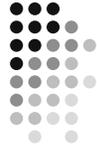


# Pain, Public Health and the Law

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## Statement of Premise

- Pain is a public health issue
  - Epidemiology of pain
  - Impact on human functioning
  - Economic consequences
  - Root cause of chronic illness
  - Intersection with addiction



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## Challenges in Reducing Incidence of Avoidable Pain

- Attitudes of health care professionals, patients and the public
- Mistaken “common knowledge” or inadequate training and education of professionals
- Avoidance of social/professional disapproval
- Concerns over addiction and diversion
- Fear of legal risk in prescribing for pain relief



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### Why the focus on medication?



- Medication is not the only method for treating pain
- Medications, including controlled substances, are critical tools in effective treatment
- Attitudes and regulatory environment around controlled substances impair other interventions to remediate pain

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### Legal Environment for Treatment for Chronic Pain



Medical licensure and discipline

Federal enforcement of Controlled Substances Act

Liability risks

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### Medical Licensure/Discipline and the Public's Health



- Police power of the individual states
- Goals and purposes of the system
- Public health concerns in discipline relating to treatment for pain
  - Quality medical care
  - Concerns over addiction and diversion
  - Impact on access to care

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## Medical Licensure and Discipline



- Nature of the disciplinary process
- “Prescribing abuse” as a ground for disciplinary action
- Standards for detecting and disciplining for prescribing abuse
- Emerging grounds for discipline for neglect in regard to treatment for pain

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## Policy of the Federation of State Medical Boards (2004)



“The undertreatment of pain is recognized as a serious public health problem that results in a decrease in patients’ functional status and quality of life and may be attributed to a myriad of social, economic, political, legal and educational factors, including inconsistencies and restrictions in state pain policies.”

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## FSMB Policy – Major Provisions



- Diagnosis and treatment of pain is integral to practice of medicine.
- Controlled substances may be essential to treatment of acute, chronic, and cancer pain.
- Tolerance and physical dependence are normal consequences of sustained use of opioids and are not the same as addiction.

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## FSMB Policy – Major Provisions



- Physicians should incorporate safeguards into their practices to minimize the potential for abuse and diversion.
- The board will not judge the practice based on quantity and duration of medication administration alone
- Practice management techniques are required: examination, documentation

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## Federal Enforcement Actions



- Federal authority in the Controlled Substances Act  
*Purpose: to control the illegitimate distribution of controlled substances without interfering with the legitimate practice of medicine*
- Enforcement by the DEA

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## Convergence of State and Federal Policy



“We want a balanced approach that addresses the abuse problem without keeping patients from getting the care that they need and deserve.”  
2001 Joint Statement, issued by the DEA and 21 national organizations.

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## Convergence of State and Federal Policy



DEA "Frequently Asked Questions"

Issued in 2003

Adopted an enforcement approach consistent with Model Guidelines issued by the FSMB

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## Divergence of Federal and State Policy



"The Myth of the Chilling Effect" 2003

*DEA mission: "to prevent, detect and investigate the diversion of legitimately manufactured controlled substances."*

Interim Policy Statement 2004

DEA withdraws FAQs, citing "misstatements"

NAAG: "state and federal policies are diverging with respect to . . . ensuring the availability of prescription pain medications to those who need them."

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## Federal Criminal Prosecutions of Physicians



- Illustrative cases
- Impact on effectiveness of changes in state regulation and emergence of liability risks
- Federal-State power in the regulation of the practice of medicine
- Inadequate assessment of public health

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## Why It Matters



- Pain causes significant social and economic losses
- Undertreatment of pain allows losses to persist and expand
- Accessibility and effectiveness of treatment for pain is hampered by a number of factors
- Law can stimulate or restrict improvement in prevention or remediation of pain

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