



Living Initiatives For End-Of-Life Care

Helping Kansans with advanced chronic and terminal illness live with dignity, comfort and peace

Testimony on HB2649
House Health and Human Services Committee
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LIFE Project Pain Management and Public Policy Task Forces
February 1, 2006

It is my pleasure to speak to you today in support of HB2649, the Pain Patient's Bill of Rights, submitted by Representative Bethell. It is my belief that this bill represents a significant addition to existing public policy related to pain management in Kansas. Experts who evaluate public policy related to pain management have consistently given Kansas high marks for its policies, and I believe that the additions proposed in this bill will produce a rating that is second to no other state's.

As I testified when I last spoke with you two weeks ago, poor pain management is a significant public health concern. For a variety of reasons, patients with pain experience great difficulty in receiving adequate treatment from their physicians and other healthcare providers, resulting in serious decrement to their quality of life. Uncontrolled pain causes disability, anxiety, anger, depression and despair, and, in the most extreme cases, suicide. The National Institutes of Health estimate that the cost of unrelieved pain to the American economy is approximately \$110 billion each year. To put that into a more local perspective, if this cost is distributed evenly across the population of the United States, the share for Kansas each year is slightly over \$1 billion.

This extreme financial and human cost is unnecessary. Research has demonstrated that approximately 90% of individuals with pain can achieve adequate pain control using oral and intravenous pain medications, along with non-drug interventions. We do not approach this level of success in common medical practice. The failure of the healthcare system to provide adequate pain relief to individuals with pain can be traced to a number of sources. From the perspective of healthcare professionals, some of the barriers include inadequate assessment of patients' pain reports; an unwillingness to accept patients' reports of pain as being valid or reliable; fear that prescribing appropriate pain medications will result in addiction or other untoward side effects; inadequate knowledge of available options for treating pain; fear of being sued for overprescribing; and fear of sanction by regulatory and law enforcement agencies. In fact, it is quite possible to obtain adequate education on pain assessment and treatment, given the prevalence of continuing education opportunities available today; addiction as a consequence of pain treatment is a truly rare complication, one that physicians can be taught to prevent, detect, and treat appropriately; physicians are increasingly being sued for undertreatment of pain; and, at least in Kansas, the regulatory and law enforcement communities have demonstrated a commitment to evaluating pain treatment appropriately, such that physicians who make an honest effort to provide good treatment and document that effort appropriately are not subject to sanction.

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Still, despite our superb public policy and supportive regulatory boards, available statistics indicate that the quality of pain management in Kansas is below average.

HB2649 seeks to improve pain care for Kansans by making a strong positive statutory statement on the subject, while simultaneously eliminating the few negative features of our public policy identified by experts in this subject area. Sections 2 and 3 of this bill outline a Pain Patient's Bill of Rights, stating in simple terms the basic right of patients to have their pain reports heard, believed, and acted upon appropriately. This recognition of the rights of individuals with pain is consistent with statements from the Joint Commission on the Accreditation of Healthcare Organizations and numerous other professional organizations. The LIFE Project's Pain Management Task Group has used the specific content of this Bill of Rights in its campaign and, as such, it has been reviewed and approved by a variety of our partner organizations, as we jointly try to improve the care of patients with life-limiting illnesses. It also closely mirrors the content of a Pain Patient's Bill of Rights developed by the American Pain Foundation. HB2649 puts this right into practical terms, outlining the type of treatment individuals with pain should expect when they see a healthcare professional. Interestingly, everything in sections 2 and 3 is already available and appropriate for individuals with pain. No new right is created here; rather, by stating these rights in this form, they are given statutory authority, and it is made perfectly clear that patients with pain should expect competent and compassionate treatment.

Section 5 of this bill seeks to delete a reference to what is known as the Principle of Double Effect, now contained in our laws prohibiting assisted suicide. The statement of this principle, intended here to reassure physicians that appropriate pain management will not be construed to be assisted suicide, in fact provides no actual protection, and instead reinforces the inaccurate notion that patients are at grave risk of being inadvertently killed when pain is managed appropriately. Current medical research refutes this notion. Eliminating the clauses indicated in the bill does absolutely nothing to change the meaning and enforceability of the existing laws; in both cases, it is still the *intent* of the physician that is the crux of the matter.

Finally, section 6 of the bill is an attempt to provide a clearer, more objective definition of unprofessional conduct as it relates to prescribing, dispensing, administering, or distributing medications, especially with respect to the controlled substances used to treat pain. After discussion with the executive director and the general counsel for the Kansas State Board of Healing Arts, I would like to offer an amendment to the language of HB2649, as it relates to K.S.A. 65-2837(b)(23). The text of this amendment follows at the end of this document, and has been distributed for your reference. This revision reflects the sentiments expressed in guidelines for the use of controlled substances in the treatment of pain, as issued by not only the Kansas State Board of Healing Arts, but also by the Kansas State Board of Nursing, and jointly by the Boards of Healing Arts, Nursing, and Pharmacy. Note that the proposed amendment not only defines "excessive" by referencing "all the medical facts relating to the patient", but it further expands the ability of the Board of Healing Arts to hold physicians accountable for "inadequate" treatment of pain. The importance of insuring that healthcare professionals understand that undertreatment of pain carries the same potential professional consequences as the overtreatment of pain can not be overstated, and it reflects language contained in both the joint statement of the licensing boards referenced earlier, and the recent Model Policy for the Use of Controlled Substances in the Treatment of Pain, as issued by the Federation of State Medical Boards. With respect to this amendment, please note that the full Board of Healing Arts has not been able to discuss it at a meeting; the next meeting of the board is scheduled for February 10.

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It is my sincere hope that you will carefully consider this important topic and act to promote the relief of pain for all Kansans by adopting HB2649. Thank you very much for the opportunity to speak to you in support of it today.

Text of Proposed Amendment

K.S.A. 65-2837(b)(23): Prescribing, dispensing, administering, *or* distributing a prescription drug or substance, including a controlled substance, *that is inadequate, ~~in an~~ excessive, improper or inappropriate given all the medical facts relating to the patient, is not for a legitimate medical purpose, manner or quantity or is not in the course of the licensee's professional practice.*