

JAN 17 2008

---

---

# 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 ninety to  
5 ninety-nine per cent of cases. In nine out of ten cases,  
6 physicians can control pain by using pills alone without having  
7 to use injections, operations, or other methods. In those few  
8 cases in which pain from disease and chronic conditions cannot  
9 be eliminated completely, it can be reduced so that the person  
10 can 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) Pain from disease and chronic conditions can be  
14           controlled;
- 15           (2) The person with advanced pain from disease and chronic  
16           conditions has a right to effective pain control;



1 (3) Part of the job as a caregiver is to ensure effective  
2 pain control;

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

5 (5) Only the person with pain knows what the pain is like;  
6 and

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

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

12 (1) Most pain patients will also require narcotics;

13 (2) Addiction is extremely rare when narcotics are used to  
14 treat pain from disease and chronic conditions; and

15 (3) Virtually all pain from disease and chronic conditions  
16 can be relieved.

17 A 1999 national pain survey revealed that fifty million  
18 Americans suffer from chronic pain as a result of chronic  
19 disease, disorder, or accident. It was estimated that another  
20 twenty-five million people live with acute pain from accident or  
21 surgery. Pain is a silent epidemic that affects the lives of  
22 individuals and their families. According to the American



1 Academy of Pain Management, effective pain and symptom  
2 management is an ethical obligation for all healthcare providers  
3 and organizations.

4       The *2000 Pain in America: A Research Report* showed that,  
5 although eighty per cent of Americans feel that pain is a  
6 natural part of aging, only sixty-four per cent would seek  
7 medical treatment for intolerable pain. The report also found  
8 that sixty per cent of Americans believe that pain is "just  
9 something you have to live with." The perception of twenty-  
10 eight per cent of the population is that there is no effective  
11 treatment for pain. It is thus important for individuals, their  
12 families, and their caregivers to know that there are many  
13 effective treatment options for the management of pain and that  
14 people do not have to suffer from chronic, debilitating,  
15 intolerable pain.

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



1 witnessing the ravaging effects of pain on the quality of life  
2 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 shall 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 the patient is not addicted to the opiate; and  
12 provided further that the particular opiate is  
13 appropriate to the treatment of that pain. For  
14 purposes of this paragraph, the term "addicted" refers  
15 to a psychological dependence, rather than a  
16 progressive physical tolerance for the opiate to  
17 relieve the pain; provided that the term does not  
18 include a narcotic-dependent person as defined in  
19 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. 801 et seq. or in chapter 329;  
17                           ~~[(iii)]~~   (C)   Prescribing, administering, or  
18                                  dispensing pharmaceuticals in violation of  
19                                  the provisions of the Federal Comprehensive  
20                                  Drug Abuse Prevention and Control Act of  
21                                  1970, 21 U.S.C. 801 et seq. or of chapter  
22                                  329;



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

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

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

20                    "(b) A schedule II controlled substance prescription  
21                    shall:



- 1 (1) Be filled within [~~three~~] seven days following the date
- 2 the prescription was issued to the patient; and
- 3 (2) Be supplied to a patient only if the prescription has
- 4 been filled and held by the pharmacy for not more than
- 5 seven days."

6 SECTION 4. Statutory material to be repealed is bracketed  
 7 and stricken. New statutory material is underscored.

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

9

INTRODUCED BY: Rosalyn H Baker

Arnold Y. J. [unclear]

Clarence K. [unclear]

Will [unclear]

Carol [unclear]

[unclear] Shiranne [unclear]

[unclear]

[unclear]



**Report Title:**

Controlled Substances; Pain Patient's Bill of Rights

**Description:**

Clarifies the prescribing of opiates for pain treatment.  
Extends the time limit in which scheduled II controlled  
substances prescriptions must be filled.

