

Senate Bill 109

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

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

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

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

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

13 "ARTICLE 6

14 16-13-120.

15 The General Assembly finds that:

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

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

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

1 16-13-121.

2 As used in this article, the term:

3 (1) 'Accepted guideline' means a care or practice guideline for pain management
4 developed by a nationally recognized clinical or professional association, specialty
5 society, or government sponsored agency that has developed practice or care guidelines
6 based on original research or on review of existing research and expert opinion. If there
7 are no currently accepted guidelines available, rules, policies, guidelines, or regulations
8 issued by the appropriate regulatory board may serve the function of such guidelines for
9 purposes of this article. Such board rules, policies, guidelines, or regulations must
10 conform to the intent of this article. Guidelines established primarily for purposes of
11 coverage, payment, or reimbursement do not qualify as accepted guidelines when offered
12 to limit treatment options otherwise covered by this article. For such a guideline to be
13 an accepted guideline for the purposes of this article, it must not be inconsistent with the
14 provisions of Code Section 16-13-123. The appropriate regulatory board may by rule
15 establish that any particular guideline otherwise qualified to be an accepted guideline is
16 not an accepted guideline on the grounds that it is inconsistent with the provisions of
17 Code Section 16-13-123; provided, however, that a guideline that has not been
18 specifically disqualified by such board rule may be held not to provide immunity in a
19 particular case on the grounds that it is inconsistent with the provisions of such Code
20 section, in accordance with the procedures set forth in Code Section 16-13-122.

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

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

26 (4) 'Health care provider' means:

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

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

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

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

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

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

1 16-13-122.

2 (a) Neither disciplinary action nor criminal prosecution shall be brought against a health
3 care provider for the prescription, dispensing, or administration of medical treatment for
4 the therapeutic purpose of relieving pain who can demonstrate by reference to an accepted
5 guideline that his or her practice substantially complied with guidelines and standards of
6 practice identified in Code Section 16-13-123 so long as the health care provider did not
7 deviate from generally accepted standards of pain management practice. The showing of
8 substantial compliance with an accepted guideline may be rebutted only by clinical expert
9 testimony. A showing that a guideline otherwise qualified to be an accepted guideline is
10 not an accepted guideline because it is inconsistent with the provisions of Code Section
11 16-13-123 may be made by clinical expert testimony.

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

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

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

29 16-13-123.

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

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

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

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

4 (3) Prescribing, dispensing, or administering pharmaceuticals in violation of the
 5 provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of
 6 1970, 21 U.S.C. Section 801, et seq., or of the laws of this state;

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

8 (5) Causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any
 9 individual, provided that it is not causing, or assisting in causing, the suicide, euthanasia,
 10 or mercy killing of any individual to prescribe, dispense, or administer medical treatment
 11 for the purpose of alleviating pain or discomfort, even if such use may increase the risk
 12 of death, so long as it is not also administered for the purpose of causing, or for the
 13 purpose of assisting in causing, death, for any reason.

14 16-13-124.

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

19 SECTION 2.

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

23 "31-1-10.

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

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

29 (2) Study and report to the Governor and the General Assembly on medical,
 30 pharmaceutical, and patient care issues involving the treatment of pain, including, but not
 31 limited to, the use of Schedule II controlled substances. Such report shall include
 32 recommendations for legislative action regarding pain management and shall be
 33 consistent with the provisions of paragraph (5) of subsection (b) of Code Section
 34 16-13-123.

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

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

3 (2) Modern pain management knowledge;

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

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

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

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

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

14 (c) The committee shall consist of 15 members to be appointed as follows:

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

19 (2) Six members appointed by the President Pro Tempore of the Senate, to include one
20 physician, one pharmacist who specializes in the care of patients in long-term care
21 facilities, one registered professional nurse, one representative of the hospice industry,
22 one representative of an organization that represents persons with a condition requiring
23 ongoing treatment for pain, and a member of the Senate Health and Human Services
24 Committee; and

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

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

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

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

35 SECTION 3.

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