S T A T E O F N E W Y O R K

732

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, CYMBROWITZ, GALEF, GUNTHER, PAULIN, PEOPLES-STOKES, SCHIMMINGER, BOYLAND, LAVINE, MARKEY, ROSENTHAL -- Multi-Sponsored by -- M. of A. BING, DINOWITZ, HOOPER, V. LOPEZ, LUPARDO, MAYERSOHN, McENENY, PHEFFER, J. RIVERA, ROBINSON, SWEENEY, TITONE, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to pain management

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and intent. The legislature finds that thousands of New Yorkers suffer needlessly from debilitating pain every year, a condition that can be remedied by the appropriate use of pain medications and other pain management methods. Health care professionals often hesitate to prescribe or administer these medications for fear of reprisal by public health or criminal justice authorities. This legislation follows the well-established public policy that the prescribing and administration of pain medications is a legitimate medical intervention that can improve the quality of life and avoid needless suffering. It is a well established medical, moral and ethical proposition that it is acceptable to relieve pain by medications, even if the result is or may be decreased consciousness and shortening of life and the indirect hastening of death. However many health care practitioners fear that the legal system may not recognize that principle. While this legislation intends to encourage the appropriate prescribing of pain medications, it does not intend in any way to diminish New York state's strong public policy and laws against the abuse of drugs.

S 2. The public health law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F
PAIN MANAGEMENT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD02453-01-1

SECTION 2899-B. DEFINITIONS.
2899-C. LIMITATION ON PROFESSIONAL DISCIPLINE OR CRIMINAL LIABILITY.
2899-D. ACTS SUBJECT TO PROFESSIONAL DISCIPLINE OR PROSECUTION.
2899-E. APPLICABILITY.

S 2899-B. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ACCEPTED GUIDELINE" MEANS A PEER REVIEWED CLINICAL PRACTICE GUIDELINE FOR PAIN MANAGEMENT DEVELOPED, AS APPLICABLE, BY A NATIONALLY-RECOGNIZED HEALTH CARE PROFESSIONAL OR SPECIALTY ASSOCIATION, OR A NATIONALLY-RECOGNIZED PAIN MANAGEMENT ASSOCIATION.

2. "HEALTH CARE PRACTITIONER" MEANS A HEALTH CARE PRACTITIONER LICENSED OR CERTIFIED UNDER TITLE EIGHT OF THE EDUCATION LAW, WHO IS AUTHORIZED TO ORDER, PRESCRIBE, ADMINISTER OR DISPENSE PAIN-RELIEVING MEDICATIONS OR OTHER TREATMENT FOR THE RELIEF OF PAIN.

3. "PAIN-RELIEVING MEDICATION" MEANS A PRESCRIPTION DRUG, INCLUDING A CONTROLLED SUBSTANCE CLASSIFIED AS SCHEDULE II OR OTHER CONTROLLED SUBSTANCE, USED FOR PAIN RELIEF.

4. "PROFESSIONAL DISCIPLINE" MEANS PROFESSIONAL DISCIPLINE UNDER TITLE TWO-A OF ARTICLE TWO OF THIS CHAPTER OR TITLE EIGHT OF THE EDUCATION LAW.

S 2899-C. LIMITATION ON PROFESSIONAL DISCIPLINE OR CRIMINAL LIABILITY. A HEALTH CARE PRACTITIONER SHALL NOT BE SUBJECT TO PROFESSIONAL DISCIPLINE OR CRIMINAL LIABILITY FOR ORDERING, PRESCRIBING, ADMINISTERING OR DISPENSING PAIN-RELIEVING MEDICATIONS OR OTHER TREATMENTS FOR THE PURPOSE OF ALLEVIATING OR CONTROLLING PAIN WHEN PRACTICING WITHIN THE HEALTH CARE PRACTITIONER'S LAWFUL SCOPE OF PRACTICE AND IN ACCORDANCE WITH THE REASONABLE STANDARD OF CARE OF THE HEALTH CARE PRACTITIONER'S PROFESSION, INCLUDING AN ACCEPTED GUIDELINE.

S 2899-D. ACTS SUBJECT TO PROFESSIONAL DISCIPLINE OR PROSECUTION. 1. NOTHING IN THIS ARTICLE SHALL PROHIBIT PROFESSIONAL DISCIPLINE OR CRIMINAL PROSECUTION OF A HEALTH CARE PRACTITIONER FOR FAILURE TO COMPLY WITH APPLICABLE STATE OR FEDERAL LAW, INCLUDING MEDICAL RECORD KEEPING; HOMICIDE OR PROMOTING, ASSISTING, CAUSING OR AIDING SUICIDE UNDER THE PENAL LAW; OR UNLAWFUL PRESCRIBING; OR UNLAWFUL DIVERSION.

2. NOTHING IN THIS ARTICLE SHALL PROHIBIT PROFESSIONAL DISCIPLINE OF A HEALTH CARE PRACTITIONER FOR FAILURE TO ADEQUATELY PRESCRIBE, ORDER, ADMINISTER OR DISPENSE PAIN-RELIEVING MEDICATIONS OR OTHER TREATMENTS FOR THE RELIEF OF PAIN IN ACCORDANCE WITH THE REASONABLE STANDARD OF CARE OF THE HEALTH CARE PRACTITIONER'S PROFESSION, INCLUDING AN ACCEPTED GUIDELINE.

S 2899-E. APPLICABILITY. THIS ARTICLE SHALL APPLY TO THE TREATMENT OF ALL PATIENTS WITH PAIN, INCLUDING DYING PATIENTS, PATIENTS WITH ACUTE PAIN AND PATIENTS WITH CHRONIC PAIN, REGARDLESS OF THE PATIENT'S PRIOR OR CURRENT CHEMICAL DEPENDENCY OR ADDICTION; PROVIDED THAT A REASONABLE STANDARD OF CARE OF THE HEALTH CARE PRACTITIONER'S PROFESSION, INCLUDING ACCEPTED GUIDELINES, MAY MAKE SPECIAL PROVISIONS RELATING TO PRIOR OR CURRENT CHEMICAL DEPENDENCY OR ADDICTION.

S 3. This act shall take effect immediately, provided that subdivision 2 of section 2899-d of the public health law, as added by section two of this act, shall take effect on the first of January of the second year after it shall have become a law.