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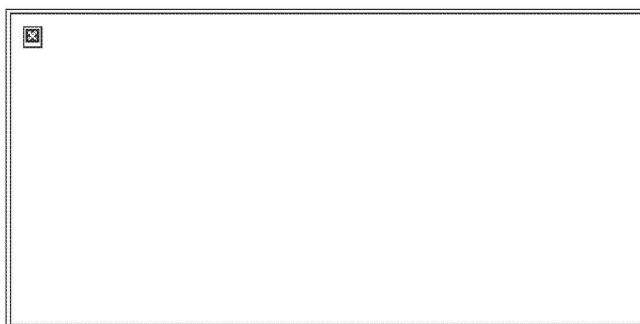
# Unprecedented Changes in State Pain Policy

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## I. CURRENT SITUATION

**Purpose.** To describe the recent trend in development of state pain policies, identify the reasons, benefits and risks, and recommend next steps.

**A new trend in state pain policy.** In the last ten years, there has been a new and rapidly growing trend for states to adopt policies which address the prescribing of opioid analgesics for chronic pain. Figure 1 presents the trend for three basic types of new policies: state laws (statutes), administrative regulations and medical board guidelines. Other state responses to the pain problem include State Pain Commissions,<sup>(1)</sup> "summit" meetings,<sup>(2)</sup> and state task forces.<sup>(3-6)</sup>



**Relevance for pain professionals.** State policies express the attitude of the state government about pain management and the medical use of controlled substances, including the opioid analgesics. It is essential that pain professionals know these policies. Furthermore, it is essential that pain professionals be involved in the adoption and revision of these policies to ensure that they reflect the current state of medical practice, do not reflect misinformation about drugs and pain, and do not interfere with patient care.

**Reasons for this trend.** There is increasing recognition on the part of health professionals, the public and policy makers that

- the management of pain, including chronic non cancer pain, is inadequate; and
- the past avoidance of opioid analgesics for chronic pain is changing<sup>(7)</sup>

**Impetus for change.** The impetus for change in state policy is coming from the following:

- **State medical boards** are adopting guidelines to recognize that opioids have a role in the management of chronic pain, and to specify the acceptable parameters;
- **Chronic pain advocates** (both patients and physicians) are asking their legislators to adopt Intractable Pain Treatment Acts or other legislation with the intent of providing immunity from discipline for physicians who prescribe opioids for chronic pain, and to "make it easier to get pain relief."
- Following the **Supreme Court decision on assisted suicide**, state agencies, legislators, and interest groups increasingly are looking for legislative alternatives; "what laws can we pass to address barriers to pain management?"

## II. BENEFITS AND RISKS

To make change in the pain policy, each type of state policy has its own potential benefits and risks. Opinions differ on the subject; these are ours.

### Statutes and regulations

(See Tables 1 and 2)

Table 1 - State Statutes		Table 2 - State Regulations	
State	Year Enacted	State	Year Enacted
California	1990*	Alabama	1995
Colorado	1991*	Arkansas	1997
Colorado	1997		

Florida	1994*
Minnesota	1997*
Missouri	1995*
Nevada	1995
North Dakota	1995
Ohio	1997*
Oregon	1995*
Rhode Island	1997*
Texas	1989*
Texas	1997
Virginia	1988
Washington	1993
Wisconsin	1995

Iowa	1997
Louisiana	1997
Nevada	1996
New Jersey	1993
Oregon	1996
Texas	1995

\* Grants immunity from discipline for physicians who prescribe opioids for intractable pain.

#### Potential benefits

- Using the force of law can be a profound way to create or change policy;
- In some states, it is necessary to change laws to recognize that controlled substances have medical value; <sup>(8-9)</sup>
- Changing laws and regulations is necessary to remove or modify existing barriers; <sup>(10-11)</sup>
- A law can provide immunity from discipline (although not from investigation) for physicians who prescribe opioids for pain (also see 'risks' below); <sup>(12-13)</sup>
- Legislatures can create commissions to study the pain problem and make recommendations; <sup>(1)</sup>
- The legislative process can be used to redress problems with state agency policies or practices;
- inadequate treatment of pain;

#### Potential risks

- With laws, you have to be careful what you ask for, and very careful how the language is drafted;
- Changing laws and regulations may not be an efficient way to:
  - change public and professional knowledge and attitudes;
  - make it easier for physicians to treat pain;
  - improve patient access to pain management.
- Opening state medical practice laws to legislative reconsideration can produce unanticipated results, such as further greater restrictions on prescribing;
- Some **Intractable Pain Treatment Acts (IPTA)** are forging new policy on fundamental matters of medical decision-making and patient access to pain medicine by (cite current status):
  - defining medical use of opioid analgesics as a "therapy of last resort"
  - suggesting that use of opioid analgesics outside the Act may not be accepted medical practice;
  - requiring an evaluation of the patient by a specialist in the organ system believed to be the cause of pain;
  - requiring a written informed consent to qualify the physician and patient;
  - applying to all intractable pain patients, including those with cancer, sickle cell and HIV disease;
  - implying that opioids may be used for pain only in cases where the cause of pain cannot be removed;
  - excluding pain patients who use drugs "for non-therapeutic purposes";

#### Medical Board Guidelines

(See Table 3)

Table 3 - State Guidelines/Statements	
State	Year Enacted
Alaska	1993
Arizona	1997
California	1994
Colorado	1996

Florida	1996
Georgia	1991
Idaho	1995
Massachusetts	1989
Maryland	1996
Minnesota	1995
Montana	1996
New Mexico	1996
North Carolina	1996
Ohio	1996
Oklahoma	1994
Oregon	1991
Rhode Island	1995
Tennessee	1995
Texas	1993
Utah	1993
Vermont	1996
Washington	1996
West Virginia	1997

#### Potential benefits

- Guidelines are a relatively simple way to express the attitude or policy of a medical board
- A guideline issued by a state medical board is a more direct and flexible method than statutes for communicating policy from the licensing agency to the licensees;
- Medical boards, as compared to legislatures, may be able to more easily take into consideration the current and changing state of clinical medicine and science;
- Guidelines from a number of state medical boards have already encouraged better pain management, and have positively clarified the role of opioids for the management of chronic pain;
- State medical boards are accustomed to considering the balance between improving quality of medical care and protecting public health;

#### Potential risks

- Guidelines do not carry the force of law and therefore do not provide any guarantees;
- Membership of state medical boards may change, thus guidelines may change;
- Guidelines may be unclear, communicate a less-than-positive message, and may lack consistency from state to state;
- Guidelines may not be effective if they are not implemented in board investigatory policy, or communicated to state physicians and other regulatory bodies.

### III. CONCLUSIONS

**Laws and regulations.** The use of laws as the method to address pain management is likely to increase as legislatures and state agencies grapple with assisted suicide and pain issues. However, the use of laws and regulations should be used with caution so that the future of pain management is only enhanced and not unduly restricted. Objectives should be defined, and the method chosen according to its potential to achieve the desired outcomes. The potential benefits and risks of various methods should be weighed carefully.

**Medical board guidelines.** This method of clarifying public policy has also increased in recent years, and is likely to continue. The Pain & Policy Studies Group and the Federation of State Medical Boards of the U.S. are cooperating a) to evaluate existing guidelines, b) to develop principles for improved guidelines, and c) to present six more workshops on pain management for medical board members (see APS Poster #844).

### IV. RECOMMENDATIONS

**1. Monitor this major policy development.** The rapid increase in state pain-related policy should be regarded as a development of major significance for the pain field; pain professionals and their organizations should actively monitor and influence the development of state pain policies;

2. **Get to know your board.** Pain professionals should get to know their state licensing board members, their policies and issues, and offer assistance;

3. **Make use of existing information.** Policy makers, medical regulators and pain professionals are encouraged to review the resources available through the PPSG Website, at

<http://www.medsch.wisc.edu/painpolicy>

4. **Work to achieve a balanced policy.** State pain-related policies should strive to a) express a positive attitude toward pain management, b) encourage use of opioid analgesics consistent with the state of clinical experience, scientific knowledge and professional consensus, c) continue efforts to address misuse, abuse and diversion of controlled substances without interfering in their appropriate medical uses.

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