

CHAPTER NO. 327***HOUSE BILL NO. 1896****By Representative Maddox****Substituted for: Senate Bill No. 1869****By Senator Herron**

AN ACT to amend Tennessee Code Annotated, Title 39, Title 53, Title 63 and Title 68, relative to intractable pain.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 6, is amended by adding Sections 2 through 11, inclusive as a new part to be appropriately designated.

SECTION 2. This part may be known and cited as the "Intractable Pain Treatment Act".

SECTION 3. For the purposes of this part:

(1) "Board" means the board of medical examiners.

(2) "Chemical dependency" means:

(A) the abuse of alcohol or a controlled substance;

(B) a pathological use of alcohol or a controlled substance that chronically impairs the applicant's ability to competently provide legal advice or services; or

(C) a physiological or physical dependence on alcohol or a controlled substance.

(3) "Intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts.

(4) "Physician" means a physician licensee of the board of medical examiners or an osteopathic physician.

SECTION 4. The general assembly finds and declares all of the following:

(a) The state has a right and duty to control the illegal use of opiate drugs.

(b) Inadequate treatment of acute and chronic pain originating from cancer or non-cancerous conditions is a significant health problem.

(c) For some patients, pain management is the single most important treatment a physician can provide.

(d) A patient suffering from severe chronic intractable pain should have access to proper treatment of his or her pain.

(e) Due to the complexity of their problems, many patients suffering from severe chronic intractable pain may require referral to a physician with expertise in the treatment of severe chronic intractable pain. In some cases, severe chronic intractable pain is best treated by a team of clinicians in order to address the associated physical, psychological, social, and vocational issues.

(f) In the hands of knowledgeable, ethical, and experienced pain management practitioners, opiates administered for severe acute and severe chronic intractable pain can be safe.

(g) Opiates can be an accepted treatment for patients in severe chronic intractable pain who have not obtained relief from any other means of treatment.

(h) A patient suffering from severe chronic intractable pain has the option to request or reject the use of any or all modalities to relieve his or her severe chronic intractable pain.

(i) A physician treating a patient who suffers from severe chronic intractable pain may prescribe a dosage deemed medically necessary to relieve severe chronic intractable pain as long as the prescribing is in conformance with the provisions of this part.

(j) A patient who suffers from severe chronic intractable pain has the option to choose opiate medication for the treatment of the severe chronic intractable pain as long as a physician has first determined that such treatment is appropriate and medically necessary and the prescribing is in conformance with the provisions of this part.

(k) The patient's physician may refuse to prescribe opiate medication for a patient who requests the treatment for severe chronic intractable pain. However, that physician shall inform the patient that there are physicians whose primary practices are the treatment of severe chronic intractable pain with methods that include the use of opiates.

SECTION 5. This section may be known and cited as the "Pain Patient's Bill of Rights".

(a) A patient suffering from severe chronic intractable pain has the option to request or reject the use of any or all modalities in order to relieve his or her severe chronic intractable pain.

(b) A patient who suffers from severe chronic intractable pain has the option to choose opiate medications to relieve severe chronic intractable pain without first having to submit to an invasive medical procedure, which is defined as surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or device, as long as the prescribing physician acts in conformance with the provisions of this part.

(c) The patient's physician may refuse to prescribe opiate medication for the patient who requests a treatment for severe chronic intractable pain. However, that physician shall inform the patient that there are physicians who specialize in the treatment of severe chronic intractable pain with methods that include the use of opiates.

(d) A physician who uses opiate therapy to relieve severe chronic intractable pain may prescribe a dosage deemed medically necessary to relieve severe chronic intractable pain, as long as that prescribing is in conformance with this part.

(e) A patient may voluntarily request that his or her physician provide an identifying notice of the prescription for purposes of emergency treatment or law enforcement identification.

(f) Nothing in this section shall do either of the following:

(1) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices or other provisions set forth in Tennessee Code Annotated, Title 63, Chapter 6, or the regulations adopted thereunder.

(2) Limit the applicability of any federal statute or federal regulation or any of the other statutes or regulations of this state that regulate dangerous drugs or controlled substances.

SECTION 6. Notwithstanding any other provision of law, a physician may prescribe or administer dangerous drugs or controlled substances to a person in the course of the physician's treatment of a person for intractable pain to provide adequate pain treatment.

SECTION 7.

(a) No physician may be subject to disciplinary action by the board for prescribing or administering appropriate amounts, combinations, or durations of dangerous drugs or controlled substances in the course of treatment of a person for intractable pain.

(b) The board is authorized to set by rule guidelines to govern treatment under this part. Such guidelines may include requirements for documented medical history, written treatment plans, discussion of benefits and risks of the treatment, periodic review, and the keeping of appropriate records. Such guidelines may be in addition to specific requirements for persons with substance abuse issues governed by Section 9 of this part.

SECTION 8.

(a) Notwithstanding any other provision of this part, subsections (c) and (d) of this section shall govern the treatment of persons for chemical dependency by a physician because of their use of dangerous drugs or controlled substances.

(b) The provisions of this part provide no authority to a physician to prescribe or administer dangerous drugs or controlled substances to a person for other than

legitimate medical purposes as defined by the board and who the physician knows or should know to be using drugs for nontherapeutic purposes.

(c) The provisions of this part authorize a physician to treat a patient who develops an acute or chronic painful medical condition with a dangerous drug or a controlled substance to relieve the patient's pain using appropriate doses, for an appropriate length of time, and for as long as the pain persists. A patient under this subsection includes a person who:

- (1) is a current drug abuser;
- (2) is not currently abusing drugs but has a history of drug abuse; or
- (3) lives in an environment that poses a risk for drug misuse or diversion of the drug to illegitimate use.

(d) A physician who treats a patient under subsection (c) of this section shall monitor the patient to ensure the prescribed dangerous drug or controlled substance is used only for the treatment of the patient's painful medical condition. To ensure that the prescribed dangerous drug or controlled substance is not being diverted to another use and the appropriateness of the treatment of the patient's targeted symptoms, the physician shall:

- (1) specifically document:
 - (A) the understanding between the physician and patient about the patient's prescribed treatment;
 - (B) the name of the drug prescribed;
 - (C) the dosage and method of taking the prescribed drug;
 - (D) the number of dose units prescribed; and
 - (E) the frequency of prescribing and dispensing the drug; and
- (2) consult with a psychologist, psychiatrist, expert in the treatment of addictions, or other health care professional, as appropriate.

SECTION 9. Nothing in this part shall deny the right of the board of medical examiners to cancel, revoke, or suspend the license of any physician who:

- (1) prescribes, administers, or dispenses a drug or treatment for other than legitimate medical purposes as defined by the board and that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;
- (2) fails to keep complete and accurate records of purchases and disposals of drugs as provided by law, or of controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), including records of:

- (A) the date of purchase;
- (B) the sale or disposal of the drugs by the physician;
- (C) the name and address of the person receiving the drugs; and
- (D) the reason for the disposal of or the dispensing of the drugs to the person;

(3) writes false or fictitious prescriptions for dangerous drugs, for controlled substances scheduled in the Tennessee Drug Act, Tennessee Code Annotated, Title 39, Chapter 17, Part 4, or for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513); or

(4) prescribes, administers, or dispenses in a manner not consistent with public health and welfare dangerous drugs under Tennessee Code Annotated, Title 39, Chapter 17, Part 4, controlled substances scheduled in the Tennessee Drug Act, Tennessee Code Annotated, Title 39, Chapter 17, Part 4, or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513).

SECTION 10. Any physician who practices pain management shall also be able to hire physician assistants to assist them in their practice. Any of these assistants shall be a licensed physician assistant according to the requirements in Section 63-19-105(a) except for any person who meets the following requirements:

- (a) Is 65 years of age or older;
- (b) Was granted a degree in pre-medical studies in 1960;
- (c) Was granted a Master of Science Degree from the University of Tennessee in 1990;
- (d) Was an instructor and assistant professor during the time period 1977-97 at East Tennessee State University in Surgical Technology;
- (e) Was an instructor in surgical techniques and instruments to medical students and surgical residents at the Quillen College of Medicine at East Tennessee State University;
- (f) Met the standards and qualifications of the American Association of Physician Assistants in March of 1976 and was rated as "physicians assistant – SP-2";
- (g) Satisfactorily completed the postgraduate course "clinical skills for physicians' assistants V" in September 1977 from the Hahnemann Medical College and Hospital in Philadelphia, Pennsylvania;
- (h) Held an "assistants renewal certificate" issued by the Virginia Board of Medicine from July 1, 1977 to June 30, 1978; and

(i) Was recognized as a "Certified Surgical Assistant" by the National Surgical Assistant Association in May of 1987.

Such person shall be issued a license within sixty (60) days upon submission of evidence to the board of medical examiners that such person met all of the above criteria. Provided however, that such person shall only work under the supervision of one physician who is in the sole practice of pain management and rehabilitation medicine. Such person's duties shall only include helping the physician examine patients in the physician's office, doing diagnostic E.M.Gs, ordering appropriate lab and x-rays studies, seeing the physician's hospital patients on hospital rounds and writing orders to be counter-signed by such physician, but, at no time shall this person be allowed to prescribe medicine. Such person shall also have the ability to work under a physician, who is in the sole practice of pain management and rehabilitation medicine, while performing extensive medical missionary trips in underprivileged countries. Any continuing education requirements for a person meeting the above criteria shall not be waived.

SECTION 11. This act is not intended nor shall it be interpreted to allow for the prescription of any illegal substance to any patient or person at any time in violation of federal law.

SECTION 12. The board of medical examiners is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5. Existing rules not inconsistent with the provisions of this act shall remain in effect until modified by the board.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 21, 2001



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this day of 2000

DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 1896 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.

*See Public Chapter 436 for amendment.