



GOV. MSG. NO. **773**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 30, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 30, 2008, the following bill was signed into law:

SB2157 SD1 HD2 CD1

A BILL FOR AN ACT RELATING TO HEALTH.
(ACT 131)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. According to the American College of
2 Physicians, internal medicine section, most pain from disease
3 and chronic conditions can be controlled or even eliminated.
4 For example, even advanced pain can be controlled in 90 to 99
5 per cent of cases. In nine out of ten cases, physicians can
6 control pain by using pills alone without having to use
7 injections, operations, or other methods. In those few cases in
8 which pain from disease and chronic conditions cannot be
9 eliminated completely, it can be reduced so that the person can
10 live with the pain from day-to-day and still accomplish
11 activities that are important to the person. The American
12 College of Physicians further states that:

- 13 (1) The person with advanced pain from disease and chronic
14 conditions has a right to effective pain control;
- 15 (2) Part of the job of a caregiver is to ensure effective
16 pain control;



1 (3) Pain control takes time to achieve, so persistence is
2 vital;

3 (4) Only the person with pain knows what the pain is like;
4 and

5 (5) Never assume that pain means the underlying medical
6 condition is spreading.

7 Furthermore, a pain initiative in Texas states that, while
8 alternatives to drug treatment such as biofeedback, hypnosis,
9 and acupuncture can be effective for some types of pain:

- 10 (1) Most pain patients will also require narcotics;
- 11 (2) Addiction is extremely rare when narcotics are used to
12 treat pain from disease and chronic conditions; and
- 13 (3) Virtually all pain from disease and chronic conditions
14 can be relieved.

15 The legislature finds that Hawaii law should permit pain
16 patients to be prescribed appropriate narcotic pain medication.
17 The legislature further finds that pain patients deserve
18 appropriate medical care that relieves the debilitating and
19 intolerable discomforts of pain as much as possible, so that
20 they can lead normal lives to the greatest extent possible and
21 so that their caregivers can be relieved of stress and anxiety



1 in witnessing the ravaging effects of pain on the quality of
2 life of the pain patient in their care.

3 The purpose of this Act is to clarify a pain patient's
4 right to be prescribed controlled substances to relieve pain.

5 SECTION 2. Section 327H-2, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§327H-2[+] Bill of rights. (a) The pain patient's
8 bill of rights includes the following:

- 9 (1) A patient who suffers from severe acute pain or severe
10 chronic pain has the option to request or reject the
11 use of any or all modalities to relieve the pain;
- 12 (2) A patient who suffers from severe acute pain or severe
13 chronic pain has the option to choose from appropriate
14 pharmacologic treatment options to relieve severe
15 acute pain or severe chronic pain, including opiate
16 medications, without first having to submit to an
17 invasive medical procedure.

18 For purposes of this paragraph, "invasive medical
19 procedure" means surgery, destruction of a nerve or
20 other body tissue by manipulation, or the implantation
21 of a drug delivery system or device;



- 1 (3) A patient's physician may refuse to prescribe opiate
2 medication for a patient who requests a treatment for
3 severe acute pain or severe chronic pain. However,
4 that physician may inform the patient of physicians
5 who are qualified to treat severe acute pain and
6 severe chronic pain employing methods that include the
7 use of opiates;
- 8 (4) A physician who uses opiate therapy to relieve severe
9 acute pain or severe chronic pain may prescribe a
10 dosage deemed medically necessary to relieve the pain;
- 11 (5) A patient may voluntarily request that the patient's
12 physician provide an identifying notice of the
13 prescription for purposes of emergency treatment or
14 law enforcement identification; and
- 15 (6) With regard to pain patients, the application of this
16 section shall be guided by the medical principle that
17 physical tolerance and dependence are normal
18 consequences of sustained use of opiate medication,
19 distinguishable from psychological dependency or
20 addiction that bears no relationship to pain
21 experienced by a patient. For the purposes of this
22 section, psychological dependency shall be



1 characterized by a patient's compulsion to take a drug
2 notwithstanding the fact that the patient knows the
3 harmful and destructive effect of the drug on the
4 patient. The distinction is one of treatment of pain
5 as opposed to feeding a psychological need. A patient
6 who suffers severe acute pain or severe chronic pain
7 secondary to a diagnosis in any form of disease and
8 chronic conditions may be entitled to receive a
9 prescription of opiate medication for the treatment of
10 the pain, if requested by that patient; provided that:

- 11 (A) The particular opiate is appropriate to the
12 treatment of that pain; and
13 (B) The patient is not addicted to the opiate. For
14 the purposes of this subparagraph, the term
15 "addicted" refers to a psychological dependence,
16 rather than a progressive physical tolerance for
17 the opiate to relieve the pain; provided that the
18 term does not include a narcotic-dependent person
19 as defined in section 329-40.

20 ~~[(6)]~~ (b) Nothing in this section shall be construed to:

21 ~~[(A)]~~ (1) Expand the authorized scope of practice of
22 any licensed physician;



1 ~~[(B)]~~ (2) Limit any reporting or disciplinary
2 provisions applicable to licensed physicians and
3 surgeons who violate prescribing practices; and

4 ~~[(C)]~~ (3) Prohibit the discipline or prosecution of a
5 licensed physician for:

6 ~~[(i)]~~ (A) Failing to maintain complete, accurate,
7 and current records that document the
8 physical examination and medical history of
9 a patient, the basis for the clinical
10 diagnosis of a patient, and the treatment
11 plan for a patient;

12 ~~[(ii)]~~ (B) Writing false or fictitious
13 prescriptions for controlled substances
14 scheduled in the Federal Comprehensive Drug
15 Abuse Prevention and Control Act of 1970, 21
16 ~~[U.S.C.]~~ United States Code 801 et seq. or
17 in chapter 329;

18 ~~[(iii)]~~ (C) Prescribing, administering, or
19 dispensing pharmaceuticals in violation of
20 the provisions of the Federal Comprehensive
21 Drug Abuse Prevention and Control Act of



1 1970, 21 [~~U.S.C.~~] United States Code 801 et
2 seq. or of chapter 329;

3 [~~(iv)~~] (D) Diverting medications prescribed for a
4 patient to the licensed physician's own
5 personal use; and

6 [~~(v)~~] (E) Causing, or assisting in causing, the
7 suicide, euthanasia, or mercy killing of any
8 individual; provided that it is not
9 "causing, or assisting in causing, the
10 suicide, euthanasia, or mercy killing of any
11 individual" to prescribe, dispense, or
12 administer medical treatment for the purpose
13 of treating severe acute pain or severe
14 chronic pain, even if the medical treatment
15 may increase the risk of death, so long as
16 the medical treatment is not also furnished
17 for the purpose of causing, or the purpose
18 of assisting in causing, death for any
19 reason."

20 SECTION 3. Section 329-38, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) A schedule II controlled substance prescription
2 shall:

3 (1) Be filled within [~~three~~] seven days following the date
4 the prescription was issued to the patient; and

5 (2) Be supplied to a patient only if the prescription has
6 been filled and held by the pharmacy for not more than
7 seven days."

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.



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APPROVED this 30 day of MAY, 2008



GOVERNOR OF THE STATE OF HAWAII



