



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

October 8, 2018

Lyle Kelsey
Executive Director
Oklahoma Medical Board
101 NE 51st Street
Oklahoma City, OK 73105

Dear Mr. Kelsey:

It has come to my attention that the Board of Medical Licensure and Board of Osteopathic Examiners have received questions about Senate Bill 1446 (“SB 1446”). SB 1446 was enacted in the 2018 Oklahoma Legislature with an effective date of November 1, 2018. SB 1446 imposes new requirements on opioid prescribing. As a result of these new requirements, you have asked for a letter of counsel concerning the following:

- (1) Can mid-level practitioners conduct the required “consultation” after an initial seven (7) day opioid prescription?
- (2) Must the “consultation” be a face-to-face encounter?
- (3) When a schedule II controlled dangerous substance or any prescription opioid drug is continuously prescribed for three (3) months or more for chronic pain, can a mid-level practitioner “assess the patient” prior to every renewal?

Before a physician prescribes a schedule II controlled dangerous substance or any prescription opioid drug, a valid physician/patient relationship must be established pursuant to Okla. Admin. Code § 435:10-7-12. In order to establish a valid physician/patient relationship, a physician must conduct a medically appropriate, timely-scheduled, face-to-face encounter with the patient, unless the physician meets one of the six (6) exceptions outlined in Okla. Admin. Code § 435:10-7-12.

Pursuant to SB 1446, a physician must limit an initial prescription for an opioid drug to seven (7) days. After seven days, a practitioner may issue a subsequent prescription for an additional seven (7) days *after consultation with the patient*. The requisite “*consultation*” may be performed by mid-level practitioners that meet the statutory definition of “practitioner” provided in 63 O.S. § 2-101(32). This includes “*physician assistants under the supervision of a*

licensed medical doctor or osteopathic physician” or “any other person licensed, registered or otherwise permitted to prescribe, distribute, dispense . . . or administer a controlled dangerous substance in the course of professional practice or research in this state.” 63 O.S. § 2-101(32)(6)-(8).

Although SB 1446 does not expressly or impliedly require this consultation to take place in a face-to-face encounter, it is important to note that a subsequent seven (7) day prescription after consultation may only be authorized *if* the practitioner determines the prescription is necessary and appropriate to the treatment needs of the patient, documents the rationale for the issuance of the subsequent prescription; and determines that the issuance of the subsequent prescription does not present an undue risk of abuse, addiction or diversion.

When a schedule II controlled dangerous substance or any prescription opioid drug is continuously prescribed for three (3) months or more for chronic pain, SB 1446 requires (among other things) that a practitioner “*assess*” the patient prior to every renewal to determine whether the patient is experiencing problems associated with physical and psychological dependence and document the results of that assessment. Similar to the aforementioned “consultation,” mid-level practitioners who meet the statutory definition of “practitioner” provided in 63 O.S. § 2-101(32), may “assess” the patient as required by 63 O.S. § 2-309I(F)(2). SB 1446 does not expressly provide that a practitioner must “assess” a patient face-to-face. However, a face-to-face encounter is recommended in order to properly determine whether a patient is experiencing problems associated with physical dependence.

Sincerely,



GRANT CODY
ASSISTANT ATTORNEY GENERAL