By Senator Bogdanoff

25-01224-12 20121198__

1 A bill to be entitled
2 An act relating to the prescribing of controlled
3 substances; amending s. 456.44, F.S.; revising the
4 definition of the term “addiction medicine specialist”
5 to include a board-certified psychiatrist, rather than
6 a physiatrist; providing that the management of pain
7 in certain patients requires consultation with or
8 referral to a psychiatrist, rather than a physiatrist;
9 providing that a prescription is deemed compliant with
10 the standards of practice and is valid for dispensing
11 when a pharmacy receives it; providing that the
12 standards of practice regarding the prescribing of
13 controlled substances do not apply to certain board-
14 certified psychiatrists and rheumatologists; amending
15 ss. 458.3265 and 459.0137, F.S.; requiring that a
16 pain-management clinic register with the Department of
17 Health unless the clinic is wholly owned and operated
18 by certain health care professionals, including a
19 board-certified psychiatrist or rheumatologist;
20 providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Paragraph (a) of subsection (1) and subsection
25 (3) of section 456.44, Florida Statutes, are amended to read:
26 456.44 Controlled substance prescribing.—
27 (1) DEFINITIONS.—
28 (a) “Addiction medicine specialist” means a board-certified
29 psychiatrist who holds ~~physiatrist with~~ a subspecialty

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-01224-12 20121198__

30 certification in addiction medicine or who is eligible for such
31 subspecialty certification in addiction medicine, an addiction
32 medicine physician who is certified or eligible for
33 certification by the American Society of Addiction Medicine, or
34 an osteopathic physician who holds a certificate of added
35 qualification in Addiction Medicine through the American
36 Osteopathic Association.
37 (3) STANDARDS OF PRACTICE.—The standards of practice in
38 this section do not supersede the level of care, skill, and
39 treatment recognized in general law related to health care
40 licensure.
41 (a) A complete medical history and a physical examination
42 must be conducted before beginning any treatment and must be
43 documented in the medical record. The exact components of the
44 physical examination shall be left to the judgment of the
45 clinician who is expected to perform a physical examination
46 proportionate to the diagnosis that justifies a treatment. The
47 medical record must, at a minimum, document the nature and
48 intensity of the pain, current and past treatments for pain,
49 underlying or coexisting diseases or conditions, the effect of
50 the pain on physical and psychological function, a review of
51 previous medical records, previous diagnostic studies, and
52 history of alcohol and substance abuse. The medical record must
53 ~~shall~~ also document the presence of one or more recognized
54 medical indications for the use of a controlled substance. Each
55 registrant must develop a written plan for assessing each
56 patient’s risk of aberrant drug-related behavior, which may
57 include patient drug testing. Registrants must assess each
58 patient’s risk for aberrant drug-related behavior and monitor

that risk on an ongoing basis in accordance with the plan.

(b) Each registrant must develop a written individualized treatment plan for each patient. The treatment plan must ~~shall~~ state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and must ~~shall~~ indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician shall adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including a rehabilitation program, shall be considered depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. The interdisciplinary nature of the treatment plan shall be documented.

(c) The physician shall discuss the risks and benefits of the use of controlled substances, including the risks of abuse and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient’s surrogate or guardian if the patient is incompetent. The physician shall use a written controlled substance agreement between the physician and the patient outlining the patient’s responsibilities, including, but not limited to:

1. Number and frequency of prescriptions and refills for controlled substances ~~substance prescriptions and refills~~.

2. Patient compliance and reasons for which drug therapy may be discontinued, such as a violation of the agreement.

3. An agreement that controlled substances for the treatment of chronic nonmalignant pain shall be prescribed by a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

88 single treating physician unless otherwise authorized by the
89 treating physician and documented in the medical record.
90 (d) The patient shall be seen by the physician at regular
91 intervals, not to exceed 3 months, to assess the efficacy of
92 treatment, ensure that controlled-substance ~~controlled substance~~
93 therapy remains indicated, evaluate the patient's progress
94 toward treatment objectives, consider adverse drug effects, and
95 review the etiology of the pain. Continuation or modification of
96 therapy depends ~~shall depend~~ on the physician's evaluation of
97 the patient's progress. If treatment goals are not being
98 achieved, despite medication adjustments, the physician shall
99 reevaluate the appropriateness of continued treatment. The
100 physician shall monitor patient compliance in medication usage,
101 related treatment plans, controlled substance agreements, and
102 indications of substance abuse or diversion at a minimum of 3-
103 month intervals.
104 (e) The physician shall refer the patient as necessary for
105 additional evaluation and treatment in order to achieve
106 treatment objectives. Special attention shall be given to those
107 patients who are at risk for misusing their medications and
108 those whose living arrangements pose a risk for medication
109 misuse or diversion. The management of pain in patients with a
110 history of substance abuse or with a comorbid psychiatric
111 disorder requires extra care, monitoring, and documentation and
112 requires consultation with or referral to an addictionologist or
113 psychiatrist ~~physiatrist~~.
114 (f) A physician registered under this section must maintain
115 accurate, current, and complete records that are accessible and
116 readily available for review and comply with the requirements of

25-01224-12 20121198__

117 this section, the applicable practice act, and applicable board
118 rules. The medical records must include, but are not limited to:
119 1. The complete medical history and a physical examination,
120 including history of drug abuse or dependence.
121 2. Diagnostic, therapeutic, and laboratory results.
122 3. Evaluations and consultations.
123 4. Treatment objectives.
124 5. Discussion of risks and benefits.
125 6. Treatments.
126 7. Medications, including date, type, dosage, and quantity
127 prescribed.
128 8. Instructions and agreements.
129 9. Periodic reviews.
130 10. Results of any drug testing.
131 11. A photocopy of the patient’s government-issued photo
132 identification.
133 12. If a written prescription for a controlled substance is
134 given to the patient, a duplicate of the prescription.
135 13. The physician’s full name presented in a legible
136 manner.
137 (g) Patients with signs or symptoms of substance abuse
138 shall be immediately referred to a board-certified pain
139 management physician, an addiction medicine specialist, or a
140 mental health addiction facility as it pertains to drug abuse or
141 addiction unless the physician is board-certified or board-
142 eligible in pain management. Throughout the period ~~of time~~
143 before receiving the consultant’s report, a prescribing
144 physician shall clearly and completely document medical
145 justification for continued treatment with controlled substances

146 and those steps taken to ensure medically appropriate use of
147 controlled substances by the patient. Upon receipt of the
148 consultant's written report, the prescribing physician shall
149 incorporate the consultant's recommendations for continuing,
150 modifying, or discontinuing the controlled-substance ~~controlled~~
151 ~~substance~~ therapy. The resulting changes in treatment shall be
152 specifically documented in the patient's medical record.
153 Evidence or behavioral indications of diversion shall be
154 followed by discontinuation of the controlled-substance
155 ~~controlled substance~~ therapy, and the patient shall be
156 discharged, and all results of testing and actions taken by the
157 physician shall be documented in the patient's medical record.
158 (h) When a pharmacy subject to this section receives a
159 prescription, the prescription is deemed compliant with the
160 standards of practice under this section and, therefore, valid
161 for dispensing.
162
163 This subsection does not apply to a board-certified
164 anesthesiologist, physiatrist, psychiatrist, rheumatologist, or
165 neurologist, or to a board-certified physician who has surgical
166 privileges at a hospital or ambulatory surgery center and
167 primarily provides surgical services. This subsection does not
168 apply to a board-certified medical specialist who has also
169 completed a fellowship in pain medicine approved by the
170 Accreditation Council for Graduate Medical Education or the
171 American Osteopathic Association, or who is board certified in
172 pain medicine by a board approved by the American Board of
173 Medical Specialties or the American Osteopathic Association and
174 performs interventional pain procedures of the type routinely

175 billed using surgical codes.
176 Section 2. Paragraph (a) of subsection (1) of section
177 458.3265, Florida Statutes, is amended to read:
178 458.3265 Pain-management clinics.—
179 (1) REGISTRATION.—
180 (a)1. As used in this section, the term:
181 a. "Chronic nonmalignant pain" means pain unrelated to
182 cancer or rheumatoid arthritis which persists beyond the usual
183 course of disease or beyond the injury that is the cause of the
184 pain or which persists more than 90 days after surgery.
185 b. "Pain-management clinic" or "clinic" means any publicly
186 or privately owned facility:
187 (I) That advertises in any medium for any type of pain-
188 management services; or
189 (II) Where in any month a majority of patients are
190 prescribed opioids, benzodiazepines, barbiturates, or
191 carisoprodol for the treatment of chronic nonmalignant pain.
192 2. Each pain-management clinic must register with the
193 department unless:
194 a. The ~~That~~ clinic is licensed as a facility pursuant to
195 chapter 395;
196 b. The majority of the physicians who provide services in
197 the clinic ~~primarily~~ provide primarily surgical services;
198 c. The clinic is owned by a publicly held corporation whose
199 shares are traded on a national exchange or on the over-the-
200 counter market and whose total assets at the end of the
201 corporation's most recent fiscal quarter exceeded $50 million;
202 d. The clinic is affiliated with an accredited medical
203 school at which training is provided for medical students,

204 residents, or fellows;
205 e. The clinic does not prescribe controlled substances for
206 the treatment of pain;
207 f. The clinic is owned by a corporate entity exempt from
208 federal taxation under 26 U.S.C. s. 501(c)(3);
209 g. The clinic is wholly owned and operated by one or more
210 board-certified anesthesiologists, physiatrists, psychiatrists,
211 rheumatologists, or neurologists; or
212 h. The clinic is wholly owned and operated by one or more
213 board-certified medical specialists who have also completed
214 fellowships in pain medicine approved by the Accreditation
215 Council for Graduate Medical Education, or who are also board-
216 certified in pain medicine by a board approved by the American
217 Board of Medical Specialties and perform interventional pain
218 procedures of the type routinely billed using surgical codes.
219 Section 3. Paragraph (a) of subsection (1) of section
220 459.0137, Florida Statutes, is amended to read:
221 459.0137 Pain-management clinics.—
222 (1) REGISTRATION.—
223 (a)1. As used in this section, the term:
224 a. "Chronic nonmalignant pain" means pain unrelated to
225 cancer or rheumatoid arthritis which persists beyond the usual
226 course of disease or beyond the injury that is the cause of the
227 pain or which persists more than 90 days after surgery.
228 b. "Pain-management clinic" or "clinic" means any publicly
229 or privately owned facility:
230 (I) That advertises in any medium for any type of pain-
231 management services; or
232 (II) Where in any month a majority of patients are

233 prescribed opioids, benzodiazepines, barbiturates, or
234 carisoprodol for the treatment of chronic nonmalignant pain.
235 2. Each pain-management clinic must register with the
236 department unless:
237 a. The ~~That~~ clinic is licensed as a facility pursuant to
238 chapter 395;
239 b. The majority of the physicians who provide services in
240 the clinic ~~primarily~~ provide primarily surgical services;
241 c. The clinic is owned by a publicly held corporation whose
242 shares are traded on a national exchange or on the over-the-
243 counter market and whose total assets at the end of the
244 corporation’s most recent fiscal quarter exceeded $50 million;
245 d. The clinic is affiliated with an accredited medical
246 school at which training is provided for medical students,
247 residents, or fellows;
248 e. The clinic does not prescribe controlled substances for
249 the treatment of pain;
250 f. The clinic is owned by a corporate entity exempt from
251 federal taxation under 26 U.S.C. s. 501(c)(3);
252 g. The clinic is wholly owned and operated by one or more
253 board-certified anesthesiologists, physiatrists, psychiatrists,
254 rheumatologists, or neurologists; or
255 h. The clinic is wholly owned and operated by one or more
256 board-certified medical specialists who have also completed
257 fellowships in pain medicine approved by the Accreditation
258 Council for Graduate Medical Education or the American
259 Osteopathic Association, or who are also board-certified in pain
260 medicine by a board approved by the American Board of Medical
261 Specialties or the American Osteopathic Association and perform

25-01224-12 20121198__

262 interventional pain procedures of the type routinely billed
263 using surgical codes.
264 Section 4. This act shall take effect July 1, 2012.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.