

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Engrossed: S3/26/03 S3/31/03 S4/1/03 S4/3/03*

2 84th General Assembly

# A Bill

Act 1405 of 2003

3 Regular Session, 2003

SENATE BILL 265

4

5 By: Senator Altes

6 *By: Representative Judy*

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## For An Act To Be Entitled

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AN ACT TO IMPROVE THE TREATMENT OF CHRONIC

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INTRACTABLE PAIN; TO INFORM PHYSICIANS ABOUT THE

12

AVAILABLE METHODS FOR TREATING CHRONIC PAIN; AND

13

FOR OTHER PURPOSES.

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## Subtitle

16

AN ACT TO IMPROVE THE TREATMENT OF

17

CHRONIC INTRACTABLE PAIN.

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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

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17-95-701. Title.

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This subchapter shall be known and may be cited as the "Chronic

27

Intractable Pain Treatment Act".

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17-95-702. Findings.

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The General Assembly finds that:

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(1) Pain management plays an important role in good medical practice;

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(2) Physicians should recognize the need to make pain relief

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accessible to all patients with chronic intractable pain; and

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(3) Physicians should view pain management as a regular part of their

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medical practice for all patients with chronic intractable pain.

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1 17-95-703. Definitions.

2 As used in this subchapter:

3 (1) "Board" means the Arkansas State Medical Board;

4 (2) "Chronic intractable pain" means a pain state for which the cause  
5 of the pain cannot be removed or otherwise treated, and for which no relief  
6 or cure has been found after reasonable efforts by a physician;

7 (3)(A) "Dangerous or controlled drugs" means drugs used for pain  
8 relief, including but not limited to:

9 (i) Opioids; and

10 (ii) Other drugs classified under schedules II, III, IV,  
11 or V by the United States Food and Drug Administration;

12 (B) "Dangerous or controlled drugs" does not include any  
13 substance the prescription of which is illegal under federal law;

14 (4) "Disciplinary action" means any remedial or punitive sanctions  
15 imposed on a licensed physician by the board;

16 (5) "Patient" means a person seeking medical diagnosis and treatment;  
17 and

18 (6) "Physician" means a licensee of the Arkansas State Medical Board.

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20 17-95-704. Arkansas State Medical Board -Treatment - Prohibitions.

21 (a)(1) A physician shall not be subject to disciplinary action by the  
22 Arkansas State Medical Board solely for prescribing dangerous or controlled  
23 drugs for the relief of chronic intractable pain.

24 (2) The board shall direct the Pain Management Review Committee  
25 to use the criteria under subsections (d) and (e) of this section to review a  
26 physician's conduct in regard to prescribing, administering, ordering, or  
27 dispensing pain medications and other drugs necessary to treat chronic  
28 intractable pain.

29 (b) The board shall:

30 (1) Make reasonable efforts to notify health care providers  
31 under its jurisdiction of the existence of the "Chronic Intractable Pain  
32 Treatment Act";

33 (2) Inform any health care provider licensed by the board  
34 investigated regarding the provider's practices in the management of pain of  
35 the existence of the "Chronic Pain Intractable Treatment Act"; and

36 (3)(A) In a disciplinary hearing, the board shall present

1 opinion evidence from a full time active practice physician in direct patient  
2 care knowledgeable in pain management.

3 (B) The physician has the right to present testimony from  
4 a full time active practice physician in direct patient care knowledgeable in  
5 pain management.

6 (c)(1) In lieu of a finding of gross and ignorant malpractice, the  
7 board after a hearing may incrementally impose sanctions as follows:

8 (A) Monitor prescribing habits of the physician not to  
9 exceed six (6) months;

10 (B) Require the physician to voluntarily surrender his or  
11 her United States Drug Enforcement Agency license to the board for a  
12 specified period of time not to exceed three (3) months;

13 (C) Suspend the physician's license, stay the suspension,  
14 and require monitoring of prescribing habits;

15 (D) Revoke the physician's license, stay revocation, and  
16 require monitoring of the physician's prescribing habits for a specified  
17 time; and

18 (E) Revoke the physician's license for serious violations  
19 of statutes and regulations.

20 (2) With a finding of severe violation of statutes and  
21 regulations, the board may initially impose the more severe sanctions.

22 (3) At any level of sanction, the board may require continuing  
23 medical education hours in proper prescribing habits.

24 (d) A physician may, based on evaluation and management of a patient's  
25 individual needs:

26 (1) Treat a patient who develops chronic intractable pain with a  
27 dangerous or controlled drug to relieve the patient's pain;

28 (2) Continue to treat the patient for as long as the pain  
29 persists;

30 (3) Treat the pain by managing it with dangerous or controlled  
31 drugs in amounts or combinations that may not be appropriate for treating  
32 another medical condition;

33 (4) Administer large doses of dangerous or controlled drugs for  
34 pain management if the benefit of relief outweighs the risk of the large  
35 dose; and

36 (5) Administer a large dose of a dangerous or controlled drug

1 even if its use may increase the risk of death, if the purpose is not to  
2 cause or assist in a patient's death.

3 (e) A physician may not:

4 (1) Prescribe or administer dangerous or controlled drugs  
5 intended to manage chronic intractable pain to treat a patient for chemical  
6 dependency on drugs or controlled substances;

7 (2) Prescribe or administer dangerous or controlled drugs to a  
8 person the physician knows to be using drugs for nontherapeutic purposes;

9 (3) Prescribe or administer dangerous or controlled drugs to a  
10 person for other than legitimate medical purposes; or

11 (4)(A) Cause or assist in causing the suicide, euthanasia, or  
12 mercy killing of any individual.

13 (B) However, causing or assisting in causing the suicide,  
14 euthanasia, or mercy killing of any individual does not include prescribing,  
15 dispensing, or administering medical treatment for the purpose of alleviating  
16 pain or discomfort, even if that use may increase the risk of death, so long  
17 as the treatment is not furnished for the purpose of causing or assisting in  
18 causing the death of the individual.

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20 17-95-705. Pain Management Review Committee - Membership - Duties.

21 (a)(1) There is created the Pain Management Review Committee appointed  
22 by the Arkansas State Medical Board.

23 (2) In lieu of a disciplinary hearing, the board may refer a  
24 physician to the committee for review and recommendations.

25 (b) The committee shall consist of five (5) full time active  
26 physicians in direct patient care members, two (2) of whom may be board  
27 certified pain management specialists and three (3) of whom may be physicians  
28 with significant pain management in their practices or with a degree in  
29 pharmacy, appointed by the board from a list provided by the Arkansas  
30 Osteopathic Medical Association, the Arkansas Medical Society, and the  
31 Arkansas Pain Society.

32 (c) The committee shall:

33 (1) In cooperation with the Arkansas Osteopathic Medical  
34 Association, the Arkansas Medical Society, and the Arkansas Pain Society,  
35 develop guidelines for investigations of complaints regarding conduct in  
36 violation of this subchapter;

