

SHB 1164 - H AMD 122

By Representative Kessler

ADOPTED 03/14/2003

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

27 (e) The adaptation of prosthetic eyes.

28 (2)(a) Those persons using topical drugs for diagnostic purposes in
29 the practice of optometry shall have a minimum of sixty hours of

1 didactic and clinical instruction in general and ocular pharmacology as
2 applied to optometry, (~~and for therapeutic purposes, an additional~~
3 ~~minimum of seventy five hours of didactic and clinical instruction~~)) as
4 established by the board, and certification from an institution of
5 higher learning, accredited by those agencies recognized by the United
6 States office of education or the council on postsecondary
7 accreditation to qualify for certification by the optometry board of
8 Washington to use drugs for diagnostic (~~and therapeutic~~) purposes.

9 (b) Those persons using or prescribing topical drugs for
10 therapeutic purposes in the practice of optometry must be certified
11 under (a) of this subsection, and must have an additional minimum of
12 seventy-five hours of didactic and clinical instruction as established
13 by the board, and certification from an institution of higher learning,
14 accredited by those agencies recognized by the United States office of
15 education or the council on postsecondary accreditation to qualify for
16 certification by the optometry board of Washington to use drugs for
17 therapeutic purposes.

18 (c) Those persons using or prescribing drugs administered orally
19 for diagnostic or therapeutic purposes in the practice of optometry
20 shall be certified under (b) of this subsection, and shall have an
21 additional minimum of sixteen hours of didactic and eight hours of
22 supervised clinical instruction as established by the board, and
23 certification from an institution of higher learning, accredited by
24 those agencies recognized by the United States office of education or
25 the council on postsecondary accreditation to qualify for certification
26 by the optometry board of Washington to administer, dispense, or
27 prescribe oral drugs for diagnostic or therapeutic purposes.

28 (d) Those persons administering epinephrine by injection for
29 treatment of anaphylactic shock in the practice of optometry must be
30 certified under (b) of this subsection and must have an additional
31 minimum of four hours of didactic and supervised clinical instruction,
32 as established by the board, and certification from an institution of
33 higher learning, accredited by those agencies recognized by the United
34 States office of education or the council on postsecondary
35 accreditation to qualify for certification by the optometry board to
36 administer epinephrine by injection.

37 (e) Such course or courses shall be the fiscal responsibility of
38 the participating and attending optometrist.

1 (3) The board shall establish a (~~schedule~~) list of topical drugs
2 for diagnostic and treatment purposes limited to the practice of
3 optometry, and no person licensed pursuant to this chapter shall
4 prescribe, dispense, purchase, possess, or administer drugs except as
5 authorized and to the extent permitted by the board.

6 (4) The board must establish a list of oral Schedule III through V
7 controlled substances and any oral legend drugs, with the approval of
8 and after consultation with the board of pharmacy. No person licensed
9 under this chapter may use, prescribe, dispense, purchase, possess, or
10 administer these drugs except as authorized and to the extent permitted
11 by the board. No optometrist may use, prescribe, dispense, or
12 administer oral corticosteroids.

13 (a) The board, with the approval of and in consultation with the
14 board of pharmacy, must establish, by rule, specific guidelines for the
15 prescription and administration of drugs by optometrists, so that
16 licensed optometrists and persons filling their prescriptions have a
17 clear understanding of which drugs and which dosages or forms are
18 included in the authority granted by this section.

19 (b) An optometrist may not:

20 (i) Prescribe, dispense, or administer a controlled substance for
21 more than seven days in treating a particular patient for a single
22 trauma, episode, or condition or for pain associated with or related to
23 the trauma, episode, or condition; or

24 (ii) Prescribe an oral drug within ninety days following ophthalmic
25 surgery unless the optometrist consults with the treating
26 ophthalmologist.

27 (c) If treatment exceeding the limitation in (b)(i) of this
28 subsection is indicated, the patient must be referred to a physician
29 licensed under chapter 18.71 RCW.

30 (d) The prescription or administration of drugs as authorized in
31 this section is specifically limited to those drugs appropriate to
32 treatment of diseases or conditions of the human eye and the adnexa
33 that are within the scope of practice of optometry. The prescription
34 or administration of drugs for any other purpose is not authorized by
35 this section.

36 (5) The board shall develop a means of identification and
37 verification of optometrists certified to use therapeutic drugs for the
38 purpose of issuing prescriptions as authorized by this section.

1 (6) Nothing in this chapter may be construed to authorize the use,
2 prescription, dispensing, purchase, possession, or administration of
3 any Schedule I or II controlled substance. The provisions of this
4 subsection must be strictly construed.

5 (7) With the exception of the administration of epinephrine by
6 injection for the treatment of anaphylactic shock, no injections or
7 infusions may be administered by an optometrist.

8 (8) Nothing in this chapter may be construed to authorize
9 optometrists to perform ophthalmic surgery. Ophthalmic surgery is
10 defined as any invasive procedure in which human tissue is cut,
11 ablated, or otherwise penetrated by incision, injection, laser,
12 ultrasound, or other means, in order to: Treat human eye diseases;
13 alter or correct refractive error; or alter or enhance cosmetic
14 appearance. Nothing in this chapter limits an optometrist's ability to
15 use diagnostic instruments utilizing laser or ultrasound technology.
16 Ophthalmic surgery, as defined in this subsection, does not include
17 removal of superficial ocular foreign bodies, epilation of misaligned
18 eyelashes, placement of punctal or lacrimal plugs, diagnostic dilation
19 and irrigation of the lacrimal system, orthokeratology, prescription
20 and fitting of contact lenses with the purpose of altering refractive
21 error, or other similar procedures within the scope of practice of
22 optometry.

23 **Sec. 2.** RCW 18.53.140 and 1991 c 3 s 138 are each amended to read
24 as follows:

25 It shall be unlawful for any person:

26 (1) To sell or barter, or offer to sell or barter any license
27 issued by the secretary; or

28 (2) To purchase or procure by barter any license with the intent to
29 use the same as evidence of the holder's qualification to practice
30 optometry; or

31 (3) To alter with fraudulent intent in any material regard such
32 license; or

33 (4) To use or attempt to use any such license which has been
34 purchased, fraudulently issued, counterfeited or materially altered as
35 a valid license; or

36 (5) To practice optometry under a false or assumed name, or as a
37 representative or agent of any person, firm or corporation with which

1 the licensee has no connection: PROVIDED, Nothing in this chapter nor
2 in the optometry law shall make it unlawful for any lawfully licensed
3 optometrist or association of lawfully licensed optometrists to
4 practice optometry under the name of any lawfully licensed optometrist
5 who may transfer by inheritance or otherwise the right to use such
6 name; or

7 (6) To practice optometry in this state either for him or herself
8 or any other individual, corporation, partnership, group, public or
9 private entity, or any member of the licensed healing arts without
10 having at the time of so doing a valid license issued by the secretary
11 of health; or

12 (7) To in any manner barter or give away as premiums either on his
13 or her own account or as agent or representative for any other purpose,
14 firm or corporation, any eyeglasses, spectacles, lenses or frames; or

15 (8) To use drugs in the practice of optometry, except ((~~those~~
16 ~~topically applied for diagnostic or therapeutic purposes~~)) as
17 authorized under RCW 18.53.010; or

18 (9) To use advertising whether printed, radio, display, or of any
19 other nature, which is misleading or inaccurate in any material
20 particular, nor shall any such person in any way misrepresent any goods
21 or services (including but without limitation, its use, trademark,
22 grade, quality, size, origin, substance, character, nature, finish,
23 material, content, or preparation) or credit terms, values, policies,
24 services, or the nature or form of the business conducted; or

25 (10) To advertise the "free examination of eyes," "free
26 consultation," "consultation without obligation," "free advice," or any
27 words or phrases of similar import which convey the impression to the
28 public that eyes are examined free or of a character tending to deceive
29 or mislead the public, or in the nature of "bait advertising;" or

30 (11) To use an advertisement of a frame or mounting which is not
31 truthful in describing the frame or mounting and all its component
32 parts. Or advertise a frame or mounting at a price, unless it shall be
33 depicted in the advertisement without lenses inserted, and in addition
34 the advertisement must contain a statement immediately following, or
35 adjacent to the advertised price, that the price is for frame or
36 mounting only, and does not include lenses, eye examination and
37 professional services, which statement shall appear in type as large as

1 that used for the price, or advertise lenses or complete glasses, viz.:
2 frame or mounting with lenses included, at a price either alone or in
3 conjunction with professional services; or

4 (12) To use advertising, whether printed, radio, display, or of any
5 other nature, which inaccurately lays claim to a policy or continuing
6 practice of generally underselling competitors; or

7 (13) To use advertising, whether printed, radio, display or of any
8 other nature which refers inaccurately in any material particular to
9 any competitors or their goods, prices, values, credit terms, policies
10 or services; or

11 (14) To use advertising whether printed, radio, display, or of any
12 other nature, which states any definite amount of money as "down
13 payment" and any definite amount of money as a subsequent payment, be
14 it daily, weekly, monthly, or at the end of any period of time.

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

17 It shall be unlawful for any person to sell, deliver, or possess
18 any legend drug except upon the order or prescription of a physician
19 under chapter 18.71 RCW, an osteopathic physician and surgeon under
20 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who
21 is certified by the optometry board under RCW 18.53.010, a dentist
22 under chapter 18.32 RCW, a podiatric physician and surgeon under
23 chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a
24 commissioned medical or dental officer in the United States armed
25 forces or public health service in the discharge of his or her official
26 duties, a duly licensed physician or dentist employed by the veterans
27 administration in the discharge of his or her official duties, a
28 registered nurse or advanced registered nurse practitioner under
29 chapter 18.79 RCW when authorized by the nursing care quality assurance
30 commission, an osteopathic physician assistant under chapter 18.57A RCW
31 when authorized by the board of osteopathic medicine and surgery, a
32 physician assistant under chapter 18.71A RCW when authorized by the
33 medical quality assurance commission, a physician licensed to practice
34 medicine and surgery or a physician licensed to practice osteopathic
35 medicine and surgery, a dentist licensed to practice dentistry, a
36 podiatric physician and surgeon licensed to practice podiatric medicine
37 and surgery, or a veterinarian licensed to practice veterinary

1 medicine, in any province of Canada which shares a common border with
2 the state of Washington or in any state of the United States:
3 PROVIDED, HOWEVER, That the above provisions shall not apply to sale,
4 delivery, or possession by drug wholesalers or drug manufacturers, or
5 their agents or employees, or to any practitioner acting within the
6 scope of his or her license, or to a common or contract carrier or
7 warehouseman, or any employee thereof, whose possession of any legend
8 drug is in the usual course of business or employment: PROVIDED
9 FURTHER, That nothing in this chapter or chapter 18.64 RCW shall
10 prevent a family planning clinic that is under contract with the
11 department of social and health services from selling, delivering,
12 possessing, and dispensing commercially prepackaged oral contraceptives
13 prescribed by authorized, licensed health care practitioners.

14 **Sec. 4.** RCW 69.50.101 and 1998 c 222 s 3 are each amended to read
15 as follows:

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

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

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

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

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

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

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

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

36 (i) that has a stimulant, depressant, or hallucinogenic effect on

1 the central nervous system substantially similar to the stimulant,
2 depressant, or hallucinogenic effect on the central nervous system of
3 a controlled substance included in Schedule I or II; or

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

10 (2) The term does not include:

11 (i) a controlled substance;

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

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

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

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

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

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

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

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

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

32 (l) "Drug" means (1) a controlled substance recognized as a drug in
33 the official United States pharmacopoeia/national formulary or the
34 official homeopathic pharmacopoeia of the United States, or any
35 supplement to them; (2) controlled substances intended for use in the
36 diagnosis, cure, mitigation, treatment, or prevention of disease in
37 individuals or animals; (3) controlled substances (other than food)
38 intended to affect the structure or any function of the body of

1 individuals or animals; and (4) controlled substances intended for use
2 as a component of any article specified in (1), (2), or (3) of this
3 subsection. The term does not include devices or their components,
4 parts, or accessories.

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

8 (n) "Immediate precursor" means a substance:

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

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

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

16 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),
17 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any
18 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)
19 the term includes any positional isomer; and in RCW 69.50.204(a)(35),
20 69.50.204(c), and 69.50.208(a) the term includes any positional or
21 geometric isomer.

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

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

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

37 (q) "Marijuana" or "marihuana" means all parts of the plant
38 Cannabis, whether growing or not; the seeds thereof; the resin

1 extracted from any part of the plant; and every compound, manufacture,
2 salt, derivative, mixture, or preparation of the plant, its seeds or
3 resin. The term does not include the mature stalks of the plant, fiber
4 produced from the stalks, oil or cake made from the seeds of the plant,
5 any other compound, manufacture, salt, derivative, mixture, or
6 preparation of the mature stalks (except the resin extracted
7 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
8 which is incapable of germination.

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

13 (1) Opium, opium derivative, and any derivative of opium or opium
14 derivative, including their salts, isomers, and salts of isomers,
15 whenever the existence of the salts, isomers, and salts of isomers is
16 possible within the specific chemical designation. The term does not
17 include the isoquinoline alkaloids of opium.

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

22 (3) Poppy straw and concentrate of poppy straw.

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

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

27 (6) Cocaine base.

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

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

32 (s) "Opiate" means any substance having an addiction-forming or
33 addiction-sustaining liability similar to morphine or being capable of
34 conversion into a drug having addiction-forming or addiction-sustaining
35 liability. The term includes opium, substances derived from opium
36 (opium derivatives), and synthetic opiates. The term does not include,
37 unless specifically designated as controlled under RCW 69.50.201, the

1 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
2 (dextromethorphan). The term includes the racemic and levorotatory
3 forms of dextromethorphan.

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

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

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

12 (w) "Practitioner" means:

13 (1) A physician under chapter 18.71 RCW, a physician assistant
14 under chapter 18.71A RCW, an osteopathic physician and surgeon under
15 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who
16 is certified by the optometry board under RCW 18.53.010 subject to any
17 limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a
18 podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian
19 under chapter 18.92 RCW, a registered nurse, advanced registered nurse
20 practitioner, or licensed practical nurse under chapter 18.79 RCW, a
21 pharmacist under chapter 18.64 RCW or a scientific investigator under
22 this chapter, licensed, registered or otherwise permitted insofar as is
23 consistent with those licensing laws to distribute, dispense, conduct
24 research with respect to or administer a controlled substance in the
25 course of their professional practice or research in this state.

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

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

36 (x) "Prescription" means an order for controlled substances issued
37 by a practitioner duly authorized by law or rule in the state of

1 Washington to prescribe controlled substances within the scope of his
2 or her professional practice for a legitimate medical purpose.

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

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

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

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

15 (cc) "Electronic communication of prescription information" means
16 the communication of prescription information by computer, or the
17 transmission of an exact visual image of a prescription by facsimile,
18 or other electronic means for original prescription information or
19 prescription refill information for a Schedule III-V controlled
20 substance between an authorized practitioner and a pharmacy or the
21 transfer of prescription information for a controlled substance from
22 one pharmacy to another pharmacy.

23 NEW SECTION. **Sec. 5.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected."

27 Correct the title.

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