



Attorney General Pam Bondi Department of Legal Affairs Pill Mill Eradication Act

1. Pharmacy Provisions

Summary: Requires pharmacists to report fraudulent prescriptions of controlled substances and to maintain a record of the evidence. Failure to do so is a first-degree misdemeanor.

Section 1. Section 465.015 is amended by the addition of a new Subsection (3) and the renumbering of existing subsections, to read as follows:

(3) It is unlawful for any pharmacist, pharmacy intern, or any other person employed by or at a pharmacy to fail to immediately report to the Department of Law Enforcement and the Sheriff of that county any attempt by any person to obtain any substance controlled by Sec. 893.03 that the pharmacist, pharmacy intern, or other person employed by or at a pharmacy knows or reasonably should know was obtained or attempted to be obtained from the pharmacy through any fraudulent methods or representations. Any pharmacist, pharmacy intern, or other person employed by or at a pharmacy who fails to make such a report within 24 hours after learning of the fraud or attempted fraud commits a misdemeanor of the first degree, punishable as provided in Secs. 775.082 and 775.083.

a. A sufficient report of the fraudulent obtaining of controlled substances under this Section shall contain at a minimum a copy of the prescription used or presented and a narrative including all information available to the pharmacy concerning the transaction, such as the name and telephone number of the prescribing physician, the name, description, and any personal identification information pertaining to the person presenting the prescription and all other material information, such as photographic or video surveillance of the transaction.

Summary: Requires anyone who maintains inventory of controlled substances to report the discovery of any theft of controlled substance to local law enforcement or FDLE within 48 hours. Failure to do so will result in administrative penalties and fines.

Section 2. Subsection (5) of Section 893.07 is amended to read as follows, to read as follows:

(5) Each person shall maintain a record which shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any; the kind and quantity of such controlled substances; and the date of the discovering of such loss, destruction, or theft. In the event of the discovery of the theft or loss of controlled substances, such theft or loss shall be reported to the Department of Law Enforcement and the local sheriff within 48 hours of its discovery. Any person who fails to report the discovery of the theft or loss of controlled substances under this subsection is subject to an administrative fine of up to \$100 per incident, unless the theft or loss is of a schedule II substance the failure to disclose a loss or theft of which will be subject to an administrative fine of up to \$500 per incident.

2. Dispensing Provisions

Summary: Creates a criminal penalty for doctors and osteopaths who fail to perform a physical examination before dispensing 72-hours worth of controlled substances. Makes it a second-degree misdemeanor for the first offense; first-degree misdemeanor for the second offense (within six months); and third-degree felony for the third offense (within six months).

Section 3. Paragraph (c) of Subsection (2) of Section 458.3265 is amended to read as follows:

(c) A physician must perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic. If the physician prescribes or dispenses more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the physician must document in the patient's record the reason for prescribing or dispensing that quantity record why such dosage is within the standard of care.

Section 4. Section 458.327 is amended by the addition of new Paragraphs (f) and (g) to Subsection (1), the addition of new Paragraphs (g) and (h) to Subsection (2) and the addition of a new Subsection (3), each to read as follows:

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

- (a) The practice of medicine or an attempt to practice medicine without a license to practice in Florida.
- (b) The use or attempted use of a license which is suspended or revoked to practice medicine.
- (c) Attempting to obtain or obtaining a license to practice medicine by knowing misrepresentation.
- (d) Attempting to obtain or obtaining a position as a medical practitioner or medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.
- (e) Knowingly operating, owning, or managing a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 458.3265(1).

(f) Failing to perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to the patient at a pain-management clinic occurring three or more times within a six month period or failing to perform a physical examination on three or more different patients on the same day that he or she dispenses or prescribes a controlled substance to each patient at a pain-management clinic within a six month period.

(g) Dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain of a patient occurring three or more times within a six month period without documenting in the patient's record the reason demonstrating that such dosage is within the standard of care for the prescribing or dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

- (a) Knowingly concealing information relating to violations of this chapter.
- (b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.
- (c) Referring any patient, for health care goods or services, to a partnership, firm, corporation, or other business entity in which the physician or the physician's employer has an equity interest of 10 percent or more unless, prior to such referral, the physician notifies the patient of his or her financial interest and of the patient's right to obtain such goods or services at the location of the patient's choice. This section does not apply to the following types of equity interest:
 1. The ownership of registered securities issued by a publicly held corporation or the ownership of securities issued by a publicly held corporation, the shares of which are traded on a national exchange or the over-the-counter market;
 2. A physician's own practice, whether he or she is a sole practitioner or part of a group, when the health care good

or service is prescribed or provided solely for the physician's own patients and is provided or performed by the physician or under the physician's supervision; or

3. An interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or is otherwise unrelated to fair market value.

(d) Leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without holding a valid, active license.

(e) Practicing medicine or attempting to practice medicine with an inactive or delinquent license.

(f) Knowingly prescribing or dispensing, or causing to be prescribed or dispensed, controlled substances in a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 458.3265(1).

(g) Failing to perform a physical examination of a patient on the same day that physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic two or more times in a six month period or failing to perform a physical examination on two or more different patients on the same day that physician dispenses or prescribes a controlled substance to each patient at a pain-management clinic within a six month period.

(h) Prescribing or dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain of a patient occurring two or more times within a six month period without documenting in the patient's record the reason demonstrating that such dosage is within the standard of care for the prescribing or dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain.

(3) Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(a) First offense of failing to perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic.

(b) First offense of failing to document in a patient's record the reason demonstrating that such dosage is within the standard of care for prescribing or dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain.

Section 5. Paragraph (c) of Subsection (2) of Section 459.0137 is amended to read as follows:

(c) An osteopathic physician must perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic. If the osteopathic physician prescribes or dispenses more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the osteopathic physician must document in the patient's record ~~the reason for prescribing or dispensing that quantity~~ why such dosage is within the standard of care.

Section 6. Section 459.013 is amended by the addition of new paragraphs (f) and (g) to Subsection (1), new Paragraphs (e) and (f) to Subsection (2), and new Paragraphs (d) and (e) to Subsection (3), each to read as follows:

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of osteopathic medicine, or an attempt to practice osteopathic medicine, without an active license or certificate issued pursuant to this chapter.

(b) The practice of osteopathic medicine by a person holding a limited license, osteopathic faculty certificate, or other certificate issued under this chapter beyond the scope of practice authorized for such licensee or certificate holder.

(c) Attempting to obtain or obtaining a license to practice osteopathic medicine by knowing misrepresentation.

(d) Attempting to obtain or obtaining a position as an osteopathic medical practitioner or osteopathic medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

(e) Knowingly operating, owning, or managing a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 459.0137(1).

(f) Failing to perform a physical examination of a patient on the same day that osteopathic physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic occurring three or more times within a six month period or failing to perform a physical examination on three or more different patients on the same day that osteopathic physician dispenses or prescribes a controlled substance to each patient at a pain-management clinic within a six month period.

(g) Dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain of a patient occurring three or more times within a six month period without documenting in the patient's record the reason demonstrating that such dosage is within the standard of care for the prescribing or dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Knowingly concealing information relating to violations of this chapter.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) The practice of medicine as a resident or intern without holding a valid current registration pursuant to s. 459.021.

(d) Knowingly prescribing or dispensing, or causing to be prescribed or dispensed, controlled substances in a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 459.0137(1).

(e) Failing to perform a physical examination of a patient on the same day that osteopathic physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic occurring two or more times within a six month period or failing to perform a physical examination on two or more different patients on the same day that he or she dispenses or prescribes a controlled substance to each patient at a pain-management clinic within a six month period.

(f) Dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain of a patient occurring two or more times within a six month period without documenting in the patient's record the reason demonstrating that such dosage is within the standard of care for the prescribing or dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain.

(3) Each of the following constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Fraudulently altering, defacing, or falsifying any records relating to patient care or treatment, including, but not limited to, patient histories, examination results, and test results.

(b) Referring any patient, for health care goods or services, to any partnership, firm, corporation, or other business entity in which the physician or the physician's employer has an equity interest of 10 percent or more unless, prior to such referral, the physician notifies the patient of her or his financial interest and of the patient's right to obtain such goods or services at the location of the patient's choice. This section shall not apply to the following types of equity interest:

1. The ownership of registered securities issued by a publicly held corporation or the ownership of securities issued by a publicly held corporation, the shares of which are traded on a national exchange or the over-the-counter market;

2. A physician's own practice, whether the physician is a sole practitioner or part of a group, when the health care good or service is prescribed or provided solely for the physician's own patients and is provided or performed by the physician or under the physician's supervision; or

3. An interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or is otherwise unrelated to fair market value.

(c) Paying or receiving any commission, bonus, kickback, or rebate or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, person, partnership, firm, corporation, or other business entity for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

(d) First offense of failing to perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic.

(e) First offense of failing to document in a patient's record the reason demonstrating that such dosage is within the standard of care for dispensing in excess of a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain.

3. Misrepresentation and Fraudulent Registration Provisions

Summary: Creates a criminal penalty for any person that attempts to register or registers a pain-management clinic through misrepresentation or fraud. Makes it a third-degree felony.

Section 7. A new Section 459.01501 is created, to read as follows:

Any licensee or other person who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137 who registers a pain-management clinic through misrepresentation or fraud or who procures or attempts to procure the registration of a pain-management clinic for any other person by making or causing to be made any false or fraudulent representation, commits a felony of the third degree, punishable as provided in Secs. 775.082, 775.083, and 775.084.

Section 8. A new Section 458.33101 is created, to read as follows:

Any licensee or other person who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137 who registers a pain-management clinic through misrepresentation or fraud or who procures or attempts to procure the registration of a pain-management clinic for any other person by making or causing to be made, any false or fraudulent representation, commits a felony of the third degree, punishable as provided in Secs. 775.082, 775.083, and 775.084.

4. Enhanced Burglary Provision

Summary: Enhances the criminal penalty for a burglary with the intent to obtain controlled substances. Makes it a second-degree felony.

Section 9. Subsection 810.02 (3), Florida Statutes is amended by the creation of a new paragraph (f) to read as follows:

(f) Dwelling, structure, or conveyance when the offense intended to be committed therein is theft of a substance controlled by Section 893.03. Notwithstanding any contrary provisions of law, separate judgments and sentences for both burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under Section 893.13 or trafficking in controlled substance offense under Section 893.135 may be imposed when all such offenses involve the same amount or amount(s) of controlled substance(s).

5. Pill Value Provision

Summary: Clarifies that thefts of all controlled substances are felonies regardless of the wholesale value of each pill.

Section 10. Paragraph 812.014(2)(c), Florida Statutes is amended by the creation of a new Paragraph 13 to read as follows:

13. Any amount of any substance controlled by Section 893.03 notwithstanding any contrary provisions of law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under Section 893.13 or trafficking in controlled substance offense under Section 893.135 may be imposed when all such offenses involve the same amount or amount(s) of controlled substance(s).

6. Law Enforcement Subpoena Power Provision

Summary: Clarifies existing law that allows law enforcement officers to access pharmacy records without a subpoena.

Section 11. Section 893.07 is amended by the partial rewording of Subsections (1), and (4), and the addition of a new Subsection (6), to read in its entirety as follows:

(1) Notwithstanding any other provision of law and in consonance with the authority of *State v. Carter*, 23 So.3d 798 (Fla., 1st Dist., 2009 and *State v. Tamulonis*, 39 So.3d 524 (Fla., 2nd Dist., 2010), Every person who engages in the manufacture, compounding, mixing, cultivating, growing, or by any other process producing or preparing, or in the dispensing, importation, or, as a wholesaler, distribution, of controlled substances shall:

(a) On January 1, 1974, or as soon thereafter as any person first engages in such activity, and every second year thereafter, make a complete and accurate record of all stocks of controlled substances on hand. The inventory may be prepared on the regular physical inventory date which is nearest to, and does not vary by more than 6 months from, the biennial date that would otherwise apply. As additional substances are designated for control under this chapter, they shall be inventoried as provided for in this subsection.

(b) On and after January 1, 1974, maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise disposed of by him or her, except that this subsection shall not require the maintenance of a perpetual inventory.

Compliance with the provisions of federal law pertaining to the keeping of records of controlled substances shall be deemed a compliance with the requirements of this subsection.

(2) The record of controlled substances received shall in every case show:

(a) The date of receipt.

- (b) The name and address of the person from whom received.
- (c) The kind and quantity of controlled substances received.

(3) The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show:

- (a) The date of selling, administering, or dispensing.
- (b) The correct name and address of the person to whom or for whose use, or the owner and species of animal for which, sold, administered, or dispensed.
- (c) The kind and quantity of controlled substances sold, administered, or dispensed.

(4) Every inventory or record required by this chapter, including prescription records, shall be maintained:

- (a) Separately from all other records of the registrant, or
- (b) Alternatively, in the case of Schedule III, IV, or V controlled substances, in such form that information required by this chapter is readily retrievable from the ordinary business records of the registrant.

In either case, such records described herein shall be kept and made available for a period of at least 2 years for inspection and copying by law enforcement officers whose duty it is to enforce the laws of this state relating to controlled substances.

(5) Each person shall maintain a record which shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any; the kind and quantity of such controlled substances; and the date of the discovering of such loss, destruction, or theft.

(6) Legislative Intent – For the purpose of further clarifying legislative intent, the Legislature finds that the opinions lately rendered in *State v. Carter*, 23 So.3d 798 (Fla., 1st Dist., 2009 and *State v. Tamulonis*, 39 So.3d 524 (Fla. 2nd Dist., 2010) correctly construe this Legislature’s intent that the inspection powers previously conferred herein upon law enforcement officers allowing such officers to access and review pharmacy records concerning controlled substances are properly to be exercised by such law enforcement officers without the requirement of prior subpoena or search warrant being sought or issued, and without the requirement that those persons to whom particular pharmacy records refer be given notice of the records’ examination and copying under this section.

7. Administrative Penalties

Summary: Strengthens administrative penalties for doctors or osteopaths that violate standards of care regarding controlled substances. Mandates a six-month suspension and a \$10,000 fine per incident.

Section 12. Section 458.331 is amended by the addition of a new Subsection (11) to read as follows:

(11) Notwithstanding subsection (2), upon finding that a physician has prescribed or dispensed, or caused to be prescribed or dispensed, controlled substances in a pain-management clinic in a manner that violates standards of practice as set forth in chapter 458 or rules promulgated thereunder, the Board shall at a minimum suspend the physician’s license for a period of no less than six months and impose a fine of no less than \$ 10,000.00 per count. Repeated violations shall result in increased penalties.

Section 13. Section 459.015 is amended by the addition of a new Subsection (11) to read as follows:

(11) Notwithstanding subsection (2), upon finding that an osteopathic physician has prescribed or dispensed, or caused to be prescribed or dispensed, controlled substances in a pain-management clinic in a manner that violates standards of practice as set forth in chapter 459 or rules promulgated thereunder, the Board shall at a minimum suspend the osteopathic physician’s license for a period of no less than six months and impose a fine of no less than \$ 10,000.00 per count. Repeated violations shall result in increased penalties.