

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2624

By: Vaughn

AS INTRODUCED

An Act relating to public health and safety;
providing for therapeutic pain management;
providing purpose statement; defining terms;
authorizing administration of certain drugs in
excess of recommended dosage; prohibiting certain
restrictions, disciplinary actions or criminal
prosecutions; requiring substantial compliance;
requiring certain expert testimony; providing for
treatment of evidence; providing for application of
act; providing for construction of act; requiring
notification; creating the Pain Management Ad Hoc
Advisory Committee; specifying mission and duties;
providing for appointments; providing for meetings
and recommendations; requiring reports; providing
for codification; and providing an 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 controlled 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 controlled substance in excess of the recommended dosage if the administration of the drug does not unreasonably threaten the patient's life.

C. A health care facility or a hospice shall not forbid or restrict the use of controlled substances appropriately administered to relieve pain.

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:

A. For the purposes of this act:

1. "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;

2. "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;

3. "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;

4. 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, guidelines or rules issued by the licensing board may serve the function of such guidelines for purposes of this act. Such licensing board rules, policies, guidelines or rules 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;

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

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

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.

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 an accepted 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.

D. A pharmacist is immune from any civil or criminal liability and from professional discipline for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a health care professional in the usual course of professional treatment or in authorized research.

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.;

or

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

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 make reasonable efforts to notify health care professionals under its jurisdiction of the existence of this act. At a minimum, the licensing board shall inform any health care professional investigated in relation to the professional's practices in the management of pain of the existence of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-556 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is within the office of the State Commission of Health, the Pain Management Ad Hoc Advisory Committee. The mission of the Committee shall be the following:

1. Begin a dialogue among the State Commission of Health, the licensing board and other interested persons that focuses on identifying appropriate procedures and techniques for the management of pain;

2. Study and report to the Governor, the State Commission of Health and the Legislature on medical, pharmaceutical and patient care issues involving the treatment of pain, including, but not limited to, the use of Schedule II controlled dangerous substances.

B. The Committee shall study, at a minimum, all of the following:

1. A scientific and medical review of controlled substances classified in Schedule II pursuant to the Uniform Controlled Dangerous Substances Act;

2. Modern pain management knowledge;

3. Modern pain management techniques for the treatment of pain, including the use of Schedule II controlled dangerous substances;

4. The adverse impact on patient recovery condition caused by the undertreatment of pain;

5. The identity and quantity of patients who do not receive adequate pain control treatment and the consequences and costs of undertreatment;

6. The development of guidelines to establish parameters for the investigation of a prescriber or dispenser of Schedule II controlled dangerous substances for the treatment of pain; and

7. The development of guidelines to educate prescribers, dispensers, patients, law enforcement officials and the public about pain management and regulatory issues.

C. The Committee shall consist of thirteen (13) members to be appointed as follows::

1. Five members appointed by the Governor, to include three physicians and surgeons, a pharmacist and a representative of law enforcement. The representative of law enforcement shall be selected after consultation with the Attorney General;

2. Four members appointed by the President Pro Tempore of the Senate, to include two physicians and surgeons, a pharmacist who specializes in the care of patients in long-term care facilities and a representative of an organization that represents persons with a condition requiring ongoing treatment for pain;

3. Four members appointed by the Speaker of the House of Representatives, to include two physicians and surgeons, a pharmacist and a dentist.

D. The Committee shall select a chairperson and hold its first meeting not later than February 1, 1999. The Committee shall issue a preliminary report of its activities, tentative findings and recommendations of issues requiring further study to the Governor, the Attorney General and the Legislature not later than May 15, 2000. The Committee shall issue a final report to the Governor, the

State Commissioner of Health and the Legislature not later than
December 1, 2000.

SECTION 7. This act shall become effective November 1, 1998.

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