



GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2024-3

Lyle R. Kelsey, Executive Director
Oklahoma Board of Medical Licensure & Supervision
101 N.E. 51st Street
Oklahoma City, OK 73105

February 22, 2024

Dear Executive Director Kelsey,

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

Does Oklahoma law, specifically title 63, section 2-312(E) (Supp.2022) and title 59, section 519.6(E) (2021), authorize physician assistants to prescribe and administer Schedule II controlled dangerous substances under the direction of a delegating physician at off-site locations?

I.
SUMMARY

No. Both the plain and unambiguous language of Oklahoma law, as well as the application of long-standing rules of statutory interpretation, confirm that physician assistants' prescriptive authority over Schedule II substances is limited to on-site administration.¹ Specifically, this conclusion is derived from the Uniform Controlled Dangerous Substances Act ("UCDSA"), title 63, sections 2-309A–2-315, and the Physician Assistant Act ("PAA"), title 59, sections 519.1–524.

The relevant provision of the UCDSA, title 63, section 2-312(E), confirms that physician assistants prescribing controlled substances must otherwise comply with the PAA, specifically section 519.6 of title 59. That section grants physician assistants a general authority to "prescribe drugs, including controlled medications in Schedules II through V[.]" but expressly qualifies in the next subsection that "[a] physician assistant may write an order for a Schedule II drug for immediate or ongoing administration on site." 63 O.S.Supp.2022, 519.6(E)(1–2). This plain language can only be read one way: to limit physician assistant prescriptive authority over Schedule II drugs to on-site administration only. Thus, Oklahoma law **does not allow** physician assistants to prescribe or administer Schedule II drugs at off-site locations. Any other interpretation would create an absurdity that renders the limiting language meaningless.

¹Your request did not ask the Attorney General to opine on the meaning of "off-site locations[.]" on-site locations, or "immediate or ongoing administration on site[.]" as used in title 59, section 519.6(E)(2) (2021). Thus, such questions are beyond the scope of this Opinion.

II. BACKGROUND

A. Oklahoma law governing prescriptive authority of physician assistants

In 1993, the PAA was signed into law after receiving overwhelming support from the Legislature. *See* OKLA. STATE LEG., *Bill information for S.B. 334*.² The PAA established a regulatory and licensing system covering physician assistants, authorizing them to provide health care services in certain circumstances under the supervision and direction of physicians. *See* S.B. 334, 44th Leg., 1993 Reg. Sess., 1993 Okla. Sess. Laws ch. 289. The PAA further authorized physician assistants to transmit prescriptions and orders for prescriptions, but not to dispense them. *See id.* § 6(D) (codified at 59 O.S.Supp.1993, § 519.6(D)).

Five years later, in 1998, the Oklahoma Legislature expanded a physician assistant’s prescriptive authority through enrolled S.B. 1069, 46th Leg., 1998 2d Reg. Sess., 1998 Okla. Sess. Laws ch. 128 (“1998 Bill”). This 1998 Bill amended the PAA to allow physician assistants to “prescribe” prescriptions and orders rather than transmit them. *Id.* § 4 (amending 59 O.S.Supp.1993, § 519.6(D)). Importantly, the 1998 Bill also granted physician assistants the authority to “prescribe drugs, including controlled medications in Schedules III through V pursuant to” the UCDSA. Consistent with the same, the 1998 Bill amended the UCDSA to expressly allow a licensed physician assistant to “prescribe and administer Schedule III, IV and V controlled dangerous substances” “pursuant to subsection D of Section 519.6 of Title 59” under certain conditions and under the direction of a supervising physician. *Id.* § 6(C–D) (amending 63 O.S.Supp.1997, § 2-312(E)). Through the omission of any reference to Schedule II, the statutory language made clear physician assistants had no authority to prescribe Schedule II controlled substances in 1998. *See* 2000 OK AG 34 ¶ 8 (“No authority exists which gives physician assistants authority to prescribe, order, dispense or administer Schedule II controlled dangerous substances in a hospital setting.”).

That changed in 2001, when S.B. 32, 48th Leg., 2001 Reg. Sess., 2001 Okla. Sess. Laws ch. 385 (“2001 Bill”) was signed into law. The 2001 Bill amended the relevant provision of the PAA to include prescriptive authority for Schedule II controlled substances. Specifically, the 2001 Bill divided the relevant subsection of title 59, section 519.6 (Supp.1998) into two parts: retaining the original prescriptive authority in subsection 1 (while expanding that authority to Schedule II controlled substances), and adding subsection 2, which placed heightened restrictions on prescriptive authority for Schedule II drugs. *See id.* § 3(D). The only subsequent amendments to the relevant provisions of the PAA and UCDSA between 2001 and the present were the result of a re-numbering in title 59, section 519.6, which moved subsection D to subsection E.³

²Available at <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB334&Session=9300> (last visited Feb. 21, 2024).

³*See* S.B. 1915, 57th Leg., 2020 2d Reg. Sess., 2020 Okla. Sess. Laws ch.154 § 2. Consistent with this 2020 amendment to the PAA, the complementary provision of the UCDSA was amended in 2022 to strike the reference to “subsection D” previously appearing in title 63, section 2-312(E) (2001). *See* S.B. 1322, 58th Leg., 2022 2d Reg. Sess., 2022 Okla. Sess. Laws ch. 184 § 2.

Thus, by 2001, the PAA and UCDSA established the prescriptive authority of physician assistants over controlled substances that continues to this day under title 63, section 2-312(E) (Supp.2022) and title 59, section 519.6(E) (2021). Your request is decided by interpreting these two statutory provisions.

B. Relevant statutory text

The UCDSA, title 63, sections 2-309A–2-315, grants a general authority to physician assistants to prescribe and administer Schedule II–V controlled substances under the direction of a supervising physician when (a) the physician assistant is authorized to prescribe under the PAA and (b) has otherwise complied with registration requirements. In full, section 2-312(E) states:

A physician assistant who is recognized to prescribe by the State Board of Medical Licensure and Supervision under the medical direction of a supervising physician, pursuant to Section 519.6 of Title 59 of the Oklahoma Statutes, and who has complied with the registration requirements of the Uniform Controlled Dangerous Substances Act, in good faith and in the course of professional practice only, may prescribe and administer Schedule II through V controlled dangerous substances.

63 O.S.Supp.2022 § 2-312(E).

The PAA, title 59, sections 519.1–524, contains a similar general grant of prescriptive authority to physician assistants for Schedule II–V controlled substances. Subsection 1 of section E, which provides that general grant of authority, states in relevant part:

The physician assistant may prescribe drugs, including controlled medications in Schedules II through V pursuant to Section 2-312 of Title 63 of the Oklahoma Statutes, and medical supplies and services as delegated by the delegating physician and as approved by the State Board of Medical Licensure and Supervision after consultation with the State Board of Pharmacy on the Physician Assistant Drug Formulary.

59 O.S.2021, § 519.6(E)(1). Subsection 2 of section E addresses the more specific prescriptive authority of physician assistants over Schedule II controlled substances, stating in relevant part:

A physician assistant may write an order for a Schedule II drug for immediate or ongoing administration on site. Prescriptions and orders for Schedule II drugs written by a physician assistant must be included on a written protocol determined by the delegating physician and approved by the medical staff committee of the facility or by direct verbal order of the delegating physician.

Id. § 519.6(E)(2).

III. DISCUSSION

To interpret the two statutory provisions governing physician assistants' prescriptive authority over Schedule II controlled substances, we begin with the text. When the text of a statute is plain

and unambiguous, courts will “give effect to the legislative intent and purpose as expressed by the statutory language.” *Am. Airlines, Inc. v. State ex rel. Okla. Tax Comm’n*, 2014 OK 95, ¶ 33, 341 P.3d 56, 64. Put differently, when statutory language is clear, “the courts may not search for its meaning beyond the statute itself, but will give it the meaning intended by the Legislature.” *Armstrong v. Sewer Improvement Dist. No. 1*, 1948 OK 198, ¶ 13, 199 P.2d 1012, 1017.

When statutory language is ambiguous, or “susceptible to more than one reasonable interpretation[,]” courts will “apply rules of statutory construction” to ascertain legislative intent. *Am. Airlines, Inc.*, 2014 OK 95, ¶ 33, 341 P.3d at 64. One of those well-established rules requires an ambiguous statute “to be given a reasonable construction, one that will avoid absurd consequences if this can be done without violating legislative intent.” *Id.* Another requires legislative intent “be ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each.” *Id.*, 341 P.3d at 64–65. Similarly, “a statute should be given a construction which renders every word and sentence operative rather than one that renders some words or sentences idle and nugatory.” *Case v. Pinnick*, 1939 OK 467, ¶ 6, 97 P.2d 58, 60. Finally, the “general words in a statute are limited by subsequent more specific terms.” *City of Okla. City v. Int’l Ass’n of Fire Fighters, Local 157*, 2011 OK 29, ¶ 17, 254 P.3d 678, 683.

Here, the relevant statutory provisions governing physician assistant prescriptive authority over Schedule II drugs are clear and unambiguous. Even if ambiguity exists, however, only one reasonable interpretation is supported by the text and well-established rules of statutory interpretation.

A. The UCDSA requires compliance with the PAA, specifically title 59, section 519.6 (2021).

The plain language of the UCDSA, at title 63, section 2-312, can only be read one way: to require physician assistants prescribing controlled substances to comply with the separate requirements set out in the PAA, at title 59, section 519.6. Section 2-312(E) of the UCDSA limits prescriptive authority to a physician assistant who is “recognized to prescribe by the State Board of Medical Licensure and Supervision under the medical direction of a supervising physician, ***pursuant to Section 519.6 of Title 59 of the Oklahoma Statutes***,” among other things. *Id.* (emphasis added.) Thus, a clear condition of prescriptive authority is the physician assistant’s compliance with title 59, section 519.6.⁴

Even if the language of section 2-312(E) was susceptible to more than one interpretation, only one interpretation here is reasonable: that the UCDSA requires physician assistants prescribing scheduled substances to otherwise comply with the relevant requirements of the PAA found in title 59, section 519.6. By referencing title 59, section 519.6, the UCDSA adopts that statute “and makes it wholly or partially applicable to the subject of the reference statute.” *CompSource Mut. Ins. Co. v. State ex rel. Okla. Tax Comm’n*, 2018 OK 54, ¶ 20, 435 P.3d 90, 98–99. Moreover, because both the UCDSA and the PAA govern the same subject—a physician assistant’s

⁴The general reference to “Section 519.6 of Title 59” here makes clear that compliance with ***the entirety of*** that statute is required. The fact that the prior, superseded version of this statute included a specific subsection reference does not alter this plain language.

prescriptive authority over controlled substances—they “must be construed as a harmonious whole.” *Taylor v. State Farm Fire & Cas. Co.*, 1999 OK 44, ¶ 19, 981 P.2d 1253, 1261. After all, “[a]ll legislative enactments *in pari materia* are to be interpreted together as forming a single body of law that will fit into a coherent symmetry of legislation.” *Id.*

Moreover, the legislative history behind section 2-312(E) confirms the intent to harmonize the requirements of the UCDSA with the requirements of the PAA in section 519.6.⁵ As an example, the 2020 re-organization of section 519.6 that moved the relevant text of subsection D to subsection E rendered the UCDSA’s prior reference to subsection D of section 519.6 obsolete. *See supra* note 2. Thus, the Legislature *had* to update this reference to cure an ambiguity over whether physician assistants prescribing controlled substances under the UCDSA were still subject to the relevant portion of the PAA. Without updating this reference, the plain language of the UCDSA *would not* have required physician assistants to comply with the relevant portion of the PAA, which only reinforces the conclusion that the intent of the 2022 amendment was to bring the requirements of UCDSA into harmony with the PAA—not to create a set of conflicting requirements between the two. It is unremarkable, to say the least, that the Legislature opted to leave a broad statutory reference rather than change “D” to “E.” The decision was no doubt aimed to reduce the number of amendments required to keep the UCDSA and PAA in harmony on an ongoing basis.

In conclusion, both the plain and unambiguous text of section 2-312(E), as well as rules of statutory interpretation, confirm that physician assistants prescribing controlled substances pursuant to the UCDSA must otherwise comply with the PAA, specifically title 59, section 519.6.

B. The PAA restricts physician assistant prescriptive authority over Schedule II drugs to on-site administration only.

The plain language of the PAA, at title 59, section 519.6, can only be read one way: to restrict physician assistants’ prescriptive authority over Schedule II controlled substances to on-site administration. The text of section 519.6(E)(2) is clear and unambiguous when it comes to prescriptive authority over Schedule II drugs. It states, among other requirements, that “[a] physician assistant may write an order for a Schedule II drug for immediate or ongoing administration *on site*.” 59 O.S.2021, § 519.6(E)(2) (emphasis added). Thus, if a physician assistant wishes to write an order for a Schedule II drug, that order must be for immediate or ongoing administration on site.

The use and placement of the word “may” in the sentence structure denotes the discretion of the physician assistant to prescribe Schedule II drugs, not discretion to disregard the subsequent limitation “for immediate or ongoing administration on site.” *Id.* Put differently, the word “may” merely conveys that a physician assistant *may* but *need not* prescribe Schedule II drugs pursuant to this statutory authority. A contrary reading, one that interprets “may” as rendering the subsequent limitations to the Schedule II prescriptive authority optional, would create an absurdity that renders the entire sentence superfluous. If the Legislature intended physician assistant prescriptive authority over Schedule II drugs to extend to both on-site *and off-site* administration, it could have so said. But “[w]e may not add words that are not there” and we “will not presume

⁵It is, of course, “proper to consider the history and consistent purpose of the legislation on the subject and to discover the policy of the Legislature as disclosed by the course of the legislation.” *McNeill v. City of Tulsa*, 1998 OK 2, ¶ 9, 953 P.2d 329, 332.

the legislature has done a vain and useless act.” *Frank Bartel Transp., Inc. v. State ex rel. Murray State Coll.*, 2023 OK 121, ¶ 5, 540 P.3d 480, 483; *State ex rel. Thompson v. Ekberg*, 1980 OK 91, ¶ 7, 613 P.2d 466, 467; *see also Patterson v. Beall*, 2000 OK 92, ¶ 24, 19 P.3d 839, 845 (explaining that “the mention of one thing in a statute impliedly excludes another thing”).

The words and phrases used in subsection 2 of title 59, section 519.6(E) are unambiguous and susceptible to only one reasonable interpretation. For example, the plain meaning of the phrase “Schedule II drug” encompasses any and every Schedule II drug, including those encompassed by the first subsection. The fact that the first subsection grants physician assistants general authority to “prescribe drugs, including controlled medications in Schedules II through V” does not alter this plain language. Nor does it create ambiguity or conflict. The broad grant of prescriptive authority over Schedule II–V drugs (in subsection 1) does not inherently conflict with the more specific limitation of Schedule II drug prescriptive authority (in subsection 2). *See McIntosh v. Watkins*, 2019 OK 6, ¶ 4, 441 P.3d 1094, 1096 (“The legislative intent will be ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each.”). More importantly, even if conflict could be imagined, it must be resolved to give effect to the more specific terms of subsection 2. *See Ekberg*, 1980 OK 91, ¶ 7, 613 P.2d at 467 (“[A]s a rule, general words in a statute are limited by subsequent more specific terms.”). As the Oklahoma Supreme Court has made clear: “[w]here a matter is addressed by two statutes—one specific and the other general—the specific statute, which clearly includes the matter in controversy and prescribes a different rule, governs over the general statute.” *State ex rel. Trimble v. City of Moore*, 1991 OK 97, ¶ 30, 818 P.2d 889, 899. Any contrary interpretation would render the express limitations found in subsection 2 meaningless and fail to give harmonious effect to the entirety of section 519.6(E).⁶

Similarly, the term “order” used in subsection 2 is synonymous and interchangeable with the term “prescription,” which is defined in the UCDSA and the Oklahoma Pharmacy Act as an “order” for a drug or controlled dangerous substance. 63 O.S.Supp.2023, § 2-309(D)(1); 59 O.S.Supp.2022, § 353.1(41); *see also* MERRIAM-WEBSTER’S MED. DESK DICTIONARY 667 (Revised ed. 2005) (defining “prescription” as “a written direction for the preparation, compounding, and administration of a medicine”); *id.* at 580 (defining “order” as “to give a prescription for: PRESCRIBE”). A prior Attorney General Opinion took up a remarkably similar issue in 2001, albeit in the context of veterinary prescription drugs. *See* 2001 OK AG 21 ¶¶ 12–19. As that opinion explained:

These statutory definitions [in the Pharmacy Act] indicate the terms “drug order” and “prescription” are virtually interchangeable. A prescription is an order for dangerous drugs and an order for dangerous drugs is a prescription. Most simply put, both a ‘drug order’ and a ‘prescription’ are instructions to a person authorized to dispense a dangerous drug.

⁶The legislative decision to subdivide section 519.6(E) into two parts does not undermine this conclusion. No statutory canon of construction places the *organizational form* above the statutory language. *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 227 (1957) (“The change of arrangement, which placed portions of what was originally a single section in two separated sections cannot be regarded as altering the scope and purpose of the enactment.”). Thus, we will not ignore well-established rules of statutory construction in favor of an unreasonable assumption that the division of the two parts demands separate and equal treatment.

Id. ¶ 14 (emphasis omitted). Thus, to “write an order” is to write a prescription, which matches the very definition of the verb prescribe: “to write or give medical prescriptions.” MERRIAM-WEBSTER’S MED. DESK DICTIONARY 666–67 (Revised ed. 2005). Accordingly, the plain meaning supports the conclusion that the Legislature did not intend the phrase “write an order” used in subsection 2 to convey a different or more limited prescriptive authority than the phrase “prescribe” used in subsection 1.

The history of amendments to section 519.6 confirms the Legislature’s intent to place heightened restrictions on a physician assistant’s authority to prescribe Schedule II controlled substances. When physician assistants were first granted general prescriptive authority over controlled substances in 1998, that authority *did not* include Schedule II drugs. *See* S.B. 1069, 46th Leg., 1998 2d Reg. Sess., 1998 Okla. Sess. Laws ch. 128 §§ 4, 6. Likewise, when the Legislature added that authority in 2001, and expanded what is now subsection 1 to include Schedule II, it simultaneously added the specific requirements now found in subsection 2. *See* S.B. 32, 48th Leg., 2001 Reg. Sess., 2001 Okla. Sess. Laws ch. 385 § 3(D). Thus, it is evident that the new prescriptive authority over Schedule II drugs was subject to the restrictions added in subsection 2.

The title of the 2001 Bill confirms that this is the correct construction of section 519.6. *See Kratz v. Kratz*, 1995 OK 63, ¶ 15, 905 P.2d 753, 756 (“The title to an Act is a valuable aid in its construction and may be considered in determining legislative intent.”) Here, the title of the 2001 Bill states that the purpose of this amendment was to “*specify*” when physician assistants may write orders or prescriptions for Schedule II drugs” *Id.* To accomplish this, the Legislature specified that which was previously otherwise absent from section 519.6: that physician assistants are expressly limited to prescribing a Schedule II drug *on site*. *Patterson*, 2000 OK 92, ¶ 24, 19 P.3d at 845.

In sum, the plain language of title 59, section 519.6(E) can only be read one way: to limit physician assistant prescriptive authority over Schedule II drugs to on-site administration only.

It is, therefore, the official Opinion of the Attorney General that:

Oklahoma law, specifically title 63, section 2-312(E) (Supp.2022) and title 59, section 519.6(E) (2021), *does not* allow physician assistants to prescribe and administer Schedule II controlled dangerous substances under the direction of a delegating physician at off-site locations. Physician assistants’ prescriptive authority over Schedule II substances is limited to on-site administration only.



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