

The Pain Relief Act

Project on Legal Constraints on Access to Effective Pain Relief

Short Title

Sec. 1. This Act may be cited as the Pain Relief Act.

Definitions

Sec. 2. For the purposes of this Act:

1. “Board” means [insert the appropriate list of state licensure, registration, or disciplinary boards or agencies that have disciplinary authority over physicians, nurses, physician assistants, pharmacists, and any other health care professionals covered under this Act].

2. “Physician” means a licensee of the [insert the name of the board or boards licensing M.D.s and D.O.s].

3. “Nurse” means a licensee of the [insert the name of the state board of nursing], including advanced practice nurses.

4. “Pharmacist” means a licensee of the [insert the name of the state board of pharmacy].

5. “Physician assistant” means a licensee or registrant of the [insert the name of the state board regulating physician assistants, which may include the board of medicine].

6. [Include, with definition, any other professionals who should fall within the protection of this Act.]

7. “Intractable pain” is a state of pain, even if temporary, in which reasonable efforts to remove or remedy the cause of the pain have failed or have proven inadequate.

8. “Clinical expert” is one who by reason of specialized education or substantial relevant experience in pain management has knowledge regarding current standards, practices, and guidelines.

9. An “accepted guideline” is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association, or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. If no currently accepted

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guidelines are available, then rules, policies, guidelines, or regulations issued by the Board may serve the function of such guidelines for purposes of this Act. Such Board rules,

policies, guidelines, or regulations must conform to the intent of this statute. Guidelines established primarily for purposes of coverage, payment, or reimbursement do not qualify as “accepted practice or care guidelines” when offered to limit treatment options otherwise covered within this Act.

10. “Therapeutic purpose” is the use of pharmaceutical and nonpharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

11. “Disciplinary action” includes both informal and formal, and both remedial and punitive actions taken by a Board against a health care provider.

12. “Health care provider” is a licensed professional as defined in Subsections 2, 3, 4, 5, and 6 of this section.

Sec. 3.

1. Neither disciplinary action nor state criminal prosecution shall be brought against a health care provider for the prescription, dispensing, or administration of medical treatment for the therapeutic purpose of relieving intractable pain who can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that guideline and with the standards of practice identified in Section 4 below. The showing of substantial compliance with an accepted guideline may be rebutted only by clinical expert testimony.

2. In the event that a disciplinary action or criminal prosecution is pursued, the board or prosecutor shall produce clinical expert testimony supporting the finding or charge of violation of disciplinary standards or other legal requirements on the part of the health care provider. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

3. The provisions of this section shall apply to health care providers in the treatment of all patients for intractable pain, regardless of the patient’s prior or current [chemical dependency or addiction]. The Board may develop and issue [regulations,] rules, policies, or guidelines establishing standards and procedures for the application of this Act to the care and treatment of chemically dependent individuals.

Sec. 4. Nothing in this Act shall prohibit discipline or prosecution of a health care provider for:

a. failing to maintain complete, accurate, and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

b. writing false or fictitious prescriptions for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 et seq. [or applicable state statute];

c. prescribing, administering, or dispensing pharmaceuticals in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 et seq. [or applicable state statute]; or

d. diverting medications prescribed for a patient to the provider’s own personal use.

Sec. 5. The Board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of this Act. At a minimum, the Board shall inform any health care provider investigated in relation to the provider’s practices in the management of pain of the existence of this Act.

Sec. 6. Nothing in this Act shall be construed as expanding the authorized scope of practice of any health care provider.