
SUBSTITUTE HOUSE BILL 1164

State of Washington

58th Legislature

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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
18 the examination or analysis of the human vision system, the measurement

1 of the powers or range of human vision, or the determination of the
2 refractive powers of the human eye or its functions in general; and

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

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

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

12 (e) The adaptation of prosthetic eyes.

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

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

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

1 the council on postsecondary accreditation to qualify for certification
2 by the optometry board of Washington to administer, dispense, or
3 prescribe oral drugs for therapeutic or diagnostic purposes.

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

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

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

20 (4) The board must establish a list of Schedule III through V
21 controlled substances and oral legend drugs, in consultation with and
22 with the approval of the board of pharmacy, and no person licensed
23 under this chapter may use, prescribe, dispense, purchase, possess, or
24 administer these drugs except as authorized and to the extent permitted
25 by the board. This list shall not include orally administered
26 steroids.

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

33 (b) An optometrist may not prescribe, dispense, or administer a
34 controlled substance for more than seven days in treating a particular
35 patient for a single trauma, episode, or condition or for pain
36 associated with or related to the trauma, episode, or condition.

37 (c) An optometrist may not prescribe, dispense, or administer an

1 oral drug to a patient within ninety days following the patient's
2 ophthalmic surgery without consulting the patient's surgeon.

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

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

12 (6) Nothing in this chapter may be construed to authorize retinal
13 repair surgery or laser in situ keratomileusis surgery, nor the use,
14 prescription, dispensing, purchase, possession, or administration of
15 any Schedule I or II controlled substance. The provisions of this
16 subsection must be strictly construed.

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

19 It shall be unlawful for any person:

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

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

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

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

30 (5) To practice optometry under a false or assumed name, or as a
31 representative or agent of any person, firm or corporation with which
32 the licensee has no connection: PROVIDED, Nothing in this chapter nor
33 in the optometry law shall make it unlawful for any lawfully licensed
34 optometrist or association of lawfully licensed optometrists to
35 practice optometry under the name of any lawfully licensed optometrist
36 who may transfer by inheritance or otherwise the right to use such
37 name; or

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

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

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

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

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

24 (11) To use an advertisement of a frame or mounting which is not
25 truthful in describing the frame or mounting and all its component
26 parts. Or advertise a frame or mounting at a price, unless it shall be
27 depicted in the advertisement without lenses inserted, and in addition
28 the advertisement must contain a statement immediately following, or
29 adjacent to the advertised price, that the price is for frame or
30 mounting only, and does not include lenses, eye examination and
31 professional services, which statement shall appear in type as large as
32 that used for the price, or advertise lenses or complete glasses, viz.:
33 frame or mounting with lenses included, at a price either alone or in
34 conjunction with professional services; or

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

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

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

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

11 It shall be unlawful for any person to sell, deliver, or possess
12 any legend drug except upon the order or prescription of a physician
13 under chapter 18.71 RCW, an osteopathic physician and surgeon under
14 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who
15 is certified by the optometry board under RCW 18.53.010, a dentist
16 under chapter 18.32 RCW, a podiatric physician and surgeon under
17 chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a
18 commissioned medical or dental officer in the United States armed
19 forces or public health service in the discharge of his or her official
20 duties, a duly licensed physician or dentist employed by the veterans
21 administration in the discharge of his or her official duties, a
22 registered nurse or advanced registered nurse practitioner under
23 chapter 18.79 RCW when authorized by the nursing care quality assurance
24 commission, an osteopathic physician assistant under chapter 18.57A RCW
25 when authorized by the board of osteopathic medicine and surgery, a
26 physician assistant under chapter 18.71A RCW when authorized by the
27 medical quality assurance commission, a physician licensed to practice
28 medicine and surgery or a physician licensed to practice osteopathic
29 medicine and surgery, a dentist licensed to practice dentistry, a
30 podiatric physician and surgeon licensed to practice podiatric medicine
31 and surgery, or a veterinarian licensed to practice veterinary
32 medicine, in any province of Canada which shares a common border with
33 the state of Washington or in any state of the United States:
34 PROVIDED, HOWEVER, That the above provisions shall not apply to sale,
35 delivery, or possession by drug wholesalers or drug manufacturers, or
36 their agents or employees, or to any practitioner acting within the
37 scope of his or her license, or to a common or contract carrier or

1 warehouseman, or any employee thereof, whose possession of any legend
2 drug is in the usual course of business or employment: PROVIDED
3 FURTHER, That nothing in this chapter or chapter 18.64 RCW shall
4 prevent a family planning clinic that is under contract with the
5 department of social and health services from selling, delivering,
6 possessing, and dispensing commercially prepackaged oral contraceptives
7 prescribed by authorized, licensed health care practitioners.

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

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

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

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

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

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

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

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

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

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

34 (ii) with respect to a particular individual, that the individual
35 represents or intends to have a stimulant, depressant, or
36 hallucinogenic effect on the central nervous system substantially

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

4 (2) The term does not include:

5 (i) a controlled substance;

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

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

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

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

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

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

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

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

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

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

37 (m) "Drug enforcement administration" means the drug enforcement

1 administration in the United States Department of Justice, or its
2 successor agency.

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

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

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

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

11 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),
12 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any
13 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)
14 the term includes any positional isomer; and in RCW 69.50.204(a)(35),
15 69.50.204(c), and 69.50.208(a) the term includes any positional or
16 geometric isomer.

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

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

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

32 (q) "Marijuana" or "marihuana" means all parts of the plant
33 Cannabis, whether growing or not; the seeds thereof; the resin
34 extracted from any part of the plant; and every compound, manufacture,
35 salt, derivative, mixture, or preparation of the plant, its seeds or
36 resin. The term does not include the mature stalks of the plant, fiber
37 produced from the stalks, oil or cake made from the seeds of the plant,
38 any other compound, manufacture, salt, derivative, mixture, or

1 preparation of the mature stalks (except the resin extracted
2 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
3 which is incapable of germination.

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

8 (1) Opium, opium derivative, and any derivative of opium or opium
9 derivative, including their salts, isomers, and salts of isomers,
10 whenever the existence of the salts, isomers, and salts of isomers is
11 possible within the specific chemical designation. The term does not
12 include the isoquinoline alkaloids of opium.

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

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

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

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

22 (6) Cocaine base.

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

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

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

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

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

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

7 (w) "Practitioner" means:

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

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

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

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

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

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

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

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

9 (cc) "Electronic communication of prescription information" means
10 the communication of prescription information by computer, or the
11 transmission of an exact visual image of a prescription by facsimile,
12 or other electronic means for original prescription information or
13 prescription refill information for a Schedule III-V controlled
14 substance between an authorized practitioner and a pharmacy or the
15 transfer of prescription information for a controlled substance from
16 one pharmacy to another pharmacy.

17 NEW SECTION. **Sec. 5.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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