

SUBJECT: Physician treatment of acute or chronic pain for chemically dependent persons

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Berlanga, Hirschi, Coleman, Davila, Delisi, Glaze

0 nays

3 absent — Janek, Maxey, Rodriguez

WITNESSES: For — Stratton C. Hill, Texas Medical Association, Texas Cancer Pain Initiative; Michael C. Fitzpatrick, American Cancer Society; Roy S. Martin; Deborah M. Thorpe, Texas Nurses Association; Sharon Weinstein, Texas Pain Society; Lester Van Pelt, III, Republican Party of Texas; Nina B. Wright, San Marcos Drug Free Business Initiative; Mark Mullinax; Cherry Hershberger, Texas Hospice Organization; Carolyn Parker, Texas AIDS Network; David Ralston, Texas Pain Society; Leigh Fredholm, Hospice Austin; Arana Hagan, Texas Association of Home Care; Terry Boucher, Texas Osteopathic Medical Association

Against — None

On — Cynthia Culmo, Texas Department of Health; David Boatright, Texas Department of Public Safety

BACKGROUND
: Intractable pain is defined in law as pain from a cause that cannot be removed or otherwise treated and for which no relief or cure is possible through generally accepted medical practices. The Texas Intractable Pain Treatment Act prohibits a physician from prescribing or administering dangerous drugs or controlled substances to persons the physician knows or should know is using drugs for nontherapeutic purposes or whom the physician is treating for chemical dependency.

DIGEST: CSHB 120 would amend the Texas Intractable Pain Treatment Act to allow under certain conditions physicians to relieve pain using dangerous drugs or controlled substances for patients who have acute or chronic painful medical conditions and who 1) are drug abusers, 2) have a history of drug abuse but

not now abusing drugs, or 3) live in an environment that poses a risk for drug misuse.

Physicians would be authorized to prescribe or administer drugs only for legitimate medical purposes, using appropriate doses, for an appropriate length of time, and for as long as pain persists. Physicians would be required to monitor the patient to ensure the prescribed drugs were used only for the treatment of the patient's condition, by specifically documenting 1) the understanding between the physician and the patient about the patient's treatment, 2) the name of the prescribed drug, 3) the dosage and method of taking the drug, 4) the number of dose units prescribed, and 5) the frequency of prescribing and dispensing the drug. The physician also would have to consult with a psychologist, psychiatrist, or other health professional expert in the treatment of addictions, as appropriate.

The bill would allow the Texas State Board of Medical Examiners to cancel, revoke or suspend a physician's license for dispensing nontherapeutic drugs, except for legitimate medical purposes defined by the board.

The bill would take effect September 1, 1997, and would apply only to a dangerous drug or controlled substance prescribed on or after that date.

**SUPPORTERS
SAY:**

CSHB 120 would conform existing law concerning control of intractable pain to physician practices authorized by the state medical examiners board, continue to prohibit the illegal prescription and administration of dangerous drugs and controlled substances, and help relieve patient pain and suffering. It would not increase the likelihood of illegal drug sales or the use of marijuana for medicinal purposes, but it would correct an oversight in the law that impedes some doctors from rendering needed and humane medical treatment.

The Intractable Pain Treatment Act was enacted in 1989 to authorize the use of dangerous or controlled substances to control intractable pain under conditions that also strongly enforce the legal and legitimate use of the drugs. The act specifically provides no authority to physicians to prescribe dangerous or controlled substances to drug abusers; however, it does not specifically prohibit or allow for the treatment of drug abusers in intractable pain, creating confusion about lawful medical practices.

CSHB 120 would conform the law to current Board of Medical Examiner regulations. Due to questions of interpretation, some doctors fear that they could be subject to criminal and other penalties by alleviating the pain in some of their patients who currently or formerly abused drugs, even though the board authorizes by regulation intractable pain treatment for current or former drug abusers.

CSHB 120 would promote fairness and compassionate treatment of all patients in pain. Access to pain medication should not be limited by a moral view on current or previous patient behavior. If moral or healthy conduct were a requisite for medical care, then patients who smoked also would not be allowed treatment for lung cancer, patients who drove too fast also would not be allowed trauma care. Without this change, some patients who have worked hard to successfully recover from chemical dependency, and who have been drug-free for years, could be denied needed respite from pain.

Painful diseases such as cancer and traumas such as severe burns affect thousands of people regardless of their personal background; it would be inhumane to deny pain-alleviating medications to current or formerly chemical dependent patients when those medications are normally administered to all others in similar medical straits. Terminally ill patients should be given all compassionate and medical opportunity available to live the remainder of their lives in as comfortable a condition as possible.

CSHB 120 could not in any way be interpreted as authorizing use of marijuana. The Intractable Pain Treatment Act specifically addresses the use of only two types of drug classifications, Class II and Class III. Marijuana is a Class I type of drug, and its prescription is not allowed in current law nor would it be authorized by this bill. Marijuana is a federally controlled drug, and Texas does not have the authority to make its use legal; voter initiatives in California and in Arizona that purport to legalize medical use of marijuana are now being challenged by the federal government in court.

**OPPONENTS
SAY:**

CSHB 120 should specifically prohibit the medical use of marijuana, leaving no room for interpretation by any physicians who might wish to prescribe marijuana to their patients. Without a specific prohibition, it is conceivable that the courts could interpret the bill to have passively

authorized medicinal use of marijuana, even though it is against legislative intent.

NOTES:

The committee substitute retained current law that the original version of the bill would have been deleted relating to the authorization of the medical board to cancel, revoke or suspend the license of any physician who prescribed drugs not in a manner consistent with public health and welfare.