

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 260

By: Gumm

4
5 AS INTRODUCED

6 An Act relating to public health and safety; creating
7 the Intractable Pain Treatment Act; providing short
8 title; defining term; authorizing physicians to
9 prescribe or administer controlled dangerous
10 substances in specified situations; clarifying
11 certain authority; prohibiting hospitals or other
12 health care facilities from restricting use of
13 controlled dangerous substances in certain
14 circumstances; requiring physician monitoring of
15 certain patients; directing certain physicians to
16 perform specified documentation and consultation;
17 prohibiting the treatment of certain patients with
18 intractable pain in specified circumstance;
19 prohibiting disciplinary action of physicians in
20 certain circumstances; directing physicians to
21 include certain records; specifying scope of act;
22 creating the Intractable Pain Treatment Advisory
23 Committee; providing expiration date; specifying
24 duties; providing for membership; directing selection
of chair and vice-chair; requiring quorum; providing
for travel reimbursement; 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 2-316.1 of Title 63, unless
there is created a duplication in numbering, reads as follows:

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

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

4 As used in the Intractable Pain Treatment Act:

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

6 1. The cause of the pain cannot be removed or otherwise
7 treated; and

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

10 a. is not possible, or

11 b. has not been found after reasonable efforts.

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

15 A. Notwithstanding any other provision of law, a physician may
16 prescribe or administer a controlled dangerous substance to a person
17 in the course of the physician's treatment of the person for
18 intractable pain.

19 B. Nothing in this act shall be construed to authorize a
20 physician to prescribe or administer to a person a controlled
21 dangerous substance:

22 1. For a purpose that is not a legitimate medical purpose as
23 defined by the State Board of Medical Licensure and Supervision for
24

1 Medical Doctors or the State Board of Osteopathic Examiners for
2 Doctors of Osteopathy; and

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

5 C. A hospital or other health care facility shall not prohibit
6 or restrict the use of a controlled dangerous substance prescribed
7 or administered by a physician who holds staff privileges at the
8 hospital or facility for a person diagnosed and treated by a
9 physician for intractable pain.

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

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

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

21 C. To ensure that a prescribed controlled dangerous substance
22 is not diverted to another use and to ensure the appropriateness of
23 the treatment of the patient's targeted symptoms, the physician
24 shall:

1 1. Specifically document:

- 2 a. the understanding between the physician and the
- 3 patient about the patient's prescribed treatment,
- 4 b. the name of the drug or substance prescribed,
- 5 c. the dosage and method of taking the prescribed drug or
- 6 substance,
- 7 d. the number of dose units prescribed, and
- 8 e. the frequency of prescribing and dispensing the drug
- 9 or substance; and

10 2. Consult with a psychologist, psychiatrist, expert in the
11 treatment of addiction, or other health care professional, as
12 appropriate.

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

- 15 1. Is currently abusing a controlled dangerous substance;
- 16 2. Is not currently abusing the drug or substance but has a
17 history of such abuse; or
- 18 3. Lives in an environment that poses a risk for misuse or
19 diversion to illegitimate use of the drug or substance.

20 E. Any patient who diverts any drug or substance prescribed
21 under this act for any illegitimate use, including, but not limited
22 to, the sale or transfer of the drug or substance to any other
23 person, shall, in addition to any criminal penalties, no longer be
24

1 treated with any drug or substance by any physician for intractable
2 pain as permitted under the provisions of this act.

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

6 A. A physician is not subject to disciplinary action by the
7 State Board of Medical Licensure and Supervision or the State Board
8 of Osteopathic Examiners for prescribing or administering a
9 controlled dangerous substance in the course of treatment for a
10 person for intractable pain.

11 B. Nothing in this act shall be construed to affect the
12 authority of the State Board of Medical Licensure and Supervision or
13 the State Board of Osteopathic Examiners to revoke or suspend the
14 license of a physician who:

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

16 a. for a purpose that is not a legitimate medical purpose
17 as defined by State Board of Medical Licensure and
18 Supervision for Medical Doctors or the State Board of
19 Osteopathic Examiners for Doctors of Osteopathy, and
20 b. that is nontherapeutic in nature or nontherapeutic in
21 the manner the drug or treatment is administered or
22 prescribed;

23 2. Fails to keep a complete and accurate record of the purpose
24 and disposal of:

- 1 a. a drug regulated under the Uniform Controlled
2 Dangerous Substances Act, or
- 3 b. a controlled substance scheduled in the Comprehensive
4 Drug Abuse Prevention and Control Act of 1970, 21
5 U.S.C., Section 801 et seq.;
- 6 3. Writes a false or fictitious prescription for:
- 7 a. a controlled dangerous substance regulated under the
8 Uniform Controlled Dangerous Substances Act, or
- 9 b. a controlled substance scheduled in the Comprehensive
10 Drug Abuse Prevention and Control Act of 1970, 21
11 U.S.C., Section 801 et seq.; or
- 12 4. Prescribes, administers, or dispenses in a manner
13 inconsistent with public health and welfare:
- 14 a. a controlled dangerous substance regulated under the
15 Uniform Controlled Dangerous Substances Act, or
- 16 b. a controlled substance scheduled in the Comprehensive
17 Drug Abuse Prevention and Control Act of 1970, 21
18 U.S.C., Section 801 et seq.
- 19 C. For purposes of this section, the physician's records must
20 include a record of:
- 21 1. The date of purchase;
- 22 2. The sale or disposal of the drug or substance by the
23 physician;
- 24

1 3. The name and address of the person receiving the drug or
2 substance; and

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

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

8 Except as provided by Section 4 of this act, the Intractable
9 Pain Treatment Act shall not apply to a person being treated by a
10 physician for chemical dependency because of the person's use of a
11 controlled dangerous substance.

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

15 A. There is hereby created, to continue until November 1, 2011,
16 in accordance with the provisions of the Oklahoma Sunset Law, an
17 Intractable Pain Treatment Advisory Committee to advise the Board of
18 Pharmacy on matters involving intractable pain treatment and the
19 Intractable Pain Treatment Act.

20 B. The advisory committee shall:

21 1. Study the relevant provisions in state law that relate to
22 the administration of prescription medication, controlled dangerous
23 substances, and the needs of patients for effective pain control and
24 management to determine how they affect public health needs, the

1 professional medical community, and persons affected by acute,
2 chronic, or end-of-life pain; and

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

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

8 1. Five members appointed by the President Pro Tempore of the
9 Senate as follows:

10 a. a physician who practices at a public hospital in the
11 state,

12 b. a physician who practices at a private hospital in the
13 state,

14 c. a physician who practices in the state as a
15 psychiatrist specializing in the treatment of
16 addictive diseases,

17 d. a probate court judge licensed to practice law in the
18 state, and

19 e. a member of the governing board of the state chapter
20 of a national cancer society, or designee;

21 2. Five members appointed by the Speaker of the House of
22 Representatives as follows:

23 a. a member of the governing board of an association of
24 physicians in the state, or designee,

1 b. a member of the governing board of an association of
2 nurses in the state, or designee,

3 c. an officer of a public hospital in the state who is a
4 member of the governing board of an association of
5 hospitals in the state, or designee,

6 d. an officer of a private hospital in the state who is a
7 member of the governing board of an association of
8 hospitals in the state, or designee, and

9 e. a public member who is a resident of the state; and

10 3. The Attorney General, or designee.

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

14 1. A physician representative of the State Board of Medical
15 Licensure and Supervision;

16 2. A physician representative of the State Board of Osteopathic
17 Examiners;

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

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

20 5. A representative of the Oklahoma State Bureau of Narcotics
21 and Dangerous Drugs Control.

22 E. The chair and vice-chair of the advisory committee shall be
23 selected from among the voting members of the advisory committee by
24 the voting members of the advisory committee.

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

3 G. Members of the advisory committee shall receive no
4 compensation for their service, but shall receive travel
5 reimbursement for necessary travel expenses incurred in the
6 performance of their duties in accordance with the State Travel
7 Reimbursement Act.

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

9

10 52-1-57 JM 3/6/2009 3:26:15 AM

11

12

13

14

15

16

17

18

19

20

21

22

23

24