

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2624

By: Vaughn, Morgan, Maddux and
Hastings of the House

and

Hendrick of the Senate

COMMITTEE SUBSTITUTE

[public health and safety - therapeutic pain

management - drugs - guidelines - codification -

effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-551 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Many Schedule II, III, IV and V controlled dangerous substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state.

B. To treat a patient's pain, a physician may administer a Schedule II, III, IV or V controlled dangerous substance in excess of the recommended dosage if, in the physician's judgment, appropriate pain management warrants the higher dosage and the

benefit of the relief expected outweighs the risk of the higher dosage, even if its use may increase the risk of death, so long as it is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-552 of Title 63, unless there is created a duplication in numbering, reads as follows:

For the purposes of this act:

1. An "accepted guideline" is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association, specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or the review of existing research and expert opinion. If there are no currently accepted guidelines available, rules, policies or guidelines issued by the licensing board may serve the function of such guidelines for purposes of this act. Such licensing board rules, policies or guidelines must conform to the intent of this statute. Guidelines established primarily for purposes of coverage, payment or reimbursement do not qualify as accepted practice/care guidelines when offered to limit treatment options otherwise covered within this act. For a guideline to be an accepted guideline for the purposes of this act, the guideline must not be inconsistent with the provisions of paragraph 5 of subsection B of Section 4 of this act. The licensing board may by rule establish that any particular guideline otherwise qualified to be an accepted guideline is not an accepted guideline on the grounds that it is inconsistent with the provisions of paragraph 5 of subsection B of Section 4 of this act, but even a guideline that has not been specifically disqualified by such a rule may be held not to provide a defense in a particular case on the grounds that it is inconsistent with the provisions of paragraph 5 of subsection B of

Section 4 of this act, in accordance with the procedures set forth in subsection A of Section 3 of this act;

2. "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;

3. "Disciplinary action" includes both informal and formal and both remedial and punitive actions taken by a licensing board against a health care professional;

4. "Health care professional" means any person who offers or provides health care under a license, certification or registration issued pursuant to Title 59 of the Oklahoma Statutes and who is authorized to prescribe, dispense or administer drugs to another person, including but not limited to physicians, physician assistants, advanced practice nurses, pharmacists and dentists;

5. "Licensing board" means any department, board, agency or commission of this state that issues a license, certificate or other similar document to an individual to practice as a health care professional;

6. "Schedule II, III, IV or V controlled dangerous substance" shall have the same description as such terms are described by the Uniform Controlled Dangerous Substances Act; and

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-553 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Neither disciplinary action nor state criminal prosecution shall be brought against a health care professional for the prescribing, dispensing or administering of medical treatment for the therapeutic purpose of relieving pain who can demonstrate by reference to an accepted guideline that such health care

professional's practice substantially complied with that guideline and with the standards of practice identified in Section 4 of this act. The showing of substantial compliance with accepted guidelines may be rebutted only by clinical expert testimony. A showing that a guideline otherwise qualified to be an accepted guideline is not an accepted guideline because it is inconsistent with the provisions of paragraph 5 of subsection B of Section 4 of this act may be made by clinical expert testimony.

B. In the event that a disciplinary action or criminal prosecution is pursued, the licensing 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 professional. Evidence of noncompliance with the "Physicians' Desk Reference" or a Food and Drug Administration guideline is not sufficient alone to support disciplinary or criminal action.

C. The provisions of this section shall apply to health care professionals in the treatment of all patients for pain regardless of the patient's prior or current chemical dependency or addiction. The licensing board may develop and promulgate rules establishing standards and procedures for the application of this act to the care and treatment of chemically dependent individuals. The licensing board may by rule establish that any particular guideline otherwise qualified to be an accepted guideline is not an accepted guideline on the grounds that it is inconsistent with the provisions of paragraph 5 of subsection B of Section 4 of this act.

D. It shall be a defense in a civil, criminal, or professional disciplinary proceeding that a pharmacist acted in reliance on a reasonable belief that a prescription the pharmacist received in the usual course of professional practice was in compliance with this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-554 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed as expanding the authorized scope of practice of any health care professional.

B. Nothing in this act shall prohibit discipline or prosecution of a health care professional for:

1. 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;

2. 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., Section 801 et seq.;

3. 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., Section 801 et seq.;

4. Diverting medications prescribed for a patient to the professional's own personal use;

5. Causing, or assisting in causing, the suicide, euthanasia or mercy killing of any individual, provided that it is not causing, or assisting in causing, the suicide, euthanasia or mercy killing of any individual to prescribe, dispense or administer medical treatment for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as it is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason; or

6. Failing to obtain informed consent before prescribing, dispensing, or administering medical treatment for the therapeutic purpose of relieving pain whose use may substantially increase the risk of death, based on full and accurate disclosure of any such risk.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-555 of Title 63, unless there is created a duplication in numbering, reads as follows:

The licensing board shall work with its corresponding professional association and make reasonable efforts to notify health care professionals under its jurisdiction of the existence of this act. Such efforts should be periodically reproduced.

SECTION 6. This act shall become effective November 1, 1998.

46-2-2932 KSM (<time=system>)