

732

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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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:

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

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

20                    ARTICLE 28-F  
21                    PAIN MANAGEMENT

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

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1 SECTION 2899-B. DEFINITIONS.

2 2899-C. LIMITATION ON PROFESSIONAL DISCIPLINE OR CRIMINAL  
3 LIABILITY.

4 2899-D. ACTS SUBJECT TO PROFESSIONAL DISCIPLINE OR PROSECUTION.

5 2899-E. APPLICABILITY.

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

8 1. "ACCEPTED GUIDELINE" MEANS A PEER REVIEWED CLINICAL PRACTICE GUIDE-  
9 LINE FOR PAIN MANAGEMENT DEVELOPED, AS APPLICABLE, BY A NATIONALLY-RE-  
10 COGNIZED HEALTH CARE PROFESSIONAL OR SPECIALTY ASSOCIATION, OR A NATION-  
11 ALLY-RECOGNIZED PAIN MANAGEMENT ASSOCIATION.

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

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

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

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

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

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

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

49 S 3. This act shall take effect immediately, provided that subdivision  
50 2 of section 2899-d of the public health law, as added by section two of  
51 this act, shall take effect on the first of January of the second year  
52 after it shall have become a law.