

1 SB113
2 147608-3
3 By Senators Ward, Reed, Allen, Whatley, Scofield, Taylor,
4 Brewbaker, Glover, Waggoner, Marsh, Fielding, McGill, and
5 Bussman
6 RFD: Judiciary
7 First Read: 05-FEB-13

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8 SYNOPSIS: This bill provides for the Alabama Pain
9 Management Act.

10 This bill would provide additional powers
11 for the Alabama Board of Medical Examiners
12 regarding regulating pain management clinics and
13 physicians.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To add a new Article 11 consisting of Sections
20 34-24-1001, 34-24-1002, 34-24-1003, 34-24-1004, 34-24-1005,
21 34-24-1006, 34-24-1007, 34-24-1008, 34-24-1009, 34-24-1010,
22 and 34-24-1011, to Chapter 24 of Title 34 of the Code of
23 Alabama 1975, relating to doctors of medicine, doctors of
24 osteopathy and all licensees of the Alabama Board of Medical
25 Examiners and the Medical Licensure Commission of Alabama so
26 as to provide for additional powers of the board relating to
27 pain management; to provide for the "Alabama Pain Management

1 Act"; to safeguard the public health, safety, and welfare by
2 requiring the registration and regulation of pain management
3 clinics and physicians working at these clinics; to provide
4 for the renewal of pain management registrations; to provide
5 for sanctions and punishments for the violation of the act; to
6 provide the board with the authority to close pain management
7 clinics when they pose an immediate danger to public health,
8 safety, or welfare; to provide for reports by and to the
9 board; to establish minimum standards for pain management
10 medical records; to provide for related matters and for other
11 purposes.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. A new Article 11 is added to Chapter 24,
14 Title 34, Code of Alabama 1975, as follows:

15 ARTICLE 11. Alabama Pain Management Act

16 Section 34-24-1001. Short title.

17 This article shall be known as and may be cited as
18 the "Alabama Pain Management Act."

19 Section 34-24-1002. Legislative findings.

20 The Legislature finds that the diversion, abuse, and
21 misuse of prescription medications classified as controlled
22 substances under the Alabama Uniform Controlled Substances Act
23 constitute a serious threat to the health, safety, and welfare
24 of the citizens of the State of Alabama. The Legislature
25 further finds that the registration of all pain management
26 clinics, as defined in this article, and physicians working at
27 these clinics, will assist the Alabama Board of Medical

1 Examiners in preventing the diversion, abuse, and misuse of
2 controlled substances by regulating these registrants. The
3 Legislature further finds that it is in the best interests of
4 the public safety to give the Board of Medical Examiners the
5 authority it needs to suspend the registration of these
6 clinics and physicians working at these clinics when the
7 public health, safety, or welfare requires immediate action.

8 Section 34-24-1003.

9 (a) Authority. The Alabama Board of Medical
10 Examiners shall have the jurisdiction and authority necessary
11 to carry out the provisions and intent of this article.

12 (b) Intent. The article is intended to require
13 certain entities and physicians to register under the
14 provisions of this article, and to provide to the Alabama
15 Board of Medical Examiners the following powers and duties
16 with respect to all registrants of the Board of Medical
17 Examiners, in addition to its existing authority as a
18 certifying board pursuant to the Alabama Uniform Controlled
19 Substances Act:

20 (1) To adopt, amend, and repeal such rules and
21 regulations in accordance with the Alabama Pain Management Act
22 for the proper administration and enforcement of this article.

23 (2) To establish rules regarding the registration of
24 all pain management clinics and physicians working at those
25 clinics.

26 (3) To set reasonable registration and renewal fees.

1 (4) To renew registrations and set renewal and
2 expiration dates and other deadlines.

3 (5) To initiate investigations for the purposes of
4 discovering violations of this article.

5 (6) To administer oaths, subpoena witnesses and
6 documents, including medical records, and take testimony in
7 all matters relating to the board's duties.

8 (7) To conduct investigative interviews.

9 (8) To inspect and regulate pain management clinics
10 and regulate physicians working at these clinics and require
11 these physicians to produce certain documents.

12 (9) To access and obtain information and data from
13 the Alabama Prescription Drug Monitoring Program (PDMP) to
14 discover and investigate patterns of prescribing which
15 endanger the health, safety, and welfare of patients and the
16 public.

17 (10) To revoke, suspend, reprimand, place on
18 probation, issue terms and conditions, limit practice, fine,
19 require additional training, or otherwise sanction pain
20 management clinics and physicians working at these clinics.

21 (11) To immediately close pain management clinics
22 and suspend the clinics' registrations, and immediately
23 suspend registrations from physicians working at these clinics
24 when they pose an immediate danger to the public health,
25 safety, and welfare.

26 (c) The board shall have the necessary power and
27 authority to provide funds under this article and to contract

1 with any nonprofit or for profit entities, or any individuals,
2 for the purpose of fighting conversion, abuse, and misuse of
3 controlled substances, as set forth in this article, and for
4 the purpose of providing educational activities for
5 practitioners concerning this article, without being bound by
6 any law that requires competitive bidding.

7 Section 34-24-1004. Definitions.

8 (a) Unless otherwise indicated from the context, the
9 terms set out below as used in this article shall have the
10 following meanings:

11 (1) ADMINISTER. The direct application of a
12 controlled substance, whether by injection, inhalation,
13 ingestion, or any other means, to the body of a patient or
14 research subject by:

15 a. A practitioner, or, in his or her presence, his
16 or her authorized agent.

17 b. The patient or research subject at the direction
18 and in the presence of the practitioner.

19 (2) APPLICANT. A person or entity that has submitted
20 or that is in the process of submitting a registration under
21 this article.

22 (3) BOARD. The Alabama Board of Medical Examiners.

23 (4) CHRONIC PAIN. Pain unrelated to cancer which
24 persists beyond the usual course of disease or injury that is
25 the cause of the pain for more than 90 days.

1 (5) CONTROLLED SUBSTANCE. A drug, substance, or
2 immediate precursor identified, defined, or listed in Sections
3 20-2-20 to 20-2-32, inclusive.

4 (6) DISPENSE. Deliver a controlled substance to an
5 ultimate user or research subject by or pursuant to the lawful
6 order of a practitioner, including the prescribing,
7 administering, packaging, labeling, or compounding necessary
8 to prepare the substance for that delivery.

9 (7) PAIN MANAGEMENT CLINIC or CLINIC. Any entity
10 which advertises or holds itself out to the public as treating
11 pain; or any practice of medicine or osteopathy which
12 advertises or holds itself out to the public as treating pain
13 and utilizes doctors of medicine or osteopathy and controlled
14 substances; or any business entity, including sole
15 proprietorship, that meets parameters established in rules
16 adopted by the board; or, any practice of medicine or
17 osteopathy which meets parameters established in rules adopted
18 by the board.

19 (8) PHYSICIAN. A doctor of medicine or a doctor of
20 osteopathy.

21 (9) REGISTRANT. Any person or entity issued a
22 registration by the board in its capacity as a certifying
23 board pursuant to this article.

24 Section 34-24-1005. Annual registration.

25 (a) Initial requirements. Beginning January 1, 2014,
26 and continuing each year thereafter, all pain management

1 clinics, and all physicians practicing in pain management
2 clinics, shall register with the board.

3 (b) To register, a physician applicant shall submit
4 the following to the board:

5 (1) A completed application on a form prescribed by
6 the board.

7 (2) Proof of a current Drug Enforcement
8 Administration registration.

9 (3) Proof of an Alabama Controlled Substances
10 Certificate.

11 (4) Proof of a current registration with the Alabama
12 Prescription Drug Monitoring Program (PDMP).

13 (5) The results of a criminal background check. Each
14 applicant shall submit a complete set of fingerprints to the
15 board. The board shall submit the fingerprints provided by
16 each applicant for registration to practice in a pain
17 management clinic to the Alabama Bureau of Investigation
18 (ABI). The fingerprints shall be forwarded by the ABI to the
19 Federal Bureau of Investigation (FBI) for a national criminal
20 history record check. Costs associated with conducting a
21 criminal history background check shall be borne by the
22 applicant. The board shall keep information received pursuant
23 to this section confidential, except that such information
24 received and relied upon in denying the registration of a
25 physician to practice in a pain management clinic in this
26 state may be disclosed as may be necessary to support the
27 denial.

1 (6) A list of all registrants who own, co-own,
2 operate, or provide pain management services in the clinic.

3 (7) The disclosure of any controlled substances
4 certificate or registration denial, restriction, or discipline
5 imposed on any registrant who practices pain medicine in a
6 pain management clinic.

7 (8) Payment of the initial registration fee as set
8 forth in this section and in the rules of the Alabama Board of
9 Medical Examiners.

10 (9) Any other information requested by the board.

11 (c) To register a clinic, an applicant shall provide
12 information as set forth in rules promulgated by the board.

13 (d) Exemptions. The provisions of this article shall
14 not apply to any of the following:

15 (1) A hospice program licensed by the Alabama
16 Department of Public Health, or any physicians while
17 performing work for that program.

18 (2) A facility maintained or operated by the United
19 States or any of its departments, offices, or agencies, or any
20 physicians while performing work for that facility.

21 (3) Any facility that is not included in
22 subdivisions (1) and (2) may petition the board for an
23 exemption from the requirements of this section for itself and
24 the physicians working at that facility. The board shall have
25 the sole discretion in determining whether the requested
26 exemption shall be granted or denied.

27 (e) Fees.

1 (1) Initial registration fee: An amount set by the
2 board in its rules not to exceed three hundred dollars (\$300).

3 (2) Renewal fee. An amount set by the board in its
4 rules not to exceed three hundred dollars (\$300).

5 (f) Miscellaneous.

6 (1) A physician applicant practicing in more than
7 one location shall submit a separate registration fee for each
8 practice location to which this article applies, regardless of
9 whether the clinic is operated under the same business name,
10 ownership, or management as another clinic.

11 (2) If a clinic or physician applicant does not
12 complete the initial application process within 90 days of his
13 or her first submission to the board, then the application
14 shall be closed, the application fee shall not be refunded,
15 and the applicant shall be required to reapply for
16 registration.

17 (3) An application which is submitted to the board
18 may be withdrawn at any time prior to the granting or denial
19 of registration; provided, however, that the application fee
20 shall not be refunded.

21 (g) Renewal.

22 (1) A registration by a clinic or a physician under
23 this article shall expire on December 31 of each year.

24 (2) A registrant may renew a current registration
25 prior to its expiration date by submitting the following to
26 the board:

1 a. A renewal application form prescribed by the
2 board.

3 b. The required renewal fee.

4 c. Proof that the clinic has a medical director who
5 meets the requirements in Section 34-24-1006(b).

6 d. An attestation that the clinic is not owned
7 wholly or partly by a person who has been convicted of or pled
8 nolo contendere to any of the following:

9 1. A felony.

10 2. An offense that constitutes a misdemeanor, the
11 facts of which relate to the distribution or illegal
12 prescription of any controlled substance.

13 3. Any applicant who has been convicted of a crime
14 described in paragraph d. may request an interview before the
15 board, after which the board may, in its discretion, approve
16 or deny the registration.

17 e. Any other information requested by the board.

18 Section 34-24-1006. Ownership and operation.

19 (a) Each pain management clinic shall be owned and
20 operated by one of the following:

21 (1) One or more physicians licensed to practice
22 medicine in Alabama.

23 (2) A business entity registered with the Secretary
24 of State. All clinics under this category shall produce the
25 names and addresses of all individuals listed on the entity's
26 Certification of Formation, and any amendments thereto, filed
27 with the Secretary of State. The clinic shall provide a list

1 of all directors and officers, with complete and up-to-date
2 contact information for each, who shall be responsible for the
3 operation of the clinic.

4 (b) Each clinic shall be under the direction of a
5 medical director who shall be a physician who possesses a
6 current, unrestricted license to practice medicine or
7 osteopathy in Alabama. The medical director shall have the
8 following responsibilities:

9 (1) Oversee all medical services provided at the
10 clinic.

11 (2) Be responsible for ensuring compliance with
12 requirements established in rules adopted by the board.

13 (3) Ensure that all physicians employed at the
14 clinic have registered with the Alabama Prescription Drug
15 Monitoring Program (PDMP).

16 (4) Ensure that the PDMP is utilized by all
17 physicians at the clinic as part of the clinic's quality
18 assurance program.

19 (c) Every registrant practicing in a clinic is
20 required to obtain access to the Alabama Prescription Drug
21 Monitoring Program (PDMP) maintained by the Alabama Department
22 of Public Health.

23 Section 34-24-1007. Training requirements.

24 (a) Each physician serving as the medical director
25 at a clinic shall meet at least one of the following
26 requirements:

1 (1) Successful completion of a residency program in
2 physical medicine and rehabilitation, anesthesiology,
3 addiction medicine, neurology, neurosurgery, family practice,
4 preventive medicine, internal medicine, surgery, orthopedics,
5 or psychiatry approved by the Accreditation Council for
6 Graduate Medical Education (ACGME) or the American Osteopathic
7 Association Bureau of Osteopathic Specialists (AOABOS).

8 (2) Board certification in physical medicine and
9 rehabilitation, anesthesiology, addiction medicine, neurology,
10 neurosurgery, family practice, preventive medicine, internal
11 medicine, surgery, orthopedics, or psychiatry approved by the
12 ACGME or AOABOS.

13 (3) Speciality certification in pain management,
14 hospice and palliative medicine, geriatric medicine,
15 rheumatology, hematology, medical oncology, gynecologic
16 oncology, infectious disease, pediatric hematology-oncology,
17 or pediatric rheumatology recognized by the American Board of
18 Medical Specialties or AOABOS with a certificate of added
19 qualification from the Bureau of Osteopathic Specialists.

20 (4) Board certification by the American Board of
21 Pain Medicine.

22 (5) Board certification by the American Board of
23 Interventional Pain Physicians.

24 (6) At least one of the following:

25 a. Completion of 40 in-person, live participatory
26 AMA PRA Category 1 Credits or AOABOS Category 1 credits work
27 in the area of pain management completed within three years of

1 implementation of this article or prior to serving as a
2 medical director for the clinic, whichever of them is most
3 recent.

4 b. Completion of a board approved course of medical
5 education in the area of prescribing controlled substances
6 completed within three years of implementation of this article
7 or prior to serving as medical director for the clinic,
8 whichever of them is most recent, and completion of 40
9 in-person, live participatory AMA PRA Category 1 Credits or
10 AOABOS Category 1 credits work in the area of pain management
11 within three years of commencement of service as medical
12 director.

13 Section 34-24-1008. Inspections.

14 (a) Every pain management clinic registered under
15 this article shall be open to inspection to the extent
16 authorized in this section by employees and agents of the
17 Board of Medical Examiners under rules as shall be promulgated
18 by the board. Physicians registered under this article shall
19 make all records, notes, and files open for inspection under
20 the rules as shall be promulgated by the board.

21 (b) All inspections undertaken by the Board of
22 Medical Examiners may be conducted without prior notice to the
23 clinic and its staff. Notwithstanding the foregoing, the board
24 may prescribe by rule exceptions to this section where
25 consideration of public health or safety make advance
26 disclosure of inspection dates and times reasonable. In
27 addition, scheduling inspection of pain management clinics by

1 the board at regular, periodic intervals which may be
2 predictable shall not be a violation of this section.

3 (c) If the board finds that danger to the public
4 health, safety, or welfare requires emergency suspension of a
5 registration and states in writing in its reason for that
6 finding, it may proceed without hearing or upon any
7 abbreviated hearing that it finds practicable to suspend the
8 registration of a clinic or any physician working at that
9 clinic. The suspension shall become effective immediately,
10 unless otherwise stated therein. The suspension may be
11 effective for a period of not longer than 120 days and shall
12 not be renewable. The board shall not suspend the same
13 registration for the same or a substantially similar emergency
14 within one calendar year from its first suspension unless the
15 board clearly establishes that it could not reasonably be
16 foreseen during the initial 120-day period that such emergency
17 would continue or would likely reoccur during the next nine
18 months. When such summary suspension is ordered, a formal
19 suspension or revocation proceeding under Section 34-24-361 or
20 Section 20-2-53, shall also be promptly instituted and acted
21 upon.

22 Section 34-24-1009. Investigations.

23 (a) The board or its agents may, on its own motion
24 or in response to a written complaint, investigate any
25 evidence which appears to show that a clinic, a physician
26 registrant, or a physician practicing in a clinic in the State

1 of Alabama is or may be guilty of any violation of this
2 article.

3 (b) In addition to the powers granted under this
4 article, the board or its agents are further authorized to
5 conduct any investigations pursuant to its authority in
6 Section 34-24-361, including, but not limited to, the
7 conducting of formal interviews with a physician, the filing
8 of a written administrative complaint, and the temporary
9 emergency suspension of the license of a physician without a
10 hearing in the case of imminent and immediate danger to
11 patients or the public.

12 Section 34-24-1010. Complaints.

13 The board may investigate a complaint alleging a
14 violation of this article or a rule adopted under this
15 article.

16 Section 34-24-1011. Disciplinary action and
17 sanctions.

18 (a) A violation of this article or a rule adopted
19 under this article is grounds for disciplinary action and
20 sanctions against a registrant as provided in this section.

21 (b) A violation of this article may be enforced in
22 the same manner as any other violation of Sections 20-2-50 to
23 20-2-58, inclusive.

24 (c) Any violation of this article or a rule adopted
25 under this article shall be prosecuted against and in the name
26 of the registrant or registrants participating in the alleged
27 violation.

1 (d) In addition to the requirements, sanctions, and
2 punishment provided by Section 20-2-50 to 20-2-58, inclusive,
3 the board may impose the following sanctions:

4 (1) The failure to annually register a pain
5 management clinic as defined in Section 34-24-1004(9) and as
6 established in rules adopted by the board shall be punishable
7 by a fine up to ten thousand dollars (\$10,000) per violation,
8 or the revocation of the clinic's registration, or both.

9 (2) The failure of a physician who is practicing at
10 a clinic, or who otherwise has an obligation under law to
11 annually register pursuant to the requirements of this
12 article, shall be punishable by a fine up to ten thousand
13 dollars (\$10,000) per violation or the revocation of the
14 registrant's registration, or both.

15 Section 2. Nothing in this act shall be construed to
16 limit the ability of the Board of Medical Examiners to
17 exercise authority existing prior to the passage of this act.

18 Section 3. The provisions of this act are severable.
19 If any part of this act is declared invalid or
20 unconstitutional, that declaration shall not affect the part
21 which remains.

22 Section 4. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.