

By: Senator(s) Jordan

To: Public Health and Welfare

SENATE BILL NO. 2681

1 AN ACT TO CODIFY SECTION 41-29-315, MISSISSIPPI CODE OF 1972,  
 2 TO PROVIDE THAT HEALTH CARE PROVIDERS SHALL NOT BE SUBJECT TO  
 3 DISCIPLINARY ACTION SOLELY FOR PRESCRIBING CONTROLLED SUBSTANCES  
 4 FOR THE TREATMENT OF CHRONIC PAIN; TO PROVIDE FOR A PAIN  
 5 MANAGEMENT REVIEW COMMITTEE TO INFORM HEALTH CARE PROVIDERS OF  
 6 AVAILABLE METHODS FOR TREATING CHRONIC PAIN AND TO INVESTIGATE  
 7 COMPLAINTS REGARDING THE TREATMENT OF CHRONIC PAIN IN VIOLATION OF  
 8 THIS SECTION; TO PROVIDE CERTAIN TREATMENT STANDARDS; TO PROVIDE  
 9 FOR IMMUNITY FROM CRIMINAL PROSECUTION; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** The following shall be codified as Section  
 12 41-29-315, Mississippi Code of 1972:

13 41-29-315. (1) This section shall be known and may be cited  
 14 as the "Chronic Pain Treatment Act."

15 (2) The Legislature finds that:

16 (a) Pain management plays an important role in good  
 17 medical practice;

18 (b) Health care providers should recognize the need to  
 19 make pain relief accessible to all patients with chronic pain; and

20 (c) Health care providers should view pain management  
 21 as a regular part of their medical practice for all patients with  
 22 chronic pain.

23 (3) As used in this section:

24 (a) "Board" means the Mississippi State Board of  
 25 Medical Licensure, the Mississippi Board of Nursing, the State  
 26 Board of Dental Examiners or the State Board of Pharmacy, as is  
 27 appropriate relative to the licensed provider;

28 (b) "Chronic pain" means pain which persists beyond the  
 29 usual course of a disease, beyond the expected time for healing

30 from bodily trauma, or pain associated with a long term incurable  
31 or intractable medical illness or disease;

32 (c) "Controlled substance" means any substance defined,  
33 enumerated or included in federal or state statute or regulations  
34 21 CFR, Sections 1308.11-15, or Sections 41-29-115 through  
35 41-29-119, Mississippi Code of 1972, or any substance which may  
36 hereafter be designated as a controlled substance by amendment or  
37 supplementation of such regulations and statutes;

38 (d) "Disciplinary action" means any remedial or  
39 punitive sanctions imposed on a licensed health care provider by  
40 the board;

41 (e) "Patient" means a person seeking medical diagnosis  
42 and treatment;

43 (f) "Physician" means a licensee of the State Board of  
44 Medical Licensure;

45 (g) "Nurse" means any nurse licensed by the Mississippi  
46 Board of Nursing, including nurse practitioners or advanced  
47 practice nurses;

48 (h) "Dentist" means any dentist licensed by the State  
49 Board of Dental Examiners;

50 (i) "Podiatrist" means any podiatrist licensed by the  
51 State Board of Medical Licensure;

52 (j) "Pharmacist" means any pharmacist licensed by the  
53 State Board of Pharmacy;

54 (k) "Health care provider" means a licensed  
55 professional defined in paragraph (f), (g), (h), (i) or (j) of  
56 this subsection (3).

57 (4) (a) A health care provider shall not be subject to  
58 disciplinary action by the Mississippi State Board of Medical  
59 Licensure solely for prescribing controlled substances for the  
60 relief of chronic pain.

61 (b) The board shall direct the Pain Management Review  
62 Committee to use the criteria under subsections (7) and (8) of

63 this section to review a health care provider's conduct in regard  
64 to prescribing, administering, ordering or dispensing pain  
65 medications and other drugs necessary to treat chronic pain.

66 (5) The board shall:

67 (a) Make reasonable efforts to notify health care  
68 providers under its jurisdiction of the existence of the "Chronic  
69 Pain Treatment Act";

70 (b) Inform any health care provider licensed by the  
71 board investigated regarding the provider's practices in the  
72 management of pain of the existence of the "Chronic Pain Treatment  
73 Act"; and

74 (c) In a disciplinary hearing, the board shall present  
75 opinion evidence from a full-time active health care provider in  
76 direct patient care knowledgeable in pain management. The health  
77 care provider has the right to present testimony from a full-time  
78 active practice health care provider in direct patient care  
79 knowledgeable in pain management.

80 (6) (a) Only in the event the board finds, after a full  
81 hearing, and by recommendation of the Pain Management Committee,  
82 gross and ignorant malpractice may the board incrementally impose  
83 sanctions as follows:

84 (i) Monitor prescribing habits of the health care  
85 provider not to exceed six (6) months;

86 (ii) Require the health care provider to  
87 voluntarily surrender his or her United States Drug Enforcement  
88 Agency registration to the board for a specified period of time  
89 not to exceed three (3) months;

90 (iii) Suspend the health care provider's license,  
91 stay revocation and require monitoring of the health care  
92 provider's habits for a specified time;

93 (iv) Revoke the health care provider's license,  
94 stay revocation and require monitoring of the health care  
95 provider's prescribing habits for a specified time; and

96 (v) Revoke the health care provider's license for  
97 serious violations of statutes and regulations.

98 (b) With a finding of severe violation of statutes and  
99 regulations, the board may initially impose more severe sanctions.

100 (c) At any level of sanction, the board may require  
101 continuing medical education hours in proper prescribing habits.

102 (7) A health care provider may, based on evaluation and  
103 management of a patient's individual needs:

104 (a) Treat a patient who develops chronic pain with a  
105 controlled substance to relieve the patient's pain;

106 (b) Continue to treat the patient for as long as the  
107 pain persists;

108 (c) Treat the pain by managing it with controlled  
109 substances in amounts or combinations that may not be appropriate  
110 for treating another medical condition;

111 (d) Administer large doses of controlled substances for  
112 pain management if the benefit outweighs the risk of the large  
113 dose; and

114 (e) Administer a large dose of a controlled substance  
115 even if its use may increase the risk of death, if the purpose is  
116 not to cause or assist in a patient's death.

117 (8) A health care provider may not:

118 (a) Prescribe or administer controlled substances  
119 solely to treat a patient for chemical dependency, except as  
120 provided for in state law or physician protocol;

121 (b) Prescribe or administer controlled substances to a  
122 person for other than legitimate medical purposes; or

123 (c) Cause or assist in causing the suicide, euthanasia  
124 or mercy killing of any individual. However, causing or assisting  
125 in causing the suicide, euthanasia or mercy killing of any  
126 individual does not include prescribing, dispensing or  
127 administering medical treatment for the purpose of alleviating  
128 pain or discomfort, even if that use may increase the risk of

129 death, so long as the treatment is not furnished for the purpose  
130 of causing or assisting in causing the death of an individual.

131 (9) (a) There is created the Pain Management Review  
132 Committee appointed by the Mississippi State Board of Medical  
133 Licensure.

134 (b) In lieu of a disciplinary hearing, the board must  
135 refer a health care provider to the committee for review and  
136 recommendations.

137 (c) The committee shall consist of five (5) full-time  
138 active health care providers in direct patient care members, two  
139 (2) of whom may be board certified pain management specialists and  
140 three (3) of whom may be health care providers with significant  
141 pain management in their practices or with a degree in pharmacy,  
142 appointed by the board from a list provided by the Mississippi  
143 Osteopathic Medical Association, the Mississippi Medical Society  
144 and the Mississippi Pain Society.

145 (d) The committee shall:

146 (i) In cooperation with the Mississippi  
147 Osteopathic Medical Association, the Mississippi Medical Society  
148 and the Mississippi Pain Society, develop guidelines for  
149 investigations of complaints regarding conduct in violation of  
150 this section;

151 (ii) Review complaints on an individual patient  
152 needs basis regarding health care providers treating chronic pain  
153 in violation of this section; and

154 (iii) Provide an objective critique to the board  
155 for board determination in a timely manner and, if determined,  
156 before the board's disciplinary hearing.

157 (10) This section does not condone, authorize or approve  
158 mercy killing or euthanasia, and no treatment authorized by this  
159 section may be used for mercy killing or euthanasia.

160 (11) No health care provider shall be subject to criminal  
161 prosecution for prescribing or administering controlled substances

162 under appropriate criteria in the course of treatment of a person  
163 for chronic pain.

164         **SECTION 2.** This act shall take effect and be in force from  
165 and after July 1, 2004.