

[CHAPTER 327H]
PAIN PATIENT'S BILL OF RIGHTS

Section

- 327H-1 Pain patient's bill of rights; findings
- 327H-2 Bill of rights

Law Journals and Reviews

Holding Hawai'i Nursing Facilities Accountable for the Inadequate Pain Management of Elderly Residents. 27 UH L. Rev. 233.

" **[§327H-1] Pain patient's bill of rights; findings.** The legislature finds that:

- (1) Inadequate treatment of severe acute pain and severe chronic pain originating from cancer or noncancerous conditions is a significant health problem;
- (2) For some patients, pain management is the single most important treatment a physician can provide;
- (3) A patient who suffers from severe acute pain or severe chronic pain should have access to proper treatment of pain;
- (4) Due to the complexity of their problems, many patients who suffer from severe acute pain or severe chronic pain may require referral to a physician with expertise in the treatment of severe acute pain and severe chronic pain. In some cases, severe acute pain and severe chronic pain is best treated by a team of clinicians to address the associated physical, psychological, social, and vocational issues;
- (5) In the hands of knowledgeable, ethical, and experienced pain management practitioners, opiates administered for severe acute pain or severe chronic pain can be safe; and
- (6) Opiates may be part of an overall treatment plan for a patient in severe acute pain or severe chronic pain who has not obtained relief from any other means of treatment. [L 2004, c 189, pt of §1]

" **§327H-2 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.
- (b) Nothing in this section shall be construed to:
- (1) Expand the authorized scope of practice of any licensed physician;

- (2) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices; and
- (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 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 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. [L 2004, c 189, pt of §1; am L 2008, c 131, §2]