

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 439

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO DISPENSING OF CONTROLLED SUBSTANCES PRESCRIPTIONS; AMENDING
2 SECTION 37-2726, IDAHO CODE, TO CLARIFY THAT PRACTITIONERS AND PHARMA-
3 CISTS LICENSED BY STATES OTHER THAN IDAHO MAY ACCESS THE CONTROLLED SUB-
4 STANCES PRESCRIPTIONS DATABASE FOR TREATMENT PURPOSES, TO REVISE THE
5 PENALTY FOR IMPROPER ACCESSING OR USE OF INFORMATION IN THE CONTROLLED
6 SUBSTANCES PRESCRIPTIONS DATABASE FROM A MISDEMEANOR TO A FELONY AND TO
7 MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 37-2730A, IDAHO CODE,
8 TO CLARIFY THAT THE BOARD MAY PROVIDE UNSOLICITED REPORTS TO PHARMA-
9 CISTS AND PRACTITIONERS.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 37-2726, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 37-2726. FILING PRESCRIPTIONS -- DATABASE. (1) All controlled sub-
15 stances prescriptions shall be filed with the board electronically in a
16 format established by the board or by other method as required by board rule.
17 The board may require the filing of other prescriptions by board rule. The
18 board shall establish by rule the information to be submitted pursuant to
19 the purposes of this section and the purposes set forth in section 37-2730A,
20 Idaho Code.

21 (2) The board shall create, operate and maintain a controlled sub-
22 stances prescriptions database containing the information submitted
23 pursuant to subsection (1) of this section, to be used for the purposes
24 and subject to the terms, conditions and immunities described in section
25 37-2730A, Idaho Code. The database information must be made available only
26 to the following:

27 (a) Authorized individuals employed by ~~the Idaho's boards responsible~~
28 ~~for conducting investigations related to~~ or other states' licensing en-
29 tities charged with the licensing and discipline of practitioners;

30 (b) Peace officers employed by federal, state and local law enforcement
31 agencies engaged as a specified duty of their employment in enforcing
32 law regulating controlled substances;

33 (c) Authorized individuals under the direction of the department of
34 health and welfare for the purpose of monitoring and enforcing that
35 department's responsibilities under the public health, medicare and
36 medicaid laws;

37 (d) A ~~licensed~~ practitioner, licensed in Idaho or another state, having
38 authority to prescribe controlled substances, to the extent the infor-
39 mation relates specifically to a current patient of the practitioner,
40 to whom the practitioner is prescribing or considering prescribing any
41 controlled substance;

1 (e) A ~~licensed~~ pharmacist, licensed in Idaho or another state, having
2 authority to dispense controlled substances to the extent the informa-
3 tion relates specifically to a current patient to whom that pharmacist
4 is dispensing or considering dispensing any controlled substance, or
5 providing pharmaceutical care as defined in the Idaho pharmacy act;

6 (f) An individual who is the recipient of a controlled substance pre-
7 scription entered into the database or that individual's attorney, upon
8 providing evidence satisfactory to the board that the individual re-
9 questing the information is in fact the person about whom the data entry
10 was made or the attorney for that person;

11 (g) Upon the lawful order of a court of competent jurisdiction; and

12 (h) Prosecuting attorneys, deputy prosecuting attorneys and special
13 prosecutors of a county or city and special assistant attorneys general
14 from the office of the attorney general engaged in enforcing law regu-
15 lating controlled substances.

16 (3) The board must maintain records on the information disclosed from
17 the database, including:

18 (a) The identification of each individual who requests or receives in-
19 formation from the database and who that individual represents;

20 (b) The information provided to each such individual; and

21 (c) The date and time the information is requested or provided.

22 (4) The board shall promulgate rules to ensure that only authorized in-
23 dividuals have access to the database.

24 (5) Any person who knowingly misrepresents to the board that he is a
25 person entitled under subsection (2) of this section to receive information
26 from the controlled substances prescriptions database under the condi-
27 tions therein provided, and who receives information from the controlled
28 substances prescriptions database resulting from that misrepresentation,
29 shall be guilty of a ~~misdemeanor~~ felony, punishable by imprisonment in a
30 county jail not to exceed six (6) months, or by a fine not to exceed two
31 thousand dollars (\$2,000), or both. The foregoing criminal penalty is in
32 addition to, and not in lieu of, any other civil or administrative penalty or
33 sanction authorized by law.

34 (6) Any person in possession, whether lawfully or unlawfully, of infor-
35 mation from the controlled substances prescriptions database which identi-
36 fies an individual patient and who knowingly discloses such information to
37 a person not authorized to receive or use such information under any state
38 or federal law, rule or regulation; the lawful order of a court of competent
39 jurisdiction; or written authorization of the individual patient shall be
40 guilty of a ~~misdemeanor~~ felony, punishable by imprisonment in a county jail
41 not to exceed six (6) months, or by a fine not to exceed two thousand dollars
42 (\$2,000), or both. The foregoing criminal penalty is in addition to, and not
43 in lieu of, any other civil or administrative penalty or sanction authorized
44 by law. The provisions of this subsection shall not apply to disclosure of
45 individual patient information by the patient himself. The provisions of
46 this subsection shall not apply to disclosure of information by a prosecut-
47 ing attorney, deputy prosecuting attorney or special prosecutor of a county
48 or city or by a special assistant attorney general from the office of the at-
49 torney general in the course of a criminal proceeding, whether preconviction
50 or postconviction.

1 (7) Any person with access to the board's online prescription monitor-
2 ing program pursuant to a board issued user account, login name and password
3 who fails to safeguard his user account, login name and password, resulting
4 in another person not authorized to receive or use such information under
5 the provisions of any state or federal law, rule or regulation obtaining
6 information from the controlled substances prescriptions database, shall
7 be guilty of a misdemeanor, punishable by imprisonment in a county jail
8 not to exceed six (6) months or by a fine not to exceed two thousand dollars
9 (\$2,000), or both. The foregoing criminal penalty is in addition to, and not
10 in lieu of, any other civil or administrative penalty or sanction authorized
11 by law.

12 (8) The board may, at its discretion, block access to certain con-
13 trolled substances prescriptions database data if the board has reason to
14 believe that access to the data is or may be used illegally.

15 (9) All costs associated with recording and submitting data as required
16 in this section are assumed by the dispensing practitioner recording and
17 submitting the data.

18 ~~(8) The definitions set forth in section 37-2701, Idaho Code, shall ap-~~
19 ~~ply to this section.~~

20 SECTION 2. That Section 37-2730A, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 37-2730A. PRESCRIPTION TRACKING PROGRAM. (1) The board shall maintain
23 a program to track the prescriptions for controlled substances that are
24 filed with the board under section 37-2726, Idaho Code, for the purpose of
25 assisting in identifying illegal activity related to the dispensing of con-
26 trolled substances and for the purpose of assisting the board in providing
27 information to patients, practitioners and pharmacists to assist in avoid-
28 ing inappropriate use of controlled substances. The tracking program and
29 any data created thereby shall be administered by the board.

30 (2) The board shall use the information obtained through the tracking
31 program in identifying activity it reasonably suspects may be in violation
32 of this chapter or medical assistance law. The board shall report this in-
33 formation to the individuals and persons set forth in section 37-2726(2),
34 Idaho Code. The board may release unsolicited information to pharmacists
35 and practitioners when the release of information may be of assistance in
36 preventing or avoiding inappropriate use of controlled substances. The
37 board may provide the appropriate law enforcement agency, medicaid or medi-
38 care agency or licensing board with the relevant information in the board's
39 possession, including information obtained from the tracking program, for
40 further investigation, or other appropriate law enforcement or administra-
41 tive enforcement use.

42 (3) Information, which does not identify individual patients, prac-
43 titioners or dispensing pharmacists or pharmacies, may be released by the
44 board for educational, research or public information purposes.

45 (4) Unless there is shown malice or criminal intent or gross negligence
46 or reckless, willful and wanton conduct as defined in section 6-904C, Idaho
47 Code, the state of Idaho, the board, any other state agency, or any person,
48 or entity in proper possession of information as herein provided shall not be

1 subject to any liability or action for money damages or other legal or equi-
2 table relief by reason of any of the following:

3 (a) The furnishing of information under the conditions herein pro-
4 vided;

5 (b) The receiving and use of, or reliance on, such information;

6 (c) The fact that any such information was not furnished; or

7 (d) The fact that such information was factually incorrect or was re-
8 leased by the board to the wrong person or entity.

9 (5) The board may apply for any available grants and accept any gifts,
10 grants or donations to assist in developing and maintaining the program re-
11 quired by this section.