

## ACT 131

S.B. NO. 2157

A Bill for an Act Relating to Health.

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

SECTION 1. According to the American College of Physicians, internal medicine section, most pain from disease and chronic conditions can be controlled or even eliminated. For example, even advanced pain can be controlled in 90 to 99 per cent of cases. In nine out of ten cases, physicians can control pain by using pills alone without having to use injections, operations, or other methods. In those few cases in which pain from disease and chronic conditions cannot be eliminated completely, it can be reduced so that the person can live with the pain from day-to-day and still accomplish activities that are important to the person. The American College of Physicians further states that:

- (1) The person with advanced pain from disease and chronic conditions has a right to effective pain control;
- (2) Part of the job of a caregiver is to ensure effective pain control;
- (3) Pain control takes time to achieve, so persistence is vital;
- (4) Only the person with pain knows what the pain is like; and
- (5) Never assume that pain means the underlying medical condition is spreading.

Furthermore, a pain initiative in Texas states that, while alternatives to drug treatment such as biofeedback, hypnosis, and acupuncture can be effective for some types of pain:

- (1) Most pain patients will also require narcotics;
- (2) Addiction is extremely rare when narcotics are used to treat pain from disease and chronic conditions; and
- (3) Virtually all pain from disease and chronic conditions can be relieved.

The legislature finds that Hawaii law should permit pain patients to be prescribed appropriate narcotic pain medication. The legislature further finds that pain patients deserve appropriate medical care that relieves the debilitating and intolerable discomforts of pain as much as possible, so that they can lead normal lives to the greatest extent possible and so that their caregivers can be relieved of stress and anxiety in witnessing the ravaging effects of pain on the quality of life of the pain patient in their care.

The purpose of this Act is to clarify a pain patient's right to be prescribed controlled substances to relieve pain.

SECTION 2. Section 327H-2, Hawaii Revised Statutes, is amended to read as follows:

~~[(H)]§327H-2[(H)]~~ **Bill of rights.** (a) The pain patient's bill of rights includes the following:

- (1) A patient who suffers from severe acute pain or severe chronic pain has the option to request or reject the use of any or all modalities to relieve the pain;
- (2) A patient who suffers from severe acute pain or severe chronic pain has the option to choose from appropriate pharmacologic treatment options to relieve severe acute pain or severe chronic pain, including opiate medications, without first having to submit to an invasive medical procedure.

For purposes of this paragraph, "invasive medical procedure" means surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or device;

- (3) A patient's physician may refuse to prescribe opiate medication for a patient who requests a treatment for severe acute pain or severe chronic pain. However, that physician may inform the patient of physicians who are qualified to treat severe acute pain and severe chronic pain employing methods that include the use of opiates;
- (4) A physician who uses opiate therapy to relieve severe acute pain or severe chronic pain may prescribe a dosage deemed medically necessary to relieve the pain;
- (5) A patient may voluntarily request that the patient's physician provide an identifying notice of the prescription for purposes of emergency treatment or law enforcement identification; and
- (6) With regard to pain patients, the application of this section shall be guided by the medical principle that physical tolerance and dependence are normal consequences of sustained use of opiate medication, distinguishable from psychological dependency or addiction that bears no relationship to pain experienced by a patient. For the purposes of this section, psychological dependency shall be characterized by a patient's compulsion to take a drug notwithstanding the fact that the patient knows the harmful and destructive effect of the drug on the patient. The distinction is one of treatment of pain as opposed to feeding a psychological need. A patient who suffers severe acute pain or severe chronic pain secondary to a diagnosis in any form of disease and chronic conditions may be entitled to receive a prescription of opiate medication for the treatment of the pain, if requested by that patient; provided that:
  - (A) The particular opiate is appropriate to the treatment of that pain; and
  - (B) The patient is not addicted to the opiate. For the purposes of this subparagraph, the term "addicted" refers to a psychological dependence, rather than a progressive physical tolerance for the opiate to relieve the pain; provided that the term does not include a narcotic-dependent person as defined in section 329-40.

~~[(6)]~~ (b) Nothing in this section shall be construed to:

- ~~[(A)]~~ (1) Expand the authorized scope of practice of any licensed physician;

- ~~[(B)]~~ (2) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices; and
- [(C)] (3) Prohibit the discipline or prosecution of a licensed physician for:
  - [(+)] (A) Failing to maintain complete, accurate, and current records that document the physical examination and medical history of a patient, the basis for the clinical diagnosis of a patient, and the treatment plan for a patient;
  - [(+)] (B) Writing false or fictitious prescriptions for controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 [~~U.S.C.~~] United States Code 801 et seq. or in chapter 329;
  - [(+)] (C) Prescribing, administering, or dispensing pharmaceuticals in violation of the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 [~~U.S.C.~~] United States Code 801 et seq. or of chapter 329;
  - [(+)] (D) Diverting medications prescribed for a patient to the licensed physician's own personal use; and
  - [(+)] (E) Causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual; provided that it is not "causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual" to prescribe, dispense, or administer medical treatment for the purpose of treating severe acute pain or severe chronic pain, even if the medical treatment may increase the risk of death, so long as the medical treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason."

SECTION 3. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A schedule II controlled substance prescription shall:

- (1) Be filled within [~~three~~] seven days following the date the prescription was issued to the patient; and
- (2) Be supplied to a patient only if the prescription has been filled and held by the pharmacy for not more than seven days."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 30, 2008.)