By: Price H.B. No. 2117

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 107A. TREATMENT FOR ACUTE PAIN

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

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

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

(A) chronic pain;

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

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

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

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

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

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

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

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

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

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

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

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

veterinarian, authorized to prescribe a controlled substance.

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

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

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

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

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

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

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

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

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

(1) be verbal;

(2) except as provided by Subsection (c), be completed before the prescription is issued;

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

(4) include an explanation of:

(A) the risk of addiction associated with the drug prescribed, including any risk of developing an addiction or a physical or psychological dependence on the drug;

(B) the risk of taking the drug in a dosage greater than the dosage prescribed;

(C) the danger of taking the drug with benzodiazepines, alcohol, or other central nervous system depressants;

(D) the reasons why the prescription is necessary;

(E) the responsibility of the patient to safeguard all drugs in a secure location;

(F) methods for safely disposing of an unused portion of a controlled substance or dangerous drug prescription;

(G) the patient's diagnosis;

(H) the proposed treatment plan;

(I) any anticipated therapeutic results, including realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief;

(J) therapies available in addition to or instead of drug therapy, including non-pharmacological therapeutic modalities or psychological techniques;

(K) potential side effects and techniques for managing the side effects;

(L) possible adverse effects, including the potential for tolerance and withdrawal; and

(M) the potential for impairment of judgment and

motor skills.

(c) In the case of prescribing a controlled substance or dangerous drug to a patient for acute pain following surgery, the written guidelines must:

(1) allow the practitioner to discuss the information described by Subsection (b)(4) with the patient at different phases of the healing process, at the time when receiving that information would be most effective, regardless of whether some or all of the information is discussed with the patient after the prescription is issued and the patient has begun taking the controlled substance or dangerous drug;

(2) provide recommendations as to when each piece of information described by Subsection (b)(4) should be discussed with the surgical patient;

(3) allow the practitioner to determine when each explanation described by Subsection (b)(4) should occur, based on the patient's best interest; and

(4) allow the practitioner to delegate to a licensed physician assistant, nurse practitioner, or registered nurse any explanation described by Subsection (b)(4).

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

(b).

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

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

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

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

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

SECTION 2. The Texas Medical Board shall adopt and implement the rules described by Section 107A.002(c), Occupations Code, as added by this Act, not later than March 1, 2022.

SECTION 3. Each regulatory agency that issues a license, certification, or registration to a practitioner as defined by Section 107A.001, Occupations Code, as added by this Act, shall create and make available to the practitioner the specific written discussion guidelines required by Section 107A.003, Occupations Code, as added by this Act, not later than March 1, 2022.

SECTION 4. The change in law made by this Act applies only to a prescription issued on or after March 1, 2022. A prescription

issued before that date is governed by the law in effect immediately before March 1, 2022, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2021.