
ENGROSSED SUBSTITUTE HOUSE BILL 1164

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Kessler, Pflug, Ruderman, Alexander, Cody, Moeller, Campbell, Clibborn, Morrell, Armstrong, Clements, Delvin, McDonald, Berkey, Haigh, Kenney, Hankins, Conway, Rockefeller, Simpson, Chase and McMahan)

READ FIRST TIME 02/10/03.

1 AN ACT Relating to authorizing optometrists to use and prescribe
2 approved drugs for diagnostic or therapeutic purposes without
3 limitation upon the methods of delivery in the practice of optometry;
4 and amending RCW 18.53.010, 18.53.140, 69.41.030, and 69.50.101.

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

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

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

13 (a) The employment of any objective or subjective means or method,
14 including the use of drugs (~~topically applied to the eye~~),
15 diagnostic and therapeutic purposes by those licensed under this
16 chapter and who meet the requirements of subsections (2) and (3) of
17 this section, and the use of any diagnostic instruments or devices for

1 the examination or analysis of the human vision system, the measurement
2 of the powers or range of human vision, or the determination of the
3 refractive powers of the human eye or its functions in general; and

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

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

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

13 (e) The adaptation of prosthetic eyes.

14 (2)(a) Those persons using topical drugs for diagnostic purposes in
15 the practice of optometry shall have a minimum of sixty hours of
16 didactic and clinical instruction in general and ocular pharmacology as
17 applied to optometry, (~~(and for therapeutic purposes, an additional
18 minimum of seventy five hours of didactic and clinical instruction))~~) as
19 established by the board, and certification from an institution of
20 higher learning, accredited by those agencies recognized by the United
21 States office of education or the council on postsecondary
22 accreditation to qualify for certification by the optometry board of
23 Washington to use drugs for diagnostic (~~(and therapeutic))~~ purposes.

24 (b) Those persons using or prescribing topical drugs for
25 therapeutic purposes in the practice of optometry must be certified
26 under (a) of this subsection, and must have an additional minimum of
27 seventy-five hours of didactic and clinical instruction as established
28 by the board, and certification from an institution of higher learning,
29 accredited by those agencies recognized by the United States office of
30 education or the council on postsecondary accreditation to qualify for
31 certification by the optometry board of Washington to use drugs for
32 therapeutic purposes.

33 (c) Those persons using or prescribing drugs administered orally
34 for diagnostic or therapeutic purposes in the practice of optometry
35 shall be certified under (b) of this subsection, and shall have an
36 additional minimum of sixteen hours of didactic and eight hours of
37 supervised clinical instruction as established by the board, and
38 certification from an institution of higher learning, accredited by

1 those agencies recognized by the United States office of education or
2 the council on postsecondary accreditation to qualify for certification
3 by the optometry board of Washington to administer, dispense, or
4 prescribe oral drugs for diagnostic or therapeutic purposes.

5 (d) Those persons administering epinephrine by injection for
6 treatment of anaphylactic shock in the practice of optometry must be
7 certified under (b) of this subsection and must have an additional
8 minimum of four hours of didactic and supervised clinical instruction,
9 as established by the board, and certification from an institution of
10 higher learning, accredited by those agencies recognized by the United
11 States office of education or the council on postsecondary
12 accreditation to qualify for certification by the optometry board to
13 administer epinephrine by injection.

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

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

21 (4) The board must establish a list of oral Schedule III through V
22 controlled substances and any oral legend drugs, with the approval of
23 and after consultation with the board of pharmacy. No person licensed
24 under this chapter may use, prescribe, dispense, purchase, possess, or
25 administer these drugs except as authorized and to the extent permitted
26 by the board. No optometrist may use, prescribe, dispense, or
27 administer oral corticosteroids.

28 (a) The board, with the approval of and in consultation with the
29 board of pharmacy, must establish, by rule, specific guidelines for the
30 prescription and administration of drugs by optometrists, so that
31 licensed optometrists and persons filling their prescriptions have a
32 clear understanding of which drugs and which dosages or forms are
33 included in the authority granted by this section.

34 (b) An optometrist may not:

35 (i) Prescribe, dispense, or administer a controlled substance for
36 more than seven days in treating a particular patient for a single
37 trauma, episode, or condition or for pain associated with or related to
38 the trauma, episode, or condition; or

1 (ii) Prescribe an oral drug within ninety days following ophthalmic
2 surgery unless the optometrist consults with the treating
3 ophthalmologist.

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

7 (d) The prescription or administration of drugs as authorized in
8 this section is specifically limited to those drugs appropriate to
9 treatment of diseases or conditions of the human eye and the adnexa
10 that are within the scope of practice of optometry. The prescription
11 or administration of drugs for any other purpose is not authorized by
12 this section.

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

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

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

23 (8) Nothing in this chapter may be construed to authorize
24 optometrists to perform ophthalmic surgery. Ophthalmic surgery is
25 defined as any invasive procedure in which human tissue is cut,
26 ablated, or otherwise penetrated by incision, injection, laser,
27 ultrasound, or other means, in order to: Treat human eye diseases;
28 alter or correct refractive error; or alter or enhance cosmetic
29 appearance. Nothing in this chapter limits an optometrist's ability to
30 use diagnostic instruments utilizing laser or ultrasound technology.
31 Ophthalmic surgery, as defined in this subsection, does not include
32 removal of superficial ocular foreign bodies, epilation of misaligned
33 eyelashes, placement of punctal or lacrimal plugs, diagnostic dilation
34 and irrigation of the lacrimal system, orthokeratology, prescription
35 and fitting of contact lenses with the purpose of altering refractive
36 error, or other similar procedures within the scope of practice of
37 optometry.

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

3 It shall be unlawful for any person:

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

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

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

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

14 (5) To practice optometry under a false or assumed name, or as a
15 representative or agent of any person, firm or corporation with which
16 the licensee has no connection: PROVIDED, Nothing in this chapter nor
17 in the optometry law shall make it unlawful for any lawfully licensed
18 optometrist or association of lawfully licensed optometrists to
19 practice optometry under the name of any lawfully licensed optometrist
20 who may transfer by inheritance or otherwise the right to use such
21 name; or

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

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

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

33 (9) To use advertising whether printed, radio, display, or of any
34 other nature, which is misleading or inaccurate in any material
35 particular, nor shall any such person in any way misrepresent any goods
36 or services (including but without limitation, its use, trademark,
37 grade, quality, size, origin, substance, character, nature, finish,

1 material, content, or preparation) or credit terms, values, policies,
2 services, or the nature or form of the business conducted; or

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

8 (11) To use an advertisement of a frame or mounting which is not
9 truthful in describing the frame or mounting and all its component
10 parts. Or advertise a frame or mounting at a price, unless it shall be
11 depicted in the advertisement without lenses inserted, and in addition
12 the advertisement must contain a statement immediately following, or
13 adjacent to the advertised price, that the price is for frame or
14 mounting only, and does not include lenses, eye examination and
15 professional services, which statement shall appear in type as large as
16 that used for the price, or advertise lenses or complete glasses, viz.:
17 frame or mounting with lenses included, at a price either alone or in
18 conjunction with professional services; or

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

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

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

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

32 It shall be unlawful for any person to sell, deliver, or possess
33 any legend drug except upon the order or prescription of a physician
34 under chapter 18.71 RCW, an osteopathic physician and surgeon under
35 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who
36 is certified by the optometry board under RCW 18.53.010, a dentist
37 under chapter 18.32 RCW, a podiatric physician and surgeon under

1 chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a
2 commissioned medical or dental officer in the United States armed
3 forces or public health service in the discharge of his or her official
4 duties, a duly licensed physician or dentist employed by the veterans
5 administration in the discharge of his or her official duties, a
6 registered nurse or advanced registered nurse practitioner under
7 chapter 18.79 RCW when authorized by the nursing care quality assurance
8 commission, an osteopathic physician assistant under chapter 18.57A RCW
9 when authorized by the board of osteopathic medicine and surgery, a
10 physician assistant under chapter 18.71A RCW when authorized by the
11 medical quality assurance commission, a physician licensed to practice
12 medicine and surgery or a physician licensed to practice osteopathic
13 medicine and surgery, a dentist licensed to practice dentistry, a
14 podiatric physician and surgeon licensed to practice podiatric medicine
15 and surgery, or a veterinarian licensed to practice veterinary
16 medicine, in any province of Canada which shares a common border with
17 the state of Washington or in any state of the United States:
18 PROVIDED, HOWEVER, That the above provisions shall not apply to sale,
19 delivery, or possession by drug wholesalers or drug manufacturers, or
20 their agents or employees, or to any practitioner acting within the
21 scope of his or her license, or to a common or contract carrier or
22 warehouseman, or any employee thereof, whose possession of any legend
23 drug is in the usual course of business or employment: PROVIDED
24 FURTHER, That nothing in this chapter or chapter 18.64 RCW shall
25 prevent a family planning clinic that is under contract with the
26 department of social and health services from selling, delivering,
27 possessing, and dispensing commercially prepackaged oral contraceptives
28 prescribed by authorized, licensed health care practitioners.

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

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

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

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

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

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

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

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

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

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

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

24 (2) The term does not include:

25 (i) a controlled substance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),
32 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any
33 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)
34 the term includes any positional isomer; and in RCW 69.50.204(a)(35),
35 69.50.204(c), and 69.50.208(a) the term includes any positional or
36 geometric isomer.

37 (p) "Manufacture" means the production, preparation, propagation,
38 compounding, conversion, or processing of a controlled substance,

1 either directly or indirectly or by extraction from substances of
2 natural origin, or independently by means of chemical synthesis, or by
3 a combination of extraction and chemical synthesis, and includes any
4 packaging or repackaging of the substance or labeling or relabeling of
5 its container. The term does not include the preparation, compounding,
6 packaging, repackaging, labeling, or relabeling of a controlled
7 substance:

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

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

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

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

28 (1) Opium, opium derivative, and any derivative of opium or opium
29 derivative, including their salts, isomers, and salts of isomers,
30 whenever the existence of the salts, isomers, and salts of isomers is
31 possible within the specific chemical designation. The term does not
32 include the isoquinoline alkaloids of opium.

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

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

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

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

5 (6) Cocaine base.

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

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

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

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

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

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

27 (w) "Practitioner" means:

28 (1) A physician under chapter 18.71 RCW, a physician assistant
29 under chapter 18.71A RCW, an osteopathic physician and surgeon under
30 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who
31 is certified by the optometry board under RCW 18.53.010 subject to any
32 limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a
33 podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian
34 under chapter 18.92 RCW, a registered nurse, advanced registered nurse
35 practitioner, or licensed practical nurse under chapter 18.79 RCW, a
36 pharmacist under chapter 18.64 RCW or a scientific investigator under
37 this chapter, licensed, registered or otherwise permitted insofar as is

1 consistent with those licensing laws to distribute, dispense, conduct
2 research with respect to or administer a controlled substance in the
3 course of their professional practice or research in this state.

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

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

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

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

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

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

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

30 (cc) "Electronic communication of prescription information" means
31 the communication of prescription information by computer, or the
32 transmission of an exact visual image of a prescription by facsimile,
33 or other electronic means for original prescription information or
34 prescription refill information for a Schedule III-V controlled
35 substance between an authorized practitioner and a pharmacy or the
36 transfer of prescription information for a controlled substance from
37 one pharmacy to another pharmacy.

1 NEW SECTION. **Sec. 5.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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