

State of Arkansas  
86th General Assembly  
Regular Session, 2007

# A Bill

SENATE BILL 895

By: Senator Horn  
By: Representatives Wells, Gaskill

## For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS PATIENT CHOICE ACT;  
TO ALLOW ARKANSAS PATIENTS MORE CHOICE IN THEIR  
PRESCRIPTION DRUG BUYING PURCHASES BY REGULATING  
THE DISPENSING OF PRESCRIPTION DRUGS BY CERTAIN  
MEDICAL PROFESSIONALS; AND FOR OTHER PURPOSES.

## Subtitle

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CHOICE ACT; TO ALLOW ARKANSAS PATIENTS  
MORE CHOICE IN THEIR PRESCRIPTION DRUG  
BUYING PURCHASES BY REGULATING THE  
DISPENSING OF PRESCRIPTION DRUGS BY  
CERTAIN MEDICAL PROFESSIONALS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

### SECTION 1. Findings.

The General Assembly finds that:

(1) The emergence of an increasingly competitive and cost-conscious health system benefits Arkansas consumers;

(2) Based upon a patient's concerns for privacy, convenience, and costs, a patient might benefit from obtaining prescription drugs at his or her local doctor's office;

(3) Effective regulation of drug dispensing is important to protect the public and to ensure accountability in the drug distribution system;



1           (4) A dispensing physician should be held to the same procedural  
 2 requirements for matters such as labeling, record keeping, and supervision  
 3 that are applicable to pharmacists;

4           (5) A dispensing physician should be required to register with  
 5 the appropriate regulatory board so that Arkansans may identify practitioners  
 6 who are actually dispensing prescription drugs; and

7           (6) A dispensing physician should be subject to requirements  
 8 that protect freedom of choice for patients to buy prescription drugs from  
 9 either their physicians or their pharmacist.

10  
 11           SECTION 2. Arkansas Code § 17-80-106(c), concerning investigations and  
 12 inspections of alleged wrongdoing by licensed health care professionals, is  
 13 amended to read as follows:

14           (c) Upon written request of a person authorized by the respective  
 15 licensing board and with authorization by the Director of the Division of  
 16 Pharmacy Services and Drug Control of the Division of Health of the  
 17 Department of Health and Human Services pursuant to appropriate authority  
 18 from the board, the investigators may investigate, inspect, and make copies  
 19 of medical records, dental records, nursing records, drug orders, drug  
 20 inventories, prescriptions, veterinary records, and podiatry records,  
 21 wherever located, of all persons licensed by the medical, optometric, dental,  
 22 nursing, veterinary, podiatric, and physical therapy boards in order for the  
 23 respective licensing board to determine whether or not any persons have:

24           (1) Violated the laws of the State of Arkansas or of the United  
 25 States respecting the prescribing, administering, dispensing, and use of  
 26 narcotics and potentially dangerous drugs;

27           (2) Practiced their profession in such a way as to endanger the  
 28 general health and welfare of the public; or

29           (3) Otherwise violated the practice act or rules and regulations  
 30 of that respective board.

31  
 32           SECTION 3. Arkansas Code § 17-82-102 is amended to read as follows:  
 33 17-82-102. Definitions.

34 ~~For the purposes of this chapter, unless the context otherwise requires~~  
 35 As used in this chapter:

36           (1) "Dispensing dentist" means a dentist licensed under this

chapter and permitted under § 17-82-318 who purchases legend drugs to be dispensed to his or her patients for the patients' personal use and administration outside the dentist's office.

~~(1)(A)~~(2)(A) "Practicing dentistry" means:

(i) The evaluation, diagnosis, prevention, and treatment by nonsurgical, surgical, or related procedures of diseases, disorders, and conditions of the oral cavity, maxillofacial area, and the adjacent and associated structures and their impact on the human body, but not for the purpose of treating diseases, disorders, and conditions unrelated to the oral cavity, maxillofacial area, and the adjacent and associated structures; and

(ii) The sale or offer for sale of those articles or services of dentistry enumerated in § 17-82-105(a).

(B) "Practicing dentistry" shall include, but not be limited to, the administration of anesthetics for the purpose of or in connection with the performance of any of the acts, services, or practices enumerated or described in this section.

(C) Nothing herein shall be construed to prohibit a licensed physician from extracting teeth in an emergency when, in his or her considered professional judgment, it is necessary and when it is not practicable or reasonable to secure the services of a licensed dentist; and

~~(2)(A)~~(3)(A) "The practice of dental hygiene" means the assessment, prevention, and treatment of oral diseases provided by a licensed dental hygienist under the supervision of a licensed dentist as set out in the regulations of the Arkansas State Board of Dental Examiners.

(B) The practice of dental hygiene shall include the removal of deposits from supragingival and subgingival surfaces of the teeth and any other services which the board may authorize by regulation and which are not prohibited by any provision of this chapter.

SECTION 4. Arkansas Code § 17-82-316(c), concerning the authority of the Arkansas State Board of Dental Examiners to revoke or suspend dentist's licenses, is amended to read as follows:

(c) The board may impose one (1) or more of the penalties set out in subsection (b) of this section if the board finds that the licensed dentist, dental hygienist, or permit holder has violated the Arkansas Dental Practice

Act, § 17-82-101 et seq., the regulations of the board, or has committed one (1) or more of the following acts:

(1) The presentation to or filing with the board, for the purpose of securing a license to practice dentistry or dental hygiene or to obtain any permit issued by the board, of any diploma, license, or certificate illegally or fraudulently obtained by the applicant;

(2) The use of an assumed or fictitious name in applying for a license for the purpose of shielding moral unfitness or a criminal record;

(3) The commission of any criminal operation; habitual drunkenness for a period of three (3) months; insanity; adjudication of insanity or mental incompetency if deemed detrimental to patients; conviction of an infamous crime or felony; addiction to narcotics; immoral, dishonorable, or scandalous conduct; professional incompetency; failure to maintain proper standards of sanitation or failure otherwise to maintain adequate safeguards for the health and safety of patients; or employment in the practice of the profession of any drug, nostrum, unknown formula, or dangerous or unknown anesthetic not generally used by the dental profession;

(4) The advertising of services to the public which is fraudulent and misleading or which does not comply with the rules and regulations of the board;

(5) The permitting of any unlicensed person under his or her supervision or control to perform any act, service, practice, or operation on any patient or prospective patient which constitutes a part of the practice of dentistry or dental hygiene or is involved with the administration of drugs, medicines, or anesthetics, except those services permitted by the board and under the supervision of a licensed dentist;

(6) The violation of any rule or regulation of board standards of professional conduct for dentists and dental hygienists practicing within the state; ~~or~~

(7) The violation of any term of probation or order previously entered by the board affecting the licensee or permit holder; or

(8) The dispensing of medication without having been granted a permit to dispense medication by the Arkansas State Board of Pharmacy.

SECTION 5. Arkansas Code Title 17, Chapter 82, Subchapter 3 is amended to add an additional section to read as follows:

1       17-82-318. Legend drugs – Requirements.

2       (a) This section does not apply to dentists who only dispense drugs in  
3 injectable form unless the drugs are controlled substances, in which case the  
4 section shall fully apply.

5       (b)(1) A person shall not dispense legend drugs unless licensed as a  
6 pharmacist or otherwise authorized by law.

7       (2) A dentist licensed in this state may dispense legend drugs  
8 to his or her patients in the regular course of the dentist's practice in  
9 compliance with this section.

10       (c) A dentist may dispense legend drugs for human consumption for a  
11 fee or remuneration of any kind, whether direct or indirect, if the dentist:

12           (1) Applies to the Arkansas State Board of Pharmacy for a  
13 dispensing dentist permit;

14           (2) Pays a dispensing dentist permit fee to the Arkansas State  
15 Board of Pharmacy:

16               (A) At the time of registration as a dispensing dentist;  
17 and

18               (B) Upon each renewal of the dispensing dentist permit;

19           (3) Complies with all requirements that protect freedom of  
20 choice for patients to buy prescription drugs from either their dentists or  
21 their pharmacists, including without limitation, Arkansas State Board of  
22 Dental Examiners and Arkansas State Board of Pharmacy rules and federal laws  
23 and federal regulations; and

24           (4) Before dispensing any drug, gives the patient a written  
25 prescription and in writing advises the patient that the prescription may be  
26 filled in the dentist's office or at any pharmacy.

27       (d) A dispensing dentist shall:

28           (1)(A) Personally dispense legend drugs.

29           (B) The dispensing of legend drugs shall not be delegated;

30           (2)(A) Keep records of all receipts and distributions of legend  
31 drugs.

32           (C) The records shall be subject to inspection by the  
33 proper enforcement authority and shall be readily accessible for inspection  
34 and maintained in a central registry; and

35           (3) Label legend drugs with the following information:

36               (A) Patient's name and address;

1                   (B) Prescribing dentist's address and narcotic registry  
 2 number issued by the Drug Enforcement Administration of the United States  
 3 Department of Justice;

4                   (C) Date of dispensing; and

5                   (D) Directions and cautionary statements, if any, as  
 6 required by law.

7           (e) The Arkansas State Board of Pharmacy may suspend or revoke the  
 8 dispensing dentist permit of any dentist who dispenses legend drugs in  
 9 violation of this section or the rules of the Arkansas State Board of  
 10 Pharmacy.

11           (f) The Arkansas State Board of Pharmacy shall inspect the dispensing  
 12 practice of a dispensing dentist in the same manner as licensed pharmacists  
 13 and with reasonably similar frequency as licensed pharmacists.

14           (g) Dental hygienists shall not dispense legend drugs.

15           (h) The Arkansas State Board of Pharmacy shall establish by rule the  
 16 fee required under subdivision (c)(2) of this section.

17           (i) The Arkansas State Board of Pharmacy shall enforce this section  
 18 and shall adopt rules to carry out its purpose.

19           (j) This section does not supersede or affect the provisions in §§ 17-  
 20 82-502, 17-82-503, and 17-82-504 regarding a dentist's authority to  
 21 administer general anesthesia or sedation.

22  
 23           SECTION 6. Arkansas Code § 17-92-607 is amended to read as follows:  
 24           17-92-607. Unlawful for hospital to hold licensed pharmacy permit -  
 25 Exceptions.

26           ~~(a) It shall be unlawful for any nonprofit, tax exempt, or~~  
 27 ~~governmentally funded hospital to acquire direct or indirect interest in or~~  
 28 ~~otherwise hold directly or indirectly a licensed pharmacy permit pursuant to~~  
 29 ~~the provisions of § 17-92-405, for the sale at retail of drugs and medicines.~~

30           ~~(b) However, nothing contained in this section shall be construed to~~  
 31 ~~prohibit any hospital having a direct or indirect interest in or otherwise~~  
 32 ~~holding either directly or indirectly a permit prior to March 28, 1975, from~~  
 33 ~~continuing to have an interest in or holding the permit. Nothing contained in~~  
 34 ~~this section shall be construed to prohibit any hospital so holding a permit~~  
 35 ~~prior to March 28, 1975, from receiving a renewal of the permit.~~

36           It is unlawful for any nonprofit, tax exempt, or governmentally funded

1 hospital that holds a pharmacy permit under §§ 17-92-404 and 17-92-405 to:

2 (1)(A) Sell at retail drugs and medicine purchased as a  
3 discounted drug under 42 U.S.C. § 256b, as it existed on January 1, 2007.

4 (B) Subdivision (1)(A) of this section does not prevent  
5 any nonprofit, tax exempt, or governmentally funded hospital from holding a  
6 pharmacy permit to purchase discounted drugs or medicine for the hospital's  
7 own use; and

8 (2)(A) A nonprofit, tax exempt, or governmentally funded  
9 hospital that holds a pharmacy permit shall not resell or otherwise transfer  
10 a drug purchased at a discount under 42 U.S.C. § 256b, as it existed on  
11 January 1, 2007, to a person who is not a patient of the hospital.

12 (B) Subdivision (2)(A) of this section does not prevent a  
13 nonprofit, tax exempt, or governmentally funded hospital that holds a  
14 pharmacy permit from donating prescription medication to charitable clinics  
15 as set forth in § 17-92-1101 et seq.

16  
17 SECTION 7. Arkansas Code § 17-95-102 is amended to read as follows:

18 17-95-102. Legend drugs.

19 (a) A dispensing physician is a physician licensed under the Arkansas  
20 Medical Practices Act, §§ 17-95-201 – 17-95-207, 17-95-301 – 17-95-305, and  
21 17-95-401 – 17-95-411, who purchases legend drugs to be dispensed to his or  
22 her patients for the patients' personal use and administration outside the  
23 physician's office.

24 (b) This section shall not apply to physicians who only dispense drugs  
25 in injectable form unless they are controlled substances, in which case the  
26 section shall fully apply.

27 (c) The dispensing physician shall:

28 (1)(A) Personally dispense legend drugs ~~and the~~.

29 (B) The dispensing of ~~such~~ legend drugs ~~may~~ shall not be  
30 delegated;

31 (2)(A) Keep records of all receipts and distributions of legend  
32 drugs.

33 (B) The records shall be subject to inspection by the  
34 proper enforcement authority and shall be readily accessible for inspection  
35 and maintained in a central registry; and

36 (3) Label legend drugs with the following information:

- 1 (A) Patient's name and address;  
 2 (B) Prescribing physician's address and narcotic registry  
 3 number issued by the Drug Enforcement Administration of the United States  
 4 Department of Justice;  
 5 (C) Date of dispensing; and  
 6 (D) Directions and cautionary statements, if any, as  
 7 required by law.

8 ~~(d) No physician licensed under the Arkansas Medical Practices Act, §§~~  
 9 ~~17-95-201—17-95-207, 17-95-301—17-95-305, and 17-95-401—17-95-411,~~  
 10 ~~shall dispense legend drugs without prior approval by the Arkansas State~~  
 11 ~~Medical Board after application to the board and on the showing of need.~~  
 12 ~~Licensed physicians who were dispensing in the ordinary course of their~~  
 13 ~~practice for the twelve (12) months immediately prior to July 4, 1983, shall~~  
 14 ~~be exempt from the requirements of this subsection.~~

15 (d)(1) A person shall not dispense legend drugs unless the person is  
 16 licensed as a pharmacist or otherwise authorized by law.

17 (2) A physician licensed in this state may dispense legend drugs  
 18 to his or her patients in the regular course of the physician's practice in  
 19 compliance with this section.

20 (e) A physician may dispense legend drugs for human consumption for a  
 21 fee or remuneration of any kind, whether direct or indirect, if the  
 22 physician:

23 (1) Applies to the Arkansas State Medical Board for a dispensing  
 24 physician permit;

25 (2) Pays a dispensing physician permit fee to the board:

26 (A) At the time of registration; and

27 (B) Upon each renewal of the dispensing physician permit;

28 (3) Complies with all requirements of the to the board that  
 29 protect freedom of choice for patients to buy prescription drugs from either  
 30 their physicians or their pharmacists, including without limitation, federal  
 31 laws and federal regulations; and

32 (4) Before dispensing any drug, gives the patient a written  
 33 prescription and in writing advises the patient that the prescription may be  
 34 filled in the physician's office or at any pharmacy.

35 (f) The board may suspend or revoke the registration as a dispensing  
 36 physician of any physician who dispenses legend drugs in violation of this



1 section.

2 (g) The board may suspend or revoke the license of any physician who  
 3 dispenses legend drugs in violation of this section or the rules of the  
 4 board.

5 (h) A physician practicing with a temporary license under § 17-95-503  
 6 shall not dispense legend drugs.

7 ~~(e)~~(i) The board shall enforce the provisions of this section and ~~is~~  
 8 ~~authorized and directed to adopt regulations~~ shall adopt rules to carry out  
 9 its purpose.

10  
 11 SECTION 8. Arkansas Code § 17-95-409(a), concerning grounds for  
 12 denial, suspension, or revocation of a physician's license, is amended to  
 13 read as follows:

14 (a)(1) The Arkansas State Medical Board may revoke an existing  
 15 license, impose penalties as listed in § 17-95-410, or refuse to issue a  
 16 license ~~in the event~~ if the holder or applicant, as the case may be, has  
 17 committed any of the acts or offenses defined in this section to be  
 18 unprofessional conduct.

19 (2) The words "unprofessional conduct", as used in the Arkansas  
 20 Medical Practices Act, §§ 17-95-201 – 17-95-207, 17-95-301 – 17-95-305, and  
 21 17-95-401 – 17-95-411, are declared to mean:

22 (A)(i) Conviction of any crime involving moral turpitude  
 23 or conviction of a felony.

24 (ii) The judgment of any such conviction, unless  
 25 pending upon appeal, shall be conclusive evidence of unprofessional conduct;

26 (B) Resorting to fraud, misrepresentation, or deception in  
 27 applying for or securing a license to practice medicine, in taking the  
 28 examination for the license, or in seeking a renewal of a license;

29 (C) Aiding or abetting an unlicensed person to practice  
 30 medicine;

31 (D) Procuring or aiding or abetting in procuring a  
 32 wrongful and criminal abortion;

33 (E) Violation of the laws of the United States or the  
 34 State of Arkansas regulating the possession, distribution, or use of narcotic  
 35 or controlled drugs classed in Schedules 1-5 of the Controlled Substances Act  
 36 of 1970 or the Uniform Controlled Substances Act, ~~§§ 5-64-101 – 5-64-608,~~

1 ~~including any amendments thereto~~ § 5-64-101 et seq.;

2 (F) Habitual indulgence in the use of alcohol to such an  
3 extent as to render himself or herself incapable of exercising that degree of  
4 skill and judgment in the treatment of his or her patients which the moral  
5 trust and confidence in him or her demands;

6 (G) Grossly negligent or ignorant malpractice;

7 (H) Habitual, intemperate, or excessive use of narcotics  
8 or of any other habit-forming drugs;

9 (I) Representing to a patient that a manifestly incurable  
10 condition of sickness, disease, or injury can be permanently cured;

11 (J) Becoming physically or mentally incompetent to  
12 practice medicine to such an extent as to endanger the public;

13 (K) Insanity or mental disease, if evidenced by an  
14 adjudication or by voluntary commitment to an institution for treatment of a  
15 mental disease or as determined by an examination conducted by three (3)  
16 impartial psychiatrists retained by the board;

17 (L) Soliciting for patronage; advertising for patronage in  
18 a false, fraudulent, deceptive, or misleading manner; advertising the quality  
19 of medical services; or advertising illegal procedures and practices;

20 (M) Offering, undertaking, attempting, or agreeing to cure  
21 or treat disease by a secret method, procedure, treatment, or medicine or  
22 representing, directly or indirectly, that he or she can treat, operate on,  
23 or prescribe for any human condition by a method, means, or procedure which  
24 he or she refuses to divulge upon demand to the board;

25 (N) The willful betraying of a professional secret;

26 (O) Persistent and flagrant overcharging or overtreating  
27 of patients;

28 (P) Violating a regulation of the board; ~~and~~

29 (Q) Violating a term of probation or an order previously  
30 imposed by the board; and

31 (R)(i) Dispensing unnecessary legend drugs if:

32 (a) The dispensing physician is also the  
33 prescribing physician; and

34 (b) The board finds that the dispensing  
35 physician received an unreasonable benefit from dispensing the legend drugs.

36 (ii) Subdivision (a)(2)(R) of this section does not

1 supersede any provision in the Chronic Intractable Pain Treatment Act, § 17-  
2 95-701 et seq.

3  
4 SECTION 9. Arkansas Code Title 17, Chapter 92, Subchapter 1 is amended  
5 to add an additional section to read as follows:

6 17-92-113. Dispensing dentist permits – Dispensing physician permits.

7 (a) The Arkansas State Board of Pharmacy may issue dispensing dentist  
8 permits under § 17-82-318.

9 (b) The board shall promulgate rules to implement this section.