

Regular Session, 2014

SENATE BILL NO. 619

BY SENATOR HEITMEIER

HEALTH SERVICES. Transfers the powers, duties, and functions relative to regulating pain management clinics from the Department of Health and Hospitals to the Louisiana State Board of Medical Examiners. (1/1/15)

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AN ACT

To amend and reenact R.S. 40:2198.12(A), the introductory paragraph of (B)(1) and (B)(1)(f), (D), and 2198.13 and to enact R.S. 40:2198.12(B)(1)(h) through (j), and 2198.14 through 2198.19, relative to pain management clinics; to transfer the powers and duties for the regulation of pain management clinics from the Department of Health and Hospitals to the Louisiana State Board of Medical Examiners; to provide licensure authority and powers to the Louisiana State Board of Medical Examiners to regulate and license pain management clinics; to provide for criminal penalties for operating a pain management clinic without a license; to provide an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:2198.12(A), the introductory paragraph of (B)(1) and (B)(1)(f), (D), and 2198.13 are hereby amended and reenacted and R.S. 40:2198.12(B)(1)(h) through (j) and 2198.14 through 2198.19 are hereby enacted to read as follows:

§2198.12. Licensure of pain management clinics; rules and regulations

A. Except as provided in Subsection D of this Section, all pain management clinics shall be owned and operated by a physician certified in the subspecialty of

1 pain management by a member board of the American Boards of Medical
2 Specialties, **the American Osteopathic Association, and such other entities as the**
3 **board may approve.** All pain management clinics shall be licensed by the
4 **department board.**

5 B.(1) The ~~department~~ **board** shall prescribe and publish minimum standards,
6 rules, and regulations as necessary to effectuate the provisions of this Section. Such
7 rules and regulations shall include but not be limited to all of the following:

8 * * *

9 (f) Reimbursement policies, procedures, and requirements, **including but not**
10 **limited to the requirement to accept payment from third party payors.**

11 * * *

12 **(h) The submission of periodic reports to the board.**

13 **(i) Utilization of a disclosure form developed by the board.**

14 **(j) Accessing the Prescription Monitoring Program information on a**
15 **regular basis.**

16 * * *

17 D.~~(1)~~ The following shall apply to pain management clinics operating on or
18 before June 15, 2005, pursuant to an occupational license or certificate of operation
19 which has not been suspended or revoked:

20 ~~(1)~~**(a)** The pain management clinic shall not be owned, either in whole or in
21 part, by or have any contractual relationship, whether through employment or by
22 independent contract, with a physician who during the course of his practice has been
23 denied the privilege of prescribing, dispensing, administering, supplying, or selling
24 any controlled dangerous substance and who has, during the course of his practice
25 had board action taken against his medical license as a result of dependency on drugs
26 or alcohol.

27 ~~(2)~~**(b)** The pain management clinic shall be operated by a medical director
28 who shall be a physician. **The medical director shall be responsible for**
29 **compliance with all applicable laws and rules.**

1 There shall be an annual license fee to be set by the ~~department~~ **board** not to
2 exceed one thousand dollars for any license issued in accordance with the provisions
3 of this Part. Monies collected for annual fees shall be used for the investigation and
4 enforcement of the provisions of this Part.

5 **§2198.14. Powers and duties of the board**

6 **A. In the administration of this Part, the board shall have all of the**
7 **authority, powers, protections, and immunities conferred upon it by the**
8 **Louisiana Medical Practice Act. In addition, the board shall have authority to:**

9 **(1) Adopt rules and regulations in accordance with the Administrative**
10 **Procedure Act for the purpose of administering the provisions of this Part and**
11 **administer and enforce all rules and regulations promulgated by the**
12 **department pursuant to this Part until modified, superseded, or repealed by the**
13 **board.**

14 **(2) Approve, refuse to issue or renew, restrict, place on probation,**
15 **suspend, or revoke a license.**

16 **(3) Conduct administrative hearings on the refusal to issue or renew,**
17 **suspension or revocation of a license.**

18 **(4) Conduct inspections, surveys and investigations of pain management**
19 **clinics and their records to ensure compliance with this Part.**

20 **(5) Have all other powers necessary and proper for the performance of**
21 **its duties and the administration of this Part.**

22 **(6) Issue a subpoena for any medical information, testimony, records,**
23 **data, reports, or other documents or information relative to a pain management**
24 **clinic or a facility operating as a pain management clinic without a license.**

25 **§2198.15. Causes for nonissuance, suspension, revocation; administrative costs**
26 **and fines**

27 **A. In accordance with the Administrative Procedure Act, the board may**
28 **refuse to issue or renew, restrict, place on probation, suspend or revoke a**
29 **license held or applied for under this Part for any of the following causes,**

1 **including but not limited to:**

2 **(1) Failing to meet the qualifications prescribed by this Part.**

3 **(2) Fraud, deceit or perjury in obtaining a license issued under this Part.**

4 **(3) Action against the license of a physician operating a pain**
5 **management clinic or working in association with a pain management clinic by**
6 **the board for violation of the board's pain management rules or for any**
7 **violation of R.S. 37:1285(A), which would render the physician ineligible under**
8 **this Part to own, operate, be employed by or contracted to a pain management**
9 **clinic.**

10 **(4) Owning or operating an unlicensed pain management clinic or**
11 **performing any act which in any way assists a person to operate an unlicensed**
12 **pain management clinic, or having a professional connection with or lending**
13 **one's name to an illegal practitioner.**

14 **(5) Violation of any rules, regulations, or orders of the board, or any**
15 **provisions of this Part.**

16 **B.(1) As part of a decision or order, the board may require a license**
17 **holder or an applicant to pay all costs of the board proceedings, including but**
18 **not limited to investigator, stenographer and attorney fees, witness fees and**
19 **expenses, and the per diem and expenses of the members of the board's hearing**
20 **panel and to pay a fine not to exceed five thousand dollars.**

21 **(2) If for any reason the costs or fines imposed by the board under this**
22 **Section are not paid within the time specified by the board, the board may**
23 **recover costs and reasonable attorney fees associated with their collection.**

24 **(3) The board may authorize any member of the board or the board's**
25 **executive director to sign an affidavit, petition, or other legal process, including**
26 **but not limited to a petition in any court of competent jurisdiction for a money**
27 **judgment for any and all costs and fines payable pursuant to a final decision or**
28 **order of the board.**

29 **§2198.16. Adjudication; publication of action; judicial review; security**

1 A. Proceedings for the refusal to issue or renew, restriction, probation,
2 suspension, or revocation of a pain management clinic license shall be
3 conducted by the board in accordance with its rules, regulations, and
4 procedures and in compliance with the Administrative Procedure Act.

5 B. Any final decision or order issued by the board shall constitute a
6 public record.

7 C. A party aggrieved by a final decision or order of the board resulting
8 from an administrative adjudication may file a petition for judicial review,
9 pursuant to R.S. 49:964.

10 D. Judicial review of a final decision or order of the board, or a
11 preliminary, procedural or intermediate decision, ruling, order, or action of the
12 board shall be subject to and governed by the requirements and procedures set
13 forth in R.S. 37:1285 (F) through (I).

14 E. A party seeking judicial review of a decision or order of the board
15 shall furnish security in accordance with R.S. 37:1285.3.

16 §2198.17. Investigations and complaints; confidentiality of records

17 A. The board, through its duly authorized agents, shall inspect at
18 regular intervals as may be deemed necessary by the board, and without prior
19 notice, all pain management clinics subject to the provisions of this Part. The
20 board shall also develop and facilitate coordination with other authorized local,
21 state, and federal agencies making inspections of such facilities.

22 B. The board, through its duly authorized agents, shall investigate all
23 complaints against any pain management clinic as defined in this Part. This
24 shall include investigating complaints regarding a facility or clinic operating as
25 a pain management clinic without a license.

26 C. Notwithstanding any law to the contrary, all information, records,
27 accounts, books, photographs, copies, memoranda, or data concerning the
28 fitness of any individual to receive or continue to hold a pain management clinic
29 license, in the custody or control of the board, shall be deemed nonpublic,

1 confidential, and privileged information and restricted to the exclusive use of
2 the board, its members, officers, investigators, agents, and representatives in
3 carrying out the provisions of this Part.

4 §2198.18. Injunctive and other relief

5 A. The board may cause to issue in any court of competent jurisdiction
6 a writ of injunction enjoining any person from operating a pain management
7 clinic that is not licensed under this Part. The injunction shall not be subject to
8 being released upon bond. The trial of the proceeding by injunction shall be
9 summary and by the judge without a jury. The failure of the board to seek an
10 injunction shall not constitute a waiver nor confer upon any person violating
11 this Part a right to engage in such conduct.

12 B. In the suit for an injunction, the board may demand of the defendant
13 a penalty of not more than five thousand dollars, as well as reasonable attorney
14 fees and court costs. The judgment for penalty, reasonable attorney fees, and
15 costs may be rendered in the same judgment as the injunction.

16 C. In lieu of or in addition to the other remedies provided in this Section,
17 the board may report violations of this Part to the attorney general, an
18 appropriate district attorney, or other appropriate law enforcement officer, who
19 may in his discretion cause appropriate criminal proceedings to be brought.

20 §2198.19. Criminal penalties

21 A. It shall be unlawful for any person to own or operate a pain
22 management clinic without a license issued by the board.

23 B. Whosoever owns or operates an unlicensed pain management clinic
24 shall be fined not more than five hundred dollars for each offense or imprisoned
25 for not more than five months, or both. Each day that a pain management clinic
26 operates without a license shall constitute a separate offense.

27 Section 2. Upon the transfer accomplished by this Act, any pending or unfinished
28 business of the Department of Health and Hospitals related to the licensure or regulation of
29 any pain management clinic shall become the business of and be completed by the Louisiana

1 State Board of Medical Examiners; provided, that any legal proceeding to which the
2 Department of Health and Hospitals is or may be made a party as a result of the
3 administration of this Part that is pending before any court on the effective date of transfer
4 shall be continued in the name of the Department of Health and Hospitals.

5 Section 3. All documents, records or rights of action heretofore possessed, controlled
6 or used by the Department of Health and Hospitals in the exercise of the functions hereby
7 transferred shall be transferred to the Louisiana State Board of Medical Examiners.

8 Section 4. Any reference in this Part or in any related rules or documents to the
9 Department of Health and Hospitals shall be deemed to refer to the Louisiana State Board
10 of Medical Examiners, and any administrative rules and regulations promulgated by the
11 Department of Health and Hospitals pursuant to this Part, which are in effect on the day
12 preceding the effective date of this Act, shall be considered valid and shall continue in force
13 and effect and be enforceable by the Louisiana State Board of Medical Examiners until and
14 unless modified, superseded, or repealed by the Louisiana State Board of Medical
15 Examiners.

16 Section 5. This Act shall become effective on January 1, 2015.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Christopher D. Adams.

DIGEST

Heitmeier (SB 619)

Present law provides for the regulation of pain management clinics by the Department of Health and Hospitals.

Proposed law transfers the regulation of pain management clinics from the department to the Louisiana State Board of Medical Examiners.

Present law provides that certain pain management clinics operating on or before June 15, 2005, may be licensed by Department of Health and Hospitals if their license has not been suspended or revoked.

Present law provides the following qualifiers:

- (1) The pain management clinic shall not be owned, either in whole or in part, by or have any contractual relationship, whether through employment or by independent contract, with a physician who during the course of his practice has been denied the privilege of prescribing, dispensing, administering, supplying, or selling any controlled dangerous substance and who has, during the course of his practice had board action taken against his medical license as a result of dependency on drugs or alcohol.

- (2) The pain management clinic shall be operated by a medical director who shall be a physician.
- (3) The pain management clinic shall not be owned in whole or in part by a person who has been convicted of or who has pled guilty or nolo contendere to an offense that constitutes a felony.
- (4) The pain management clinic shall not be owned in whole or in part by a person who has been convicted of or who has pled guilty or nolo contendere to an offense that constitutes a misdemeanor, the facts of which relate to the distribution or illegal prescription of any narcotic.
- (5) The pain management clinic shall operate as an urgent care facility, offering primary or acute health services in addition to caring for those with chronic pain and shall have held itself out to the public as such.
- (6) The pain management clinic shall implement policies and procedures that are consistent with all pain management regulations issued by the State Board of Medical Examiners.
- (7) A pain management clinic which is exempted from the requirement of being owned and operated by a physician certified in the subspecialty of pain management may relocate and continue to be exempted from the requirement of being owned and operated by a physician certified in the subspecialty of pain management if the new location is in the same parish in which the original clinic was located.
- (8) All pain management clinics shall submit to the department all relevant documentation proving valid operation before June 15, 2005, including but not limited to occupational licenses or certificates of operation issued by local authorities.

Proposed law amends the present law to provide the present law exemption for licensure shall not apply to a pain management clinic that is not licensed by or has not made an application to the Department of Health and Hospitals for licensure on or before August 1, 2014.

Proposed law provides the causes for nonissuance, restriction, probation, suspension, revocation of a pain management clinic license and provides for adjudication, publication of action, judicial review, and a posting of a required security.

Proposed law provides injunctive relief powers to the Louisiana State Board of Medical Examiners.

Proposed law provides criminal penalties for any person owning or operating a pain management clinic without a license. Proposed penalties are a fine of not more than \$500 for each offense, or imprisonment for not more than five months, or both. Each day the pain management clinic operates without a license is a separate offense.

Effective January 1, 2015.

(Amends R.S. 40:2198.12(A), (B)(1)(intro para) and (B)(1)(f), (D), and 2198.13; adds R.S. 40:2198.12(B)(1)(h) through (j), and 2198.14 through 2198.19)