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HOUSE BILL 1585

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Morris and Dyer

Read first time 01/31/95. Referred to Committee on Health Care.

1 AN ACT Relating to prescription of controlled substances for  
2 intractable pain; amending RCW 18.130.180; adding a new section to  
3 chapter 18.130 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Cancer is increasingly prevalent today in  
6 America with more than one million newly diagnosed cases annually.  
7 Among the most tragic victims are those whose lives are consumed by  
8 chronic, intractable pain. Some twenty million Americans suffer  
9 chronic pain stemming from a variety of causes. Chronic pain is  
10 identified as one of the nation's most costly health problems involving  
11 nearly fifty billion dollars in medical and social costs, including  
12 severe psychological problems that can destroy the will to live.

13 While opiates are extremely effective for treating pain, chronic  
14 pain is commonly undertreated by physicians because of the fear of  
15 addiction of patients. Recent studies however have shown that persons  
16 with intractable pain can be treated with narcotics with little risk of  
17 developing the self-destructive behavior characteristic of addiction  
18 because their motivations and psychological reactions and tolerances  
19 are different.

1 In addition, physicians report that the threat of disciplinary  
2 action for overprescribing acts as a deterrent to physicians in  
3 treating chronic pain patients with opiates. New clinical guidelines  
4 to correct the problem of inadequate treatment of pain in patients with  
5 cancer were published this year by a research arm of the federal  
6 department of health and human services. In addition, the states of  
7 California and Texas have recently enacted policies relating to the  
8 treatment of chronic pain.

9 It is the intent of the legislature that the state medical quality  
10 assurance commission develop and implement guidelines for the treatment  
11 of intractable chronic pain in accordance with recognized national  
12 standards pursuant to this act.

13 **Sec. 2.** RCW 18.130.180 and 1993 c 367 s 22 are each amended to  
14 read as follows:

15 The following conduct, acts, or conditions constitute  
16 unprofessional conduct for any license holder or applicant under the  
17 jurisdiction of this chapter:

18 (1) The commission of any act involving moral turpitude,  
19 dishonesty, or corruption relating to the practice of the person's  
20 profession, whether the act constitutes a crime or not. If the act  
21 constitutes a crime, conviction in a criminal proceeding is not a  
22 condition precedent to disciplinary action. Upon such a conviction,  
23 however, the judgment and sentence is conclusive evidence at the  
24 ensuing disciplinary hearing of the guilt of the license holder or  
25 applicant of the crime described in the indictment or information, and  
26 of the person's violation of the statute on which it is based. For the  
27 purposes of this section, conviction includes all instances in which a  
28 plea of guilty or nolo contendere is the basis for the conviction and  
29 all proceedings in which the sentence has been deferred or suspended.  
30 Nothing in this section abrogates rights guaranteed under chapter 9.96A  
31 RCW;

32 (2) Misrepresentation or concealment of a material fact in  
33 obtaining a license or in reinstatement thereof;

34 (3) All advertising which is false, fraudulent, or misleading;

35 (4) Incompetence, negligence, or malpractice which results in  
36 injury to a patient or which creates an unreasonable risk that a  
37 patient may be harmed. The use of a nontraditional treatment by itself  
38 shall not constitute unprofessional conduct, provided that it does not

1 result in injury to a patient or create an unreasonable risk that a  
2 patient may be harmed;

3 (5) Suspension, revocation, or restriction of the individual's  
4 license to practice the profession by competent authority in any state,  
5 federal, or foreign jurisdiction, a certified copy of the order,  
6 stipulation, or agreement being conclusive evidence of the revocation,  
7 suspension, or restriction;

8 (6) The possession, use, prescription for use, or distribution of  
9 controlled substances or legend drugs in any way other than for  
10 legitimate or therapeutic purposes, diversion of controlled substances  
11 or legend drugs, the violation of any drug law, or prescribing  
12 controlled substances for oneself. The prescription of controlled  
13 substances or legend drugs for patients suffering intractable pain in  
14 accordance with section 3 of this act is not to be construed as  
15 unprofessional conduct;

16 (7) Violation of any state or federal statute or administrative  
17 rule regulating the profession in question, including any statute or  
18 rule defining or establishing standards of patient care or professional  
19 conduct or practice;

20 (8) Failure to cooperate with the disciplining authority by:

21 (a) Not furnishing any papers or documents;

22 (b) Not furnishing in writing a full and complete explanation  
23 covering the matter contained in the complaint filed with the  
24 disciplining authority; or

25 (c) Not responding to subpoenas issued by the disciplining  
26 authority, whether or not the recipient of the subpoena is the accused  
27 in the proceeding;

28 (9) Failure to comply with an order issued by the disciplinary  
29 authority or a stipulation for informal disposition entered into with  
30 the disciplinary authority;

31 (10) Aiding or abetting an unlicensed person to practice when a  
32 license is required;

33 (11) Violations of rules established by any health agency;

34 (12) Practice beyond the scope of practice as defined by law or  
35 rule;

36 (13) Misrepresentation or fraud in any aspect of the conduct of the  
37 business or profession;

38 (14) Failure to adequately supervise auxiliary staff to the extent  
39 that the consumer's health or safety is at risk;

1 (15) Engaging in a profession involving contact with the public  
2 while suffering from a contagious or infectious disease involving  
3 serious risk to public health;

4 (16) Promotion for personal gain of any unnecessary or  
5 inefficacious drug, device, treatment, procedure, or service;

6 (17) Conviction of any gross misdemeanor or felony relating to the  
7 practice of the person's profession. For the purposes of this  
8 subsection, conviction includes all instances in which a plea of guilty  
9 or nolo contendere is the basis for conviction and all proceedings in  
10 which the sentence has been deferred or suspended. Nothing in this  
11 section abrogates rights guaranteed under chapter 9.96A RCW;

12 (18) The procuring, or aiding or abetting in procuring, a criminal  
13 abortion;

14 (19) The offering, undertaking, or agreeing to cure or treat  
15 disease by a secret method, procedure, treatment, or medicine, or the  
16 treating, operating, or prescribing for any health condition by a  
17 method, means, or procedure which the licensee refuses to divulge upon  
18 demand of the disciplining authority;

19 (20) The willful betrayal of a practitioner-patient privilege as  
20 recognized by law;

21 (21) Violation of chapter 19.68 RCW;

22 (22) Interference with an investigation or disciplinary proceeding  
23 by willful misrepresentation of facts before the disciplining authority  
24 or its authorized representative, or by the use of threats or  
25 harassment against any patient or witness to prevent them from  
26 providing evidence in a disciplinary proceeding or any other legal  
27 action;

28 (23) Current misuse of:

29 (a) Alcohol;

30 (b) Controlled substances; or

31 (c) Legend drugs;

32 (24) Abuse of a client or patient or sexual contact with a client  
33 or patient;

34 (25) Acceptance of more than a nominal gratuity, hospitality, or  
35 subsidy offered by a representative or vendor of medical or health-  
36 related products or services intended for patients, in contemplation of  
37 a sale or for use in research publishable in professional journals,  
38 where a conflict of interest is presented, as defined by rules of the

1 disciplining authority, in consultation with the department, based on  
2 recognized professional ethical standards.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.130 RCW  
4 to read as follows:

5 (1) A physician and surgeon may prescribe or administer controlled  
6 substances to a person in the course of the physician and surgeon's  
7 treatment of that person for a diagnosed condition causing intractable  
8 pain.

9 (2) "Intractable pain," as used in this section, means a pain state  
10 in which the cause of the pain cannot be removed or otherwise treated  
11 and which in the generally accepted course of medical practice no  
12 relief or cure of the cause of the pain is possible or none has been  
13 found after reasonable efforts including, but not limited to,  
14 evaluation by the attending physician and surgeon and, if available,  
15 one or more physicians and surgeons specializing in the treatment of  
16 the area, system, or organ of the body perceived as the source of the  
17 pain.

18 (3) No physician and surgeon is subject to disciplinary action by  
19 the medical quality assurance commission for prescribing or  
20 administering controlled substances in the course of treatment of a  
21 person for intractable pain.

22 (4) This section does not apply to those persons being treated by  
23 the physician and surgeon for chemical dependency because of their use  
24 of drugs or controlled substances.

25 (5) This section does not authorize a physician and surgeon to  
26 prescribe or administer controlled substances to a person the physician  
27 and surgeon knows to be using drugs or substances for nontherapeutic  
28 purposes.

29 (6) This section does not affect the power of the commission to  
30 deny, revoke, or suspend the license of a physician and surgeon, or  
31 otherwise discipline, who does any of the following:

32 (a) Prescribes or administers a controlled substance or treatment  
33 that is nontherapeutic in nature or nontherapeutic in the manner the  
34 controlled substance or treatment is administered or prescribed or is  
35 for a nontherapeutic purpose in a nontherapeutic manner.

36 (b) Fails to keep complete and accurate records of purchases and  
37 disposals of substances listed in chapter 69.50 RCW, or of controlled  
38 substances scheduled in, or pursuant to, the federal comprehensive drug

1 abuse prevention and control act of 1970. A physician and surgeon  
2 shall keep records of his or her purchases and disposals of these  
3 drugs, including the date of purchase, the date and records of the sale  
4 or disposal of the drugs by the physician and surgeon, the name and  
5 address of the person receiving the drugs, and the reason for the  
6 disposal of or the dispensing of the drugs to the person and shall  
7 otherwise comply with all state recordkeeping requirements for  
8 controlled substances.

9 (c) Writes false or fictitious prescriptions for controlled  
10 substances listed in chapter 69.50 RCW or scheduled in the federal  
11 comprehensive drug abuse prevention and control act of 1970.

12 (d) Prescribes, administers, or dispenses in a manner not  
13 consistent with public health and welfare controlled substances listed  
14 in chapter 69.50 RCW or scheduled in the federal comprehensive drug  
15 abuse prevention and control act of 1970.

16 (7) Nothing in this section may be construed to prohibit the  
17 governing body of a hospital from taking disciplinary actions against  
18 a physician and surgeon under professional peer review procedures.

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