

# DON'T WRITE PRESCRIPTIONS FOR TROUBLE



Some things never change.

The Oklahoma State Board of Medical Licensure and Supervision Department of Investigations and Compliance remains frustrated that many well-meaning Oklahoma physicians and Physician Assistants (PA) continue to find themselves in trouble for unwittingly violating state and federal laws when writing prescriptions. Most prescribing problems are avoidable.

The following is a slightly updated version of an article sent to Oklahoma physicians in 2011 as a primer on what physicians need to know before they write prescriptions. While much of the following information may seem elementary, the Department of Investigations notes that some Oklahoma doctors continue to make prescribing errors that could lead to Medical Board action and even state and/or federal charges.

**Basic Criteria for Writing a Prescription:** Oklahoma physicians cannot write a prescription without a “sufficient examination and establishment of a valid physician/patient relationship.” The Medical Board stipulates a physician/patient relationship consist of a face-to-face or approved telemedicine encounter (OAC 435:10-7-13) during which physicians should verify patients are who they claim to be and establish a diagnosis through accepted medical practices such as history and physical, mental status exam and appropriate diagnosis and laboratory tests.

Physicians always must make the reason for the prescription a part of the patient’s medical record.

The Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBNDD) requires physicians to keep retrievable records readily available for all Controlled Dangerous Substances (CDS) II-V they prescribe, administer or dispense. Every time a prescription is issued, the chart documentation should list the drug, strength, direction for use, quantity, reason (e.g., pain, anxiety, muscle spasms) and number of refills allowed.

PAs can only prescribe to patients who are within their own and their supervising physicians’ scopes of practice.

No prescriptions should be written to friends or fellow workers without a valid physician/patient relationship and maintenance of a medical chart. Physicians and PAs are prohibited from writing prescriptions for themselves or specific family members.

**Valid Prescription Requirements:** A CDS prescription must be signed and dated on the day issued. The prescription must be written in ink, indelible pencil or typed on pads meeting Federal guidelines and manually signed by the practitioner on the date issued. A secretary or other medical professional may be designated by the physician to prepare the prescription for the doctor’s signature. The prescription must include the patient’s full name and address, physician’s full name and address, DEA number, drug name and strength, dosage form and quantity, directions for use and refills if authorized. DEA requires prescribers to place their DEA number on prescriptions. If a prescriber doesn’t place the DEA number on the prescription, the pharmacist must call the physician and create a telephone prescription. The pharmacist may not add the DEA number to the original prescription. If the physician is not contacted by telephone, insurance auditors will declare the prescription invalid and recover all payment for the prescription from the pharmacy.

**Prescribing to Family Members:** Except for medical emergencies when no other doctors are available, physicians may NOT prescribe a CDS to themselves or any family members within the first and second degrees of consanguinity, i.e., spouses, parents, children (first degree); and brothers, sisters, grandchildren and grandparents (second degree).

Physicians MAY prescribe CDS to third degree relatives (nieces, nephews, aunts, uncles, great grandchildren, great grandparents) and below as long as a valid physician/patient relationship exists.

**Never Sign a Blank Prescription:** Federal law prohibits physicians from pre-signing prescriptions. Prescriptions must be signed by the practitioner on the date issued. A blank, signed prescription is illegal since the physician can never be sure for whom or what purpose it could be filled.

State and federal law enforcement officials take this law very seriously. In a worst case scenario, a physician pre-signed blank prescriptions to allow office Nurse Practitioners on the doctor's day off to refill the prescriptions of chronic pain patients. Federal agents raided the office and criminally prosecuted the physician who not only lost the medical license but served seven (7) months in a federal prison and was fined \$30,000.

**Thirty Day Window for Schedule II Prescriptions:** OBND rules and regulations state that any prescription for Schedule II drugs becomes invalid thirty (30) days after it is issued. However, a physician who will be out of the office for an extended period of time may write a valid prescription for a Schedule II dated on the day of issue with the stipulation that it may not be filled until a future date within the thirty (30) day window, e.g., a prescription written on March 1 is not to be filled until March 28.

**Physician Supervised Midlevel Practitioners:** Physician Assistants (PA) and Nurse Practitioners (NP) may write prescriptions for Schedule III, IV and V medications within formularies and under physician supervision. All prescriptions written by PA or NPs must include the name and telephone number of the supervising physician.

\*\* PAs and NPs may not write outpatient prescriptions for Schedule II drugs under any circumstances.

\*\* PAs and NPs cannot dispense drugs but may distribute samples.

\*\* PA and NP prescriptions for Schedule III, IV and V medications are limited to a thirty (30) day supply.

\*\* PAs may not issue orders for medications their supervising physicians are not allowed to prescribe.

\*\* PAs may write orders for Schedule II drugs for on-site administration protocols or direct verbal order of the supervising physician.

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\*\* Certified Nurse Anesthetists (CRNA) may order and administer CDS II-V drugs but only during peri-operative and/or periparturient periods.

**Monitor Call-ins Closely:** State and federal regulations allow physicians to designate agents to call in prescriptions to pharmacies for CDS III, IV and V drugs "in order to make the prescription process more efficient." Only the physician—not the agent—can make the medical determination to prescribe the CDS. The agent normally is an employee of the physician and may be a licensed medical professional or non-medical member of the office staff. "Call-in" prescriptions must meet all the criteria of a valid written prescription and must be noted in the patient's medical record.

The physician is ultimately responsible and legally liable for all prescriptions called in under his or her name. Therefore, physicians should take great care in designating, instructing and monitoring the staff members allowed to call in prescriptions. "Agency" has legal meaning so physicians are encouraged to have their office "agents" actually sign a document acknowledging their designation along with a brief description of their responsibility. The document should be kept on file in the office with copies distributed to the main pharmacies used by the physician. While sample "agency" documents may be available on-line, physicians may wish to consult with their attorneys.

