

## ARKANSAS

Approved by Arkansas Governor April 16, 2003

SECTION 1. Arkansas Code Title 17, Chapter 95, is amended to add an additional subchapter to read as follows:

17-95-701. Title.

This subchapter shall be known and may be cited as the "Chronic Intractable Pain Treatment Act".

17-95-702. Findings.

The General Assembly finds that:

- (1) Pain management plays an important role in good medical practice;
- (2) Physicians should recognize the need to make pain relief accessible to all patients with chronic intractable pain; and
- (3) Physicians should view pain management as a regular part of their medical practice for all patients with chronic intractable pain.

17-95-703. Definitions.

As used in this subchapter:

- (1) "Board" means the Arkansas State Medical Board;
- (2) "Chronic intractable pain" means a pain state for which the cause of the pain cannot be removed or otherwise treated, and for which no relief or cure has been found after reasonable efforts by a physician;
- (3)(A) "Dangerous or controlled drugs" means drugs used for pain relief, including but not limited to:
  - (i) Opioids; and
  - (ii) Other drugs classified under schedules II, III, IV, or V by the United States Food and Drug Administration;
- (B) "Dangerous or controlled drugs" does not include any substance the prescription of which is illegal under federal law;
- (4) "Disciplinary action" means any remedial or punitive sanctions imposed on a licensed physician by the board;
- (5) "Patient" means a person seeking medical diagnosis and treatment; and
- (6) "Physician" means a licensee of the Arkansas State Medical Board.

17-95-704. Arkansas State Medical Board -Treatment - Prohibitions.

- (a)(1) A physician shall not be subject to disciplinary action by the Arkansas State Medical Board solely for prescribing dangerous or controlled drugs for the relief of chronic intractable pain.
- (2) The board shall direct the Pain Management Review Committee to use the criteria under subsections (d) and (e) of this section to review a physician's conduct in regard to prescribing, administering, ordering, or dispensing pain medications and other drugs necessary to treat chronic intractable pain.
- (b) The board shall:
  - (1) Make reasonable efforts to notify health care providers under its jurisdiction of the existence of the "Chronic Intractable Pain Treatment Act";
  - (2) Inform any health care provider licensed by the board investigated regarding the provider's practices in the management of pain of the existence of the "Chronic Pain Intractable Treatment Act"; and

- (3)(A) In a disciplinary hearing, the board shall present opinion evidence from a full time active practice physician in direct patient care knowledgeable in pain management.
- (B) The physician has the right to present testimony from a full time active practice physician in direct patient care knowledgeable in pain management.
- (c)(1) In lieu of a finding of gross and ignorant malpractice, the board after a hearing may incrementally impose sanctions as follows:
- (A) Monitor prescribing habits of the physician not to exceed six (6) months;
  - (B) Require the physician to voluntarily surrender his or her United States Drug Enforcement Agency license to the board for a specified period of time not to exceed three (3) months;
  - (C) Suspend the physician's license, stay the suspension, and require monitoring of prescribing habits;
  - (D) Revoke the physician's license, stay revocation, and require monitoring of the physician's prescribing habits for a specified time; and
  - (E) Revoke the physician's license for serious violations of statutes and regulations.
- (2) With a finding of severe violation of statutes and regulations, the board may initially impose the more severe sanctions.
- (3) At any level of sanction, the board may require continuing medical education hours in proper prescribing habits.
- (d) A physician may, based on evaluation and management of a patient's individual needs:
- (1) Treat a patient who develops chronic intractable pain with a dangerous or controlled drug to relieve the patient's pain;
  - (2) Continue to treat the patient for as long as the pain persists;
  - (3) Treat the pain by managing it with dangerous or controlled drugs in amounts or combinations that may not be appropriate for treating another medical condition;
  - (4) Administer large doses of dangerous or controlled drugs for pain management if the benefit of relief outweighs the risk of the large dose; and
  - (5) Administer a large dose of a dangerous or controlled drug even if its use may increase the risk of death, if the purpose is not to cause or assist in a patient's death.
- (e) A physician may not:
- (1) Prescribe or administer dangerous or controlled drugs intended to manage chronic intractable pain to treat a patient for chemical dependency on drugs or controlled substances;
  - (2) Prescribe or administer dangerous or controlled drugs to a person the physician knows to be using drugs for nontherapeutic purposes;
  - (3) Prescribe or administer dangerous or controlled drugs to a person for other than legitimate medical purposes; or
  - (4)(A) Cause or assist in causing the suicide, euthanasia, or mercy killing of any individual.
  - (B) However, causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual does not include prescribing, dispensing, or administering medical treatment for the purpose of alleviating pain or discomfort, even if that use may increase the risk of death, so long as the treatment is not furnished for the purpose of causing or assisting in causing the death of the individual.

#### 17-95-705. Pain Management Review Committee - Membership - Duties.

- (a)(1) There is created the Pain Management Review Committee appointed by the Arkansas State Medical Board.
- (2) In lieu of a disciplinary hearing, the board may refer a physician to the committee for review and recommendations.
- (b) The committee shall consist of five (5) full time active physicians in direct patient care members, two (2) of whom may be board certified pain management specialists and three (3) of whom may be physicians with significant pain management in their practices or with a degree in pharmacy, appointed by the board from a list provided by the Arkansas Osteopathic Medical Association, the Arkansas Medical Society, and the Arkansas Pain Society.

(c) The committee shall:

- (1) In cooperation with the Arkansas Osteopathic Medical Association, the Arkansas Medical Society, and the Arkansas Pain Society, develop guidelines for investigations of complaints regarding conduct in violation of this subchapter;
- (2) Review complaints on an individual patient needs basis regarding physicians treating chronic intractable pain in violation of this subchapter; and
- (3) Provide an objective critique to the board for board determination in a timely manner and, if determined, before the board's disciplinary hearing.

17-95-706. Scope.

This subchapter does not condone, authorize, or approve mercy killing or euthanasia, and no treatment authorized by this subchapter may be used for mercy killing or euthanasia.

17-95-707. Immunity - Criminal prosecution.

No physician shall be subject to criminal prosecution for prescribing or administering controlled substances under appropriate criteria in the course of treatment of a person for chronic intractable pain.