Senate Bill 109

By: Senators Unterman of the 45th, Thomas of the 54th and Smith of the 52nd

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled substances, so as to provide for legislative findings; to provide for definitions; to provide for immunity; to provide for applicability; to provide for notification of health care providers; to amend Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions relative to health, so as to establish the Pain Management Ad Hoc Advisory Committee; to provide for such committee´s membership, duties, and duration; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled substances, is amended by adding at its end a new article to read as follows:

″ARTICLE 6

16-13-120.

The General Assembly finds that:

(1) Many controlled substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state;

(2) To treat a patient´s pain, a physician should be able to administer a controlled substance in excess of the recommended dosage, even if its use may increase the risk of death, so long as it is not also administered for the purpose of causing, or for the purpose of assisting in causing, death, for any reason; and

(3) A health care facility or a hospice should not forbid or restrict the use of controlled substances appropriately administered to relieve pain.

16-13-121.

As used in this article, the term:

(1) 'Accepted guideline' means a care or practice guideline for pain management developed by a nationally recognized clinical or professional association, specialty 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. If there are no currently accepted guidelines available, rules, policies, guidelines, or regulations issued by the appropriate regulatory board may serve the function of such guidelines for purposes of this article. Such board rules, policies, guidelines, or regulations must conform to the intent of this article. Guidelines established primarily for purposes of coverage, payment, or reimbursement do not qualify as accepted guidelines when offered to limit treatment options otherwise covered by this article. For such a guideline to be an accepted guideline for the purposes of this article, it must not be inconsistent with the provisions of Code Section 16-13-123. The appropriate regulatory board may by rule establish that any particular guideline otherwise qualified to be an accepted guideline is not an accepted guideline on the grounds that it is inconsistent with the provisions of Code Section 16-13-123; provided, however, that a guideline that has not been specifically disqualified by such board rule may be held not to provide immunity in a particular case on the grounds that it is inconsistent with the provisions of such Code section, in accordance with the procedures set forth in Code Section 16-13-122.

(2) 'Clinical expert' means an individual who by reason of specialized education or substantial relevant experience in pain management has knowledge regarding current standards, practices, and guidelines.

(3) 'Disciplinary action' means both informal and formal and both remedial and punitive actions taken by a regulatory board against a health care provider.

(4) 'Health care provider' means:

(A) A physician licensed under Chapter 34 of Title 43;

(B) A registered professional nurse and licensed practical nurse licensed or registered under Chapter 26 of Title 43;

(C) A physician´s assistant licensed under Chapter 34 of Title 43; and

(D) A pharmacist licensed under Chapter 4 of Title 26.

(5) 'Regulatory board' means the Composite State Board of Medical Examiners, the Georgia Board of Nursing, or the State Board of Pharmacy.

(6) 'Therapeutic purpose' means the use of pharmaceutical and nonpharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

16-13-122.

(a) Neither disciplinary action nor criminal prosecution shall be brought against a health care provider for the prescription, dispensing, or administration of medical treatment for the therapeutic purpose of relieving pain who can demonstrate by reference to an accepted guideline that his or her practice substantially complied with guidelines and standards of practice identified in Code Section 16-13-123. The showing of substantial compliance with an accepted guideline may be rebutted only by clinical expert testimony. A showing that a guideline otherwise qualified to be an accepted guideline is not an accepted guideline because it is inconsistent with the provisions of Code Section 16-13-123 may be made by clinical expert testimony.

(b) In the event that a disciplinary action or criminal prosecution is pursued, the appropriate regulatory board or prosecutor shall produce clinical expert testimony supporting the finding or charge of violation of disciplinary standards or other legal requirements on the part of the health care provider. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(c) The provisions of this Code section shall apply to health care providers in the treatment of all patients for pain regardless of the patient´s prior or current chemical dependency or addiction. The appropriate regulatory board may develop and issue rules, regulations, policies, or guidelines establishing standards and procedures for the application of this article for the care and treatment of chemically dependent individuals. The appropriate regulatory board may by rule establish that any particular guideline otherwise qualified to be an accepted guideline is not an accepted guideline on the grounds that it is inconsistent with the provisions of Code Section 16-13-123.

(d) A pharmacist is immune from any civil or criminal liability and from professional discipline for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a health care provider in the usual course of professional treatment or in authorized research.

16-13-123.

(a) Nothing in this article shall be construed as expanding the authorized scope of practice of any health care provider.

(b) Nothing in this article shall prohibit discipline or prosecution of a health care provider for:

(1) Failing to maintain complete, accurate, and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

(2) Writing false or fictitious prescriptions for controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. Section 801, et seq., or in this article;

(3) Prescribing, dispensing, or administering pharmaceuticals in violation of the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. Section 801, et seq., or of the laws of this state;

(4) Diverting medications prescribed for a patient to the provider´s own personal use; or

(5) 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 alleviating pain or discomfort, even if such use may increase the risk of death, so long as it is not also administered for the purpose of causing, or for the purpose of assisting in causing, death, for any reason.

16-13-124.

The appropriate regulatory board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of this article. At a minimum, the regulatory board shall inform any health care provider investigated in relation to the provider´s practices in the management of pain of the existence of this article.″

SECTION 2.

Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions relative to health, is amended by adding a new Code section to the end of such article to read as follows:

″31-1-10.

(a) There is established the Pain Management Ad Hoc Advisory Committee. The purposes of the committee shall be to:

(1) Facilitate a discussion among the Attorney General, the appropriate regulatory boards, and other interested persons that focuses on identifying appropriate procedures and techniques for the management of pain; and

(2) Study and report to the Governor and the General Assembly on medical, pharmaceutical, and patient care issues involving the treatment of pain, including, but not limited to, the use of Schedule II controlled substances. Such report shall include recommendations for legislative action regarding pain management and shall be consistent with the provisions of paragraph (5) of subsection (b) of Code Section 16-13-123.

(b) The committee shall review, at a minimum:

(1) Scientific and medical reviews of controlled substances classified as Schedule II under Code Section 16-13-26;

(2) Modern pain management knowledge;

(3) Modern pain management techniques for the treatment of pain, including the use of Schedule II controlled substances;

(4) The adverse impact on patient recovery condition caused by the undertreatment of pain;

(5) The identity and quantity of patients who do not receive adequate pain control treatment and consequences and costs of undertreatment;

(6) The development of guidelines to establish parameters for the investigation of a prescriber or dispenser of Schedule II controlled substances for the treatment of pain; and

(7) The development of guidelines to educate prescribers, dispensers, patients, law enforcement, and the public about pain management and regulatory issues.

(c) The committee shall consist of 13 members to be appointed as follows:

(1) Five members appointed by the Governor, to include three physicians, one pharmacist, and one representative of law enforcement knowledgeable in Schedule II medications. The representative of law enforcement shall be selected after consultation with the Attorney General;

(2) Four members appointed by the President Pro Tempore of the Senate, to include one physician, one pharmacist who specializes in the care of patients in long-term care facilities, one representative of an organization that represents persons with a condition requiring ongoing treatment for pain, and a member of the Senate Health and Human Services Committee; and

(3) Four members appointed by the Speaker of the House of Representatives, to include one physician, a pharmacist, and a member of the House Committee on Health and Human Services.

(d) The committee shall select a chairperson and hold its first meeting not later than February 1, 2006. The committee shall issue a preliminary report of its activities, tentative findings, and recommendations of issues requiring further study to the Governor and the General Assembly not later than May 15, 2006. The committee shall issue a final report to the Governor and to the General Assembly not later than December 31, 2006.

(e) The members of the committee shall serve without compensation.

(f) This Code section shall be automatically repealed on December 31, 2006.″

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.