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SENATE BILL 2

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Mary Jane Garcia

AN ACT

RELATING TO HEALTH; PROVIDING FOR PATIENT RIGHTS FOR PAIN  
RELIEF TREATMENT; PROVIDING FOR LEGAL REMEDY FOR FRIVOLOUS  
ACTION OR PROSECUTION; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Pain Relief Act is  
enacted to read:

"[NEW MATERIAL] PATIENT RIGHTS. --

A. A patient suffering from severe acute or  
chronic intractable pain shall have the option to request or  
reject the use of pain relief treatment, based upon accepted  
guidelines, to relieve his severe chronic intractable pain.

B. A patient who suffers as a result of failure of  
the physician to prescribe, order, administer or dispense  
controlled substances, including opioid analgesics, to relieve

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1 or modulate pain in accordance with accepted guidelines may  
2 recover damages. Damages may be recovered before or after the  
3 patient's death.

4 C. A health care provider treating a patient with  
5 intractable pain shall advise the patient of the available  
6 pain management therapies. "

7 Section 2. Section 24-2D-1 NMSA 1978 (being Laws 1999,  
8 Chapter 126, Section 1) is amended to read:

9 "24-2D-1. SHORT TITLE. -- ~~[This act]~~ Chapter 24, Article  
10 2D NMSA 1978 may be cited as the "Pain Relief Act". "

11 Section 3. Section 24-2D-2 NMSA 1978 (being Laws 1999,  
12 Chapter 126, Section 2) is amended to read:

13 "24-2D-2. DEFINITIONS. -- As used in the Pain Relief Act:

14 A. "accepted guideline" means a current care or  
15 practice guideline for pain management developed by the  
16 American pain society, the American geriatric society, the  
17 agency for health care policy, the national cancer pain  
18 initiatives or ~~[any]~~ other nationally recognized clinical or  
19 professional association, ~~[a speciality]~~ specialty society or  
20 government-sponsored agency that has developed practice or  
21 care guidelines based on original research or on review of  
22 existing research and expert opinion ~~[whose guidelines have~~  
23 ~~been accepted by the New Mexico board of medical examiners];~~

24 B. "board" means the licensing board of a health  
25 care provider;

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1 C. "clinical expert" means a person who by reason  
2 of specialized education or substantial relevant experience in  
3 pain management has knowledge regarding current standards,  
4 practices and guidelines;

5 D. "disciplinary action" means [~~any formal~~]  
6 an action taken by a board against a health care provider,  
7 upon a finding of probable cause that the health care provider  
8 has engaged in conduct that violates the Medical Practice Act;

9 E. "health care provider" means a person licensed  
10 or otherwise authorized by law to provide health care in the  
11 ordinary course of business or practice of his profession and  
12 to have prescriptive authority within the limits of their  
13 license;

14 F. "intractable pain" means a state of pain, even  
15 if recurring, in which reasonable efforts to remove or remedy  
16 the cause of the pain have failed or have proven inadequate;  
17 and

18 G. "therapeutic purpose" means the use of  
19 pharmaceutical and non-pharmaceutical medical treatment that  
20 conforms substantially to accepted guidelines for pain  
21 management. "

22 Section 4. Section 24-2D-3 NMSA 1978 (being Laws 1999,  
23 Chapter 126, Section 3) is amended to read:

24 "24- 2D- 3. DISCIPLINARY ACTION-- EVIDENTIARY  
25 REQUIREMENTS. --

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1           A. ~~[No]~~ A health care provider who prescribes,  
2 dispenses or administers medical treatment ~~[for the purpose of~~  
3 ~~relieving]~~ to relieve intractable pain and who can demonstrate  
4 by reference to ~~[an]~~ accepted ~~[guideline]~~ guidelines that his  
5 practice substantially complies with ~~[that guideline]~~ those  
6 guidelines and with the standards of practice identified in  
7 ~~[Section 4 of]~~ the Pain Relief Act shall not be subject to  
8 disciplinary action or criminal prosecution, unless the  
9 showing of substantial compliance with ~~[an]~~ accepted  
10 ~~[guideline]~~ guidelines is rebutted by clinical expert  
11 testimony. If no currently accepted guidelines are available,  
12 then rules issued by the board may serve the function of  
13 ~~[such]~~ accepted guidelines for purposes of the Pain Relief  
14 Act. The board rules must conform to the intent of that act.  
15 Guidelines established primarily for purposes of coverage,  
16 payment or reimbursement do not qualify as ~~[an]~~ "accepted  
17 ~~[guideline]~~ guidelines" when offered to limit treatment  
18 options otherwise covered within the Pain Relief Act.

19           B. A health care provider who does not prescribe,  
20 dispense or administer medical treatment to relieve or  
21 modulate intractable pain in accordance with accepted  
22 guidelines shall be subject to mandatory disciplinary action  
23 or pain management education.

24           ~~[B. In the event that a]~~ C. If disciplinary  
25 action or criminal prosecution is pursued, the board or

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1 prosecutor shall produce clinical expert testimony supporting  
2 the finding or charge of violation of disciplinary standards  
3 or other legal requirements on the part of the health care  
4 provider. A showing of substantial compliance with ~~[an]~~  
5 accepted ~~[guideline]~~ guidelines can only be rebutted by  
6 clinical expert testimony.

7 D. If a health care provider substantially  
8 prevails in an action brought by an agency in court or before  
9 a board, and the state based any portion of its action upon  
10 the health care provider's inappropriate prescription of  
11 medication to relieve pain, the health care provider shall be  
12 awarded all costs of the action and all reasonable attorney  
13 fees incurred as a result of the action. An award pursuant to  
14 this subsection shall be made by the court in the process of  
15 hearing the underlying case or, in the case of an action  
16 brought before a board, in a separate action naming the agency  
17 as respondent.

18 ~~[E.]~~ E. The provisions of this section shall apply  
19 to health care providers in the treatment of all patients for  
20 intractable pain, regardless of the patients' prior or current  
21 chemical dependency or addiction. The board may develop and  
22 issue rules establishing standards and procedures for the  
23 application of the Pain Relief Act to the care and treatment  
24 of chemically dependent individuals. "

25 Section 5. Section 24-2D-4 NMSA 1978 (being Laws 1999,  
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1 Chapter 126, Section 4) is amended to read:

2 "24- 2D- 4. DISCIPLINARY ACTION-- PROHIBITIONS. -- Nothing in  
3 the Pain Relief Act shall prohibit discipline or prosecution  
4 of a health care provider for:

5 A. failing to maintain complete, accurate and  
6 current records documenting the physical examination and  
7 medical history of the patient, the basis for the clinical  
8 diagnosis of the patient and the treatment plan for the  
9 patient;

10 B. writing false or fictitious prescriptions for  
11 controlled substances scheduled in the federal [~~Comprehensive~~  
12 ~~Drug Abuse Prevention and Control Act of 1970, or Sections~~  
13 ~~26-1-23 and 30-31-18 NMSA 1978~~] Controlled Substances Act, the  
14 New Mexico Drug, Device and Cosmetic Act or the state  
15 Controlled Substances Act;

16 C. prescribing, administering or dispensing  
17 pharmaceuticals in violation of the provisions of the federal  
18 [~~Comprehensive Drug Abuse Prevention and Control Act of 1970,~~  
19 ~~or Sections 26-1-23 and 30-31-18 NMSA 1978~~] Controlled  
20 Substances Act, the New Mexico Drug, Device and Cosmetic Act  
21 or the state Controlled Substances Act; or

22 D. diverting medications prescribed for a patient  
23 to the provider's personal use or to other persons. "

24 Section 6. Section 24- 2D- 5 NMSA 1978 (being Laws 1999,  
25 Chapter 126, Section 5) is amended to read:

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"24- 2D- 5. NOTIFICATION. -- The board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of the Pain Relief Act and inform ~~any~~ a health care provider investigated in relation to the provider's practices in the management of pain of the existence of that act."