MISSISSIPPI LEGISLATURE REGULAR SESSION 2003

By: Representatives Eads, Taylor To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 971

AN ACT TO AMEND SECTION 41-61-59, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTIFICATION TO THE BUREAU OF NARCOTICS OF DEATHS CAUSED BY DRUG OVERDOSE; TO PROVIDE THAT DISCIPLINARY ACTIONS SHALL NOT BE BROUGHT AGAINST HEALTH CARE PROVIDERS AND STATE CRIMINAL PROSECUTIONS SHALL NOT BE BROUGHT AGAINST HEALTH CARE PROVIDERS FOR PRESCRIBING, DISPENSING OR ADMINISTERING TREATMENT FOR THE THERAPEUTIC PURPOSE OF RELIEVING INTRACTABLE PAIN WHEN SUCH TREATMENT COMPLIES WITH AN ACCEPTED GUIDELINE FOR PAIN MANAGEMENT; TO REVISE DEATH AFFECTING THE PUBLIC INTEREST; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-61-59, Mississippi Code of 1972, is amended as follows:

41-61-59. (1) A person's death which affects the public interest as specified in subsection (2) of this section shall be promptly reported to the medical examiner by the physician in attendance, any hospital employee, any law enforcement officer having knowledge of the death, the embalmer or other funeral home employee, any emergency medical technician, any relative or any other person present. The appropriate medical examiner shall notify the municipal or state law enforcement agency or sheriff and take charge of the body. The appropriate medical examiner shall notify the Mississippi Bureau of Narcotics within twenty-four (24) hours of receipt of the body in cases of death which are caused by drug overdose or which are believed to be caused by drug overdose.

(2) Subsections (2) through (8) of this section may be cited as the Pain Relief Act.

(3) For the purposes of subsections (2) through (8) of this section:

(a) "Board" means the State Board of Medical Licensure, the Mississippi Board of Nursing, the State Board of Dental Examiners or the State Board of Pharmacy.

(b) "Physician" means any physician or osteopath licensed by the State Board of Medical Licensure.

(c) "Nurse" means any nurse licensed by the Mississippi Board of Nursing, including nurse practitioners or advanced practice nurses.

(d) "Dentist" means any dentist licensed by the State Board of Dental Examiners.

(e) "Podiatrist" means any podiatrist licensed by the State Board of Medical Licensure.

(f) "Pharmacist" means any pharmacist licensed by the State Board of Pharmacy.

(g) "Intractable pain" means a state of pain, even if temporary, in which reasonable efforts to remove or remedy the cause of the pain have failed or have proven inadequate.

(h) "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices, and guidelines.

(i) "Accepted guideline" means a practice or care guideline for pain management developed by a nationally recognized clinical or professional association or a specialty society or government sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. If no currently accepted guidelines are available, then rules, regulations, policies or guidelines adopted or issued by the board may serve the function of those guidelines for the purposes of subsections (2) through (8) of this section. Any such rules, regulations, policies, guidelines of the board must conform to the intent of subsections (2) through (8) of this section. Guidelines established primarily for the purposes

of coverage, payment, or reimbursement do not qualify as accepted practice or care guidelines when offered to limit treatment options otherwise covered by subsections (2) through (8) of this section.

(j) "Therapeutic purpose" means the use of pharmaceutical and nonpharmaceutical medical treatment that substantially conforms to accepted guidelines for pain management.

(k) "Disciplinary action" includes both informal and formal, and both remedial and punitive actions taken by the board against a health care provider.

(l) "Health care provider" means a licensed professional defined in paragraphs (b), (c), (d), (e) or (f) of this subsection.

(4) (a) Disciplinary action or state criminal prosecution shall not be brought against a health care provider for prescribing, dispensing or administering medical treatment for the therapeutic purpose of relieving intractable pain, if the health care provider can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that guideline and with the standards of practice identified in subsection (5) of this section. The showing of substantial compliance with an accepted guideline may be rebutted only by clinical expert testimony.

(b) If a disciplinary action or criminal prosecution is pursued against a health care provider, the board or prosecutor shall produce clinical expert testimony supporting the finding or charge of violation of disciplinary standards or other legal requirements on the part of the health care provider. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(c) The provisions of this subsection shall apply to health care providers in the treatment of all patients for intractable pain regardless of the patient's prior or current

chemical dependency or addiction. The board may develop and adopt or issue rules, regulations, policies or guidelines establishing standards and procedures for the application of subsections (2) through (8) of this section to the care and treatment of chemically dependent individuals.

(5) Nothing in subsections (2) through (8) of this section shall prohibit discipline or prosecution of a health care provider for:

(a) Failing to maintain complete, accurate and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

(b) Writing false or fictitious prescriptions for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 USCS 801 et seq., or in the Uniform Controlled Substances Law (41-29-101 et seq.);

(c) Prescribing, administering or dispensing a pharmaceutical in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 USCS 801 et seq., or in the Uniform Controlled Substances Law (41-29-101 et seq.); or

(d) Diverting medication prescribed for a patient to the provider's own personal use.

(6) The board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of subsections (2) through (8) of this section. At a minimum, the board shall inform any health care provider investigated in relation to the provider's practices in the management of pain of the existence of subsections (2) through (8) of this section.

(7) Nothing in subsections (2) through (8) of this section shall be construed as expanding the authorized scope of practice of any health care provider.

(8) No disciplinary action shall be brought against any health care provider for prescribing, dispensing or administering treatment for the therapeutic purpose of relieving intractable pain if the prescribing, dispensing or administering of that treatment is within the scope of the health care provider and it is done in accordance with subsection (4) of this section.

(9) A death affecting the public interest includes, but is not limited to, any of the following:

(a) Violent death, including homicidal, suicidal or accidental death.

(b) Death caused by thermal, chemical, electrical or radiation injury.

(c) Death caused by criminal abortion, including self-induced abortion, or abortion related to or by sexual abuse.

(d) Death related to disease thought to be virulent or contagious which may constitute a public hazard.

(e) Death that has occurred unexpectedly or from an unexplained cause.

(f) Death of a person confined in a prison, jail or correctional institution.

(g) Death of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or in prediagnosed terminal or bedfast cases, within thirty (30) days preceding death.

(h) Death of a person where the body is not claimed by a relative or a friend.

(i) Death of a person where the identity of the deceased is unknown.

(j) Death of a child under the age of two (2) years where death results from an unknown cause or where the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.

(k) Where a body is brought into this state for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death.

(l) Where a person is presented to a hospital emergency room unconscious and/or unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital.

(m) Death which is caused by drug overdose or which is believed to be caused by drug overdose.

(n) Death of a nursing facility resident, unless a physician was in attendance and personally examined the resident within thirty-six (36) hours prior to death and certifies that the death occurred as a result of a prediagnosed terminal condition without intervening cause.

(o) Death of an assisted living facility resident, unless a physician was in attendance and personally examined the resident within thirty-six (36) hours prior to death and certifies that the death occurred as a result of a prediagnosed terminal condition without intervening cause.

(p) Death of a hospice facility resident, unless a physician was in attendance and personally examined the resident within thirty-six (36) hours prior to death and certifies that the death occurred as a result of a prediagnosed terminal condition without intervening cause.

(10) The State Medical Examiner is empowered to investigate deaths, under the authority hereinafter conferred, in any and all

political subdivisions of the state. The county medical examiners and county medical examiner investigators, while appointed for a specific county, may serve other counties on a regular basis with written authorization by the State Medical Examiner, or may serve other counties on an as-needed basis upon the request of the ranking officer of the investigating law enforcement agency. The county medical examiner or county medical examiner investigator of any county which has established a regional medical examiner district under subsection (4) of Section 41-61-77 may serve other counties which are parties to the agreement establishing the district, in accordance with the terms of the agreement, and may contract with counties which are not part of the district to provide medical examiner services for such counties. If a death affecting the public interest takes place in a county other than the one where injuries or other substantial causal factors leading to the death have occurred, jurisdiction for investigation of the death may be transferred, by mutual agreement of the respective medical examiners of the counties involved, to the county where such injuries or other substantial causal factors occurred, and the costs of autopsy or other studies necessary to the further investigation of the death shall be borne by the county assuming jurisdiction.

(11) The chief county medical examiner or chief county medical examiner investigator may receive from the county in which he serves a salary of Seven Hundred Fifty Dollars ($750.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75, provided that no county shall pay the chief county medical examiner or chief county medical examiner investigator less than One Hundred Dollars ($100.00) per month as a salary, in addition to other compensation provided by law. In any county having one or more deputy medical examiners or deputy medical examiner investigators, each deputy may receive from the county in which he serves, in the discretion of the board of supervisors, a

salary of not more than Seven Hundred Fifty Dollars ($750.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75. For this salary the chief shall assure twenty-four-hour daily and readily available death investigators for the county, and shall maintain copies of all medical examiner death investigations for the county for at least the previous five (5) years. He shall coordinate his office and duties and cooperate with the State Medical Examiner, and the State Medical Examiner shall cooperate with him.

(12) A body composed of the State Medical Examiner, whether appointed on a permanent or interim basis, the Director of the State Board of Health or his designee, the Attorney General or his designee, the President of the Mississippi Coroners' Association (or successor organization) or his designee, and a certified pathologist appointed by the Mississippi State Medical Association shall adopt, promulgate, amend and repeal rules and regulations as may be deemed necessary by them from time to time for the proper enforcement, interpretation and administration of Sections 41-61-51 through 41-61-79, in accordance with the provisions of the Mississippi Administrative Procedures Law, being Section 25-43-1 et seq.

SECTION 2. This act shall take effect and be in force from and after July 1, 2003.