

HOUSE BILL 2056

State of Washington

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By Representatives O'Brien, Hankins, Cody, Edmonds, Radcliff, Kessler, Ogden, Wensman, Poulsen, Mielke, Grant, Schoesler, Buck, Koster, Crouse, Ruderman, Mulliken, Boldt, Rockefeller, Lambert, Miloscia, Sullivan, Reardon, Gombosky, Kastama, Morris, Cairnes, Delvin, McDonald, Clements, Veloria, Linville, D. Schmidt, Dunn, Benson, Hatfield, Lovick, Pflug, Scott, Haigh, Schual-Berke, Kagi, Conway, Campbell, Keiser, Cooper and Santos

Read first time 02/15/1999. Referred to Committee on Health Care.

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 amending RCW 18.53.010, 18.53.140, 69.41.030, and 69.50.101; adding a
5 new section to chapter 18.53 RCW; and adding a new section to chapter
6 70.41 RCW.

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

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

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

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

1 this section, and the use of any diagnostic instruments or devices for
2 the examination or analysis of the human vision system, the measurement
3 of the powers or range of human vision, or the determination of the
4 refractive powers of the human eye or its functions in general; and

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

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

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

14 (e) The adaptation of prosthetic eyes.

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

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

34 (c) Those persons using or prescribing drugs administered orally,
35 by injection, or by any other method of delivery for therapeutic
36 purposes in the practice of optometry shall be certified under (b) of
37 this subsection, and shall have an additional minimum of twenty hours
38 of didactic and clinical instruction as established by the board, and
39 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 use drugs administered orally,
4 by injection, or by any other recognized method of delivery for
5 therapeutic purposes.

6 (d) Such course or courses, and any other courses required by the
7 board for certification to use any other means, method, or procedure,
8 shall be the fiscal responsibility of the participating and attending
9 optometrist.

10 (3) The board shall establish a schedule of drugs for diagnostic
11 and treatment purposes limited to the practice of optometry, and no
12 person licensed pursuant to this chapter shall prescribe, dispense,
13 purchase, possess, or administer drugs except as authorized and to the
14 extent permitted by the board.

15 (a) The board shall establish, by rule, specific guidelines for the
16 prescription and administration of drugs by optometric physicians, so
17 that licensed optometric physicians and persons filling their
18 prescriptions have a clear understanding of which drugs and which
19 dosages or forms are included in the authority granted by this section.

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

23 (c) The prescription or administration of drugs as authorized in
24 this section is specifically limited to those drugs appropriate to
25 treatment of diseases or conditions of the vision system that are
26 within the scope of practice of optometry. The prescription or
27 administration of drugs for any other purpose is not authorized by this
28 section.

29 (4) The board shall develop a means of identification and
30 verification of optometrists certified to use therapeutic drugs for the
31 purpose of issuing prescriptions, and of optometrists certified to use
32 any other objective or subjective means, method, or procedure, as
33 authorized by this section.

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

36 It shall be unlawful for any person:

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

- 1 (2) To purchase or procure by barter any license with the intent to
2 use the same as evidence of the holder's qualification to practice
3 optometry; or
- 4 (3) To alter with fraudulent intent in any material regard such
5 license; or
- 6 (4) To use or attempt to use any such license which has been
7 purchased, fraudulently issued, counterfeited or materially altered as
8 a valid license; or
- 9 (5) To practice optometry under a false or assumed name, or as a
10 representative or agent of any person, firm or corporation with which
11 the licensee has no connection: PROVIDED, Nothing in this chapter nor
12 in the optometry law shall make it unlawful for any lawfully licensed
13 optometrist or association of lawfully licensed optometrists to
14 practice optometry under the name of any lawfully licensed optometrist
15 who may transfer by inheritance or otherwise the right to use such
16 name; or
- 17 (6) To practice optometry in this state either for him or herself
18 or any other individual, corporation, partnership, group, public or
19 private entity, or any member of the licensed healing arts without
20 having at the time of so doing a valid license issued by the secretary
21 of health; or
- 22 (7) To in any manner barter or give away as premiums either on his
23 own account or as agent or representative for any other purpose, firm
24 or corporation, any eyeglasses, spectacles, lenses or frames; or
- 25 (8) To use drugs in the practice of optometry, except ((those
26 ~~topically applied for diagnostic or therapeutic purposes~~)) as
27 authorized under RCW 18.53.010; or
- 28 (9) To use advertising whether printed, radio, display, or of any
29 other nature, which is misleading or inaccurate in any material
30 particular, nor shall any such person in any way misrepresent any goods
31 or services (including but without limitation, its use, trademark,
32 grade, quality, size, origin, substance, character, nature, finish,
33 material, content, or preparation) or credit terms, values, policies,
34 services, or the nature or form of the business conducted; or
- 35 (10) To advertise the "free examination of eyes," "free
36 consultation," "consultation without obligation," "free advice," or any
37 words or phrases of similar import which convey the impression to the
38 public that eyes are examined free or of a character tending to deceive
39 or mislead the public, or in the nature of "bait advertising;" or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) The term does not include:

18 (i) a controlled substance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),
24 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any
25 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)
26 the term includes any positional isomer; and in RCW 69.50.204(a)(35),
27 69.50.204(c), and 69.50.208(a) the term includes any positional or
28 geometric isomer.

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

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

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

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

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

21 (1) Opium, opium derivative, and any derivative of opium or opium
22 derivative, including their salts, isomers, and salts of isomers,
23 whenever the existence of the salts, isomers, and salts of isomers is
24 possible within the specific chemical designation. The term does not
25 include the isoquinoline alkaloids of opium.

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

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

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

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

35 (6) Cocaine base.

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

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

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

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

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

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

18 (w) "Practitioner" means:

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

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

36 (3) A physician licensed to practice medicine and surgery, a
37 physician licensed to practice osteopathic medicine and surgery, a
38 dentist licensed to practice dentistry, a podiatric physician and
39 surgeon licensed to practice podiatric medicine and surgery, or a

1 veterinarian licensed to practice veterinary medicine in any state of
2 the United States.

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

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

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

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

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

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

27 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.53 RCW
28 to read as follows:

29 Notwithstanding any other provision of law, no hospital that
30 provides health care services to the general public may discriminate
31 against a qualified optometrist licensed under this chapter who applies
32 for hospital privileges. For purposes of this section, discrimination
33 includes, but is not limited to, the denial of hospital privileges to
34 licensed optometrists who seek such privileges to facilitate the
35 performance of any means, method, or procedure within their scope of
36 practice and who otherwise meet all credentialing requirements
37 reasonably related to the practice of optometry in a hospital setting.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.41 RCW
2 to read as follows:

3 A hospital that provides health care services to the general public
4 may not discriminate against a qualified optometrist licensed under
5 chapter 18.53 RCW who has applied to practice with the hospital solely
6 because the optometrist is board certified or eligible under an
7 approved optometrist certifying board instead of board certified or
8 eligible, respectively, under an approved medical certifying board.
9 For purposes of this section, discrimination includes, but is not
10 limited to, the denial of hospital privileges to licensed optometrists
11 who seek such privileges to facilitate the performance of any means,
12 method, or procedure within their scope of practice and who otherwise
13 meet all credentialing requirements reasonably related to the practice
14 of optometry in a hospital setting.

15 NEW SECTION. **Sec. 7.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

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