CS for ESB 1133

THE HOUSE OF REPRESENTATIVES
Thursday, April 2, 2009

Committee Substitute for

ENGROSSED

Senate Bill No. 1133

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1133 - By: JOLLEY of the Senate and DENNEY, DERBY AND RITZE of the House.

(professions and occupations - Oklahoma Interventional Pain Management and Treatment Act – codification - emergency)

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 650 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Interventional Pain Management and Treatment Act".

B. As used in this section:

1. "Chronic pain" means a pain state which is subacute, persistent and intractable;

2. "Fluoroscope" means a radiologic instrument equipped with a fluorescent screen on which opaque internal structures can be viewed as moving shadow images formed by the differential transmission of X-rays throughout the body; and

3. "Interventional pain management" means the practice of medicine devoted to the diagnosis and treatment of chronic pain, through the use of such techniques as:

a. ablation of targeted nerves,

b. percutaneous precision needle placement with placement of drugs in targeted areas, such as local anesthetics, steroids, analgesics, peripheral nerve blocks, epidural injections and spinal joint injections, and

c. surgical techniques, such as laser or endoscopic diskectomy, intrathecal infusion pumps and spinal cord stimulators.

C. It shall be unlawful to practice or offer to practice interventional pain management in this state unless such person has been duly licensed under the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act.

D. 1. Nothing in this section shall prevent a certified registered nurse anesthetist from administering a lumbar intra-laminar epidural steriod injection when requested to do so by a physician and under the direct supervision of a physician.

2. A certified registered nurse anesthetist shall not operate a freestanding pain management facility without direct supervision of a physician who is board-certified in interventional pain management or its equivalent.

E. The State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners, and the Oklahoma Board of Nursing shall establish guidelines for the standard of care for interventional pain management, including the proper use of

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fluoroscopy in such practice. Nothing in this section shall be construed to affect or give jurisdiction to the State Board of Medical Licensure and Supervision over any osteopathic physician properly licensed by the State Board of Osteopathic Examiners.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 491, as last amended by Section 2, Chapter 358, O.S.L. 2008 (59 O.S. Supp. 2008, Section 491), is amended to read as follows:

Section 491. A. 1. Every person before practicing medicine and surgery or any of the branches or departments of medicine and surgery, within the meaning of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act <u>or the Oklahoma Interventional Pain Management and Treatment Act</u>, within this state, must be in legal possession of the unrevoked license or certificate issued pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act.

2. Any person practicing in such manner within this state, who is not in the legal possession of a license or certificate, shall, upon conviction, be guilty of a felony, punishable by a fine in an amount not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by imprisonment in the county jail for a term of not more than one (1) year or imprisonment in the custody of the Department of Corrections for a term of not more than four (4) years, or by both such fine and imprisonment.

3. Each day a person is in violation of any provision of this subsection shall constitute a separate criminal offense and, in addition, the district attorney may file a

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separate charge of medical battery for each person who is injured as a result of treatment or surgery performed in violation of this subsection.

4. Any person who practices medicine and surgery or any of the branches or departments thereof without first complying with the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act <u>or the Oklahoma Interventional Pain Management and Treatment Act</u> shall, in addition to the other penalties provided therein, receive no compensation for such medical and surgical or branches or departments thereof services.

B. 1. If a license has been revoked or suspended pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act whether for disciplinary reasons or for failure to renew the license, the State Board of Medical Licensure and Supervision may, subject to rules promulgated by the Board, assess and collect an administrative fine not to exceed Five Thousand Dollars ($5,000.00) for each day after revocation or suspension whether for disciplinary reasons or for failure to renew such license that the person practices medicine and surgery or any of the branches or departments thereof within this state.

2. <u>The Board may impose administrative penalties against any person who violates any of the provisions of the Oklahoma Interventional Pain Management and Treatment Act or any rule promulgated pursuant thereto. The Board is authorized to initiate disciplinary and injunctive proceedings against any person who has violated any of the provisions of the Oklahoma Interventional Pain Management and Treatment Act or any rule of the Board promulgated pursuant thereto. The Board is authorized in the name of</u>

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the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of the Oklahoma Interventional Pain Management and Treatment Act, or to restrain any violation thereof. The members of the Board shall not be personally liable for proceeding under this section.

3. Fines assessed shall be in addition to any criminal penalty provided pursuant to subsection A of this section.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 622, is amended to read as follows:

Section 622. A. 1. Except as otherwise provided by this section, it shall be unlawful for any person to practice as an osteopathic physician and surgeon in this state, without a license to do so, issued by the State Board of Osteopathic Examiners; provided, that any license or certificate heretofore issued under the laws of this state, authorizing its holder to practice osteopathic medicine, shall remain in full force and effect.

2. Osteopathic physicians engaged in postgraduate training beyond the internship year, also known as PGY-1, shall be licensed.

3. Osteopathic physicians engaged in interventional pain management pursuant to the Oklahoma Interventional Pain Management and Treatment Act shall be licensed by the State Board of Osteopathic Examiners.

B. 1. A person within or outside of this state who performs through electronic communications diagnostic or treatment services within the scope of practice of an osteopathic physician and surgeon for any patient whose condition is being diagnosed or treated within this state shall be licensed in this state, pursuant to the provisions of the

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Oklahoma Osteopathic Medicine Act. However, in such cases, a nonresident osteopathic physician who, while located outside this state, consults on an irregular basis with a physician who is located in this state is not required to be licensed in this state.

2. Any osteopathic physician licensed in this state who engages in the prescription of drugs, devices, or treatments via electronic means may do so only in the context of an appropriate physician/patient relationship wherein a proper patient record is maintained including, at the minimum, a current history and physical.

3. Any commissioned medical officer of the armed forces of the United States or medical officer of the United States Public Health Service or the Veterans Administration of the United States, in the discharge of official duties and/or within federally controlled facilities, who is fully licensed to practice osteopathic medicine and surgery in one or more jurisdictions of the United States shall not be required to be licensed in this state pursuant to the Oklahoma Osteopathic Medicine Act, unless the person already holds an osteopathic medical license in this state pursuant to the Oklahoma Osteopathic Medicine Act. In such case, the medical officer shall be subject to the Oklahoma Osteopathic Medicine Act.

4. A person who performs any of the functions covered by this subsection submits themselves to the jurisdiction of the courts of this state for the purposes of any cause of action resulting from the functions performed.

C. A hospital or related institution, as such terms are defined in Section 1-701 of Title 63 of the Oklahoma Statutes, which has the principal purpose or function of providing hospital or medical care, including but not limited to any corporation,

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association, trust, or other organization organized and operated for such purpose, may employ one or more persons who are duly licensed to practice osteopathic medicine in this state without being regarded as itself practicing osteopathic medicine within the meaning and provisions of this section. The employment by the hospital or related institution of any person who is duly licensed shall not, in and of itself, be considered as an act of unprofessional conduct by the person so employed. Nothing provided herein shall eliminate, limit or restrict the liability for any act or failure to act of any hospital, any hospital's employees or persons duly licensed to practice osteopathic medicine.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04-01-09 - DO PASS, As Amended and Coauthored.

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