

Appropriate Management of Pain: Addressing the Clinical, Legal, and Regulatory Barriers

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Adequate treatment of pain is essential to alleviate suffering, yet studies show that patients with terminal or serious illness receive inadequate pain relief. In the case of terminally ill patients, adequate palliation of pain may be likely to reduce requests for physician-assisted suicide. This issue of the journal addresses barriers to effective pain relief and suggests how treatment of pain can be improved. The symposium features the Pain Relief Act, which is designed to provide practitioners who prescribe controlled substances for pain with protection from inappropriate legal sanctions. The Act is the product of the Project on Legal Constraints on Access to Effective Pain Relief, whose principal investigators were Nancy Neveloff Dubler, LL.B., Sandra H. Johnson, J.D., LL.M., Robert J. Levine, M.D., and Benjamin W. Moulton, J.D., M.P.H.

The Project was supported by the Mayday Fund and the Emily Davie and Joseph S. Kornfeld Foundation. The Project included a major research effort to analyze state regulatory efforts and other legal issues that appeared to influence negatively access to effective pain relief. It also included a substantial research component on the cultural context for consent and pain relief. The work of the Project on state regulatory issues was reviewed by a local advisory committee working with researchers at St. Louis University, expert consultants, and a National Advisory Committee whose members included representatives of major medical, nursing, and legal organizations. In November 1996, the Project held the National Meeting on Legal, Ethical, and Institutional Issues in Pain Relief, where 200 participants, including fifty key state policy makers, studied the clinical, legal, ethical, and institutional issues. The Project's recommendations were subject to examination in several

workshop sessions. Resources developed by the Project and a description of its work are available on the website of the American Society of Law, Medicine & Ethics (ASLME) (<http://www.aslme.org>). The Project will continue and expand in 1997–98 with continued funding by the Mayday Fund.

ASLME thanks the board of directors of the Mayday Fund and the Emily Davie and Joseph S. Kornfeld Foundation for their generous support for the Project. We appreciate their commitment to improving the treatment of patients in pain. ASLME also acknowledges the special support of Fenella Rouse, J.D., for her guidance and encouragement throughout the Project.

The symposium begins with four personal narratives about pain relief, followed by two papers on clinical and pharmacological issues in pain relief. Dr. Robert McQuillan offers a personal anecdote on the physician-patient relationship in the context of a patient with chronic lower back pain who is being treated with long-term opioid therapy. Dr. Christine Cassel recounts the plight of a physician whose license was suspended by a licensing board for allegedly misprescribing controlled substances to a patient with lumbar stenosis and degenerative arthritis of the spine. Reverend Jay Gabb describes how comprehensive pain management requires an interdisciplinary approach, with attention to the patient's physical and spiritual needs. And finally Sandra Albertson writes of her personal struggle with the loss of a loved one to cancer.

Dr. Russell Portenoy provides clinical background on the use of controlled substances for relief of chronic pain. Drawing from the clinical data on cancer patients, he argues persuasively that, contrary to the traditional view of opioid therapy, some patient populations can sustain long-term opioid analgesia without significant adverse effects. He also provides guidelines for managing opioid therapy for nonmalignant pain.

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Douglas Pisano, a pharmacist, provides insights into pharmacy's part in the delivery of pain medication. He focuses on issues of federal and state oversight of controlled substances and how pharmacists and other practitioners must work within the regulatory environment; and he outlines how pharmacists select and substitute medications.

The next section presents the Pain Relief Act, which is designed to encourage proper pain management by giving protection from inappropriate legal sanctions to physicians who prescribe controlled substances for chronic pain in accordance with accepted clinical practice standards. Following presentation of the Pain Relief Act, Sandra Johnson describes the legal issues and regulatory challenges that arise in oversight of health care professionals treating patients for pain. She offers a detailed commentary on the Act's structure and its operations. She also compares the Act to existing state statutes on pain relief and highlights how its unique provisions may be preferable to current state statutes on pain relief.

Following up on the Act's underlying tenet to improve knowledge about pain management, David Ralston, Chris Stern Hyman, and David Joranson and Aaron Gilson provide three perspectives on how this can be done. Mr. Ralston takes a critical look at Texas's experience in improving the quality and level of chronic pain management among Texas physicians. He reviews the regulatory and statutory changes since the passage of the Intractable Pain Treatment Act of 1989, discussing whether rules or policy statements provide the best guidance to physicians. He argues that issuing rules, which have the force of law, gives physicians legal reassurance about disciplinary actions involving controlled substances.

Chris Hyman examines how state medical boards contribute to the problem of undertreatment of pain. She con-

tends that the boards and their licensees need to be better informed about how to manage pain effectively, and that the boards should provide pain experts to help them investigate physicians accused of improper prescribing of controlled substances. David Joranson and Aaron Gilson focus on education of physicians about pain control, arguing that state medical boards, through focused workshops, can improve the level of pain management by establishing flexible guidelines to help physicians prescribe controlled substances for chronic intractable pain.

Addressing the notion of consent raised by Sandra Johnson in her commentary, Linda Post et al. analyze the Western concept of informed consent. Given the primacy of the caregivers' obligation to treat pain, Post et al. argue for a richer notion of consent that emphasizes the providers' ethical duty of beneficence over their duty to respect autonomy.

In her article, Robyn Shapiro elucidates a potential trend in malpractice liability for failure to provide adequate pain relief. Drawing on two state-level court decisions and the courts' broader use of medical guidelines to define proper standards of care, she foresees the broadening of providers' liability for failing to treat patients according to established clinical standards.

Finally, Dr. Loring Conant and Arlene Lowney examine hospice as a component of palliative care. They argue that the interdisciplinary hospice philosophy of care can provide effective physical and emotional relief at end-of-life, not only in hospice settings but also in hospital and other care settings.

The editors thank Sandra Johnson for her role in and commitment to the Project, and we invite readers to write or email us with your thoughts on these papers. Addresses can be found in the masthead.