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H.B. No. 2811

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prescribing of controlled substances and dangerous
3 drugs for acute pain.

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

5 SECTION 1. Subtitle A, Title 3, Occupations Code, is
6 amended by adding Chapter 107A to read as follows:

7 CHAPTER 107A. TREATMENT FOR ACUTE PAIN

8 Sec. 107A.001. DEFINITIONS. In this chapter:

9 (1) "Abuse" or "substance abuse" means the maladaptive
10 pattern of substance use manifested by recurrent and significant
11 adverse consequences related to the repeated use of controlled
12 substances or other drugs.

13 (2) "Acute pain" means the normal, predicted,
14 physiological response to a stimulus such as trauma, disease, and
15 operative procedures. Acute pain is time limited. The term does
16 not include:

17 (A) chronic pain;

18 (B) pain being treated as part of cancer care;

19 (C) pain being treated as part of hospice or
20 other end-of-life care; or

21 (D) pain being treated as part of palliative
22 care.

23 (3) "Addiction" means a primary, chronic, or
24 neurobiological disease characterized by craving and compulsive

1 use of drugs. Addiction is often characterized by impaired control
2 over drug use, including taking more drugs more often than
3 prescribed by a physician. It may also be characterized by
4 continued use despite harm to oneself or others. Genetic,
5 psychosocial, and environmental factors may influence the
6 development and manifestation of addiction. Physical dependence
7 and tolerance are normal physiological consequences of extended
8 drug therapy for pain and, alone, do not indicate addiction.

9 (4) "Chronic pain" means a state in which pain
10 persists beyond the usual course of an acute disease or healing of
11 an injury. Chronic pain may be associated with a chronic
12 pathological process that causes continuous or intermittent pain
13 over months or years.

14 (5) "Controlled substance" has the meaning assigned by
15 Section 481.002, Health and Safety Code.

16 (6) "Dangerous drug" has the meaning assigned by
17 Section 483.001, Health and Safety Code.

18 (7) "Diversion" means the use of drugs by anyone other
19 than the person for whom the drug was prescribed.

20 (8) "Pain" means an unpleasant sensory and emotional
21 experience associated with actual or potential tissue damage.

22 (9) "Physical dependence" means a state of adaptation
23 that is manifested by drug class-specific signs and symptoms that
24 can be produced by abrupt cessation, rapid dose reduction,
25 decreasing blood level of the drug, or administration of an
26 antagonist.

27 (10) "Practitioner" means a person, other than a

1 veterinarian, authorized to prescribe a controlled substance.

2 (11) "Tolerance" means a physiological state
3 resulting from regular use of a drug in which an increased dosage is
4 needed to produce a specific effect or in which a reduced effect is
5 observed with a constant dose over time. Tolerance does not
6 necessarily occur during opioid treatment and does not, alone,
7 indicate addiction.

8 (12) "Withdrawal" means the physiological and mental
9 readjustment that accompanies discontinuation of a drug for which a
10 person has established a physical dependency.

11 Sec. 107A.002. EVALUATION OF PATIENT WITH ACUTE PAIN. (a)
12 A practitioner's treatment of a patient's acute pain is evaluated by
13 considering whether the treatment meets the generally accepted
14 standard of care.

15 (b) A practitioner shall obtain a medical history and a
16 physical examination that includes a problem-focused examination
17 specific to the chief presenting complaint of the patient. The
18 patient's medical record must document the medical history and
19 physical examination.

20 (c) The Texas Medical Board shall adopt rules governing what
21 information a practitioner who is prescribing a controlled
22 substance or dangerous drug for acute pain or creating a treatment
23 plan for the treatment of acute pain must place in the patient's
24 medical record regarding the medical history and physical
25 examination of the patient. The rules adopted under this
26 subsection may create different standards for practitioners
27 treating patients with acute pain in an emergency department.

1 (d) Before prescribing a controlled substance or dangerous
2 drug for the treatment of acute pain, a practitioner must review
3 prescription data and history related to the patient under Section
4 481.076, Health and Safety Code.

5 (e) If a practitioner determines that reviewing the
6 patient's prescription data and history under Subsection (d) is not
7 necessary before prescribing a controlled substance or dangerous
8 drug to the patient, the practitioner must document in the
9 patient's medical record the practitioner's rationale for not
10 reviewing the data and history.

11 Sec. 107A.003. INFORMED CONSENT. (a) Each regulatory
12 agency that issues a license, certification, or registration to a
13 practitioner shall create specific written guidelines for a
14 discussion between the practitioner and a patient with acute pain,
15 or the patient's surrogate or guardian if the patient is unable to
16 give consent for the patient's medical treatment, about the risks
17 and benefits of the use of a controlled substance or dangerous drug
18 to treat the patient's acute pain.

19 (b) The written guidelines must require that the
20 discussion:

21 (1) be verbal;

22 (2) be documented by a signed document maintained in
23 the patient's medical record or a contemporaneous notation included
24 in the patient's medical record; and

25 (3) include an explanation of:

26 (A) the risk of addiction associated with the
27 drug prescribed, including any risk of developing an addiction or a

- 1 physical or psychological dependence on the drug;
2 (B) the risk of taking the drug in a dosage
3 greater than the dosage prescribed;
4 (C) the danger of taking the drug with
5 benzodiazepines, alcohol, or other central nervous system
6 depressants;
7 (D) the reasons why the prescription is
8 necessary;
9 (E) the responsibility of the patient to
10 safeguard all drugs in a secure location;
11 (F) methods for safely disposing of an unused
12 portion of a controlled substance or dangerous drug prescription;
13 (G) the patient's diagnosis;
14 (H) the proposed treatment plan;
15 (I) any anticipated therapeutic results,
16 including realistic expectations for sustained pain relief and
17 improved functioning and possibilities for lack of pain relief;
18 (J) therapies available in addition to or instead
19 of drug therapy, including non-pharmacological therapeutic
20 modalities or psychological techniques;
21 (K) potential side effects and techniques for
22 managing the side effects;
23 (L) possible adverse effects, including the
24 potential for tolerance and withdrawal; and
25 (M) the potential for impairment of judgment and
26 motor skills.
27 (c) A regulatory agency described by Subsection (a) may

1 develop written guidelines for written information to be provided
2 to the patient about the risks and benefits of a controlled
3 substance or dangerous drug used to treat the patient's acute pain.
4 The guidelines may not authorize the practitioner to provide the
5 written information under this subsection in lieu of discussing the
6 information verbally with the patient as described by Subsection
7 (b).

8 Sec. 107A.004. PERIODIC REVIEW OF TREATMENT OF ACUTE PAIN;
9 CONSULTATION AND REFERRAL. (a) If necessary, the practitioner
10 shall:

11 (1) see the patient being treated for acute pain for
12 periodic review at reasonable intervals; or

13 (2) subject to Subsection (c), refer the patient to
14 another practitioner for further evaluation and treatment.

15 (b) The practitioner shall review the patient's compliance
16 with the prescribed treatment plan and reevaluate the potential for
17 substance abuse or diversion.

18 (c) Patients who are at risk for substance abuse or
19 addiction and patients with acute pain and histories of substance
20 abuse or addiction or with comorbid psychiatric disorders require
21 the consideration of a consultation with or referral to an expert in
22 the management of those patients.

23 SECTION 2. The Texas Medical Board shall adopt and
24 implement the rules described by Section 107A.002(c), Occupations
25 Code, as added by this Act, not later than March 1, 2020.

26 SECTION 3. Each regulatory agency that issues a license,
27 certification, or registration to a practitioner as defined by

1 Section 107A.001, Occupations Code, as added by this Act, shall
2 create and make available to the practitioner the specific written
3 discussion guidelines required by Section 107A.003, Occupations
4 Code, as added by this Act, not later than March 1, 2020.

5 SECTION 4. The change in law made by this Act applies only
6 to a prescription issued on or after March 1, 2020. A prescription
7 issued before that date is governed by the law in effect immediately
8 before March 1, 2020, and the former law is continued in effect for
9 that purpose.

10 SECTION 5. This Act takes effect September 1, 2019.