

1 ENGROSSED SENATE
2 BILL NO. 260

By: Gumm of the Senate
and
Carey of the House

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5
6 [public health and safety - Intractable Pain
7 Treatment Act - expiration date - membership -
8 travel reimbursement - codification -
9 effective date]

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

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 2-316.1 of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 This act shall be known and may be cited as the "Intractable
16 Pain Treatment Act".

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2-316.2 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 As used in the Intractable Pain Treatment Act:

21 "Intractable pain" means a state of pain for which:

22 1. The cause of the pain cannot be removed or otherwise
23 treated; and

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1 2. In the generally accepted course of medical practice, relief
2 or cure of the cause of the pain:

3 a. is not possible, or

4 b. has not been found after reasonable efforts.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-316.3 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 A. Notwithstanding any other provision of law, a physician may
9 prescribe or administer a controlled dangerous substance to a person
10 in the course of the physician's treatment of the person for
11 intractable pain.

12 B. Nothing in this act shall be construed to authorize a
13 physician to prescribe or administer to a person a controlled
14 dangerous substance:

15 1. For a purpose that is not a legitimate medical purpose as
16 defined by the State Board of Medical Licensure and Supervision for
17 Medical Doctors or the State Board of Osteopathic Examiners for
18 Doctors of Osteopathy; and

19 2. If the physician knows or should know the person is using
20 drugs for nontherapeutic purpose.

21 C. A hospital or other health care facility shall not prohibit
22 or restrict the use of a controlled dangerous substance prescribed
23 or administered by a physician who holds staff privileges at the
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1 hospital or facility for a person diagnosed and treated by a
2 physician for intractable pain.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-316.4 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 A. A physician is authorized to treat a patient with an acute
7 or chronic painful medical condition with a controlled dangerous
8 substance to relieve the patient's pain using appropriate doses, for
9 an appropriate length of time, and for as long as the pain persists.

10 B. A physician who treats a patient under this act shall
11 monitor the patient to ensure that a prescribed controlled dangerous
12 substance is used only for the treatment of the patient's painful
13 medical condition.

14 C. To ensure that a prescribed controlled dangerous substance
15 is not diverted to another use and to ensure the appropriateness of
16 the treatment of the patient's targeted symptoms, the physician
17 shall:

18 1. Specifically document:

- 19 a. the understanding between the physician and the
20 patient about the patient's prescribed treatment,
21 b. the name of the drug or substance prescribed,
22 c. the dosage and method of taking the prescribed drug or
23 substance,
24 d. the number of dose units prescribed, and

1 e. the frequency of prescribing and dispensing the drug
2 or substance; and

3 2. Consult with a psychologist, psychiatrist, expert in the
4 treatment of addiction, or other health care professional, as
5 appropriate.

6 D. As used in this section, "patient" shall include a person
7 who:

8 1. Is currently abusing a controlled dangerous substance;

9 2. Is not currently abusing the drug or substance but has a
10 history of such abuse; or

11 3. Lives in an environment that poses a risk for misuse or
12 diversion to illegitimate use of the drug or substance.

13 E. Any patient who diverts any drug or substance prescribed
14 under this act for any illegitimate use, including, but not limited
15 to, the sale or transfer of the drug or substance to any other
16 person, shall, in addition to any criminal penalties, no longer be
17 treated with any drug or substance by any physician for intractable
18 pain as permitted under the provisions of this act.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2-316.5 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 A. A physician is not subject to disciplinary action by the
23 State Board of Medical Licensure and Supervision or the State Board
24 of Osteopathic Examiners for prescribing or administering a

1 controlled dangerous substance in the course of treatment for a
2 person for intractable pain.

3 B. Nothing in this act shall be construed to affect the
4 authority of the State Board of Medical Licensure and Supervision or
5 the State Board of Osteopathic Examiners to revoke or suspend the
6 license of a physician who:

7 1. Prescribes, administers, or dispenses a drug or treatment:

8 a. for a purpose that is not a legitimate medical purpose
9 as defined by State Board of Medical Licensure and
10 Supervision for Medical Doctors or the State Board of
11 Osteopathic Examiners for Doctors of Osteopathy, and

12 b. that is nontherapeutic in nature or nontherapeutic in
13 the manner the drug or treatment is administered or
14 prescribed;

15 2. Fails to keep a complete and accurate record of the purpose
16 and disposal of:

17 a. a drug regulated under the Uniform Controlled
18 Dangerous Substances Act, or

19 b. a controlled substance scheduled in the Comprehensive
20 Drug Abuse Prevention and Control Act of 1970, 21
21 U.S.C., Section 801 et seq.;

22 3. Writes a false or fictitious prescription for:

23 a. a controlled dangerous substance regulated under the
24 Uniform Controlled Dangerous Substances Act, or

1 b. a controlled substance scheduled in the Comprehensive
2 Drug Abuse Prevention and Control Act of 1970, 21
3 U.S.C., Section 801 et seq.; or

4 4. Prescribes, administers, or dispenses in a manner
5 inconsistent with public health and welfare:

6 a. a controlled dangerous substance regulated under the
7 Uniform Controlled Dangerous Substances Act, or

8 b. a controlled substance scheduled in the Comprehensive
9 Drug Abuse Prevention and Control Act of 1970, 21
10 U.S.C., Section 801 et seq.

11 C. For purposes of this section, the physician's records must
12 include a record of:

13 1. The date of purchase;

14 2. The sale or disposal of the drug or substance by the
15 physician;

16 3. The name and address of the person receiving the drug or
17 substance; and

18 4. The reason for the dispensing of the drug or substance to
19 the person.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-316.6 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 Except as provided by Section 4 of this act, the Intractable
24 Pain Treatment Act shall not apply to a person being treated by a

1 physician for chemical dependency because of the person's use of a
2 controlled dangerous substance.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-316.7 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 A. There is hereby created, to continue until November 1, 2011,
7 in accordance with the provisions of the Oklahoma Sunset Law, an
8 Intractable Pain Treatment Advisory Committee to advise the Board of
9 Pharmacy on matters involving intractable pain treatment and the
10 Intractable Pain Treatment Act.

11 B. The advisory committee shall:

12 1. Study the relevant provisions in state law that relate to
13 the administration of prescription medication, controlled dangerous
14 substances, and the needs of patients for effective pain control and
15 management to determine how they affect public health needs, the
16 professional medical community, and persons affected by acute,
17 chronic, or end-of-life pain; and

18 2. Make recommendations as necessary to the Board of Pharmacy
19 and the Legislature on changes to the laws and regulations involving
20 intractable pain treatment and the Intractable Pain Treatment Act.

21 C. The membership of the advisory committee shall consist of
22 eleven (11) members as follows:

23 1. Five members appointed by the President Pro Tempore of the
24 Senate as follows:

- 1 a. a physician who practices at a public hospital in the
- 2 state,
- 3 b. a physician who practices at a private hospital in the
- 4 state,
- 5 c. a physician who practices in the state as a
- 6 psychiatrist specializing in the treatment of
- 7 addictive diseases,
- 8 d. a probate court judge licensed to practice law in the
- 9 state, and
- 10 e. a member of the governing board of the state chapter
- 11 of a national cancer society, or designee;

12 2. Five members appointed by the Speaker of the House of
13 Representatives as follows:

- 14 a. a member of the governing board of an association of
- 15 physicians in the state, or designee,
- 16 b. a member of the governing board of an association of
- 17 nurses in the state, or designee,
- 18 c. an officer of a public hospital in the state who is a
- 19 member of the governing board of an association of
- 20 hospitals in the state, or designee,
- 21 d. an officer of a private hospital in the state who is a
- 22 member of the governing board of an association of
- 23 hospitals in the state, or designee, and
- 24 e. a public member who is a resident of the state; and

1 3. The Attorney General, or designee.

2 D. The following persons shall serve on the advisory committee
3 as nonvoting resource members and shall be appointed by the director
4 of the agency the member represents:

5 1. A physician representative of the State Board of Medical
6 Licensure and Supervision;

7 2. A physician representative of the State Board of Osteopathic
8 Examiners;

9 3. A nurse representative of the Oklahoma Board of Nursing;

10 4. A representative of the State Department of Health; and

11 5. A representative of the Oklahoma State Bureau of Narcotics
12 and Dangerous Drugs Control.

13 E. The chair and vice-chair of the advisory committee shall be
14 selected from among the voting members of the advisory committee by
15 the voting members of the advisory committee.

16 F. A quorum of the advisory committee shall be required in
17 order for any final action of the advisory committee.

18 G. Members of the advisory committee shall receive no
19 compensation for their service, but shall receive travel
20 reimbursement for necessary travel expenses incurred in the
21 performance of their duties in accordance with the State Travel
22 Reimbursement Act.

23 SECTION 8. This act shall become effective November 1, 2009.

1 Passed the Senate the 25th day of February, 2009.

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4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2009.

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9 Presiding Officer of the House
10 of Representatives