
A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

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

1 SECTION 1. Chapter 329, Hawaii Revised Statutes, is
2 amended by adding two new sections to part IV to be
3 appropriately designated and to read as follows:

4 "§329- Administrative penalties. (a) Any person who
5 violates this chapter or any rule adopted by the department
6 pursuant to this chapter shall be fined not more than \$10,000
7 for each separate offense. Any action taken to collect the
8 penalty provided for in this subsection shall be considered a
9 civil action and the fine shall be deposited into the state
10 general fund.

11 (b) In addition to any other administrative or judicial
12 remedy provided by this part, or by rules adopted pursuant to
13 this chapter, the director may impose by order the
14 administrative penalty specified in this section. Factors to be
15 considered in imposing the administrative penalty include the
16 nature and history of the violation and of any prior violation,
17 and the opportunity, difficulty, and history of corrective



1 action. For any judicial proceeding to recover the
2 administrative penalty imposed, the administrator need only show
3 that notice was given, a hearing was held or the time granted
4 for requesting a hearing has expired without such a request, the
5 administrative penalty was imposed, and the penalty remains
6 unpaid.

7 §329- Injunctive relief. The administrator may
8 institute a civil action in any court of competent jurisdiction
9 for injunctive relief to prevent any violation of this chapter
10 or any rule adopted to implement this chapter. The court shall
11 have powers to grant relief in accordance with the Hawaii rules
12 of civil procedure."

13 SECTION 2. Section 329-1, Hawaii Revised Statutes, is
14 amended by adding two new definitions to be appropriately
15 inserted and to read as follows:

16 "Designated member of the health care team" includes
17 physician assistants, advanced practice registered nurses, and
18 covering physicians.

19 "Physician-patient relationship" means the collaborative
20 relationship between physicians and their patients. The health
21 and well being of patients depends upon a collaborative
22 relationship between physicians and their patients. To



1 establish this relationship, the treating physician or the
2 physician's designated member of the health care team, at a
3 minimum, must:

- 4 (1) Personally perform a face-to-face history and physical
5 examination of the patient that shall be appropriate
6 to the specialty training and experience of the
7 physician or the designated member of the health care
8 team, make a diagnosis and formulate a therapeutic
9 plan, or personally treat a specific injury or
10 condition;
- 11 (2) Discuss with the patient the diagnosis or treatment
12 including the benefits of other treatment options; and
- 13 (3) Ensure the availability of appropriate follow-up
14 care."

15 SECTION 3. Section 329-38, Hawaii Revised Statutes, is
16 amended by amending subsection (g) to read as follows:

17 "(g) Prescriptions for controlled substances shall be
18 issued only as follows:

- 19 (1) All prescriptions for controlled substances shall
20 originate from within the State and be dated as of,
21 and signed on, the day when the prescriptions were
22 issued and shall contain:



- 1 (A) The first and last name and address of the
2 patient; and
- 3 (B) The drug name, strength, dosage form, quantity
4 prescribed, and directions for use. Where a
5 prescription is for gamma hydroxybutyric acid,
6 methadone, or buprenorphine, the practitioner
7 shall record as part of the directions for use,
8 the medical need of the patient for the
9 prescription.

10 The controlled substance prescriptions shall be no
11 larger than eight and one-half inches by eleven inches
12 and no smaller than three inches by four inches.

13 A practitioner may sign a prescription in the same
14 manner as the practitioner would sign a check or legal
15 document (e.g., J.H. Smith or John H. Smith) and shall
16 use both words and figures (e.g., alphabetically and
17 numerically as indications of quantity, such as five
18 (5)), to indicate the amount of controlled substance
19 to be dispensed. Where an oral order is not
20 permitted, prescriptions shall be written with ink or
21 indelible pencil or typed, shall be manually signed by
22 the practitioner, and shall include the name, address,



1 telephone number, and registration number of the
2 practitioner. The prescriptions may be prepared by a
3 secretary or agent for the signature of the
4 practitioner, but the prescribing practitioner shall
5 be responsible in case the prescription does not
6 conform in all essential respects to this chapter and
7 any rules adopted pursuant to this chapter. In
8 receiving an oral prescription from a practitioner, a
9 pharmacist shall promptly reduce the oral prescription
10 to writing, which must include the following
11 information: the name, strength, and quantity of the
12 drug, in figures only, and specific directions for the
13 drug's use; the date the oral prescription was
14 received; the full name, DEA registration number, and
15 oral code number of the practitioner; and the name and
16 address of the person for whom the controlled
17 substance was prescribed or the name of the owner of
18 the animal for which the controlled substance was
19 prescribed.

20 A corresponding liability shall rest upon a pharmacist
21 who fills a prescription not prepared in the form
22 prescribed by this section. A pharmacist may add a



1 patient's missing address or change a patient's
2 address on all controlled substance prescriptions
3 after verifying the patient's identification and
4 noting the identification number on the back of the
5 prescription. The pharmacist shall not make changes
6 to the patient's name, the controlled substance being
7 prescribed, the quantity of the prescription, the
8 practitioner's DEA number, or the practitioner's
9 signature;

10 (2) An intern, resident, or foreign-trained physician, or
11 a physician on the staff of a Department of Veterans
12 Affairs facility or other facility serving veterans,
13 exempted from registration under this chapter, shall
14 include on all prescriptions issued by the physician:

15 (A) The registration number of the hospital or other
16 institution; and

17 (B) The special internal code number assigned to the
18 physician by the hospital or other institution in
19 lieu of the registration number of the
20 practitioner required by this section.

21 The hospital or other institution shall forward a copy
22 of this special internal code number list to the



1 department as often as necessary to update the
2 department with any additions or deletions. Failure
3 to comply with this paragraph shall result in the
4 suspension of that facility's privilege to fill
5 controlled substance prescriptions at pharmacies
6 outside of the hospital or other institution. Each
7 written prescription shall have the name of the
8 physician stamped, typed, or hand-printed on it, as
9 well as the signature of the physician;

10 (3) An official exempted from registration shall include
11 on all prescriptions issued by the official:

12 (A) The official's branch of service or agency (e.g.,
13 "U.S. Army" or "Public Health Service"); and

14 (B) The official's service identification number, in
15 lieu of the registration number of the
16 practitioner required by this section. The
17 service identification number for a Public Health
18 Service employee shall be the employee's social
19 security identification number.

20 Each prescription shall have the name of the officer
21 stamped, typed, or handprinted on it, as well as the
22 signature of the officer; and



1 (4) A physician assistant registered to prescribe
2 controlled substances under the authorization of a
3 supervising physician shall include on all controlled
4 substance prescriptions issued:

5 (A) The DEA registration number of the supervising
6 physician; and

7 (B) The DEA registration number of the physician
8 assistant.

9 Each written controlled substance prescription issued
10 shall include the printed, stamped, typed, or hand-
11 printed name, address, and phone number of both the
12 supervising physician and physician assistant, and
13 shall be signed by the physician assistant. The
14 medical record of each written controlled substance
15 prescription issued by a physician assistant shall be
16 reviewed and initialed by the physician assistant's
17 supervising physician within seven working days."

18 SECTION 4. Section 329-38, Hawaii Revised Statutes, is
19 amended by amending subsections (j), (k), (l), and (m) to read
20 as follows:

21 "(j) A prescription for a schedule II controlled substance
22 may be transmitted by the practitioner or the practitioner's



1 agent to a pharmacy by facsimile equipment; provided that the
2 original written, signed prescription is presented to the
3 pharmacist for review prior to the actual dispensing of the
4 controlled substance, except as noted in subsection (k), (l),
5 (m). The original prescription shall be maintained in
6 accordance with section 329-36. A prescription for a schedule
7 III, IV, or V controlled substance may be transmitted by the
8 practitioner or the practitioner's agent to a pharmacy by
9 facsimile; provided that:

10 (1) The information shall be communicated only between the
11 prescribing practitioner or the prescriber's
12 authorized agent and the pharmacy of the patient's
13 choice[+]. The original prescription shall be
14 maintained by the practitioner in accordance with
15 section 329-36;

16 (2) The information shall be communicated in a
17 retrievable, recognizable format acceptable to the
18 intended recipient and shall include the physician's
19 oral code designation and the name of the recipient
20 pharmacy;

21 (3) No electronic system, software, or other intervening
22 mechanism or party shall alter the practitioner's



1 prescription, order entry, selection, or intended
2 selection without the practitioner's approval on a per
3 prescription per order basis. Facsimile prescription
4 information shall not be altered by any system,
5 software, or other intervening mechanism or party
6 prior to receipt by the intended pharmacy;

7 (4) The prescription information processing system shall
8 provide for confidentiality safeguards required by
9 federal or state law; and

10 (5) Prescribing practitioners and pharmacists shall
11 exercise prudent and professional judgment regarding
12 the accuracy, validity, and authenticity of any
13 facsimile prescription information. The facsimile
14 shall serve as the original written prescription for
15 purposes of this section and shall be maintained in
16 accordance with section 329-36.

17 (k) A prescription prepared in accordance with subsection
18 (g) written for a narcotic listed in schedule II to be
19 compounded for the direct administration to a patient by
20 parenteral, intravenous, intramuscular, subcutaneous, or
21 intraspinal infusion, but does not extend to the dispensing of
22 oral dosage units of controlled substances, may be transmitted



1 by the practitioner or the practitioner's agent to the pharmacy
2 by facsimile. The original prescription shall be maintained by
3 the practitioner in accordance with section 329-36. The
4 pharmacist shall note on the face of the facsimile prescription
5 in red ink "Home Infusion/IV" and this facsimile shall serve as
6 the original written prescription for purposes of this section
7 and it shall be maintained in accordance with section 329-36.

8 (1) A prescription prepared in accordance with subsection
9 (g) written for a schedule II substance for a patient enrolled
10 in a hospice care program certified or paid for by medicare
11 under Title XVIII or a hospice program that is licensed by the
12 State may be transmitted by the practitioner or the
13 practitioner's agent to the dispensing pharmacy by facsimile.
14 The original prescription shall be maintained by the
15 practitioner in accordance with section 329-36. The
16 practitioner or practitioner's agent shall note on the
17 prescription that the patient is a hospice patient. The
18 pharmacist shall note on the face of the facsimile prescription
19 in red ink "HOSPICE" and this facsimile shall serve as the
20 original written prescription for purposes of this section and
21 it shall be maintained in accordance with section 329-36.



1 (m) A prescription prepared in accordance with subsection
2 (g) written for a schedule II controlled substance for a
3 resident of a state-licensed long-term care facility may be
4 transmitted by the practitioner or the practitioner's agent to
5 the dispensing pharmacy by facsimile. The original prescription
6 shall be maintained by the practitioner in accordance with
7 section 329-36. The pharmacist shall note on the face of the
8 facsimile prescription in red ink "LTCF" and this facsimile
9 shall serve as the original written prescription for purposes of
10 this section and it shall be maintained in accordance with
11 section 329-36."

12 SECTION 5. Section 329-41, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§329-41 Prohibited acts B--penalties.** (a) It is
15 unlawful for any person:

16 (1) Who is subject to part III to distribute, administer,
17 prescribe, or dispense a controlled substance in
18 violation of section 329-38[+] or rules authorized
19 under section 329-31; however, a licensed manufacturer
20 or wholesaler may sell or dispense a controlled
21 substance to a master of a transpacific ship or a
22 person in charge of a transpacific aircraft upon which



1 no physician is regularly employed, for the actual
2 medical needs of persons on board such ship or
3 aircraft when not in port; provided schedule I or II
4 controlled substances shall be sold to the master of
5 such ship or person in charge of such aircraft only in
6 accordance with the provisions set forth in 21 Code of
7 Federal Regulations, Sections 1301, 1305, and 1307,
8 adopted pursuant to Title 21, United States Code,
9 Section 821;

10 (2) Who is a registrant to manufacture a controlled
11 substance not authorized by the registrant's
12 registration or to distribute or dispense a controlled
13 substance not authorized by the registrant's
14 registration to another registrant or another
15 authorized person;

16 (3) To refuse or fail to make available, keep, or furnish
17 any record, notification, order form, prescription,
18 statement, invoice, or information in patient charts
19 relating to the administration, dispensing, or
20 prescribing of controlled substances;

21 (4) To refuse any lawful entry into any premises for any
22 inspection authorized by this chapter;



- 1 (5) Knowingly to keep or maintain any store, shop,
2 warehouse, dwelling, building, vehicle, boat,
3 aircraft, or other structure or place for the purpose
4 of using these substances or which is used for keeping
5 or selling them in violation of this chapter or
6 chapter 712, part IV; [e~~r~~]
- 7 (6) Who is a practitioner or pharmacist to dispense a
8 controlled substance to any individual not known to
9 the practitioner or pharmacist, without first
10 obtaining proper identification and documenting, by
11 signature on a log book kept by the practitioner or
12 pharmacist, the identity of and the type of
13 identification presented by the individual obtaining
14 the controlled substance. If the individual does not
15 have any form of proper identification, the pharmacist
16 shall verify the validity of the prescription and
17 identity of the patient with the prescriber, or their
18 authorized agent, before dispensing the controlled
19 substance. For the purpose of this section, "proper
20 identification" means government-issued identification
21 containing the photograph, printed name, and signature



1 of the individual obtaining the controlled
2 substance[-];

3 (7) Who is a practitioner to predate or pre-sign
4 prescriptions to facilitate the obtaining or attempted
5 obtaining of controlled substances; or

6 (8) Who is a practitioner to facilitate the issuance or
7 distribution of a written prescription or to issue an
8 oral prescription for a controlled substance when not
9 physically in the state.

10 (b) It is unlawful for any person subject to part III of
11 this chapter, to administer, prescribe, or knowingly dispense
12 any controlled substance without a bona fide physician-patient
13 relationship.

14 [+b)] (c) Any person who violates this section is guilty
15 of a class C felony[-]; provided that any person who violates
16 subsection (b) shall be guilty of a crime as provided in part IV
17 of chapter 712 for the relevant type and quantity of the
18 controlled substance administered, prescribed, or dispensed in
19 violation of subsection (b)."

20 SECTION 6. Section 329-42, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) It is unlawful for any person knowingly or
2 intentionally:

3 (1) To distribute as a registrant a controlled substance
4 classified in schedule I or II, except pursuant to an
5 order form as required by section 329-37;

6 (2) To use in the course of the manufacture [~~or~~],
7 distribution, administration, or prescribing of a
8 controlled substance a registration number that is
9 fictitious, revoked, suspended, expired, or issued to
10 another person;

11 (3) To obtain or attempt to obtain any controlled
12 substance or procure or attempt to procure the
13 administration of any controlled substance:

14 (A) By fraud, deceit, misrepresentation, embezzlement,
15 theft;

16 (B) By the forgery or alteration of a prescription or
17 of any written order;

18 (C) By furnishing fraudulent medical information or
19 the concealment of a material fact;

20 (D) By the use of a false name, patient identification
21 number, or the giving of false address;



- 1 (E) By the unauthorized use of a physician's oral
2 call-in number; or
- 3 (F) By the alteration of a prescription by the
4 addition of future refills;
- 5 (4) To furnish false or fraudulent material information
6 in, or omit any material information from, any
7 application, report, or other document required to be
8 kept or filed under this chapter, or any record
9 required to be kept by this chapter;
- 10 (5) To make, distribute, or possess any punch, die, plate,
11 stone, or other thing designed to print, imprint, or
12 reproduce the trademark, trade name, or other
13 identifying mark, imprint, or device of another or any
14 likeness of any of the foregoing upon any drug or
15 container or labeling thereof so as to render the drug
16 a counterfeit substance;
- 17 (6) To misapply or divert to the person's own use or other
18 unauthorized or illegal use or to take, make away
19 with, or secrete, with intent to misapply or divert to
20 the person's own use or other unauthorized or illegal
21 use, any controlled substance that shall have come
22 into the person's possession or under the person's



1 care as a registrant or as an employee of a registrant
2 who is authorized to possess controlled substances or
3 has access to controlled substances by virtue of the
4 person's employment; or

5 (7) To make, distribute, possess, or sell any prescription
6 form, whether blank, faxed, computer generated,
7 photocopied, or reproduced in any other manner without
8 the authorization of the licensed practitioner."

9 SECTION 7. Section 329-52, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§329-52 Administrative inspections**~~[and warrants]~~. ~~[(a)~~
12 ~~Issuance and execution of administrative inspection warrants~~
13 ~~shall be as follows:~~

14 ~~(1) A judge of the circuit court, or any district judge~~
15 ~~within the judge's jurisdiction, and upon proper oath~~
16 ~~or affirmation showing probable cause, may issue~~
17 ~~warrants for the purpose of conducting administrative~~
18 ~~inspections authorized by this chapter or rules~~
19 ~~hereunder, and seizures of the property appropriate to~~
20 ~~the inspections. For purposes of the issuance of~~
21 ~~administrative inspection warrants, probable cause~~
22 ~~exists upon showing a valid public interest in the~~



1 ~~effective enforcement of this chapter or rules~~
2 ~~hereunder, sufficient to justify administrative~~
3 ~~inspection of the area, premises, building or~~
4 ~~conveyance in the circumstances specified in the~~
5 ~~application for the warrant;~~

6 ~~(2) A warrant shall issue only upon an affidavit of a~~
7 ~~designated officer or employee having knowledge of the~~
8 ~~facts alleged, sworn to before the judge and~~
9 ~~establishing the grounds for issuing the warrant. If~~
10 ~~the judge is satisfied that grounds for the~~
11 ~~application exist or that there is probable cause to~~
12 ~~believe they exist, the judge shall issue a warrant~~
13 ~~identifying the area, premises, building, or~~
14 ~~conveyance to be inspected, the purpose of the~~
15 ~~inspection, and, if appropriate, the type of property~~
16 ~~to be inspected, if any. The warrant shall:~~

17 ~~(A) State the grounds for its issuance and the name of~~
18 ~~each person whose affidavit has been taken in~~
19 ~~support thereof;~~

20 ~~(B) Be directed to a person authorized by section 329-~~
21 ~~51 to execute it;~~



1 ~~(C) Command the person to whom it is directed to~~
2 ~~inspect the area, premises, building, or~~
3 ~~conveyance identified for the purpose specified~~
4 ~~and, if appropriate, direct the seizure of the~~
5 ~~property specified;~~

6 ~~(D) Identify the item or types of property to be~~
7 ~~seized, if any;~~

8 ~~(E) Direct that it be served during normal business~~
9 ~~hours and designate the judge to whom it shall be~~
10 ~~returned;~~

11 ~~(3) A warrant issued pursuant to this section must be~~
12 ~~executed and returned within ten days of its date~~
13 ~~unless, upon a showing of a need for additional time,~~
14 ~~the court orders otherwise. If property is seized~~
15 ~~pursuant to a warrant, a copy shall be given to the~~
16 ~~person from whom or from whose premises the property~~
17 ~~is taken, together with a receipt for the property~~
18 ~~taken. The return of the warrant shall be made~~
19 ~~promptly, accompanied by a written inventory of any~~
20 ~~property taken. The inventory shall be made in the~~
21 ~~presence of the person executing the warrant and of~~
22 ~~the person from whose possession or premises the~~



1 ~~property was taken, if present, or in the presence of~~
2 ~~at least one credible person other than the person~~
3 ~~executing the warrant. A copy of the inventory shall~~
4 ~~be delivered to the person from whom or from whose~~
5 ~~premises the property was taken and to the applicant~~
6 ~~for the warrant,~~

7 ~~(4) The judge who has issued a warrant shall attach~~
8 ~~thereto a copy of the return and all papers returnable~~
9 ~~in connection therewith and file them with the chief~~
10 ~~clerk of the judicial circuit in which the inspection~~
11 ~~was made.~~

12 ~~(b) The department of public safety may make~~
13 ~~administrative inspections of controlled premises in accordance~~
14 ~~with the following provisions:~~

15 ~~(1) For purposes of this section only, "controlled~~
16 ~~premises" means:~~

17 ~~(A) Places where persons registered or exempted from~~
18 ~~registration requirements under this chapter are~~
19 ~~required to keep records, and~~

20 ~~(B) Places including factories, warehouses,~~
21 ~~establishments, and conveyances in which persons~~
22 ~~registered or exempted from registration~~



1 ~~requirements under this chapter are permitted to~~
2 ~~hold, manufacture, compound, process, sell,~~
3 ~~deliver, or otherwise dispose of any controlled~~
4 ~~substance.~~

5 ~~(2) When authorized by an administrative inspection~~
6 ~~warrant issued pursuant to subsection (a) an officer~~
7 ~~or employee designated by the department of public~~
8 ~~safety, upon presenting the warrant and appropriate~~
9 ~~credentials to the owner, operator, or agent in~~
10 ~~charge, may enter controlled premises for the purpose~~
11 ~~of conducting an administrative inspection.~~

12 ~~(3) When authorized by an administrative inspection~~
13 ~~warrant, an officer or employee designated by the~~
14 ~~department of public safety may:~~

15 ~~(A) Inspect and copy records required by this chapter~~
16 ~~to be kept;~~

17 ~~(B) Inspect, within reasonable limits and in a~~
18 ~~reasonable manner, controlled premises and all~~
19 ~~pertinent equipment, finished and unfinished~~
20 ~~material, containers and labeling found therein,~~
21 ~~and, except as provided in subsection (b)(5), all~~
22 ~~other things therein, including records, files,~~



1 ~~papers, processes, controls, and facilities~~
2 ~~bearing on violation of this chapter; and~~
3 ~~(C) Inventory any stock of any controlled substance~~
4 ~~therein and obtain samples thereof.~~
5 ~~(4) This section does not prevent the inspection without a~~
6 ~~warrant of books and records pursuant to an~~
7 ~~administrative subpoena issued in accordance with law,~~
8 ~~nor does it prevent entries and administrative~~
9 ~~inspections, including seizures of property, without a~~
10 ~~warrant.~~
11 ~~(A) If the owner, operator, or agent in charge of the~~
12 ~~controlled premises consents;~~
13 ~~(B) In situations presenting imminent danger to health~~
14 ~~or safety;~~
15 ~~(C) In situations involving inspection of conveyances~~
16 ~~if there is reasonable cause to believe that the~~
17 ~~mobility of the conveyance makes it impracticable~~
18 ~~to obtain a warrant;~~
19 ~~(D) In any other exceptional or emergency circumstance~~
20 ~~where time or opportunity to apply for a warrant~~
21 ~~is lacking; or~~



1 dispense, deliver, or otherwise dispose of any
2 controlled substance or regulated chemical
3 designated under 329-61.

4 (2) Inspections shall be at reasonable times and within
5 reasonable limits and in a reasonable manner of
6 controlled premises and vehicles in which persons
7 registered or exempted from registration requirements
8 under this chapter are permitted to hold, manufacture,
9 compound, process, sell, dispense, deliver, or
10 otherwise dispose of any controlled substance or
11 regulated chemical designated under 329-61 and all
12 pertinent equipment, finished and unfinished
13 materials, containers, and labeling therein to
14 determine if this chapter is being violated;

15 (3) The administrator or any of the administrator's agents
16 shall have access to and may copy any and all records,
17 books, logs, or documents pertaining to the
18 administering, prescribing, dispensing, or sale of
19 controlled substances or regulated chemicals
20 designated under this chapter without a warrant; and

21 (4) The administrator or any of the administrator's agents
22 may inventory any stock of any controlled substance or



1 regulated chemical designated under 329-61 and secure
2 samples or specimens of any drug, device, or chemical
3 not seized as evidence by paying or offering to pay
4 for the sample. The administrator shall make or cause
5 to be made examinations of samples secured under this
6 section to determine whether or not this chapter is
7 being violated.

8 (b) An inspection of records authorized by this section
9 shall not extend to financial data, data relating to pricing of
10 items, other than shipment and sale amounts, unless the owner,
11 operator, or agent in charge of the controlled premises consents
12 in writing."

13 SECTION 8. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect on July 1, 2007.



Report Title:

Controlled Substances

Description:

Prohibits pre-signed and predated prescriptions. Clarifies how the narcotic enforcement division administrator shall conduct inspections at pharmacies. (SD1)

