**The following excerpt is reprinted from the Arkansas Code Annotated Relating to the Regulation of Controlled Substances.**

## ARKANSAS CODE RULES AND REGULATIONS RELATING TO THE REGULATION OF CONTROLLED SUBSTANCES

### §20-64-207. PROFESSIONAL USE OF NARCOSTIC DRUGS

(1) Physicians and Dentists. A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or intern under his direction and supervision.

(2) Veterinarians. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) Return of Unused Drugs. Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian, shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient.

### §20-7-604. REQUIREMENTS FOR PRESCRIPTION DRUG MONITORING PROGRAM

(a) The State Board of Health shall create the Prescription Drug Monitoring Program upon the Department of Health's procuring adequate funding to establish the program.

(b) (1) Each dispenser shall submit to the department information regarding each controlled substance dispensed.

(2) A dispenser located outside Arkansas and licensed and registered by the Arkansas State Board of Pharmacy shall submit to the department information regarding each controlled substance prescription dispensed to an ultimate user whose address is within Arkansas.

(3) The State Board of Health shall create a controlled substances database for the Prescription Drug Monitoring Program.

(c) Each dispenser required to report under subsection (b) of this section shall submit to the department by electronic means information that shall include without limitation:

(1) The dispenser's identification number;

(2) The date the prescription was filled;

(3) The prescription number;

(4) Whether the prescription is new or is a refill;

(5) The National Drug Code for the controlled substance that is dispensed;

(6) The quantity of the controlled substance dispensed;

(7) The number of days' supply dispensed;

(8) The number of refills ordered;

(9) (A) A patient identifier.

(B) A patient identifier shall not be a Social Security number or a driver's license number;

(10) The patient's name;

(11) The patient's address;

(12) The patient's date of birth;

(13) The patient's gender;

(14) The prescriber's identification number;

(15) The date the prescription was issued by the prescriber; and

(16) The source of the payment for the prescription.

(d) (1) Except as required in subdivision (d)(2) of this section, practitioners are encouraged to access or check the information in the controlled substance database created under this subchapter before prescribing, dispensing, or administering medications.

(2) (A) A prescriber shall check the information in the program when prescribing:

(i) An opioid from Schedule II or Schedule III for every time prescribing the medication to a patient; and

(ii) A benzodiazepine medication for the first time prescribing the medication to a patient.

(B) A licensing board that licenses practitioners who have the authority to prescribe shall adopt rules requiring the practitioners to check the information in the program as described in subdivision (d)(2)(A) of this section.

(C) This subdivision (d)(2) does not apply to:

(i) A practitioner administering a controlled substance:

(a) Immediately before or during surgery;

(b) During recovery from a surgery while in a healthcare facility;

(c) In a healthcare facility; or

(d) Necessary to treat the patient in an emergency situation at the scene of an emergency, in a licensed ground ambulance or air ambulance, or in the intensive care unit of a licensed hospital;

(ii) A practitioner prescribing or administering a controlled substance to:

(a) A palliative care or hospice patient; or

(b) A resident in a licensed nursing home facility; or

(iii) Situations in which the program is not accessible due to technological or electrical failure.

(D) The State Board of Health may amend, by rule, the exemptions listed in subdivision (d)(2)(C) of this section upon a recommendation from the Secretary of the Department of Health and a showing that the exemption or lack of exemption is unnecessarily burdensome or has created a hardship.

(3) A licensed oncologist shall check the program when prescribing to a patient on an initial malignant episodic diagnosis and every three (3) months following the diagnosis while continuing treatment.

(e) This subchapter does not prohibit licensing boards from requiring practitioners to access or check the information in the controlled substance database as a part of a review of the practitioner's professional practice.

(f) Each dispenser shall submit the required information in accordance with transmission methods and frequency established by the department.

(g) (1) The department shall create a process for patients to address errors, inconsistencies, and other matters in their record as maintained under this section, including cases of breach of privacy and security.

(2) The department shall develop algorithms within the controlled substance database that would alert a practitioner if his or her patient is being prescribed opioids by more than three (3) physicians within any thirty-day period, if funding is available.

(h) (1) The department shall limit access to only those employees whose access is reasonably necessary to carry out this section.

(2) However, a prescriber may delegate access to the controlled substance database to persons under his or her supervision or employment.

(i) A certified law enforcement prescription drug diversion investigator shall provide to the department the following information in order to be granted access to the Prescription Drug Monitoring Program:

(1) The identification credentials assigned by the department; and

(2) The case number of the investigation.

(j) (1) A qualified law enforcement agency shall submit to the department an annual report of the data accessed by all certified law enforcement prescription drug diversion investigators in the qualified law enforcement agency, including without limitation:

(A) Written verification that the inquiries were part of a lawful prescription drug diversion investigation as provided to the department through the case number of the investigation; and

(B) The disposition of the investigation.

(2) The department shall:

(A) Create a verification form for use under subdivision (j)(1) of this section; and

(B) Make the verification form available annually to the qualified law enforcement agency.

(3) (A) The verification form under subdivision (j)(2) of this section shall be submitted to the department within thirty (30) days of receipt of the form by the qualified law enforcement agency.

(B) Failure to submit a verification form under subdivision (j)(3)(A) of this section shall result in the immediate suspension of access to the database by the qualified law enforcement agency and its certified law enforcement prescription drug diversion investigators until a determination is made by the department to allow continued access.

**20-7-606. CONFIDENTIALITY**

(a) Prescription information submitted to the Department of Health under this subchapter is confidential and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) (1) The controlled substances database created in this subchapter and all information contained in the controlled substances database and any records maintained by the Department of Health or by an entity contracting with the Department of Health that is submitted to, maintained, or stored as a part of the controlled substances database is privileged and confidential, is not a public record, and is not subject to subpoena or discovery in a civil proceeding.

(2) Information in the controlled substances database may be accessed by:

(A) A certified law enforcement officer pursuant to a criminal investigation but only after the law enforcement officer obtains a search warrant signed by a judge that demonstrates probable cause to believe that a violation of federal or state criminal law has occurred, that specified information contained in the database would assist in the investigation of the crime, and that the specified information should be released to the certified law enforcement officer;

(B) A regulatory body engaged in the supervision of activities of licensing or regulatory boards of practitioners authorized to prescribe or dispense controlled substances;

(C) A person or entity investigating a case involving breaches of privacy involving the database or its records;

(D) A certified law enforcement prescription drug diversion investigator of a qualified law enforcement agency; or

(E) A practitioner within the Arkansas Medicaid prescription drug program;

(F) The Department of Human Services or the Crimes Against Children Division if:

(i) The purpose of the database access is related to an investigation under the Child Maltreatment Act, § 12-18-101 et seq., and not pursuant to a criminal investigation by a certified law enforcement officer; and

(ii) The Department of Human Services has obtained a circuit court order to access the database under § 12-18-622.

(G) The Office of Medicaid Inspector General for review and investigation of fraud, waste, and abuse within the Arkansas Medicaid prescription drug program if access is limited to beneficiaries of the Arkansas Medicaid prescription drug program.

(c) This section does not apply to information, documents, or records created or maintained in the regular course of business of a pharmacy, a medical, dental, optometric, or veterinary practitioner, or another entity covered by this subchapter, and all information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil proceeding merely because the information contained in the records was reported to the controlled substances database under this subchapter.

(d) The Department of Health shall establish and enforce policies and procedures to ensure that the privacy and confidentiality of patients are maintained and that patient information collected, recorded, transmitted, and stored is protected and not disclosed to persons except as listed in § 20-7-607.

(e) The Prescription Drug Monitoring Program shall establish and maintain a process for verifying the credentials and authorizing the use of prescription information by individuals and agencies listed in § 20-7-607.

**20-7-607. PROVIDING PRESCRIPTION MONITORING INFORMATION**

(a) (1) (A) (i) The Department of Health shall review the Prescription Drug Monitoring Program information, including without limitation a review to identify information that appears to indicate whether a person is obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances based on prescribing criteria determined by the Secretary of the Department of Health upon consultation with the Prescription Drug Monitoring Program Advisory Committee.

(ii) The prescribing criteria shall be posted on the website of the department and be available in print upon request.

(B) If the information appears to indicate misuse or abuse may have occurred, the department shall notify the practitioners and dispensers who have prescribed or dispensed in the following manner:

(i) The department shall provide quarterly reports to the individual practitioners and dispensers; and

(ii) If after twelve (12) months of providing quarterly reports to the practitioners and dispensers, the information appears to indicate misuse or abuse may be continuing, the department shall send a report to the licensing boards of the practitioner or dispenser who prescribed or dispensed the prescription.

(C) If information of misuse or abuse is identified, the department shall notify the practitioners and dispensers who prescribed or dispensed the prescriptions and the United States Diversion Control Division of the United States Drug Enforcement Administration.

(D) On or before January 1, 2019, the department shall contract with a vendor to make the program interactive and to provide same-day reporting in real time, if funding and technology are available.

(2) (A) The department may review the program information, including without limitation a review to identify information that appears to indicate whether a prescriber or dispenser may be prescribing or dispensing prescriptions in a manner that may represent misuse or abuse of controlled substances.

(B) If information of misuse or abuse is identified, the department may notify the professional licensing board of the prescriber or dispenser only after the relevant professional licensing board has provided the department with the parameters for triggering a notification from the department to the professional licensing board.

(b) The department shall provide information in the program upon request and at no cost only to the following persons:

(1) (A) A person authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for his or her patients or for reviewing information regarding prescriptions that are recorded as having been issued or dispensed by the requester.

(B) An agent or employee of the prescriber or dispenser to whom the prescriber or dispenser has delegated the task of assessing the data described in this subsection, but only if the agent or employee has been granted access by a delegate account;

(2) A patient who requests his or her own prescription monitoring information;

(3) A parent or legal guardian of a minor child who requests the minor child's program information;

(4) (A) A designated representative of a professional licensing board of the professions of the healing arts representing health care disciplines whose licensees are prescribers pursuant to an investigation of a specific individual, entity, or business licensed or permitted by the licensing board.

(B) Except as permitted by subdivision (a)(2) of this section, the department shall provide information under subdivision (b)(4)(A) of this section only if the requesting licensing board states in writing that the information is necessary for an investigation;

(5) The State Medical Examiner as authorized by law to investigate causes of deaths for cases under investigation pursuant to his or her official duties and responsibilities;

(6) Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances required to be submitted under this subchapter pursuant to the agency's official duties and responsibilities; and

(7) Personnel of the department for purposes of administration and enforcement of this subchapter.

(c) Information collected under this subchapter shall be maintained for three (3) years.

(d) The department may provide patient, prescriber, or dispenser information to public or private entities for statistical, research, or educational purposes after encrypting or removing any patient's name, street name and number, patient identification number, month and day of birth, and prescriber or dispenser information that could be used to identify individual patients or persons who received prescriptions.

(e) The department may provide information in the program to insurance carriers for the purpose of verifying prescriber or dispenser registration for individuals that are part of the health plan's network of providers.

**20-7-608. INFORMATION EXCHANGE WITH OTHER PRESCRIPTION DRUG MONITORING PROGRAMS.**

(a) The Department of Health may provide prescription monitoring information to federal prescription drug monitoring programs or other states' prescription drug monitoring programs, and the information may be used by those programs consistent with this subchapter.

(b) The department may request and receive prescription monitoring information from federal prescription drug monitoring programs or other states' prescription drug monitoring programs and may use the information under this subchapter.

(c) The department may develop the capability to transmit information to other prescription drug monitoring programs and receive information from other prescription drug monitoring programs employing the standards of exchangeability.

(d) The department may enter into written agreements with federal prescription drug monitoring programs or other states' prescription drug monitoring programs for the purpose of describing the terms and conditions for sharing prescription information under this subchapter.

**20-7-702. DEFINITIONS.**

As used in this subchapter:

(1) "Hospital" means a healthcare facility licensed as a hospital by the State Board of Health under § 20-9-213;

(2) "Chronic nonmalignant pain" means pain requiring more than three (3) consecutive months of prescriptions for:

(A) An opioid that is written for more than the equivalent of ninety (90) tablets, each containing five milligrams (5 mg) of hydrocodone;

(B) A morphine equivalent dose of more than fifteen milligrams (15 mg) per day; or

(C) In the specific case of tramadol, a dose of fifty milligrams (50 mg) or one hundred twenty (120) tablets;

(3) "Opioid" means a drug or medication that relieves pain, including without limitation:

(A) Hydrocodone;

(B) Oxycodone;

(C) Morphine;

(D) Codeine;

(E) Heroin; and

(F) Fentanyl; and

(4) "Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance.

**20-7-703. OPIOID PRESCRIBING GUIDELINES FOR EMERGENCY DEPARTMENT**

(a) A hospital with an emergency department shall adopt guidelines concerning opioid prescribing in the emergency department.

(b) The guidelines shall be drafted jointly by the emergency department physicians and medical staff and approved by the governing body of the hospital.

(c) The guidelines shall address, at a minimum:

(1) Treatment of chronic nonmalignant pain and acute pain;

(2) Limits on amounts or duration of opioid prescriptions; and

(3) Identification of situations where opioid prescriptions should be discouraged or prohibited.

(d) The guidelines shall not be construed as establishing a standard of care.

**20-7-704. PRESCRIBER EDUCATION**

(a) (1) Within the first two (2) years of being granted a license in the state, a prescriber shall obtain a minimum of two (2) hours of prescribing education approved by the appropriate licensing board.

(2) The education approved by the appropriate licensing board under subdivision (a)(1) of this section shall include:

(A) Options for online and in-person programs; and

(B) Information on prescribing rules, regulations, and laws that apply to individuals who are licensed in the state.

(b) This section shall apply to all prescribers licensed after December 31, 2015.

**20-7-706. PATIENT EVALUATION**

A patient who is being treated with controlled substances for chronic nonmalignant pain shall be evaluated at least one (1) time every six (6) months by a physician who is licensed by the Arkansas State Medical Board.

**20-7-707. PRESCRIBER REQUIREMENTS**

(a) For a patient with chronic nonmalignant pain, a prescriber, at a minimum and in addition to any additional requirements of the appropriate licensing board, shall:

(1) Check the prescriptive history of the patient on the Prescription Drug Monitoring Program at least every six (6) months; and

(2) Have a signed pain contract with the patient that states, at a minimum, the expectations of the prescriber for the behavior of the patient which may include:

(A) A requirement for random urine drug screenings to help ensure that the patient is abiding by the requirements of the contract; and

(B) A requirement for random pill counts to ensure compliance with the prescription.

(b) The requirements of this section shall not apply to a patient:

(1) Whose pain medications are being prescribed for a malignant condition;

(2) With a terminal condition;

(3) Who is a resident of a licensed healthcare facility;

(4) Who is enrolled in a hospice program; or

(5) Who is in an inpatient or outpatient palliative care program.

**20-7-708. IMMUNITY**

A prescriber or licensed healthcare facility that in good faith reports a suspected drug diversion is immune from civil or criminal liability and disciplinary action by the appropriate licensing board.