supported with structured staffing and informational resources, among representatives of those professions whose recognized expertise and clinical experience can summon the requisite facts, reasoning, and analysis necessary for a discourse on practice issues

that may from time to time be submitted to them for consideration. The establishment of the vision care clinical technology committee within the department of health is the most appropriate forum for a dialogue to flourish among vision care professionals from specialized disciplines, whose findings and recommendations can form the basis for resolving clinical practice issues of interest to policy makers in the development of sound policies affecting the practice of vision care consistent with the health, safety, and welfare of the public.

(2) A vision care clinical technology committee is established within the department of health which shall meet at the request of the secretary of health, or on the call of the secretary upon a joint request from the chairs of the board of optometry and medical quality assurance commission, to review questions involving clinical practice raised by new technological developments in the field of vision care, related to regulatory issues involving scope of practice parameters or other issues of mutual concern. The committee may make findings, issue opinions, and make recommendations, in an advisory capacity, to the board of optometry, the medical quality assurance commission, the secretary, appropriate standing committees of the senate and house of representatives, or other governmental entities, professional associations, or parties of interest.

(3) The members of the committee shall be appointed by the secretary who shall consider those individuals, recognized in their profession with the requisite education, knowledge, and clinical experience, who are recommended for appointment by the appropriate professional associations. The members shall serve for terms of two years or until their successors are appointed. The committee shall be constituted with three board-certified ophthalmologists licensed to practice medicine in this state; three optometrists licensed to practice optometry in this state; and the secretary, who shall preside as chair of the committee without a vote representing the public interest by virtue of the office. The secretary may appoint, on an ad hoc basis and without a vote, other health professionals with recognized knowledge and experience when a question involving the expertise of other health disciplines is necessary for an informed dialogue. In the case of a vacancy, the secretary shall appoint a member to serve for the remainder of the unexpired term. The members shall serve without compensation, but may be reimbursed for travel and per diem expenses authorized in RCW 43.03.050 and 43.03.060.

(4) The committee may invite the participation of any person or organization and hold public hearings on matters related to their authority. Meetings of the committee are open to the public pursuant to law.

Sec. 3. RCW 69.41.030 and 1996 c 178 s 17 are each amended to read as follows:

It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified for advanced practice under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering,

possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

Sec. 4. RCW 69.50.101 and 1996 c 178 s 18 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner’s administering or dispensing of a controlled substance in the course of the practitioner’s professional practice; or

(2) by a practitioner, or by the practitioner’s authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers,

whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified for advanced practice under RCW 18.53.010, subject to any

limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

--- END ---