



# Ohio Legislative Service Commission

## Final Analysis

Carol Napp

### **Am. Sub. S.B. 83** 129th General Assembly (As Passed by the General Assembly)

**Sens.** Oelslager and Tavares, Cafaro, Brown, Coley, Daniels, Hughes, Niehaus, Sawyer, Schiavoni, Turner, Wilson

**Reps.** Goodwin, Fende, Antonio, Barnes, Gardner, Garland, Hackett, R. Hagan, Hill, Ramos, Yuko, Amstutz, Anielski, Blessing, Brenner, Celebrezze, Celeste, Cera, Damschroder, Driehaus, Fedor, Foley, Gerberry, C. Hagan, Heard, Hottinger, Huffman, Kozlowski, Letson, Luckie, Milkovich, Murray, O'Brien, Okey, Pillich, Reece, Ruhl, Sears, Slaby, Szollosi, Weddington, Williams, Winburn, Batchelder

**Effective date:** \*

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## ACT SUMMARY

### **Schedule II controlled substances prescribed by advanced practice nurses**

- Eliminates restrictions on the authority of an advanced practice nurse (APN) to prescribe schedule II controlled substances, but only when the drugs are prescribed from specified locations.
- Provides immunity from civil liability, criminal prosecution, and professional disciplinary action to a pharmacist who relies in good faith on the APN's prescription.
- Prohibits an APN from prescribing schedule II controlled substances in a convenience care clinic.
- Eliminates a provision prohibiting an APN from prescribing schedule II controlled substances in collaboration with a podiatrist.

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\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

## **Study in advanced pharmacology**

- Requires an APN applying for a certificate to prescribe to complete at least 45 contact hours in advanced pharmacology and related topics, of which at least 36 hours (instead of 30) must be instruction in such areas as the use of drugs in maintaining health.
- Requires that the course of study include instruction specific to schedule II controlled substances.

## **Reasons for Board of Nursing disciplinary actions**

- Permits the Board of Nursing to take professional disciplinary action against a nurse or dialysis technician who self-administers any schedule I controlled substance.

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## **CONTENT AND OPERATION**

### **Authority to prescribe schedule II controlled substances**

#### **Prescribing from specified locations**

The act provides that an advanced practice nurse (APN) who holds a certificate to prescribe is not subject to three restrictions in continuing law governing an APN's authority to prescribe schedule II controlled substances, but only when the APN issues a prescription to a patient from specified locations.<sup>1</sup> A schedule II controlled substance is a drug or other substance that (1) has a high potential for abuse, (2) has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions, and (3) may lead to severe psychological or physical dependence if abused.<sup>2</sup> Examples include hydrocodone, oxycodone, morphine, and methamphetamine.<sup>3</sup>

When prescribing from a location that is not one of those specified in the act, the APN remains subject to the following three restrictions in continuing law: (1) the patient must have a terminal condition, (2) the APN's collaborating physician must have initially prescribed the drug for the patient, and (3) the prescription must be for an

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<sup>1</sup> R.C. 3719.06 and 4723.481(C)(2).

<sup>2</sup> 21 United States Code (U.S.C.) § 812(b).

<sup>3</sup> 21 Code of Federal Regulations (C.F.R.) § 1308.12.

amount that does not exceed the amount necessary for the patient's use in a single 24-hour period.<sup>4</sup>

The locations from which the act authorizes an APN to prescribe a schedule II controlled substance without being subject to the three restrictions are the following:<sup>5</sup>

- (1) A hospital registered with the Department of Health;
- (2) An entity owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals;
- (3) A health care facility operated by the Department of Mental Health or Department of Developmental Disabilities;
- (4) A nursing home licensed by the Department of Health or a political subdivision;
- (5) A county home or district home that is certified under the Medicare or Medicaid program;
- (6) A hospice care program;
- (7) A community mental health agency;
- (8) An ambulatory surgical facility;
- (9) A freestanding birthing center;
- (10) A federally qualified health center;
- (11) A federally qualified health center look-alike, which is a not-for-profit health center that meets the eligibility requirements for, but does not receive, a federal public health services grant;
- (12) A health care office or facility operated by a board of health or an authority having the duties of a board of health;
- (13) A site where a medical practice is operated, but only if the practice is comprised of one or more physicians who are also owners of the practice, the practice is organized to provide direct patient care, and the APN providing services at the site has a standard care arrangement and collaborates with at least one of the physician owners

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<sup>4</sup> R.C. 4723.481(C)(1).

<sup>5</sup> R.C. 4723.481(C)(2)(a) to (m).

who practices primarily at that site. (Entering into a standard care arrangement and practicing in collaboration are requirements of ongoing law governing the practice of APNs.)

### **Immunity from liability for pharmacists**

The act provides that a pharmacist who acts in good faith reliance on a prescription issued by an APN at a location specified above is not liable for or subject to any of the following for relying on the prescription: (1) damages in any civil action, (2) prosecution in any criminal proceeding, or (3) professional disciplinary action by the State Board of Pharmacy.<sup>6</sup>

### **Convenience care clinics**

The act prohibits an APN from prescribing any schedule II controlled substance to a patient in a convenience care clinic. The prohibition applies even if the convenience care clinic is owned or operated by an entity that is one of the locations from which an APN, under the act, may prescribe schedule II controlled substances without being subject to the three restrictions that otherwise apply when an APN prescribes a schedule II controlled substance.<sup>7</sup>

### **Prescribing in collaboration with a podiatrist**

The act authorizes an APN to prescribe schedule II controlled substances in collaboration with a podiatrist by eliminating the prior law provision that prohibited an APN from doing so.<sup>8</sup>

### **Rulemaking**

The act requires the Board of Nursing to adopt rules as necessary to implement the act's provisions pertaining to an APN's authority to prescribe schedule II controlled substances. The rules must conform to the recommendations submitted by the Committee on Prescriptive Governance.<sup>9</sup> With respect to the Board's rules establishing criteria for APN standard care arrangements with physicians and podiatrists, the act

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<sup>6</sup> R.C. 4723.481(D).

<sup>7</sup> R.C. 4723.481(C)(3).

<sup>8</sup> R.C. 4723.481(C) (prior law).

<sup>9</sup> Section 4.

requires the rules to include components that apply to the authority to prescribe schedule II controlled substances.<sup>10</sup>

### **Transition provisions**

The act specifies that an APN's authority to prescribe schedule II controlled substances, as established by the act, begins on the act's effective date. The act requires, however, that an APN complete at least six contact hours of instruction specific to schedule II controlled substances if the APN's certificate to prescribe was issued either (1) before the act's effective date or (2) before the Board of Nursing implements the act's provisions pertaining to instruction in schedule II controlled substances. Satisfactory evidence of completing the six hours of instruction must be submitted to the Board as a condition of eligibility for renewal of the APN's certificate to prescribe or, in the case of an APN participating in an externship, as a condition of receiving a new certificate.<sup>11</sup>

### **Advanced pharmacology course of study**

The act requires an APN seeking prescriptive authority to complete a *course of study* in advanced pharmacology and related topics consisting of at least 45 contact hours. Prior law referred instead to *instruction* in advanced pharmacology and related topics and did not specify a minimum number of contact hours.<sup>12</sup> The act maintains requirements that (1) the course of study be approved by the Board of Nursing in accordance with standards adopted by the Board in rules and (2) the content be specific to the applicant's nursing specialty.<sup>13</sup>

The act increases to 36 (from 30), the minimum number of contact hours of instruction an APN seeking prescriptive authority must complete in advanced pharmacology and related topics that includes pharmacokinetic principles and clinical application and the use of drugs and therapeutic devices in illness prevention and maintenance of health. Prior law referred to the instruction as *training*. Rules adopted by the Board prior to the act required this portion of the instruction to consist of a minimum of 36 hours, so the act makes the statutory requirement consistent with the requirement in those rules.<sup>14</sup>

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<sup>10</sup> R.C. 4723.50(B)(3).

<sup>11</sup> Section 3.

<sup>12</sup> R.C. 4723.482(B)(2).

<sup>13</sup> R.C. 4723.482(B)(2).

<sup>14</sup> Ohio Administrative Code 4723-09-02.

## **Instruction specific to schedule II drugs**

The act adds a requirement that the course of study in advanced pharmacology include instruction specific to schedule II controlled substances, including all of the following:

- (1) Indications for the use of schedule II controlled substances in drug therapies;
- (2) The most recent guidelines for pain management therapies, as established by state and national organizations such as the Ohio Pain Initiative and the American Pain Society;
- (3) Fiscal and ethical implications of prescribing schedule II controlled substances;
- (4) State and federal laws that apply to the authority to prescribe schedule II controlled substances;
- (5) Prevention of abuse and diversion of schedule II controlled substances, including identification of the risk of abuse and diversion, recognition of abuse and diversion, types of assistance available for prevention of abuse and diversion, and methods of establishing safeguards against abuse and diversion.<sup>15</sup>

## **Former pilot program participants**

The act repeals a provision under which an APN who participated in one of the three former APN pilot programs that were operated in medically underserved areas of Ohio could apply for a certificate authorizing the APN to prescribe anywhere in Ohio without having to complete an externship or another course of study in advanced pharmacology. The repealed provision, enacted by Am. Sub. H.B. 241 of the 123rd General Assembly, applied to APNs with prescriptive authority under the pilot programs as of May 17, 2000.<sup>16</sup> If any pilot program participant has not since obtained a certificate to prescribe, the APN under the act must complete the same requirements as any other APN seeking a certificate to prescribe.

## **Professional discipline for using schedule I controlled substances**

The act permits the Board of Nursing to take professional disciplinary action, such as license revocation or suspension, against a nurse or dialysis technician for self-

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<sup>15</sup> R.C. 4723.482(B)(5)(d).

<sup>16</sup> R.C. 4723.482(A)(2).

administering or otherwise taking into the body any schedule I controlled substance.<sup>17</sup> A schedule I controlled substance is a drug or other substance that (1) has a high potential for abuse, (2) has no currently accepted medical use in treatment in the United States, and (3) has a lack of accepted safety for use under medical supervision.<sup>18</sup> Examples include heroin and marihuana.<sup>19</sup>

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## HISTORY

| ACTION                                      | DATE     |
|---|----------|
| Introduced                                  | 02-16-11 |
| Reported, S. Health, Human Services & Aging | 06-23-11 |
| Passed Senate (32-1)                        | 06-28-11 |
| Reported, H. Health & Aging                 | 01-25-12 |
| Passed House (92-3)                         | 02-14-12 |
| Senate concurred in House amendments (32-1) | 02-15-12 |

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<sup>17</sup> R.C. 4723.28.

<sup>18</sup> 21 U.S.C. § 812(b).

<sup>19</sup> 21 C.F.R. § 1308.11.

