

1 HB307
2 147315-5
3 By Representatives Johnson (R) and Wren
4 RFD: Health
5 First Read: 19-FEB-13

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To add a new Article 11, consisting of Sections
9 20-2-250, 20-2-251, 20-2-252, 20-2-253, 20-2-254, 20-2-255,
10 20-2-256, 20-2-257, 20-2-258, and 20-2-259, to Chapter 2 of
11 Title 20 of the Code of Alabama 1975, to allow for the
12 prescribing of certain schedules of controlled substances by
13 certified registered nurse practitioners (CRNP) and certified
14 nurse midwives (CNM) with collaborative practice agreements;
15 to provide for the establishment of qualifications required
16 for certified registered nurse practitioners and certified
17 nurse midwives to obtain a Qualified Alabama Controlled
18 Substances Registration Certificate (QACSC); to provide for
19 prescriptive, administering, and dispensing authority of CRNPs
20 and CNMs in possession of a QACSC; to provide for the
21 establishment of the Board of Medical Examiners (board) as the
22 certifying board for the registration and approval of a CRNP
23 and CNM to obtain or renew a QACSC; to establish an advisory
24 committee to comment on proposed rules; to authorize the board
25 to adopt rules concerning the application procedures, fees,
26 issuance, restriction, limitation, suspension, or revocation
27 of a QACSC and for the conduct of hearings regarding the same;

1 to provide for grounds for the denial, restriction,
2 limitation, suspension, or revocation of a QACSC; to provide
3 for an appeals process for a CRNP or CNM adversely affected by
4 an order of the board denying an application for or
5 restricting, limiting or suspending or revoking a QACSC; to
6 provide for the board to charge and collect fees, congruent
7 with other mid-level providers in Alabama, to defray expenses
8 incurred in the registration of CRNPs and CNMs, and the
9 issuance, restriction, limitation, suspension or revocation of
10 a QACSC to provide immunity to any member of the board, its
11 agents, employees, consultants, or attorneys regarding
12 investigations or proceedings to restrict, limit, suspend, or
13 revoke a QACSC; to add a new Article 12 to Chapter 2 of Title
14 20, Code of Alabama 1975, consisting of Section 20-2-260, to
15 allow a person who holds a Qualified Alabama Controlled
16 Substances Registration Certificate (QACSC) to be issued a
17 Limited Purpose Schedule II Permit to be used in limited
18 specific circumstances; and to amend Sections 20-2-214 and
19 20-2-217 of the Code of Alabama 1975, relating to the
20 Controlled Substances Prescription Database.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. A new Article 11 consisting of Sections
23 20-2-250, 20-2-251, 20-2-252, 20-2-253, 20-2-254, 20-2-255,
24 20-2-256, 20-2-257, 20-2-258, and 20-2-259, is added to
25 Chapter 2, Title 20 of the Code of Alabama 1975, to read as
26 follows:

27 ARTICLE 11

1 Prescribing of Certain Schedules of Controlled
2 Substances by Certified Registered Nurse Practitioners and
3 Certified Nurse Midwives.

4 §20-2-250.

5 As used in this article, the following words shall
6 have the following meanings:

7 (1) ADMINISTER. The direct application of a
8 controlled substance whether by injection, inhalation,
9 ingestion, or any other means, to the body of a patient by any
10 of the following:

11 a. A collaborating physician or, in his or her
12 presence, his or her authorized agent.

13 b. A certified registered nurse practitioner or
14 certified nurse midwife.

15 c. The patient at the direction and in the presence
16 of the collaborating physician, certified registered nurse
17 practitioner, or certified nurse midwife.

18 (2) BOARD. The Board of Medical Examiners of the
19 State of Alabama.

20 (3) CERTIFIED NURSE MIDWIFE or CNM. An advanced
21 practice nurse who is subject to a collaborative practice
22 agreement with a collaborating physician pursuant to Title 34,
23 Chapter 21, Article 5, and who has advanced knowledge and
24 skills relative to the management of women's health care
25 focusing on pregnancy, childbirth, the postpartum period, care
26 of the newborn, family planning, and gynecological needs of
27 women, within a health care system that provides for

1 consultation, collaborative management, or referral as
2 indicated by the health status of the patient.

3 (4) CERTIFIED REGISTERED NURSE PRACTITIONER or CRNP.
4 An advanced practice nurse who is subject to a collaborative
5 practice agreement with a collaborating physician pursuant to
6 Title 34, Chapter 21, Article 5, and who has advanced
7 knowledge and skills in the delivery of nursing services
8 within a health care system that provides for consultation,
9 collaborative management, or referral as indicated by the
10 health status of the patient.

11 (5) COLLABORATING PHYSICIAN. A doctor of medicine or
12 doctor of osteopathy licensed to practice medicine in Alabama
13 who agrees in writing to practice in collaboration with one or
14 more certified registered nurse practitioners or certified
15 nurse midwives in accordance with Title 34, Chapter 21,
16 Article 5, and the rules and regulations adopted by the Board
17 of Medical Examiners and the Board of Nursing.

18 (6) PRESCRIBE or PRESCRIBING. The act of issuing a
19 prescription for a controlled substance.

20 (7) PRESCRIPTION. Any order for a controlled
21 substance written or signed or transmitted by word of mouth,
22 telephone, telegraph, closed circuit television, or other
23 means of communication by a legally competent collaborating
24 physician, certified registered nurse practitioner, or
25 certified nurse midwife authorized by law to prescribe and
26 administer the drug which is intended to be filled,
27 compounded, or dispensed by a pharmacist.

1 (8) QACSC. A Qualified Alabama Controlled Substances
2 Registration Certificate.

3 §20-2-251.

4 (a) The Board of Medical Examiners is hereby
5 designated as the certifying board for the registration and
6 approval of a certified registered nurse practitioner (CRNP)
7 or a certified nurse midwife (CNM) in obtaining or renewing a
8 Qualified Alabama Controlled Substances Registration
9 Certificate (QACSC). The board may adopt regulations
10 concerning the application procedures, fees, and grounds for
11 the restriction, limitation, suspension, or revocation of a
12 QACSC, excluding the charge of expenses for conducting an
13 investigation or expenses of a hearing, and to provide for
14 hearings in connection with the same. The board shall
15 establish a unique QACSC number that identifies the particular
16 applicant as a certified registered nurse practitioner or
17 certified nurse midwife with a valid QACSC. However, nothing
18 in this act shall permit the board to encroach on the powers,
19 duties, and authority of the Board of Nursing in carrying out
20 its legally authorized functions. The Board of Nursing shall
21 remain the sole licensing and disciplinary authority for CRNPs
22 and CNMs.

23 (b) An advisory committee shall be created to
24 comment on proposed rules.

25 (c) The board and its agents, attorneys, or
26 investigators shall be permitted access to the records of any
27 CRNP or CNM, including patient records, which would relate to

1 a request for a QACSC, a renewal of a QACSC, or a possible
2 violation of any provision of the Alabama Uniform Controlled
3 Substances Act, this article, or applicable regulations of the
4 board.

5 (d) (1) The board may establish protocols,
6 formularies, or medical regimens which relate to, govern, or
7 regulate a QACSC, and any such protocol, formulary, or medical
8 regimen shall not be considered a rule under the Alabama
9 Administrative Procedure Act.

10 (2) The formulary of controlled substances that may
11 be prescribed by CRNPs and CNMs shall be approved by the
12 certifying board upon the recommendation of the joint practice
13 committee established by Article 5, commencing with Section
14 34-21-80, Chapter 21, Title 34, but the formulary shall not be
15 considered a rule under the Alabama Administrative Procedure
16 Act.

17 §20-2-252.

18 The Board of Medical Examiners may grant a Qualified
19 Alabama Controlled Substances Registration Certificate (QACSC)
20 to a certified registered nurse practitioner (CRNP) or
21 certified nurse midwife (CNM) who:

22 (1) Is practicing in accordance with this article,
23 Title 34, Chapter 21, Article 5, and all rules and regulations
24 pertaining to collaboration between a qualified physician and
25 a qualified CRNP or a CNM.

26 (2) Submits proof of successful completion of a
27 course or courses approved by the board which includes

1 advanced pharmacology and prescribing trends relating to
2 controlled substances and which is consistent with the same
3 requirements for other mid-level providers.

4 (3) Provides accurate and complete documentation of
5 12 or more months of active, clinical practice with one or
6 more collaborative practices agreement which is governed by
7 Title 34, Chapter 21, Article 5 and which has received final
8 approval from the Board of Medical Examiners and the Alabama
9 Board of Nursing. Temporary approval practice and provisional
10 approval practice shall not be used or considered to meet the
11 requirement of 12 or more months of active, clinical practice.

12 §20-2-253.

13 (a) Upon receipt of a Qualified Alabama Controlled
14 Substances Registration Certificate (QACSC) and a valid
15 registration number issued by the United States Drug
16 Enforcement Administration, a certified registered nurse
17 practitioner (CRNP) or certified nurse midwife (CNM) may
18 prescribe, administer, authorize for administration, or
19 dispense only those controlled substances listed in Schedules
20 III, IV, and V of Article 2, Chapter 2, of this title in
21 accordance with rules adopted by the Board of Medical
22 Examiners and any protocols, formularies, and medical regimens
23 established by the board for regulation of a QACSC.

24 (b) A CRNP or a CNM shall not utilize his or her
25 QACSC for the purchasing, obtaining, maintaining, or ordering
26 of any stock supply or inventory of any controlled substance
27 in any form.

1 (c) A CRNP or a CNM authorized to prescribe,
2 administer, or dispense controlled substances in accordance
3 with this article may not prescribe, administer, or dispense
4 any controlled substance to himself, herself, or his or her
5 spouse, child, or parent.

6 §20-2-254.

7 The Board of Medical Examiners may deny an
8 application of a certified registered nurse practitioner
9 (CRNP) or a certified nurse midwife (CNM) requesting a
10 Qualified Alabama Controlled Substances Registration
11 Certificate (QACSC), deny a request for a renewal of a QACSC,
12 or initiate action against the QACSC of a CRNP or a CNM
13 possessing a QACSC based on the following grounds:

14 (1) Fraud or deceit in applying for, procuring, or
15 attempting to procure a QACSC in the State of Alabama.

16 (2) Conviction of a crime under any state or federal
17 law relating to any controlled substance.

18 (3) Conviction of a crime or offense which affects
19 the ability of the CRNP or CNM to practice with due regard for
20 the health or safety of his or her patients.

21 (4) Prescribing a drug or utilizing a QACSC in such
22 a manner as to endanger the health of any person or patient of
23 the CRNP, CNM, or collaborating physician.

24 (5) Suspension or revocation of the registration
25 number issued to the CRNP or CNM by the United States Drug
26 Enforcement Administration.

1 (6) Excessive dispensing or prescribing of any drug
2 to any person or patient of the CRNP, CNM, or collaborating
3 physician.

4 (7) Unfitness or incompetence due to the use of or
5 dependence on alcohol, chemicals, or any mood-altering drug to
6 such an extent as to render the CRNP or CNM unsafe or
7 unreliable to prescribe drugs or to hold a QACSC.

8 (8) Any violation of a requirement set forth in this
9 article or a rule adopted pursuant to this article.

10 §20-2-255.

11 (a) Any hearing regarding the issuance, restriction,
12 limitation, suspension or revocation of a Qualified Alabama
13 Controlled Substances Registration Certificate (QACSC) held by
14 a certified registered nurse practitioner or a certified nurse
15 midwife for any violations of this article shall be before the
16 Board of Medical Examiners.

17 (b) The board shall have the authority to restrict,
18 suspend, or revoke a QACSC, whenever a CRNP or a CNM is found
19 guilty on the basis of substantial evidence of any of the acts
20 or offenses enumerated in Section 20-2-254. The board shall
21 also have the authority to reinstate or to deny reinstatement
22 of a QACSC.

23 (c) The board may limit revocation or suspension of
24 a QACSC to the particular controlled substance with respect to
25 which grounds for revocation or suspension exist.

26 (d) The board shall promptly notify the Drug
27 Enforcement Administration of the United States Department of

1 Justice and the Alabama Board of Nursing of all orders
2 suspending or revoking a QACSC of a CRNP or a CNM.

3 (e) Any hearing conducted before the board in
4 accordance with this section shall be considered a contested
5 case under the Alabama Administrative Procedure Act, and shall
6 be conducted in accordance with the requirements of this
7 article.

8 §20-2-256.

9 (a) A certified registered nurse practitioner (CRNP)
10 or certified nurse midwife (CNM) adversely affected by an
11 order of the Board of Medical Examiners denying an application
12 for a Qualified Alabama Controlled Substances Registration
13 Certificate (QACSC) or the renewal of a QACSC may obtain
14 judicial review thereof by filing a written petition for
15 review with the Circuit Court of Montgomery County in
16 accordance with Section 41-22-20.

17 (b) A CRNP or a CNM adversely affected by an order
18 of the board suspending, revoking, or restricting a QACSC,
19 whether or not such suspension, revocation, or restriction is
20 limited; or denying reinstatement of a QACSC, may obtain
21 judicial review thereof by filing a written petition for
22 review with the Circuit Court of Montgomery County in
23 accordance with Section 41-22-20.

24 (c) The following procedures shall take precedence
25 over subsection (c) of Section 41-22-20 relating to the
26 issuance of a stay of any order of the board suspending,
27 revoking, or restricting a QACSC. The suspension, revocation,

1 or restriction of a QACSC shall be given immediate effect and
2 no stay or supersedeas shall be granted pending judicial
3 review of a decision by the board to suspend, revoke, or
4 restrict a QACSC unless a reviewing court, upon proof by the
5 party seeking judicial review, finds in writing that the
6 action of the board was taken without statutory authority, was
7 arbitrary or capricious, or constituted a gross abuse of
8 discretion.

9 (d) From the judgment of the circuit court, either
10 the board or any affected party who invoked judicial review
11 may obtain a review of any final judgment of the circuit court
12 under Section 41-22-21. No security shall be required of the
13 board.

14 §20-2-257.

15 The Board of Medical Examiners may charge and
16 collect fees to defray expenses incurred in the registration
17 and issuance of a Qualified Alabama Controlled Substances
18 Registration Certificate (QACSC) and the administration of
19 this article ~~which shall be similar to~~ shall be the same as
20 other mid-level providers. The types and amounts of fees shall
21 be established in rules adopted by the board. The fees shall
22 be retained by the board and may be expended for the general
23 operation of the board.

24 §20-2-258.

25 Any member of the Board of Medical Examiners, any
26 agent, employee, consultant, or attorney of the board, any
27 person making any report or rendering any opinion or supplying

1 any evidence or information or offering any testimony to the
2 board in connection with any investigation or hearing
3 conducted by the board as authorized in this article, shall be
4 immune from any lawsuit or legal proceeding for any conduct in
5 the course of his or her official duties with respect to such
6 investigations or hearings.

7 §20-2-259.

8 The Board of Medical Examiners may adopt rules
9 necessary to carry out the intent, purposes, and provisions of
10 this article.

11 Section 2. A new Article 12, consisting of Section
12 20-2-260, is added to Chapter 2, Title 20 of the Code of
13 Alabama 1975, to read as follows:

14 Article 12. Limited Purpose Schedule II Permit.

15 §20-2-260.

16 (a) The Board of Medical Examiners may at any future
17 date it chooses create a Limited Purpose Schedule II Permit
18 (LPSP), and assess fees associated with the permit, that,
19 along with any other necessary registration, may permit
20 assistants to physicians, certified registered nurse
21 practitioners, or certified nurse midwives to lawfully
22 prescribe, administer, authorize for administration, or
23 dispense only those controlled substances listed in Schedule
24 II substances of Article 2 of Chapter 2 of this title in
25 accordance, as specified and limited by the permit, with rules
26 adopted by the board and any protocols, formularies, and
27 medical regimens established by the board for regulation of a

1 LPSP. Any protocols, formularies, and medical regimens shall
2 not be considered administrative rules under the Alabama
3 Administrative Procedure Act.

4 (b) An assistant to physician, certified registered
5 nurse practitioner, or certified nurse midwife shall not
6 utilize his or her LPSP for the purchasing, obtaining,
7 maintaining, or ordering of any stock supply or inventory of
8 any controlled substance in any form.

9 (c) An assistant to physician, certified registered
10 nurse practitioner, or certified nurse midwife authorized to
11 prescribe, administer, or dispense controlled substances in
12 accordance with this article shall not prescribe, administer,
13 or dispense any controlled substance to his or her own self,
14 spouse, child, or parent.

15 (d) The board may not permit assistants to
16 physicians, certified registered nurse practitioners, or
17 certified nurse midwives to lawfully prescribe, administer,
18 authorize for administration, or dispense all controlled
19 substances listed in Schedule II of Article 2 of Chapter 2 of
20 this title. It is the intent of this article, if and when the
21 board chooses to use this authority at some future date, that
22 the LPSP may be used only at the board's discretion and as
23 limited by the board to specific circumstances and specific
24 drugs.

25 Section 3. Section 20-2-214 and 20-2-217 of the Code
26 of Alabama of 1975, are amended to read as follows:

27 "§20-2-214.

1 "The following persons or entities shall be
2 permitted access to the information in the controlled
3 substances database, subject to the limitations indicated
4 below:

5 "(1) Authorized representatives of the certifying
6 boards, provided, however, that access shall be limited to
7 inquiries concerning the licensees of the certifying board,
8 however, authorized representatives from the Board of Medical
9 Examiners may access the database to inquire about certified
10 registered nurse practitioners (CRNPs), or certified nurse
11 midwives (CNMs) that hold a Qualified Alabama Controlled
12 Substances Registration Certificate (QACSC).

13 "(2) A licensed practitioner approved by the
14 department who has authority to prescribe, dispense, or
15 administer controlled substances, provided, however, that such
16 access shall be limited to information concerning an assistant
17 to physician with a Qualified Alabama Controlled Substances
18 Registration Certificate over whom the practitioner exercises
19 physician supervision, a CRNP and a CNM with a QACSC over whom
20 the practitioner exercises professional oversight and
21 direction pursuant to an approved collaborative practice
22 agreement, and a current or prospective patient of the
23 practitioner. Practitioners shall have no requirement or
24 obligation to access or check the information in the
25 controlled substances database prior to prescribing,
26 dispensing, or administering medications or as part of their
27 professional practice.

1 "(3) A licensed assistant to physician approved by
2 the department who is authorized to prescribe, administer, or
3 dispense pursuant to a ~~Qualified Alabama Controlled Substances~~
4 ~~Registration Certificate~~ QACSC; provided, however, that such
5 access shall be limited to information concerning a current or
6 prospective patient of the assistant to physician.

7 "(4) A licensed certified registered nurse
8 practitioner or a licensed certified nurse midwife approved by
9 the department who is authorized to prescribe, administer, or
10 dispense pursuant to a QACSC; provided, however, that such
11 access shall be limited to information concerning a current or
12 prospective patient of the CRNP or CNM.

13 "~~(4)~~ (5) A licensed pharmacist approved by the
14 department, provided, however, that such access is limited to
15 information related to the patient or prescribing practitioner
16 designated on a controlled substance prescription that a
17 pharmacist has been asked to fill. Pharmacists shall have no
18 requirement or obligation to access or check the information
19 in the controlled substances database prior to dispensing or
20 administering medications or as part of their professional
21 practices.

22 "~~(5)~~ (6) State and local law enforcement authorities
23 as authorized under Section 20-2-91, and federal law
24 enforcement authorities authorized to access prescription
25 information upon application to the department accompanied by
26 an affidavit stating probable cause for the use of the
27 requested information.

1 "~~(6)~~(7) Employees of the department and consultants
2 engaged by the department for operational and review purposes.

3 "~~(7)~~(8) The prescription drug monitoring program of
4 any of the other states or territories of the United States,
5 if recognized by the Alliance for Prescription Drug Monitoring
6 Programs under procedures developed by the United States
7 Department of Justice or the Integrated Justice Information
8 Systems Institute or successor entity subject to or consistent
9 with limitations for access prescribed by this chapter for the
10 Alabama Prescription Drug Monitoring Program.

11 "§20-2-217.

12 "There is hereby assessed a surcharge in the amount
13 of ten dollars (\$10) per year on the controlled substance
14 registration certificate of each licensed medical, dental,
15 podiatric, optometric, and veterinary medicine practitioner
16 authorized to prescribe or dispense controlled substances and
17 on the Qualified Alabama Controlled Substances Registration
18 Certificate (QACSC) of each licensed assistant to physician,
19 certified registered nurse practitioner, or certified nurse
20 midwife. This surcharge shall be effective for every
21 practitioner certificate and every Qualified Alabama
22 Controlled Substances Registration Certificate (QACSC) issued
23 or renewed ~~on or after August 1, 2004,~~ shall be in addition to
24 any other fees collected by the certifying boards, and shall
25 be collected by each of the certifying boards and remitted to
26 the department at such times and in such manner as designated
27 in the regulations of the department. The proceeds of the

1 surcharge assessed herein shall be used exclusively for the
2 development, implementation, operation, and maintenance of the
3 controlled substances prescription database."

4 Section 4. This act shall become effective on the
5 first day of the fifth month following its passage and
6 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Health 19-FEB-13

Read for the second time and placed
on the calendar..... 20-MAR-13

Read for the third time and passed
as amended..... 11-APR-13

Yeas 96, Nays 0, Abstains 0

Jeff Woodard
Clerk