MISSISSIPPI LEGISLATURE REGULAR SESSION 2008

By: Representative Read

To: Public Health and Human Services

HOUSE BILL NO. 1339

AN ACT TO CREATE NEW SECTION 73-21-114, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE STATE BOARD OF PHARMACY SHALL DESIGNATE AN OFFICIAL MISSISSIPPI PRESCRIPTION FORM THAT WILL BE SERIALIZED AND TAMPER-RESISTANT; TO AUTHORIZE THE BOARD TO CONTRACT WITH A PRIVATE VENDOR TO DEVELOP AND PRINT THE OFFICIAL PRESCRIPTION FORMS; TO PROVIDE THAT THE OFFICIAL PRESCRIPTION FORMS SHALL BE PROVIDED BY THE BOARD OR THE PRIVATE VENDOR TO REGISTERED PRACTITIONERS AND FACILITIES WITHOUT CHARGE; TO PROVIDE THAT THE BOARD SHALL ESTABLISH SECURITY REGULATIONS CONCERNING THE PROCUREMENT OF THE OFFICIAL PRESCRIPTION FORMS; TO REQUIRE PRACTITIONERS TO ISSUE ALL WRITTEN PRESCRIPTIONS UPON AN OFFICIAL PRESCRIPTION FORM; TO PROVIDE THAT A PHARMACIST SHALL NOT FILL A WRITTEN PRESCRIPTION FROM A MISSISSIPPI PRACTITIONER UNLESS ISSUED ON AN OFFICIAL PRESCRIPTION FORM; TO PROVIDE THAT PRACTITIONERS SHALL REGISTER WITH THE BOARD IN ORDER TO BE ISSUED OFFICIAL PRESCRIPTION FORMS; TO REQUIRE REGISTERED PRACTITIONERS AND FACILITIES TO UNDERTAKE ADEQUATE SAFEGUARDS AND SECURITY MEASURES TO ASSURE AGAINST DESTRUCTION, THEFT OR UNAUTHORIZED USE OF AN OFFICIAL PRESCRIPTION FORM; TO PROVIDE THAT VIOLATIONS OF THIS ACT ARE A FELONY; TO AMEND SECTIONS 73-21-115, 73-21-127 AND 41-29-105, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 73-21-114, Mississippi Code of 1972:

73-21-114. (1) The State Board of Pharmacy shall designate an official Mississippi prescription form. The form shall be serialized and tamper-resistant. For the purposes of this section, "tamper resistant" means unable to be altered, copied or counterfeited. The board may contract with a private vendor to develop and print the official prescription form from a third-party vendor, provided that the printer has met security regulations promulgated by the board.

(2) The official prescription forms shall be provided by the board or by the private vendor to registered practitioners and

facilities without charge. Each series of prescriptions shall be issued to a specific practitioner in consecutively numbered blocks of fifty (50) and shall only be used by that practitioner. The board shall establish security regulations for the board and the private vendor concerning the procurement of the official prescription forms.

(3) A practitioner authorized to write a prescription in the state shall issue all written prescriptions upon an official prescription form.

(4) A pharmacist shall not fill a written prescription from a Mississippi practitioner unless issued upon an official prescription form. Nothing in this section shall be construed to impact regulations regarding oral, electronic or out-of-state prescription practices.

(5) (a) A practitioner or facility shall register with the board in order to be issued official prescription forms. Registration shall be without charge. Registration shall include, but not be limited to:

(i) The name of a practitioner authorized to prescribe controlled substances;

(ii) The primary address and the address of additional places of business;

(iii) The practitioner's drug enforcement agency number;

(iv) The practitioner's license number; and

(v) The serialized prescription blank number.

(b) A practitioner's or facility's registration shall be subject to approval by the board, under rules promulgated by the board. Any change to a practitioner's or a facility's registered information shall be promptly reported to the board in a manner promulgated by the board.

(6) (a) A registered facility shall obtain official prescription forms for use at the facility and shall assign the

forms to registered staff practitioners. The number of official prescription forms issued to a registered practitioner or facility by the board or the private vendor shall be a reasonable quantity and at the discretion of the board. Official prescription forms shall be imprinted with:

(i) The name of the registered practitioner or the registered practitioners at a registered facility;

(ii) The registered practitioner's drug enforcement agency's identification number;

(iii) The primary address and the address of additional places of business;

(iv) The practitioner's license number; and

(v) The serialized prescription blank number.

(b) An official prescription form is not transferable and shall be used only by the registered practitioner or facility to whom issued.

(7) A registered practitioner or facility shall undertake adequate safeguards and security measures promulgated by the board to assure against destruction, theft or unauthorized use of an official prescription form. A registered practitioner shall, at minimum, maintain a record of official prescription forms received and establish a system requiring forms be secure pursuant to security measures promulgated by the board. A register facility shall, at minimum, maintain a record of official prescription forms received, maintain a record of forms assigned to its registered staff practitioners, establish a system requiring forms to be secure pursuant to security measures promulgated by the board, and require a registered staff practitioner to surrender their assigned forms when the practitioner terminates affiliation with the registered facility.

(8) A registered practitioner or facility shall immediately notify the board, in a manner promulgated by the board, upon their knowledge of the loss, destruction, theft or unauthorized use of

an official prescription form. A registered practitioner or facility shall report the failure to receive official prescription forms to the board within a reasonable time after ordering the forms. A registered practitioner or facility shall immediately notify the board and the diversion investigation unit of the Mississippi Bureau of Investigation upon their knowledge of prescription diversion or suspected diversion pursuant to the loss, theft or unauthorized use of an official prescription form.

(9) This subsection shall be effective from and after July 1, 2009. A violation of this section is a felony punishable by a fine of not less than One Thousand Dollars ($1,000.00), or commitment to the Department of Corrections for not less than one (1) year, or both. A second or subsequent violation of this section is a felony punishable by a fine of not less than Five Thousand Dollars ($5,000.00), or commitment to the Department of Corrections for not less than five (5) years, or both.

(10) The board, in conjunction with the head of the diversion investigation unit of the Mississippi Bureau of Investigation, shall issue an annual report on the effectiveness of the official Mississippi prescription form.

SECTION 2. Section 73-21-115, Mississippi Code of 1972, is amended as follows:

73-21-115. (1) Every prescription written in this state by a person authorized to issue such prescription shall be on an official Mississippi prescription form containing two (2) lines for the prescriber's signature. There shall be a signature line in the lower right-hand corner of the prescription form beneath which shall be clearly imprinted the words "substitution permissible." There shall be a signature line in the lower left-hand corner of the prescription form beneath which shall be clearly imprinted the words "dispense as written." The prescriber's signature on either signature line shall validate the

prescription and shall designate approval or disapproval of product selection.

(2) If a prescription form which does not contain the two (2) signature lines required in subsection (1) of this section is utilized by the prescriber, he shall write in his own handwriting the words "dispense as written" thereupon to prevent product selection.

(3) A pharmacist licensed by the Mississippi State Board of Pharmacy may dispense a one-time emergency dispensing of a prescription of up to a seventy-two-hour supply of a prescribed medication in the event the pharmacist is unable to contact the prescriber to obtain refill authorization, provided that:

(a) The prescription is not for a controlled substance;

(b) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(c) The dispensing pharmacist notifies the prescriber or his agent of the emergency dispensing within seven (7) working days after the one-time emergency dispensing;

(d) The pharmacist properly records the dispensing as a separate nonrefillable prescription. Said document shall be filed as is required of all other prescription records. This document shall be serially numbered and contain all information required of other prescriptions. In addition it shall contain the number of the prescription from which it was refilled; and

(e) The pharmacist shall record on the new document the circumstances which warrant this emergency dispensing.

This emergency dispensing shall be done only in the permitted facility which contains the nonrefillable prescription.

SECTION 3. Section 73-21-127, Mississippi Code of 1972, is amended as follows:

73-21-127. The Board of Pharmacy shall develop and implement a computerized program to track prescriptions for controlled

substances and to report illegal activity, under the following conditions:

(a) The prescriptions tracked shall be prescriptions for controlled substances listed in Schedule II, III, IV or V that are filled by a pharmacy. The computerized tracking program shall make use of the serial number printed on the official Mississippi prescription form and captured as part of the dataset. The program shall provide information regarding the inappropriate use of controlled substances in Schedule II, III, IV and V to pharmacies, practitioners and appropriate state agencies in order to prevent the improper or illegal use of such controlled substances. The program shall not infringe on the legal use of controlled substances for the management of severe or intractable pain.

(b) The Board of Pharmacy shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide them with the relevant information obtained for further investigation.

(c) Information obtained from the program is confidential and must not be disclosed to any person. Information must be disclosed upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney.

(d) Licensed physicians, dentists and pharmacists may obtain patient specific information in the program by request.

(e) The Board of Pharmacy may apply for any available grants and accept any gifts, grants or donations to assist in future development or in maintaining the program.

SECTION 4. Section 41-29-105, Mississippi Code of 1972, is amended as follows:

41-29-105. The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(i) A practitioner (or, in his presence, by his authorized agent); or

(ii) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. Such word does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman. This definition shall not be applied to the term "agent" when such term clearly designates a member or officer of the Bureau of Narcotics or other law enforcement organization.

(c) "Board" means the Mississippi State Board of Medical Licensure.

(d) "Bureau" means the Mississippi Bureau of Narcotics. However, where the title "Bureau of Drug Enforcement" occurs, that term shall also refer to the Mississippi Bureau of Narcotics.

(e) "Commissioner" means the Commissioner of the Department of Public Safety.

(f) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of Sections 41-29-113 through 41-29-121.

(g) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than

the person who in fact manufactured, distributed or dispensed the substance.

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

(i) "Director" means the Director of the Bureau of Narcotics.

(j) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(k) "Dispenser" means a practitioner who dispenses.

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

(m) "Distributor" means a person who distributes.

(n) "Drug" means (i) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and (iv) a substance intended for use as a component of any article specified in this paragraph. Such word does not include devices or their components, parts, or accessories.

(o) "Hashish" means the resin extracted from any part of the plants of the genus Cannabis and all species thereof or any preparation, mixture or derivative made from or with that resin.

(p) "Immediate precursor" means a substance which the board has found to be and by rule designates as being the

principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term "manufacture" does not include the preparation, compounding, packaging or labeling of a controlled substance in conformity with applicable state and local law:

(i) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(ii) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(r) "Marihuana" means all parts of the plant of the genus Cannabis and all species thereof, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds, excluding hashish.

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

(i) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(ii) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical

with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium;

(iii) Opium poppy and poppy straw; and

(iv) Cocaine, coca leaves and any salt, compound, derivative or preparation of cocaine, coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(t) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 41-29-111, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such word does include its racemic and levorotatory forms.

(u) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(v) "Paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Law. It includes, but is not limited to:

(i) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(ii) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(iii) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(iv) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(v) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

(vi) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(vii) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;

(viii) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(ix) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(x) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

(xi) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

(xii) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips, meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs; and

13. Ice pipes or chillers.

In determining whether an object is paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(i) Statements by an owner or by anyone in control of the object concerning its use;

(ii) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(iii) The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Law;

(iv) The proximity of the object to controlled substances;

(v) The existence of any residue of controlled substances on the object;

(vi) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Law shall not prevent a finding that the object is intended for use, or designed for use as paraphernalia;

(vii) Instructions, oral or written, provided with the object concerning its use;

(viii) Descriptive materials accompanying the object which explain or depict its use;

(ix) National and local advertising concerning its use;

(x) The manner in which the object is displayed for sale;

(xi) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(xii) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(xiii) The existence and scope of legitimate uses for the object in the community;

(xiv) Expert testimony concerning its use.

(w) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

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

(y) "Practitioner" means:

(i) A physician, dentist, veterinarian, scientific investigator, optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; and

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

(z) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(aa) "Sale," "sell" or "selling" means the actual, constructive or attempted transfer or delivery of a controlled substance for remuneration, whether in money or other consideration.

(bb) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(cc) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(dd) "Official Mississippi prescription form" means the serialized and tamper-resistant prescription pads designated by the State Board of Pharmacy under Section 73-21-114.

SECTION 5. Section 1 of this act shall take effect and be in force from and after July 1, 2008, and Sections 2, 3 and 4 of this act shall take effect and be in force from and after July 1, 2009.