ACT 165

H.B. NO. 703

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk Dextropropoxyphene (nondosage form);
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Glutethimide;
(11) Isomethadone;
(12) Levo-alphacetylmethadol (LAAM);
(13) Levomethorphan;
(14) Levorphanol;
(15) Metazocine;
(16) Methadone;
(17) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(18) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
[~~(19) Oxycodone~~]
[~~(20)~~] (19) Pethidine (Meperidine);
[~~(21)~~] (20) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
[~~(22)~~] (21) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
[~~(23)~~] (22) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
[~~(24)~~] (23) Phenazocine;
[~~(25)~~] (24) Piminodine;
[~~(26)~~] (25) Racemethorphan;
[~~(27)~~] (26) Racemorphan;
[~~(28)~~] (27) Remifentanil; and
[~~(29)~~] (28) Sufentanil."

SECTION 2. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers,

and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine ((+)-norpseudoephedrine)[1]
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenproporex;
(5) Mazindol;
(6) Mefenorex;
(7) Modafinil;
(8) Phentermine;
(9) Pemoline (including organometallic complexes and chelates thereof);
(10) Pipradrol;
(11) Sibutramine; and
(12) [~~SPA ((-)-1-dimethylamino-1,2-diphenylethane.~~] SPA (1-dimethylamino-1,2-diphenylethane, lefetamine)."

SECTION 3. Section 329-38, Hawaii Revised Statutes, is amended to read as follows:

"**§329-38 Prescriptions.** (a) No controlled substance in schedule II may be dispensed without a written prescription of a practitioner, except:

[~~(1) In an emergency situation, these drugs may be dispensed upon oral prescription of a practitioner; provided that promptly thereafter, the prescription is reduced to writing by the practitioner and filed by the pharmacy; or~~]

(1) In the case of an emergency situation, a pharmacist may dispense a controlled substance listed in schedule II upon receiving oral authorization from a prescribing practitioner; provided that:
   (A) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescribing practitioner);
   (B) Within seventy-two hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of this subsection, the prescription shall have written on its face "Authorization for Emergency Dispensing." The written prescription may be delivered to the pharmacist in person or by mail, and if by mail, the prescription must be postmarked within the seventy-two hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription, which had earlier been reduced to writing. The pharmacist shall notify the administrator if the prescribing practitioner fails to deliver a written prescription to the pharmacy within the allotted time. Failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner. Any physician who fails to deliver a written prescription within the seventy-two hour period shall be in violation of section 329-41(a)(1); or
(2) When dispensed directly by a practitioner, other than a pharmacist, to the ultimate user. The practitioner in dispensing a controlled substance in schedule II shall affix to the package a label showing:

(A) The date of dispensing;
(B) The name, strength, and quantity issued of the drug;
(C) The dispensing practitioner's name and address;
(D) The name of the patient;
(E) The date the potency of the drug expires if that date is available from the manufacturer or principal labeler; and
(F) Directions for use, and cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule II controlled substances ordered, administered, prescribed, and dispensed shall be maintained for five years. [~~All schedule II prescriptions shall be written by the practitioner in duplicate.~~] Prescriptions and records of dispensing shall otherwise be retained in conformance with the requirements of section 329-36. No prescription for a controlled substance in schedule II may be refilled.

(b) The transfer of original prescription information for a controlled substance listed in schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis, subject to the following requirements:

(1) The transfer shall be communicated directly between two licensed pharmacists, and the transferring pharmacist shall:
   (A) Write or otherwise place the word "VOID" on the face of the invalidated prescription;
   (B) Record on the reverse of the invalidated prescription the name, address, and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and
   (C) Record the date of the transfer and the name of the pharmacist transferring the information;
(2) The pharmacist receiving the transferred prescription information shall:
   (A) Write or otherwise place the word "transfer" on the face of the transferred prescription;
   (B) Record all information required to be on a prescription, including:
      (i) The date of issuance of original prescription;
      (ii) The original number of refills authorized on original prescription;
      (iii) The date of original dispensing;
      (iv) The number of valid refills remaining and date of last refill;
      (v) The pharmacy's name, address, DEA registration number, and original prescription number from which the prescription information was transferred; and
      (vi) The name of transferor pharmacist;
(3) Both the original and transferred prescription must be maintained for a period of five years from the date of last refill; and
(4) The procedure allowing the transfer of prescription information for refill purposes is permissible only between pharmacies located on the same island in this State.

Failure to comply with this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.

(c) No controlled substance in schedule III, IV, or V may be dispensed without a written or oral prescription of a practitioner, except when a controlled substance is dispensed directly by a practitioner, other than a pharmacist, to an

ultimate user. The practitioner, in dispensing a controlled substance in schedule III, IV, or V, shall affix to the package a label showing:

(1) The date of dispensing;
(2) The name, strength, and quantity issued of the drug;
(3) The dispensing practitioner's name and business address;
(4) The name of the patient;
(5) The date the potency of the drug expires, if that date is available from the manufacturer or the principal labeler;
(6) Directions for use; and
(7) Cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for five years. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36 unless otherwise provided by law. Prescriptions may not be filled or refilled more than three months after the date of the prescription or be refilled more than two times after the date of the prescription, unless the prescription is renewed by the practitioner.

(d) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

(1) A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or for legitimate and authorized research shall not be deemed a prescription within the meaning and intent of this section, and the person who knowingly fills such a purported prescription, as well as the person who issues the prescription, shall be subject to the penalties provided for violations of this chapter;
(2) A prescription may not be issued to allow an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients;
(3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule for the purpose of ''detoxification treatment'' or ''maintenance treatment''. Nothing in this section shall prohibit a physician or authorized hospital staff from administering or dispensing narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction; and
(4) An individual practitioner may not prescribe or dispense a substance included in schedule II, III, IV, or V for that individual practitioner's personal use, except in a medical emergency.

(e) Prescriptions for controlled substances shall be issued only as follows:

(1) All prescriptions for controlled substances shall be dated as of, and signed on, the day when the prescriptions were issued and shall bear:
   (A) The full name and address of the patient; and
   (B) The name, address, telephone number, and registration number of the practitioner.

   The controlled substance prescriptions shall be no larger than four and one-half inches by six and one-half inches and no smaller than four inches by five inches.

A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or by typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all essential respects to this chapter and any rules adopted pursuant to this chapter. A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section;

(2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:

(A) The registration number of the hospital or other institution; and

(B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

The hospital or other institution shall forward a copy of this special internal code number list to the department as often as necessary to update the department with any additions or deletions. Failure to comply with this paragraph shall result in the suspension of that facility's privilege to fill controlled substance prescriptions at pharmacies outside of the hospital or other institution. Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician;

(3) An official exempted from registration shall include on all prescriptions issued by the official:

(A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and

(B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee shall be the employee's social security identification number.

Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer; and

(4) A physician assistant registered to prescribe controlled substances under the authorization of a supervising physician shall include on all prescriptions issued:

(A) The DEA registration number of the supervising physician; and

(B) The [~~special code number assigned to the physician assistant by the department.~~] DEA registration number of the physician assistant.

Each written prescription issued shall include the printed, stamped, typed, or hand-printed name, address, and phone number of both the supervising physician and physician assistant, and shall be signed by the physician assistant. The medical record of each written prescription issued by a physician assistant shall be reviewed and initialed by the physician assistant's supervising physician within seven working days.

(f) A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of the pharmacist's professional practice and either registered individually or employed in a registered pharmacy or registered institutional practitioner.

(g) Partial filling of controlled substance prescriptions shall be determined as follows:

(1) The partial filling of a prescription for a controlled substance listed in schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling; provided that if the remaining portion is not or cannot be filled within the seventy-two-hour period, the pharmacist shall notify the prescribing individual practitioner. No further quantity shall be supplied beyond seventy-two hours without a new prescription; [~~and~~]

(2) The partial filling of a prescription for a controlled substance listed in schedule III, IV, or V is permissible; provided that:
   (A) Each partial filling is recorded in the same manner as a refilling;
   (B) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;
   (C) No dispensing occurs more than three months after the date on which the prescription was issued; and
   (D) The prescription is refilled no more than two times after the initial date of the prescription, unless the prescription is renewed by the practitioner[~~.~~]; and

(3) A prescription for a schedule II controlled substance written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is a ''long-term care facility patient.'' For the purposes of this section, ''LTCF'' means long-term care facility. A prescription that is partially filled and does not contain the notation ''LTCF patient'' shall be deemed to have been filled in violation of this section. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II controlled substance prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed sixty days from the issue date unless sooner terminated by the discontinuance of medication.

(h) A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment; provided that the original written, signed prescription is presented to the pharmacist

for review prior to the actual dispensing of the controlled substance, except as noted in subsection (i), (j), or (k). The original prescription shall be maintained in accordance with section 329-36.

(i) A prescription prepared in accordance with subsection (e) written for a narcotic listed in schedule II to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion, but does not extend to the dispensing of oral dosage units of controlled substances, may be transmitted by the practitioner or the practitioner's agent to the pharmacy by facsimile. The pharmacist shall note on the face of the facsimile prescription in red ink "Home Infusion/IV" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

(j) A prescription prepared in accordance with subsection (e) written for a schedule II, III, IV, or V substance for a patient enrolled in a hospice care program certified or paid for by medicare under Title XVIII or a hospice program that is licensed by the State may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or practitioner's agent shall note on the prescription that the patient is a hospice patient. The pharmacist shall note on the face of the facsimile prescription in red ink "HOSPICE" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

(k) A prescription prepared in accordance with subsection (e) written for a schedule II, III, IV, or V controlled substance for a resident of a state-licensed long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The pharmacist shall note on the face of the facsimile prescription in red ink "LTCF" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36."

SECTION 4. Section 329-40, Hawaii Revised Statutes, is amended to read as follows:

"**§329-40 Methadone treatment programs.** (a) Notwithstanding any other provision of law to the contrary, methadone may be administered or dispensed or both as part of a State-registered and Federal [~~Food and Drug Administration~~] Substance Abuse and Mental Health Services Administration approved methadone treatment program by a practitioner who is licensed and registered under state and federal law to administer[~~, prescribe,~~] and dispense methadone for patients or by an agent of the practitioner, supervised by and under the order of the practitioner. The agent must be a pharmacist, registered nurse, or licensed practical nurse. The licensed practitioner shall be responsible for the amounts of methadone administered or dispensed in accordance with [~~Federal Food and Drug Administration~~] Substance Abuse and Mental Health Services Administration regulations and shall record, approve, and countersign all changes in dosage schedules.

(b) Registration of a methadone treatment program requires that:

(1) The methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration;

(2) The medical director of a methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration at the location of the program;

(3) Admission to a methadone treatment program be limited to the narcotic-dependent persons as defined in this chapter;

(4) Unless otherwise stated in this chapter, admission to a methadone treatment program be in accordance with title 21 Code of Federal Regulations part 291[~~;~~] and title 42 Code of Federal Regulations part 8;

(5) All medical orders including initial medication orders, all subsequent medication order changes, all changes in the frequency of take-home medication, and the prescription of additional take-home medication for emergency situations be authorized by a licensed registered physician employed by the program;

(6) Only the medical director or other designated program physician authorize a patient's admission for treatment in accordance with title 21 Code of Federal Regulations part 291[~~;~~] and title 42 Code of Federal Regulations part 8; and

(7) Take-home doses of methadone be dispensed to patients in accordance with title 21 Code of Federal Regulations part 291[~~.~~] and title 42 Code of Federal Regulations part 8, but shall not exceed a fourteen-day supply at any given time nor more than the maximum amount of take-homes for Levo-alphacetylmethadol (LAAM/Orlamm) that would allow a patient to be away from the clinic for dosing for more than two weeks unless authorized by the state authority.

The term "methadone treatment program" as used in this section means an organization or a person (including a private physician) that administers or dispenses methadone to a narcotic-dependent person for maintenance or detoxification treatment and who provides the medical and rehabilitative services required by title 21 Code of Federal Regulations part 291 or title 42 Code of Federal Regulations part 8 and is approved to do so by the State and by the United States [~~Food and Drug Administration,~~] Substance Abuse and Mental Health Services Administration, and who holds a controlled substance registration as required by this chapter and the United States Drug Enforcement Administration to use methadone for the treatment of narcotic-dependent persons.

The term "narcotic-dependent person" as used in this section means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

The term "state authority" as used in this section means the agency within the State which exercises the responsibility for governing the treatment of narcotic-dependent persons with the narcotic drug methadone."

SECTION 5. Section 329-59, Hawaii Revised Statutes, is amended to read as follows:

"**§329-59 Controlled substance registration revolving fund; established.** (a) There is established within the state treasury the controlled substance registration revolving fund. The fund shall be expended at the discretion of the director of public safety for the purpose of:

(1) Offsetting the cost of the electronic prescription accountability system [~~and~~], the registration and control of the manufacture, distribution, prescription, and dispensation of controlled substances and regulated chemicals listed under section 329-61, within the State[~~;~~] and the processing and issuance of a patient registry identification certificate designated under part IX; and

(2) Funding positions authorized by the legislature by law.

(b) The fund shall consist of all moneys derived from fees collected pursuant to sections 329-31 [~~and~~], 329-67, and 329-123(b) and legislative appropriations. All fees collected pursuant to sections 329-31 [~~and~~], 329-67, and 329-123(b) shall be deposited in the controlled substance registration revolving fund."

SECTION 6. There is appropriated out of the controlled substance registration revolving fund established by section 329-59, Hawaii Revised Statutes, the sum of $10,000 or so much thereof as may be necessary for fiscal year 2002-2003, to be expended by the department of public safety to provide for equipment and current expenses to carry out the provisions of part IX of chapter 329, Hawaii Revised Statutes.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval, except that section 6 shall take effect on July 1, 2002.

(Approved June 18, 2002.)

Note

1. Prior to amendment ";" appeared here.