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SENATE BILL 343

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Mary Jane Garcia

AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE PAIN RELIEF ACT;
PROVIDING DISCIPLINARY ACTIONS AND PROHIBITIONS; REQUIRING
NOTIFICATION TO HEALTH CARE PROVIDERS; DEFINING THE SCOPE OF
THE ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Pain Relief Act".

Section 2. DEFINITIONS.--As used in the Pain Relief Act:

A. "accepted guideline" means a care or practice
guideline for pain management developed by a nationally
recognized clinical or professional association, a speciality
society or government-sponsored agency that has developed
practice or care guidelines based on original research or on
review of existing research and expert opinion;

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1 B. "board" means the licensing board of a health
2 care provider;

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

7 D. "disciplinary action" means informal, formal,
8 remedial and punitive actions taken by a board against a
9 health care provider;

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

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

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

23 Section 3. DISCIPLINARY ACTION-- EVIDENTIARY
24 REQUIREMENTS. --

25 A. No disciplinary action or criminal prosecution

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

17 B. In the event that a disciplinary action or
18 criminal prosecution is pursued, the board or prosecutor shall
19 produce clinical expert testimony supporting the finding or
20 charge of violation of disciplinary standards or other legal
21 requirements on the part of the health care provider.
22 Evidence of noncompliance with an accepted guideline is not
23 sufficient alone to support disciplinary or criminal action.

24 C. The provisions of this section shall apply to
25 health care providers in the treatment of all patients for

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1 intractable pain, regardless of the patients' prior or current
2 chemical dependency or addiction. The board may develop and
3 issue rules establishing standards and procedures for the
4 application of the Pain Relief Act to the care and treatment
5 of chemically dependent individuals.

6 Section 4. DISCIPLINARY ACTION--PROHIBITIONS.--Nothing
7 in the Pain Relief Act shall prohibit discipline or
8 prosecution of a health care provider for:

9 A. failing to maintain complete, accurate and
10 current records documenting the physical examination and
11 medical history of the patient, the basis for the clinical
12 diagnosis of the patient and the treatment plan for the
13 patient;

14 B. writing false or fictitious prescriptions for
15 controlled substances scheduled in the federal Comprehensive
16 Drug Abuse Prevention and Control Act of 1970 or Sections
17 26-1-23 and 30-31-18 NMSA 1978;

18 C. prescribing, administering or dispensing
19 pharmaceuticals in violation of the provisions of the federal
20 Comprehensive Drug Abuse Prevention and Control Act of 1970 or
21 Sections 26-1-23 and 30-31-18 NMSA 1978; or

22 D. diverting medications prescribed for a patient
23 to the provider's own personal use.

24 Section 5. NOTIFICATION.--The board shall make
25 reasonable efforts to notify health care providers under its

1 jurisdiction of the existence of the Pain Relief Act and
2 inform any health care provider investigated in relation to
3 the provider's practices in the management of pain of the
4 existence of that act.

5 Section 6. SCOPE OF ACT. --Nothing in the Pain Relief Act
6 shall be construed as expanding the authorized scope of
7 practice of health care providers.

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FIRST SESSION, 1999

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March 1, 1999

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 343

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 1, line 21, strike "a" and insert in lieu thereof "the American pain society, the American geriatric society, the agency for health care policy, the national cancer pain initiatives or any other".

2. On page 1, line 25, after "opinion" insert "whose guidelines have been accepted by the New Mexico board of medical examiners".

3. On page 2, line 7, strike "informal," and insert in lieu thereof "any" and after "formal" strike the comma.

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/ SB 343

Page 7

4. On page 2, line 8, strike "remedial and punitive actions" and insert in lieu thereof "action".

5. On page 2, line 9, after "provider" insert ", upon a finding of probable cause that the health care provider has engaged in conduct that violates the Medical Practice Act".

6. On page 2, line 16, strike "temporary" and insert in lieu thereof "recurring".

7. On page 2, line 25, after "No" strike the remainder of the line.

8. On page 3, line 1, strike "shall be brought against a".

9. On page 3, line 3, strike "therapeutic".

10. On page 3, line 7, after "Act" insert:

"shall be subject to disciplinary action or criminal

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/ SB 343

Page 8

prosecution, unless the showing of substantial compliance with
an accepted guideline is rebutted by clinical expert testimony".

11. On page 3, line 14, after the period strike the
remainder of the line and strike all of lines 15 and 16.

12. On page 3, line 22, strike lines 22 and 23 and insert
in lieu of:

"A showing of substantial compliance with an accepted
guideline can only be rebutted by clinical expert testimony".

13. On page 4, line 23, strike "own" and after "use"
insert "or to other persons".,

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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SPAC/ SB 343

Page 9

Shannon Robinson, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Ingle, Stockard, Smith

Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SPAC/ SB 343

Page 10

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 14, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE BILL 343, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SPAC/ SB 343

Page 11

Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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SPAC/ SB 343

Page 12

Excused: Aragon, Davis, Lopez

Absent: None

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 March 19, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

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12 SENATE BILL 343, as amended

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14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

16
17 Respectfully submitted,

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20 _____
21 R. David Pederson, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

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