
A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

13 (1) Pain from disease and chronic conditions can be
14 controlled;

15 (2) The person with advanced pain from disease and chronic
16 conditions has a right to effective pain control;



1 (3) Part of the job as a caregiver is to ensure effective
2 pain control;

3 (4) Pain control takes time to achieve, so persistence is
4 vital;

5 (5) Only the person with pain knows what the pain is like;
6 and

7 (6) Never assume that pain means the underlying medical
8 condition is spreading.

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

13 (1) Most pain patients will also require narcotics;

14 (2) Addiction is extremely rare when narcotics are used to
15 treat pain from disease and chronic conditions; and

16 (3) Virtually all pain from disease and chronic conditions
17 can be relieved.

18 (c) A 1999 national pain survey revealed that fifty
19 million Americans suffer from chronic pain as a result of
20 chronic disease, disorder, or accident. It was estimated that
21 another twenty-five million people live with acute pain from
22 accidents or surgery. Pain is a silent epidemic that affects



1 the lives of individuals and their families. According to the
2 American Academy of Pain Management, effective pain and symptom
3 management is an ethical obligation for all health care
4 providers and organizations.

5 The publication, *2000 Pain in America: A Research Report*,
6 showed that, although eighty per cent of Americans feel that
7 pain is a natural part of aging, only sixty-four per cent would
8 seek medical treatment for intolerable pain. The report also
9 found that sixty per cent of Americans believe that pain is
10 "just something you have to live with." The perception of
11 twenty-eight per cent of the population is that there is no
12 effective treatment for pain. It is thus important for
13 individuals, their families, and their caregivers to know that
14 there are many effective treatment options for the management of
15 pain and that people do not have to suffer from chronic,
16 debilitating, intolerable pain.

17 (d) The legislature finds that Hawaii law should permit
18 pain patients to be prescribed appropriate narcotic pain
19 medication. The legislature further finds that pain patients
20 deserve appropriate medical care that relieves the debilitating
21 and intolerable discomforts of pain as much as possible, so that
22 they can lead normal lives to the greatest extent possible and



1 so that their caregivers can be relieved of stress and anxiety
2 in witnessing the ravaging effects of pain on the quality of
3 life of the pain patient in their care.

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

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

8 "[+]§327H-2[+] **Bill of rights.** (a) The pain patient's
9 bill of rights includes the following:

10 (1) A patient who suffers from severe acute pain or severe
11 chronic pain has the option to request or reject the
12 use of any or all modalities to relieve the pain;

13 (2) A patient who suffers from severe acute pain or severe
14 chronic pain has the option to choose from appropriate
15 pharmacologic treatment options to relieve severe
16 acute pain or severe chronic pain, including opiate
17 medications, without first having to submit to an
18 invasive medical procedure.

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



- 1 (3) A patient's physician may refuse to prescribe opiate
2 medication for a patient who requests a treatment for
3 severe acute pain or severe chronic pain. However,
4 that physician may inform the patient of physicians
5 who are qualified to treat severe acute pain and
6 severe chronic pain employing methods that include the
7 use of opiates;
- 8 (4) A physician who uses opiate therapy to relieve severe
9 acute pain or severe chronic pain may prescribe a
10 dosage deemed medically necessary to relieve the pain;
- 11 (5) A patient may voluntarily request that the patient's
12 physician provide an identifying notice of the
13 prescription for purposes of emergency treatment or
14 law enforcement identification; and
- 15 (6) With regard to pain patients, the application of this
16 section shall be guided by the medical principle that
17 physical tolerance and dependence are normal
18 consequences of sustained use of opiate medication,
19 distinguishable from psychological dependency or
20 addiction that bears no relationship to pain
21 experienced by a patient. For the purposes of this
22 section, psychological dependency shall be



1 characterized by a patient's compulsion to take a drug
2 notwithstanding the fact that the patient knows the
3 harmful and destructive effect of the drug on the
4 patient. The distinction is one of treatment of pain
5 as opposed to feeding a psychological need. A patient
6 who suffers severe acute pain or severe chronic pain
7 secondary to a diagnosis in any form of disease and
8 chronic conditions may be entitled to receive a
9 prescription of opiate medication for the treatment of
10 the pain, if requested by that patient; provided that:

- 11 (A) The patient is not addicted to the opiate; and
12 (B) The particular opiate is appropriate to the
13 treatment of that pain.

14 For purposes of this paragraph, the term "addicted"
15 refers to a psychological dependence, rather than a
16 progressive physical tolerance for the opiate to
17 relieve the pain; provided that the term does not
18 include a narcotic-dependent person as defined in
19 section 329-40.

20 [~~6~~] (b) Nothing in this section shall be construed to:

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



1 ~~[(B)]~~ (2) Limit any reporting or disciplinary
2 provisions applicable to licensed physicians and
3 surgeons who violate prescribing practices; and

4 ~~[(C)]~~ (3) Prohibit the discipline or prosecution of a
5 licensed physician for:

6 ~~[(i)]~~ (A) Failing to maintain complete, accurate,
7 and current records that document the
8 physical examination and medical history of
9 a patient, the basis for the clinical
10 diagnosis of a patient, and the treatment
11 plan for a patient;

12 ~~[(ii)]~~ (B) Writing false or fictitious
13 prescriptions for controlled substances
14 scheduled in the Federal Comprehensive Drug
15 Abuse Prevention and Control Act of 1970, 21
16 U.S.C. 801 et seq. or in chapter 329;

17 ~~[(iii)]~~ (C) Prescribing, administering, or
18 dispensing pharmaceuticals in violation of
19 the provisions of the Federal Comprehensive
20 Drug Abuse Prevention and Control Act of
21 1970, 21 U.S.C. 801 et seq. or of chapter
22 329;



1 ~~(iv)~~ (D) Diverting medications prescribed for a
2 patient to the licensed physician's own
3 personal use; and

4 ~~(v)~~ (E) Causing, or assisting in causing, the
5 suicide, euthanasia, or mercy killing of any
6 individual; provided that it is not
7 "causing, or assisting in causing, the
8 suicide, euthanasia, or mercy killing of any
9 individual" to prescribe, dispense, or
10 administer medical treatment for the purpose
11 of treating severe acute pain or severe
12 chronic pain, even if the medical treatment
13 may increase the risk of death, so long as
14 the medical treatment is not also furnished
15 for the purpose of causing, or the purpose
16 of assisting in causing, death for any
17 reason."

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

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



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

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

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



Report Title:

Controlled Substances; Pain Patient's Bill of Rights

Description:

Clarifies the prescribing of opiates for pain treatment.
Extends the time limit in which scheduled II controlled
substances prescriptions must be filled. (SB2157 SD1)

