

MINNESOTA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT (*No provisions found*)
Health; Chapter 152. Drug, Controlled Substances
- INTRACTABLE PAIN TREATMENT ACT (*Part of Controlled Substances Act*)
Health; Chapter 152. Drug, Controlled Substances; Prescriptions, Section 125
- MEDICAL PRACTICE ACT
Health; Chapter 147. Board of Medical Practice
- PHARMACY PRACTICE ACT
Health; Chapter 151. Pharmacy

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*No provisions found*) (*Part of Pharmacy Board Regulations*)
Board of Pharmacy; Chapter 6800. Pharmacies and Pharmacists
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Board of Medical Practice; Chapter 5600. Licensure and Registration
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Board of Pharmacy; Chapter 6800. Pharmacies and Pharmacists

OTHER GOVERNMENTAL POLICIES

- JOINT BOARD POLICY STATEMENT
Minnesota Boards of Medical Practice, Nursing, and Pharmacy. *Joint Statement on Pain Management. Minnesota Board of Medical Practice Update*. Fall 2004, p. 3. Adopted: Fall, 2004.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- HOSPICE LICENSING
Health; Chapter 144A. Nursing Homes and Home Care; Hospice Care Licensing
- HOMICIDE AND SUICIDE
Crimes, Criminals; Chapter 609. Criminal Code; Homicide and Suicide



Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act ¹								
Intractable Pain Treatment Act		•	•		•			
Medical Practice Act		•						
Pharmacy Practice Act			•					
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Joint Board Policy Statement		•		•				•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Hospice Licensing								•
Homicide and Suicide								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Intractable Pain Treatment Act		•						•
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Joint Board Policy Statement ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Hospice Licensing ¹								
Homicide and Suicide ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found



STATUTES

Intractable Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Minn. Stat. § 152.125

152.125 Intractable pain

Subdivision 1. Definition. For purposes of this section, "intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated with the consent of the patient and in which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts. Reasonable efforts for relieving or curing the cause of the pain may be determined on the basis of, but are not limited to, the following:

(1) when treating a nonterminally ill patient for intractable pain, evaluation by the attending physician and one or more physicians specializing in pain medicine or the treatment of the area, system, or organ of the body perceived as the source of the pain; or

(2) when treating a terminally ill patient, evaluation by the attending physician who does so in accordance with the level of care, skill, and treatment that would be recognized by a reasonably prudent physician under similar conditions and circumstances.

Subd. 2. Prescription and administration of controlled substances for intractable pain. Notwithstanding any other provision of this chapter, a physician may prescribe or administer a controlled substance in schedules II to V of section 152.02 to an individual in the course of the physician's treatment of the individual for a diagnosed condition causing intractable pain. No physician shall be subject to disciplinary action by the board of medical practice for appropriately prescribing or administering a controlled substance in schedules II to V of section 152.02 in the course of treatment of an individual for intractable pain, provided the physician keeps accurate records of the purpose, use, prescription, and disposal of controlled substances, writes accurate prescriptions, and prescribes medications in conformance with chapter 147.

Subd. 3. Limits on applicability. This section does not apply to:

(1) a physician's treatment of an individual for chemical dependency resulting from the use of controlled substances in schedules II to V of section 152.02;

(2) the prescription or administration of controlled substances in schedules II to V of section 152.02 to an individual whom the physician knows to be using the controlled substances for nontherapeutic purposes;

(3) the prescription or administration of controlled substances in schedules II to V of section 152.02 for the purpose of terminating the life of an individual having intractable pain; or

(4) the prescription or administration of a controlled substance in schedules II to V of section 152.02 that is not a controlled substance approved by the United States Food and Drug Administration for pain relief.

Subd. 4. Notice of risks. Prior to treating an individual for intractable pain in accordance with subdivision 2, a physician shall discuss with the individual the risks associated with the controlled substances in schedules II to V of section 152.02 to be prescribed or administered in the course of the physician's treatment of an individual, and document the discussion in the individual's record.

(-) CRITERION 10:
Implies opioids are not part of professional practice

(+) CRITERION 3:
Opioids are part of professional practice

(-) CRITERION 16:
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Suggests that physicians would not qualify for immunity and relief from concerns about regulatory scrutiny if they prescribe opioids as a treatment of first choice for patients who present initially with severe pain, such as those with sickle-cell anemia.

(+) CRITERION 2:
Pain management is part of medical practice

(+) CRITERION 5:
Addresses fear of regulatory scrutiny

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Minn. Stat. § 147.081

147.081 Practicing without license; penalty

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Subd. 3. Practice of medicine defined. For purposes of this chapter, a person not exempted under section 147.09 is "practicing medicine" or engaged in the "practice of medicine" if the person does any of the following:

(1) advertises, holds out to the public, or represents in any manner that the person is authorized to practice medicine in this state;

(2) offers or undertakes to prescribe, give, or administer any drug or medicine for the use of another;

(3) offers or undertakes to prevent or to diagnose, correct, or treat in any manner or by any means, methods, devices, or instrumentalities, any disease, illness, pain, wound, fracture, infirmity, deformity or defect of any person;

(4) offers or undertakes to perform any surgical operation including any invasive or noninvasive procedures involving the use of a laser or laser assisted device, upon any person;

(5) offers to undertake to use hypnosis for the treatment or relief of any wound, fracture, or bodily injury, infirmity, or disease; or

(6) uses in the conduct of any occupation or profession pertaining to the diagnosis of human disease or conditions, the designation "doctor of medicine," "medical doctor," "doctor of osteopathy," "osteopath," "osteopathic physician," "physician," "surgeon," "M.D.," "D.O.," or any combination of these designations.

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(+) **CRITERION 2:**
*Pain management is part
of medical practice*



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Pharmacy Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Minn. Stat. § 151.37

151.37 Legend drugs, who may prescribe, possess

Subdivision 1. Prohibition. Except as otherwise provided in this chapter, it shall be unlawful for any person to have in possession, or to sell, give away, barter, exchange, or distribute a legend drug.

Subd. 2. Prescribing and filling. (a) A licensed practitioner in the course of professional practice only, may prescribe, administer, and dispense a legend drug, and may cause the same to be administered by a nurse, a physician assistant, or medical student or resident under the practitioner's direction and supervision, and may cause a person who is an appropriately certified, registered, or licensed health care professional to prescribe, dispense, and administer the same within the expressed legal scope of the person's practice as defined in Minnesota Statutes. A licensed practitioner may prescribe a legend drug, without reference to a specific patient, by directing a nurse, pursuant to section 148.235, subdivisions 8 and 9, physician assistant, or medical student or resident to adhere to a particular practice guideline or protocol when treating patients whose condition falls within such guideline or protocol, and when such guideline or protocol specifies the circumstances under which the legend drug is to be prescribed and administered. An individual who verbally, electronically, or otherwise transmits a written, oral, or electronic order, as an agent of a prescriber, shall not be deemed to have prescribed the legend drug. This paragraph applies to a physician assistant only if the physician assistant meets the requirements of section 147A.18.

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Joint Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Pain management is a significant issue in health care today. Estimates of Americans experiencing pain range from 50-75 million persons annually. Thirty to fifty percent of patients undergoing cancer treatment experience pain. The effects of unmanaged pain are serious and wide-ranging and, yet, pain is widely under-treated. Untreated or inadequately treated pain impacts patients' quality of life and increases health care costs. Factors cited in the under-treatment of pain include concerns about causing addiction or tolerance; inadequate knowledge of controlled substances and pain management; fear of scrutiny and discipline by regulatory agencies; inadequate assessment; and patient reluctance to report pain or to take pain medications.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) guidelines on pain management state, "Patients have the right to appropriate assessment and management of pain." (Emphasis added). It is, therefore, incumbent upon Minnesota physicians, nurses and pharmacists to work cooperatively and effectively to address the dimensions of pain and to provide maximum pain relief with minimal side effects. Towards that end, and in the interest of public protection, the Minnesota Boards of Medical Practice, Nursing and Pharmacy issue the following joint statement.

To effectively assist patients in the management of pain, health care professionals should, within their scope of practice:

- Consistently and thoroughly assess all patients for pain. If pain is reported, the pain should be evaluated with a complete history and physical with laboratory and diagnostic testing, if indicated;
- Work collaboratively in a multi-disciplinary approach to develop and implement an individualized, written treatment plan utilizing pharmacologic and non-pharmacologic interventions with specific objectives for the patient;
- Regularly evaluate the effectiveness of the treatment plan, using a consistent, developmentally appropriate, standardized pain scale, and make adjustments as needed;
- Document all aspects of pain assessment and care in a timely, clear, consistent, complete and accurate manner;
- Anticipate and effectively manage side effects of pain medications;
- Provide adequate and culturally appropriate information to patients and family members or caregivers to support patients in making informed decisions and participate in the management of their pain;
- Be aware of the risks of diversion and abuse of controlled substances and take appropriate steps to minimize these risks;
- Recognize individuals with chemical dependency may experience pain requiring medications, including opioids, and may require specialized management;
- Consult with, and refer patients to, other providers when appropriate;
- Develop organization-appropriate and evidence-based policies and protocols for pain management;
- Become and remain knowledgeable regarding effective pain management; and
- Comply with all state and federal laws and regulations regarding prescribing, dispensing, and administering legend drugs, including controlled substances.

(CONTINUED ON NEXT PAGE)

(+) **CRITERION 4:**
Pain management is encouraged

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes a practitioner's responsibility to provide patients information about pain management and palliative care when considering treatment options.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes the need for a multidisciplinary approach to pain management.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Recognizes that a patient's prior history or current status of drug abuse does not contraindicate appropriate pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Joint Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Resources:

American Pain Foundation
201 North Charles Street, Suite 710
Baltimore, MD 21201-4111
1-888-615-PAIN (7246)
<http://www.painfoundation.org/>

American Pain Society
<http://www.ampainsoc.org/>

DEA
<http://www.dea diversion.pdf/>

Federation of State Medical Boards: Model Policy for use of Controlled Substances for the Treatment of Pain.
<http://www.fsmb.org/>

"Guideline for Pain Management." Kansas State Board of Nursing (2001).

"Joint Statement on Pain Management in End-of-Life Care." North Carolina Boards of Nursing, Pharmacy and Medicine (1999).

"MNA Position Statement: Pain Management." Minnesota Nurses Association, (2000).
<http://www.painandhealth.org/>

"Pain Management Policy." California Board of Registered Nursing. (1999)

"Position Statement on Pain Management and Control of Distressing Symptoms in Dying Patients." American Nurses Association. (2003).

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Hospice Licensing

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Minn. Stat. § 144A.751

144A.751 Hospice bill of rights

Subdivision 1. Statement of rights. An individual who receives hospice care has the right to:

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- (22) have pain and symptoms managed to the patient's desired level of comfort.
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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for hospices to ensure that pain management is an essential part of patient care.

STATUTES

Homicide and Suicide

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Minn. Stat. § 609.215

609.215 Suicide

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Subd. 3. Acts or omissions not considered aiding suicide or aiding attempted suicide.
(a) A health care provider, as defined in section 145B.02, subdivision 6, who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, does not violate this section unless the medications or procedures are knowingly administered, prescribed, or dispensed to cause death.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

MISSISSIPPI

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 41. Public Health; Chapter 29. Poisons, Drugs and Other Controlled Substances;
Article 3. Uniform Controlled Substances Law
- MEDICAL PRACTICE ACT (*No provisions found*)
Title 73. Professions and Vocations; Chapter 25. Physicians
- PHARMACY PRACTICE ACT
Title 73. Professions and Vocations; Chapter 21. Pharmacists
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*Part of Pharmacy Board Regulations*) (*No provisions found*)
Agency 50. Regulatory Agencies; Sub-Agency 018. Pharmacy Board
- MEDICAL BOARD REGULATIONS
Agency 50. Regulatory Agencies; Sub-Agency 013. Board of Medical Licensure
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Agency 50. Regulatory Agencies; Sub-Agency 018. Pharmacy Board

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD POLICY STATEMENT
Mississippi State Board of Medical Licensure. *Pain, Pain Management and Mississippi State Board of Medical Licensure Scrutiny. MSBML Newsletter*. Vol. 1, No. 10. Fall 1997.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- HOSPICE
Title 41. Public Health; Chapter 85. Mississippi Hospice Law of 1995
- HOSPICE STANDARDS
Agency 12. Department of Health; Sub-Agency 000. General; Chapter 039. Minimum Standards of Operation for Hospice



Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Medical Practice Act ¹								
Pharmacy Practice Act			•					
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board		•	•				•	
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement		•		•				•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Hospice								•
Hospice Standards								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board		•		•				•
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement	•							
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Hospice ¹								
Hospice Standards ¹								

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STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Miss. Code Ann. § 41-29-105

§ 41-29-105. Definitions

The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

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(y) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; and

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*

STATUTES

Pharmacy Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Miss. Code Ann. § 73-21-83

§ 73-21-83. Board to regulate practice of pharmacy; licensing of pharmacists; fees; persons holding license on July 1, 1991

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(2) A license for the practice of pharmacy shall be obtained by all persons prior to their engaging in the practice of pharmacy. However, the provisions of this chapter shall not apply to physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of the State of Mississippi and are authorized to dispense and administer prescription drugs in the course of professional practice.

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulation

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

CMSR 50-013-002

50 013 002. Regulations Pertaining to Prescribing, Administration and Dispensing of Medication

V. ADDENDUM: USE OF CONTROLLED SUBSTANCES FOR CHRONIC (Non-Terminal) PAIN:

A. DEFINITION: For the purpose of Article V., Addendum, the following terms have the indicated meaning:

"Chronic Pain" is a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain. Further, if a patient is receiving controlled substances for the treatment of pain for a prolonged period of time (more than six months), then they will be considered for the purposes of this regulation to have "de facto" chronic pain and subject to the same requirements of this regulation. "Terminal Disease Pain" should not be confused with "Chronic Pain." For the purpose of this Section, "Terminal Disease Pain" is pain arising from a medical condition for which there is no possible cure and the patient is expected to live no more than six (6) months. "Acute Pain" is the normal, predicted physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with surgery, trauma and acute illness. It is generally time limited and is responsive to therapies, including controlled substances as defined by the U.S. Drug Enforcement Administration. Title 21 CFR Part 1301 Food and Drugs.

"Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects and is characterized by compulsive use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not be considered addiction.

"Physical Dependence" is a physiological state of neuroadaptation to a substance which is characterized by the emergence of a withdrawal syndrome if the use of the substance is stopped or decreased abruptly, or if an antagonist is administered. Withdrawal may be relieved by re-administration of the substance. Physical dependence is a normal physiological consequence of extended opioid therapy for pain and should not be considered addiction.

"Substance Abuse" is the use of any substance(s) for non-therapeutic purposes; or use of medication for purposes other than those for which it is prescribed.

"Tolerance" is a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect or a reduced effect is observed with a constant dose. Tolerance occurs to different degrees for various drug effects, including sedation, analgesia and constipation. Analgesic tolerance is the need to increase the dose of opioid to achieve the same level of analgesia. Such tolerance may or may not be evident during treatment and does not equate with addiction,

B. Notwithstanding any other provisions of these rules and regulations, a physician may prescribe, administer, or dispense controlled substances in Schedules II, IIN, III, IIIN, IV and V, or other drugs having addiction-forming and addiction-sustaining liability to a person in the usual course of treatment of that person for a diagnosed condition causing chronic pain.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Does this imply that opioids are a treatment of last resort?

(+) **CRITERION 7:**
Physical dependence or analgesic tolerance are not confused with "addiction"

(+) **CRITERION 2:**
Pain management is part of medical practice

(-) **CRITERION 10:**
Implies opioids are not part of professional practice

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY B:
Mandated consultation

(+) **CRITERION 3:**
Opioids are part of professional practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 2:**
Pain management is part
of medical practice

PAIN, PAIN MANAGEMENT AND MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
SCRUTINY

The skillful management of pain is one of the most valuable services a physician can provide. This service calls into play many components of the art and science of medicine and the technological skills that physicians possess. The result of pain management, skillfully done, is most rewarding to the patient and physician alike.

In many respects, the mechanism of pain is a mystery, but it is a mystery that is being progressively untangled. There have been many advances in our knowledge, allowing a better understanding of pain mechanisms and the therapeutic approaches to pain. We now know that:

Pain may be perceived peripherally, at several levels in the spinal cord and mid brain, and in the central nervous system. This knowledge allows pain to be classified and to be treated in different ways, depending on the level where it is perceived.

There are natural-endogenous agonist and antagonist influences and some knowledge of how these can be brought into play.

There are many factors which influence pain, i.e.:

- a. The patient's general situation with his family, employment, finances, spirituality, marital status, et al.;
- b. The patient's previous responses to pain and to pain medications;
- c. The patient's disease, whether it is due to an acute problem where healing and return to normal is expected, a terminal problem where progression of the disease to death within an estimated six (6) months or less, or a chronic non-terminal source of the pain where neither of the outcomes stated above is expected; and
- d. The patient's attitude toward the pain.

Pain therapy is multimodal and with the above knowledge, a plan of therapy can be selectively evolved that is effective in most cases. A general recitation of these modes is as follows:

- a. Behavior modification-psychological evaluation and intervention;
- b. Physical therapy ranging from therapeutic exercises and joint manipulation to a variety of modalities including hydrotherapy, thermotherapy, manipulation to change threshold of sensory nerve ends (TENS), and others;
- c. Analgesics to include NSAIDS, antidepressants and anticonvulsants;
- d. Where indicated, a variety of maneuvers ranging from nerve blocks to ablative surgery; and
- e. Controlled substances, including drugs for anxiety and depression, as well as opioids of appropriate strength.

With a working knowledge of all these things, the physician, using good clinical judgement, can create and carry out a plan that will satisfactorily resolve most pain problems and minimize the side effects and potential side effects of all these modes of therapy.

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OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

Many physicians are astute in the management of acute pain associated with surgery, trauma, and procedures. A growing number of physicians are becoming adept in the management of the pain of terminal disease. These terminal diseases include a number of cancers, AIDS, a number of progressive neurological diseases, end-stage heart and lung disease, and a variety of other disorders.

Adequate relief of acute pain requires regular doses of an ample amount of medication, as well as supportive measures with physical therapy therapeutic exercises, i.e., walking and breathing exercises, et al. Here the physiologic injury is soon repaired, and the patient returns to normal.

Palliative terminal care requires much supportive treatment involving psychosocial, pastoral care, physical therapy, family therapy, and a degree of occupational therapy. Compassionate care on the part of all care givers to the patients and their families is a must. Medication must be managed skillfully to assure that increasing amounts are appropriate. Therapy and medication are required for the wide variety of problems that inevitably arise with these situations. The ability to help patients to die graciously and in comfort has traditionally been an outstanding asset of physicians who care for these patients.

The Mississippi State Board of Medical Licensure supports the adequate treatment of all pain. In the acute and terminal categories of pain, the Board's concern is that they not be under treated.

Chronic pain of the non-terminal disorders is where problems arise. It is here that skills in pain management are stretched to the limit. All of the skills embodied in the art and science of medicine and the technologies involved in pain management are called into play.

Successful management in the case of chronic non-terminal pain requires:

Patient evaluation skills to provide a diagnosis and mechanism for the pain.

Management skills in evolving a plan of therapy that brings all the multimodal elements of the therapeutic armamentarium under consideration and selects out those that are most appropriate in each particular case.

Self-evaluation skills to know what you know, and to know what you do not know, and to know when consultation may be sought with pain specialists, addictionologists, orthopedic surgeons, neurologists, neurosurgeons and others who can provide help in establishing a diagnosis and a mechanism for the pain, and can help evolve an appropriate plan of therapy.

Appropriate and timely monitoring of all modes of therapy including medications.

Awareness of and a watchful eye for the possibility of drug dependency and/or addiction where controlled substances are used.

Documentation of all evaluations, the plan of therapy, observations made on follow-up visits (especially the response to therapy and the continuing need for therapy, including everything but especially with regard to controlled drug use). Remember, if it is not documented, who is to say that it happened.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 4:**
Encourages pain
management

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Recognizes the need for a multidisciplinary approach to pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

What Does the Licensure Board Require of You?

- I. The Mississippi State Board of Medical Licensure publishes a book entitled *LAWS, RULES AND REGULATIONS GOVERNING THE PRACTICE OF PHYSICIANS (M.D./D.O.) AND PODIATRIST (D.P.M.)*. Section 2 of this publication is entitled "RULES PERTAINING TO PRESCRIBING, ADMINISTRATION AND DISPENSING OF MEDICATION." We strongly suggest you familiarize yourself with these rules and regulations based on the law.

Follow all of the steps described in the section on the successful management of non-terminal chronic pain.

Know that a medical record documenting all things is not only part of good patient management, but allows any outside agency (such as the Mississippi State Board of Medical Licensure) that may examine these records to have good insight into what was done, medications prescribed, dosage of medications, how often medication is given, and time period medication is prescribed.

Know that the Board will have no quarrel with you if:

- (a) an appropriate good faith history and physical, along with other appropriate studies to make a diagnosis and to understand so far as is possible the mechanism of the pain;
- (b) a plan of therapy is evolved and utilized using all the available modes of therapy available and appropriate for each particular patient;
- (c) appropriate consultation is obtained;
- (d) controlled substances are used only after all other measures and non-controlled analgesics are found to be ineffective; and
- (e) all of this is timely and appropriately documented.

(-) **CRITERION 9:**
Opioids are a last resort

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Hospice

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Miss. Code Ann. § 41-85-3

§ 41-85 -3. Definitions

When used in this chapter, unless otherwise requires:

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(h) "Palliative care" means the reduction of abatement of pain and other troubling symptoms by appropriate coordination of all elements of the hospice care team needed to achieve needed relief of distress.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Hospice law recognizes that pain management is an essential part of palliative care.

REGULATIONS

Hospice Standards

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

CMSR 12-000-039

12 000 039. Minimum Standards of Operation for Hospice

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PART IV ADMINISTRATION

400

Section A. Administration.

400.1. Governing Body - A hospice shall have a governing body that assumes full legal responsibility for compliance with these regulations and for setting policy, appointing persons to carry out such policies, and monitoring the hospice's total operation.

400.2. Medical Director -

(a) Each hospice shall have a medical director, who, on the basis of training, experience and interest, shall be knowledgeable about the psychosocial and medical aspects of hospice care.

(b) The medical director shall be appointed by the governing body or its designee.

(c) The duties of the medical director shall include, but not be limited to:

1. Consultation with attending physicians, as requested, regarding pain and symptom management;

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (medical director's responsibility) for hospices to ensure that pain management is an essential part of patient care.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

MISSOURI

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 12. Public Health and Welfare; Chapter 195. Drug Regulations; Narcotic Drug Act
- MEDICAL PRACTICE ACT (*No provisions found*)
Title 22. Occupations and Professions; Chapter 334. Physicians and Surgeons, Therapists, Athletic Trainers, Health Care Providers
- INTRACTABLE PAIN TREATMENT ACT (*Part of Medical Practice Act*)
Title 22. Occupations and Professions; Chapter 334. Physicians and Surgeons, Therapists, Athletic Trainers, Health Care Providers; Sections 334.105-334.107
- PHARMACY PRACTICE ACT (*No provisions found*)
Title 22. Occupations and Professions; Chapter 338. Pharmacists and Pharmacies

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Title 19. Department of Health and Senior Services; Division 30. Division of Senior Services and Regulation; Chapter 1. Controlled Substances
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 4. Department of Economic Development; Division 150. State Board of Registration for the Healing Arts
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 4. Department of Economic Development; Division 220. State Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
Missouri State Board of Registration for the Healing Arts. *Information About the Use of Controlled Substances for the Treatment of Pain*. Adopted: October 15, 2004.
- MEDICAL BOARD GUIDELINE
Missouri State Board of Registration for the Healing Arts. *Palliative Care Guidelines*. Adopted: January, 2001.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- ADVISORY COUNCIL ON PAIN AND SYMPTOM MANAGEMENT
Title 12. Public Health and Welfare; Chapter 192. Department of Health; Missouri State Advisory Council on Pain and Symptom Management
- HOSPICE SERVICES
Title 13. Department of Social Services; Division 70. Division of Medical Services; Chapter 50. Hospice Services Program



Provisions that may *ENHANCE* pain management

	1	2	3	4	5	6	7	8
Criteria	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Medical Practice Act ¹								
Intractable Pain Treatment Act		•	•		•			•
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances			•					
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline		•	•	•	•		•	•
Medical Board Guideline				•				•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Advisory Council on Pain and Symptom Management								•
Hospice Services								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act			•					
Medical Practice Act ¹								
Intractable Pain Treatment Act		•		•				•
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline ¹								
Medical Board Guideline ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Advisory Council on Pain and Symptom Management ¹								
Hospice Services ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found



STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

§ 195.010 R.S.Mo.

§ 195.010. Definitions

The following words and phrases as used in sections 195.005 to 195.425, unless the context otherwise requires, mean:

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. .

(15) "Drug dependent person", a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of such substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence:

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. .

(35) "Practitioner", a physician, dentist, optometrist, podiatrist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by this state to distribute, dispense, conduct research with respect to or administer or to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in this state, or a pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research:

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. .

(+) **CRITERION 3:**
Opioids are part of professional practice

(-) **CRITERION 11:**
Physical dependence or analgesic tolerance confused with "addiction"

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Intractable Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Suggests that physicians would not qualify for immunity and relief from concerns about regulatory scrutiny if they prescribe opioids as a treatment of first choice for patients who present initially with severe pain, such as those with sickle-cell anemia.

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY A:
Restrictions based on patient characteristics

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Recognizes that a patient's prior history or current status of drug abuse does not contraindicate appropriate pain management.

§ 334.105 R.S.Mo. – § 334.106 R.S.Mo.

§ 334.105. Intractable pain treatment act--definitions

1. Sections 334.105 to 334.107 shall be known and may be cited as the "Intractable Pain Treatment Act".

2. For purposes of sections 334.105 to 334.107, the following terms mean:

(1) "Board", the state board of registration for the healing arts;

(2) "Intractable pain", a pain state in which the cause of pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts that have been documented in the physician's medical records;

(3) "Physician", physicians and surgeons licensed pursuant to this chapter by the board;

(4) "Therapeutic purpose", the use of controlled substances in acceptable doses with appropriate indication for the treatment of pain. Any other use is nontherapeutic.

§ 334.106. Intractable pain treatment physician may prescribe controlled substances for therapeutic purposes, requirements--exceptions

1. Notwithstanding any other provision of law to the contrary, a physician may prescribe, administer or dispense controlled substances for a therapeutic purpose to a person diagnosed and treated by a physician for a condition resulting in intractable pain, if such diagnosis and treatment has been documented in the physician's medical records. No physician shall be subject to disciplinary action by the board solely for prescribing, administering or dispensing controlled substances when prescribed, administered or dispensed for a therapeutic purpose for a person diagnosed and treated by a physician for a condition resulting in intractable pain, if such diagnosis and treatment has been documented in the physician's medical records.

2. The provisions of subsection 1 of this section shall not apply to those persons being treated by a physician for chemical dependency because of their use of controlled substances not related to the therapeutic purposes of treatment of intractable pain.

3. The provisions of subsection 1 of this section provide no authority to a physician to prescribe, administer or dispense controlled substances to a person the physician knows or should know to be using controlled substances which use is not related to the therapeutic purpose.

4. Drug dependency or the possibility of drug dependency in and of itself is not a reason to withhold or prohibit the prescribing, administering or dispensing of controlled substances for the therapeutic purpose of treatment of a person for intractable pain, nor shall dependency relating solely to such prescribing, administering or dispensing subject a physician to disciplinary action by the board.

(-) **CRITERION 10:**
Implies opioids are not part of professional practice

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY A:
Arbitrary standards for legitimate prescribing

COMMENT: "Acceptable doses" implies there is a limit, but the limit is not specified and who determines the limit?

(+) **CRITERION 3:**
Opioids are part of professional practice

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY C:
Conflicting or inconsistent policies or provisions

COMMENT: Appears to be inconsistency between these provisions relating to the use of opioids for a person with pain who is drug dependent.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that inadequate treatment of pain is subject to disciplinary action just as other substandard practices might be.

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

COMMENT: Provides immunity from discipline only for physicians who adhere to the IPTA standards.

CAUTION:

The purpose of this information is to educate and inform licensees and the public consistent with the Missouri regulations and statutes about the use of controlled substances for the treatment of pain. Nothing contained herein shall be construed to expand or diminish the requirements of federal or state laws and regulations pertaining to the use of controlled substances for the treatment of pain.

Information about the Use of Controlled Substances for the Treatment of Pain Section I: Preamble

The Missouri State Board of Registration for the Healing Arts recognizes that principles of quality medical practice dictate that the people of the State of Missouri have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs associated with untreated or inappropriately treated pain. The inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The Board encourages physicians to view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. Accordingly, this information has been developed to clarify the Board's concerns on pain control, particularly as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from physicians' lack of knowledge about pain management. Fears of investigation or sanction by federal, state and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician's responsibility. As such, the Board will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The Board recognizes that controlled substances including opioid analgesics may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The medical management of pain should include consideration of current clinical knowledge and scientific research and the use of pharmacologic and non-pharmacologic modalities according to the judgment of the physician. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain, and treatment outcomes. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.

The Missouri Board is obligated under the laws of the State of Missouri to protect the public health and safety. The Board recognizes that the use of opioid analgesics for other than legitimate medical purposes poses a threat to the individual and society and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the Board expects that physicians incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

Physicians who order, prescribe, dispense or administer controlled substances, including opioid analgesics, for a therapeutic purpose and in accordance with the "Intractable pain treatment Act" contained at §§ 334.105 through 334.107 are not subject to discipline.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 7:**
Physical dependence or analgesic tolerance are not confused with "addiction"

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Section II: Considerations

The Board provides the following criteria for a physician's treatment of pain, including the use of controlled substances:

Evaluation of the Patient—A medical history and physical examination must be obtained, evaluated, and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

Treatment Plan—The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

Informed Consent and Agreement for Treatment—The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse or has a history of substance abuse, the physician should consider the use of a written agreement between physician and patient outlining patient responsibilities, including urine/serum medication levels screening when requested; number and frequency of all prescription refills; and reasons for which drug therapy may be discontinued (e.g., violation of agreement).

Periodic Review—The physician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

Consultation—The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

Medical Records - The physician should keep accurate and complete records in compliance with § 334.097.

Compliance With Controlled Substances Laws and Regulations—To prescribe, dispense or administer controlled substances, the physician must be licensed in the state and comply with applicable federal and state regulations.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Section III: Definitions

The following terms are defined as follows:

Acute Pain—Acute pain is the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is generally timelimited.

Addiction—Addiction is a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

Chronic Pain—Chronic pain is a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

Pain—An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Physical Dependence—Physical dependence is a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

Pseudoaddiction—The iatrogenic syndrome resulting from the misinterpretation of relief seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief seeking behaviors resolve upon institution of effective analgesic therapy.

Substance Abuse—Substance abuse is the use of any substance(s) for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

Tolerance—Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Adopted by the Missouri Board of Healing Arts October 15, 2004

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Missouri State Board of Registration for the Healing Arts Palliative Care Guidelines

During recent meetings, the Missouri Board of Healing Arts has held several discussions regarding the treatment of terminally ill patients and their concern that physicians who are treating these patients are not knowledgeable about palliative care. It is the Board's position that physicians who care for terminally ill patients should be knowledgeable about palliative care. The Board's definition of palliative care includes, fully assessing and evaluating the patient's needs; understanding the patient's goals and values; helping with advance care planning and honestly discussing treatment options; aggressively managing pain and other symptoms; using the team approach; and documenting the case. If you are treating terminally ill patients, you are encouraged to follow the following guidelines:

A) Evaluating the Patient:

A patient with life limiting chronic illness should be given the option of palliative care. Physicians should use prognostic guidelines to identify patients who are entering the terminal period of their lives. Assessment should include the patient's disease state, prognosis, physical symptoms, and psychosocial and spiritual concerns. Coexisting disease and the impact of symptoms on functioning should be documented. The needs of the family, or other caregivers, for information and support should be assessed.

B) Understanding the Patient's Goals and Values:

Discussions between the patient and physician about advanced directives and goals and values of the patient are central to palliative care and should be conducted as early as possible in the clinical course to maximize patient input to decision-making. It is advisable to have the patient name which person, or persons should serve as substitute decision-maker if the patient is no longer able to participate in decision-making. The patient's preferences should be documented in an advance directive. The substitute decision-maker should follow the patient's expressed wishes.

C) Discussing Treatment Options:

The burdens and benefits of shifting from curative treatment to palliative care need to be carefully explained by the physician to the decisional patient or substitute decision-maker to obtain informed consent for the care plan. This plan should be based on the goals of the decisional patient or those expressed in the patient's advance directive. The consensus of the family should also be sought. Decisions about resuscitation and withholding and withdrawing treatment should be consistent with these goals.

D) Aggressive Management of Pain and Symptoms:

It is the ethical responsibility of the physician to provide pain and symptom management that promotes the best quality of life for the patient. Physical symptoms may not be controlled by standard treatment when the patient has unrelieved emotional or spiritual suffering. Multidisciplinary assessment and treatment should be used to define and address the many dimensions of suffering. Refer to the Missouri Intractable Pain Treatment Act for guidelines in pain management. (Missouri Statutes 334.105, 334.106, 334.107)

E) Team Approach:

The multiple types of suffering experienced by patients and families may best be managed by a team approach: an effective multidisciplinary team of professionals as indicated by the patient's needs with interest and expertise in palliative care. Examples of such teams are a hospice program, an informal group of skilled professionals, or a palliative care consultation team.

F) Documentation:

Good documentation protects patient preferences. All discussions and treatment decisions should be documented by the physician in the medical record. Such documentation should be accessible for guiding subsequent decisions. To evaluate effectiveness of treatment, documentation of pain assessment and treatment response should use a standard pain scale when possible.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes the need for a multidisciplinary approach to pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Advisory Council on Pain and Symptom Management

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (advisory council) to improve pain management.

§ 192.350 R.S.Mo.

§ 192.350. Pain and symptom management advisory council created, appointment, qualifications, terms, vacancies, how filled

1. There is hereby established within the department of health and senior services the "Missouri State Advisory Council on Pain and Symptom Management". The council shall consist of nineteen members that are residents of this state. The members of the council shall include:

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REGULATIONS

Hospice Services

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

19 CSR 30-35.010

30-35.010 Hospice Program Operations

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(G) Clinical Services. The hospice shall routinely provide through direct employees the following services:

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2. Medical director services. The medical director shall be a direct or contract employee. The medical director's or designee's services and responsibilities include:

A. Consulting with attending physicians regarding pain and symptom control:

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. .

13 CSR 70-50.010

70-50.010 Hospice Services Program

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. .

The following services are hospice-covered services when specified in the individual's plan of care:

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(I) Short-term inpatient care required for procedures necessary for pain control or acute or chronic symptom management provided in a participating hospice inpatient unit, or a participating hospital, or nursing facility (NF) that additionally meets the special hospice standards regarding staffing and patient areas:

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. .

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes mechanisms for hospices to ensure that pain management is an essential part of patient care .

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

MONTANA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 50. Health and Safety; Chapter 32. Controlled Substances
- PROFESSIONAL PRACTICE ACT (*No provisions found*)
Title 37. Professions and Occupations; Chapter 1. General Provisions
- MEDICAL PRACTICE ACT (*No provisions found*)
Title 37. Professions and Occupations; Chapter 3. Medicine
- PHARMACY PRACTICE ACT (*No provisions found*)
Title 37. Professions and Occupations; Chapter 7. Pharmacy
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*Part of Pharmacy Board Regulations*) (*No provisions found*)
Title 24. Department of Labor and Industry; Chapter 174. Pharmacy; Sub-Chapter 14.
Dangerous Drug Act
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 24. Department of Labor and Industry; Chapter 156. Medical Examiners
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 24. Department of Labor and Industry; Chapter 174. Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
Montana Board of Medical Examiners. *Statement on the Use of Controlled Substances in the Treatment of Intractable Pain, Guidelines for Prescribing Opioid Analgesics for Chronic Pain*. *Montana Medical Association Bulletin*. Vol. 51, pp. 3-4. June 1996.
Adopted: March 15, 1996.
- JOINT BOARD POLICY STATEMENT
Montana Board of Medical Examiners, Board of Nursing, and Board of Pharmacy.
Statement of the Prescribing and Filling of Controlled Substances in the Treatment of Chronic Pain. Adopted: July 27, 2002.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

No policies found



Provisions that may *ENHANCE* pain management

Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Professional Practice Act ¹								
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline				•	•			•
Joint Board Policy Statement			•	•				•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Professional Practice Act ¹								
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline	•			•				
Joint Board Policy Statement	•							
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Mont. Code Anno., § 50-32-101

50-32-101 Definitions.

As used in this chapter, the following definitions apply:

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(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

STATEMENT ON THE USE OF CONTROLLED
SUBSTANCES IN THE TREATMENT OF INTRACTABLE PAIN, GUIDELINES FOR PRESCRIBING
OPIOID ANALGESICS FOR CHRONIC PAIN

The Montana Board of Medical Examiners continues to be concerned about the use of controlled substances by individuals who seek them for their mood-altering and addictive potential rather than legitimate medical reasons. However, the Board is also concerned about adequate pain management. The Board recognizes that pain from whatever cause is often under treated. The Board is aware that there are a number of factors that continue to interfere with effective pain management. These include exaggerated fears of opioid side effects including addiction, fear of legal consequences when controlled substances are used, low priority of proper pain management in our health care system, and the lack of integration of current knowledge concerning pain management into medical education and clinical practice.

(+) **CRITERION 5:**
*Addresses fear of
regulatory scrutiny*

(-) **CRITERION 9:**
Opioids are a last resort

(+) **CRITERION 8:**
*Other provisions that
may enhance pain
management*

CATEGORY A:
*Issues related to
healthcare professionals*

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

The Board seeks to assure that no Montanan requiring narcotics for pain relief is denied them because of a physician's real or perceived fear that the Board of Medical Examiners will take disciplinary action based solely on the use of narcotics to relieve pain. While improper use of narcotics, like any improper medical care, will continue to be a concern of the Board, the Board is aware that treatment of malignant and especially nonmalignant pain is a very difficult task. The Board does not want to be a hindrance to the proper use of opioid analgesics. Treatment of chronic pain is multifactorial and certainly treatment with modalities other than opioid analgesics should be utilized, usually before long term opioids are prescribed. Use of new or alternative types of treatment should always be considered for intractable pain periodically, in attempts to either cease opioid medications or reduce their use.

The proper use of opioid analgesics for chronic pain must involve certain elements, which are also consistent with any quality medical care. The following guidelines will help assure the proper use of these medications for chronic pain and minimize the improper use: **GUIDELINES FOR PRESCRIBING OPIOID ANALGESICS FOR CHRONIC PAIN**

1. Thorough history and physical examination. Included in the history is assessment of the etiology of pain, physical and psychological function of the patient, substance abuse history, other treatments that have been attempted to control the patient's level of pain, identification of underlying or coexisting diseases or conditions and, as much as possible, statements by all treating physicians that the patient's pain is intractable and not controlled by other than the use of opioid analgesics.

2. Treatment plan. A thoroughly documented, written treatment plan should be established and should include how treatment success will be evaluated, such as pain relief and improved physical or psychological functioning. Several treatment modalities should be utilized in most cases and should be done concurrently with the use of opiates. Periodic review by the physician should be accomplished to determine that there are no other appropriate treatment methods that would then be of additional benefit to the patient.

3. Informed consent. The physician should discuss the risks and benefits of the use of controlled substances with the patient and/or guardian and this should be accomplished on an ongoing basis, not just at the initiation of treatment.

4. Appropriate referral. If treatment objectives are not being realized or if patients appear to be at risk for misuse of medications, referral should be made to appropriate specialists including addiction specialists and chronic pain specialists.

5. Documentation. All the above recommendations and guidelines should be recorded accurately and completely in the patient's medical record.

We hope that the above statements and guidelines will help reverse the trend of under treatment of intractable pain, and that they will facilitate the more appropriate use of controlled substances by duly licensed practitioners with prescriptive authority in the State of Montana.

(+) **CRITERION 4:**
*Encourages pain
management*

(-) **CRITERION 12:**
*Medical decisions are
restricted*

CATEGORY D:
*Undue prescription
limitations*

COMMENT: "Drug holidays" are no longer recognized as appropriate medical practice.

(+) **CRITERION 8:**
*Other provisions that
may enhance pain
management*

CATEGORY C:
*Regulatory or policy
issues*

COMMENT: Represents the principle of Balance, which states that efforts to reduce the abuse and diversion of controlled substances should not interfere with legitimate medical use.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Joint Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Identifies an important barrier to the appropriate use of opioid analgesics; however, addiction-related terms (this concept is referred to as "pseudoaddiction") are clearly defined in the Federation's model medical board policies, which Montana has not yet adopted.

(-) **CRITERION 9:**
Opioids are a last resort

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

STATEMENT OF THE PRESCRIBING AND FILLING OF CONTROLLED SUBSTANCES IN THE TREATMENT OF CHRONIC PAIN

The Montana Board of Medical Examiners, Montana Board of Nursing and Montana Board of Pharmacy recognize that pain has historically been under treated due to an exaggerated fear of patient addiction and diversion of pain medication with corresponding fear of legal consequences and a lack of current knowledge concerning pain management. Untreated chronic pain can lead to clinical exacerbations, increased suffering and eventual disability. Patient requests for more pain medication can often be interpreted as drug seeking behavior, when inadequately treated pain is actually the cause.

Improper prescribing and dispensing of opioids will continue to be a concern of the Montana Board of Medical Examiners, Board of Nursing, and the Board of Pharmacy. However, appropriate prescribing of opioid analgesics should be encouraged by all of those involved in patient care. Both the physician or other healthcare provider and the pharmacist share responsibility for appropriate prescribing of opioid pain medication. The Board of Medical Examiners has established a policy for appropriate treatment of chronic pain, which is outlined below. With use of these guidelines and appropriate communication between practitioners and pharmacists, inappropriate use of opioid pain medications will be minimized. If a pharmacist has suspicion of the inappropriateness of a pain medication, he or she should contact the practitioner concerning this issue.

Treatment of chronic pain is multifactorial and treatment with modalities other than opioids should usually be utilized before opioids are prescribed. The use of alternative types of treatment should be considered periodically to reassess the necessity of continued opioid use. The following guidelines have been provided in the form of a policy letter from the Board of Medical Examiners to providers in the state:

Board of Medical Examiners recommendations:

- **Thorough history and physical examination.** Included in the history is assessment of the etiology of pain, physical and psychological function of the patient, substance abuse history, other treatments that have been attempted to control the patient's level of pain, identification of underlying or co-existing diseases or conditions and, as much as possible, statements by all treating physicians that the patient's pain is intractable and not controlled by other than the use of opioid analgesics.
- **Treatment plan.** A thoroughly documented, written treatment plan should be established and should include how treatment success will be evaluated, such as pain relief and improved physical or psychological functioning. Several treatment modalities should be utilized in most cases and should be done concurrently with the use of opiates. Periodic review by the physician should be accomplished to determine that there are no other appropriate treatment methods that would then be of additional benefit to the patient.
- **Informed consent.** The physician should discuss the risks and benefits of the use of controlled substances with the patient and/or guardian and this should be accomplished on an ongoing basis, not just at the initiation of treatment.
- **Appropriate referral.** If treatment objectives are not being realized or if patients appear to be at risk for misuse of medications, referral should be made to appropriate specialists including addiction medicine specialists and chronic pain specialists.
- **Documentation.** All the above recommendations and guidelines should be recorded accurately and completely in the patient's medical record.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes the need for a multidisciplinary approach to pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Joint Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

A pharmacist evaluating a controlled substance prescription should consider the following points:

- Are you able to verify the identity of the prescriber and the patient?
- What is the physical condition and demeanor of the patient with respect to the drug being prescribed? Is the prescribed drug therapeutically appropriate to the patient's diagnosis?
- Does the patient live within the general area of the pharmacy? If not, is the distance great enough to make it unlikely the patient would travel so far to fill a legitimate prescription?
- Does the drug prescribed have a pattern of abuse, and does the patient have any known history of drug abuse or misuse that might contraindicate the use of this drug?
- Is the prescription consistent with the prescribing patterns of the practitioner, including the type and amount of drug prescribed? Does the practitioner write for a greater than usual percentage of controlled substances? Are you aware of any prior disciplinary or criminal action involving the practitioner?
- Are the drugs prescribed consistent with the practitioner's specialty and scope of practice? Does the prescription contain an unusual combination of drugs, or drugs that antagonize one another?
- Does the quantity of drug prescribed and refills authorized differ appreciably from recognized and accepted prescribing practices?

Studies have shown that the abuse potential of opioids is generally low in healthy volunteers who do not abuse drugs. Practitioners are encouraged to reverse the trend of under treatment of pain, yet remain aware of the dangers of diversion and nonmedical use of controlled substances. It is imperative the pharmacists and prescribers continue to strive for open and clear lines of communication regarding their patient's use and possible misuse of medications. The Board of Medical Examiners, Nursing and Pharmacy seek to assure that no Montana resident will needlessly suffer due to under treated pain and encourage both prescribers and pharmacists to do their part by responsibly prescribing and dispensing opioids.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Represents the principle of Balance, which states that efforts to reduce the abuse and diversion of controlled substances should not interfere with legitimate medical use.

(+) **CRITERION 4:**
Encourages pain management

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NEBRASKA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Chapter 28. Crimes and Punishments; Article 4. Drugs and Narcotics
- PROFESSIONAL PRACTICE ACT
Chapter 71. Public Health and Welfare; Article 1. Licenses; Professional and Occupational; (a) Definitions – (j) Licensee Assistance Program
- MEDICAL PRACTICE ACT
Chapter 71. Public Health and Welfare; Article 1. Licenses; Professional and Occupational; (o) Practice of Medicine and Surgery
- OSTEOPATHIC PRACTICE ACT (*No provisions found*)
Chapter 71. Public Health and Welfare; Article 1. Licenses; Professional and Occupational; (r) Practice of Osteopathy
- PHARMACY PRACTICE ACT (*No provisions found*)
Chapter 71. Public Health and Welfare; Article 1. Licenses; Professional and Occupational; (s) Practice of Pharmacy
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
No policy found
- MEDICAL BOARD REGULATIONS
Department of Health and Human Services System; Title 172. Health and Human Services System; Professional and Occupational Licensure; Chapter 88. Regulations Governing the Practice of Medicine and Surgery and Osteopathic Medicine and Surgery
- PHARMACY BOARD REGULATIONS
Department of Health and Human Services System; Title 172. Health and Human Services System; Professional and Occupational Licensure; Chapter 128. Practice of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
Nebraska Board of Medicine and Surgery. *Guidelines for the Use of Controlled Substances for the Treatment of Pain*. Adopted: June 3, 2005.



RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- PAIN MANAGEMENT ACT
Chapter 71. Public Health and Welfare; Article 24. Drugs; (d) Pain Management



Provisions that may *ENHANCE* pain management

	1	2	3	4	5	6	7	8
Criteria	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Professional Practice Act		•						
Medical Practice Act		•						
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board		•						
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline		•	•	•	•	•	•	•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Pain Management Act	•	•	•	•	•	•		•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Professional Practice Act								•
Medical Practice Act ¹								
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board				•				
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Pain Management Act ¹								

Note: A dot indicates that one or more provisions were identified
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STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.R.S. Neb. § 28-401

§ 28-401. Terms, defined

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

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(20) Practitioner shall mean a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 71-5175;

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(+) **CRITERION 3:**
Opioids are part of professional practice

STATUTES

Professional Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.R.S. Neb. § 71-101

§ 71-101. Law, how cited; terms, defined

Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343 to 71-1,361, 71-1301 to 71-1354, and 71-2801 to 71-2823 shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

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(10) Dependence means a compulsive or chronic need for or an active addiction to alcohol or any controlled substance or narcotic drug.

R.R.S. Neb. § 71-101.01

§ 71-101.01. Healing art, defined

Whenever the term healing art or healing arts is used in any statute, unless such statute specifically designates otherwise, it shall be construed to refer exclusively to a health profession in which a licensed practitioner offers or undertakes to diagnose, treat, operate on, or prescribe for any human pain, injury, disease, deformity, or physical or mental condition. Nothing in this section shall be construed to enlarge the scope or definition for practice of any practitioner licensed in accordance with Chapter 71, article 1.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: If "chronic need" includes a person with pain who is using opioids for a legitimate medical purpose for a prolonged period of time, then physicians would risk investigation for prescribing for patients with chronic pain.

(+) **CRITERION 2:**
Pain management is part of medical practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.R.S. Neb. § 71-1,102

§ 71-1,102. Practice of medicine and surgery, defined

For the purpose of the Uniform Licensing Law, and except as otherwise provided by law, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery: (1) Persons who publicly profess to be physicians, surgeons, or obstetricians, or publicly profess to assume the duties incident to the practice of medicine, surgery, or obstetrics, or any of their branches; (2) persons who prescribe and furnish medicine for some illness, disease, ailment, injury, pain, deformity, or any physical or mental condition, or treat the same by surgery; (3) persons holding themselves out to the public as being qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition, or injuries of human beings; (4) persons who suggest, recommend, or prescribe any form of treatment for the intended palliation, relief, or cure of any physical or mental ailment of any person; (5) persons who maintain an office for the examination or treatment of persons afflicted with ailments, diseases, injuries, pain, deformity, or any physical or mental condition of human beings; (6) persons who attach to their name the title of M.D., surgeon, physician, physician and surgeon, or any word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases, injuries, pain, deformity, infirmity, or any physical or mental condition of human beings; and (7) persons who are physically located in another state but who, through the use of any medium, including an electronic medium, perform for compensation any service which constitutes the healing arts that would affect the diagnosis or treatment of an individual located in this state, unless he or she is providing consultation services to a physician and surgeon who is duly licensed in this state and is a treating physician of the individual. For purposes of this subdivision, consultation means the evaluation of the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data.

(+) **CRITERION 2:**
Pain management is part
of medical practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Nebraska Admin. Code Title 172, Ch. 88

CHAPTER 88. REGULATIONS GOVERNING THE PRACTICE OF MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY

001 SCOPE OF REGULATIONS These regulations are intended to implement the laws governing the practice of Medicine and Surgery and Osteopathic Medicine and Surgery pursuant to Neb. Rev. Stat. " 71-1,102 to 71-1,107.30, 71-1,137 to 71-1,141 and the Uniform Licensing Law.

88-013 UNPROFESSIONAL CONDUCT: This section defines the following acts as unprofessional conduct, pursuant to Neb. Rev. Stat. '71-148(22), and where applicable, further construes the unlawful or unprofessional acts listed in Neb. Rev. Stat. " 71-147 and 71-148.

12. Except as otherwise permitted by law, prescribing, selling, administering, distributing, ordering, or giving to an addict or any person previously drug dependent, any drug legally classified as a controlled substance:

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY A:
Restrictions based on patient characteristics

COMMENT: Nebraska law does not seem to create an exemption for patients with pain and a history of addiction.

REGULATIONS

Pharmacy Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Nebraska Admin. Code Title 175, Ch. 8

CHAPTER 8. PHARMACIES

8-001 SCOPE AND AUTHORITY: These regulations govern licensure of Pharmacies. The regulations are authorized by and implement the Health Care Facility Licensure Act, *Neb. Rev. Stat. sections 71-401 to 71-462.*

8-002 DEFINITIONS

Healing arts means a health profession in which a licensed practitioner offers or undertakes to diagnose, treat, operate on, or prescribe for any human pain, injury, disease, deformity, or physical or mental condition.

(+) **CRITERION 2:**
Pain management is part of medical practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

GUIDELINES FOR THE USE OF CONTROLLED SUBSTANCES FOR THE TREATMENT OF PAIN

Section I: Preamble

The Nebraska Board of Medicine and Surgery recognizes that principles of quality medical practice dictate that the people of the State of Nebraska have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs associated with untreated or inappropriately treated pain. For the purposes of this policy, the inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The Board encourages physicians to view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. Accordingly, this policy has been developed to clarify the Board's position on pain control, particularly as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from physicians' lack of knowledge about pain management. Fears of investigation or sanction by federal, state and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician's responsibility. As such, the Board will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The Board recognizes that controlled substances including opioid analgesics may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The Board will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and non-pharmacologic modalities according to the judgment of the physician. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain, and treatment outcomes. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.

The Nebraska Board of Medicine and Surgery is obligated under the laws of the State of Nebraska to protect the public health and safety. The Board recognizes that the use of opioid analgesics for other than legitimate medical purposes pose a threat to the individual and society and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the Board expects that physicians incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that inadequate treatment of pain is subject to disciplinary action just as other substandard practices might be.

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 7:**
Physical dependence or analgesic tolerance are not confused with "addiction"

(+) **CRITERION 2:**
Pain management is part of medical practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

Physicians should not fear disciplinary action from the Board for ordering, prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the course of professional practice. The Board will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state or federal law is required.

(+) **CRITERION 3:**
Opioids are part of
professional practice

(+) **CRITERION 6:**
Prescription amount
alone does not
determine legitimacy

The Board will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

Allegations of inappropriate pain management will be evaluated on an individual basis. The board will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation. The physician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

CATEGORY A:
Issues related to
healthcare professionals

CATEGORY A:
Issues related to
healthcare professionals

COMMENT:
Acknowledges need for
treatment flexibility for
physicians to respond to
individual clinical
circumstances, as long
as their prescribing
maintains the standards
of good medical
practice.

COMMENT: Recognizes
that the goals of pain
treatment should extend
beyond pain scores, to
include improvements to
patient functioning and
quality of life.

Section II: Guidelines

The Board has adopted the following criteria when evaluating the physician's treatment of pain, including the use of controlled substances:

Evaluation of the Patient—A medical history and physical examination must be obtained, evaluated, and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

Treatment Plan—The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(CONTINUED ON NEXT PAGE)

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Informed Consent and Agreement for Treatment—The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse or has a history of substance abuse, the physician should consider the use of a written agreement between physician and patient outlining patient responsibilities, including

- urine/serum medication levels screening when requested;
- number and frequency of all prescription refills; and
- reasons for which drug therapy may be discontinued (e.g., violation of agreement).

Periodic Review—The physician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

Consultation—The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

Medical Records—The physician should keep accurate and complete records to include

1. the medical history and physical examination,
2. diagnostic, therapeutic and laboratory results,
3. evaluations and consultations,
4. treatment objectives,
5. discussion of risks and benefits,
6. informed consent,
7. treatments,
8. medications (including date, type, dosage and quantity prescribed),
9. instructions and agreements and
10. periodic reviews.

Records should remain current and be maintained in an accessible manner and readily available for review.

(CONTINUED ON NEXT PAGE)

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Compliance With Controlled Substances Laws and Regulations—To prescribe, dispense or administer controlled substances, the physician must be licensed in the state and comply with applicable federal and state regulations. Physicians are referred to the *Physicians Manual of the U.S. Drug Enforcement Administration* and (any relevant documents issued by the state medical board) for specific rules governing controlled substances as well as applicable state regulations.

Section III: Definitions

For the purposes of these guidelines, the following terms are defined as follows:

Acute Pain—Acute pain is the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is generally time-limited.

Addiction—Addiction is a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

Chronic Pain—Chronic pain is a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

Pain—An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Physical Dependence—Physical dependence is a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

Pseudoaddiction—The iatrogenic syndrome resulting from the misinterpretation of relief seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief seeking behaviors resolve upon institution of effective analgesic therapy.

Substance Abuse—Substance abuse is the use of any substance(s) for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

Tolerance—Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pain Management Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.R.S. Neb. § 71-2418

§ 71-2418. Legislative findings

(1) The Legislature finds that many controlled substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of Nebraska. Principles of quality medical practice dictate that the people of Nebraska have access to appropriate and effective pain relief.

(2) The Legislature finds that the appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain. The Legislature therefore encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, including those patients who experience pain as a result of terminal illness.

(3) The Legislature finds that a physician should be able to prescribe, dispense, or administer a controlled substance in excess of the recommended dosage for the treatment of pain so long as such dosage is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it conforms to policies and guidelines for the treatment of pain adopted by the Board of Examiners in Medicine and Surgery.

(4) The Legislature finds that a health care facility, hospice, or third-party payor should not forbid or restrict the use of controlled substances appropriately administered for the treatment of pain.

R.R.S. Neb. § 71-2420

§ 71-2420. Board of Examiners in Medicine and Surgery; duties

The Board of Examiners in Medicine and Surgery shall adopt policies and guidelines for the treatment of pain to ensure that physicians who are engaged in the appropriate treatment of pain are not subject to disciplinary action, and the board shall consider policies and guidelines developed by national organizations with expertise in pain management for this purpose.

(+) **CRITERION 1:**
Controlled substances
are necessary for public
health

(+) **CRITERION 4:**
Encourages pain
management

(+) **CRITERION 6:**
Prescription amount
alone does not
determine legitimacy

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Attempts to
provide a secure
environment for
physicians prescribing in
their healthcare facility.

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

(+) **CRITERION 3:**
Opioids are part of
professional practice

(+) **CRITERION 2:**
Pain management is part
of medical practice

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Clarifies for
physicians an important
distinction between
physician-assisted
suicide and prescribing
controlled substances for
pain relief; language
identifies a clinical
misperception that is
pervasive in end-of-life
care and attempts to
lessen its impact on
patient treatment.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NEVADA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 40. Public Health and Safety; Chapter 453. Controlled Substances
- PROFESSIONAL PRACTICE ACT (*No provisions found*)
Title 54. Professions, Occupations, and Businesses; Chapter 622. General Provisions Governing Regulatory Bodies
- MEDICAL PRACTICE ACT
Title 54. Professions, Occupations, and Businesses; Chapter 630. Physicians, Physician Assistants, and Practitioners of Respiratory Care
- OSTEOPATHIC PRACTICE ACT
Title 54. Professions, Occupations, and Businesses; Chapter 633. Osteopathic Medicine
- PHARMACY PRACTICE ACT (*No provisions found*)
Title 54. Professions, Occupations, and Businesses; Chapter 639. Pharmacists and Pharmacies
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*No provisions found*)
Chapter 453. Controlled Substances;
Chapter 458. Abuse of Alcohol and Drugs
- MEDICAL BOARD REGULATIONS
Chapter 630. Physicians, Physician Assistants, and Practitioners of Respiratory Care
- OSTEOPATHIC BOARD REGULATIONS
Chapter 633. Osteopathic Medicine
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Chapter 639. Pharmacists and Pharmacy

OTHER GOVERNMENTAL POLICIES

No policies found

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

No policies found



Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act		•	•					•
Professional Practice Act ¹								
Medical Practice Act					•			
Osteopathic Practice Act					•			
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board		•	•	•	•	•	•	•
Osteopathic Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act			•			•		
Professional Practice Act ¹								
Medical Practice Act ¹								
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board		•		•				•
Osteopathic Board ¹								•
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Nev. Rev. Stat. Ann. § 453.098 - 453.099

§ 453.098. "Narcotic addict" defined

"Narcotic addict" means a person of any age who has developed a compulsion to continue taking or who has developed a psychic or physical dependence on the effects of a narcotic drug.

§ 453.099. "Narcotic addiction" defined

"Narcotic addiction" means compulsion to continue taking or psychic or physical dependence on the effects of a narcotic drug.

(-) **CRITERION 11:**
Physical dependence or analgesic tolerance confused with "addiction"

Nev. Rev. Stat. Ann. § 453.256

§ 453.256. Prescriptions; requirements for dispensing certain substances; penalty

.
. .

9. As used in this section:

(a) "Facsimile machine" means a device which sends or receives a reproduction or facsimile of a document or photograph which is transmitted electronically or telephonically by telecommunications lines.

(b) "Medical treatment" includes dispensing or administering a narcotic drug for pain, whether or not intractable.

(c) "Parenteral solution" has the meaning ascribed to it in NRS 639.0105

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 3:**
Opioids are part of professional practice

Nev. Rev. Stat. Ann. § 453.257

§ 453.257. Filling second or subsequent prescriptions

A pharmacist shall not fill a second or subsequent prescription for a controlled substance listed in Schedule II for the same patient unless the frequency of prescriptions is in conformity with the directions for use. The need for any increased amount shall be verified by the practitioner in writing or personally by telephone.

.
. .

(-) **CRITERION 14:**
Undue prescription requirements

COMMENT: Appears to require verification of any subsequent Schedule II prescription which includes any increased amount.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Recognizes that a prescription monitoring program should not interfere with legitimate medical use of controlled substances.

Nev. Rev. Stat. Ann. § 453.1545

453.1545. Board and division required to develop computerized program to track prescriptions for controlled substances; reporting of illegal activity; confidentiality of information obtained from program; gifts, grants and donations.

1. The Board and the Division shall cooperatively develop a computerized program to track each prescription for a controlled substance listed in schedule II, III or IV that is filled by a pharmacy that is registered with the Board or that is dispensed by a practitioner who is registered with the Board. The program must:

(c) Not infringe on the legal use of a controlled substance for the management of severe or intractable pain.

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

Nev. Rev. Stat. Ann. § 630.3066

§ 630.3066. Prescribing or administering amygdalin, procaine hydrochloride or certain controlled substances for treatment of intractable pain not grounds for initiating disciplinary action

A physician is not subject to disciplinary action solely for prescribing or administering to a patient under his care:

1. Amygdalin (laetrile), if the patient has consented in writing to the use of the substance.

2. Procaine hydrochloride with preservatives and stabilizers (Gerovital H3).

3. A controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with accepted standards for the practice of medicine.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Osteopathic Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Nev. Rev. Stat. Ann. § 633.521

633.521. Prescribing or administering certain drugs or controlled substances or engaging in activity relating to medical use of marijuana not grounds for disciplinary action under certain circumstances.

(+) CRITERION 5:
Addresses fear of
regulatory scrutiny

An osteopathic physician is not subject to disciplinary action solely for:

1. Prescribing or administering to a patient under his care:

(c) A controlled substance which is listed in schedule II, III, IV or V by the State Board of Pharmacy pursuant to *NRS 453.146*, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with accepted standards for the practice of osteopathic medicine.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

NAC 630.187

630.187 Adoption by reference of Model Guidelines for the Use of Controlled Substances for the Treatment of Pain. (NRS 630.130)

1. The board hereby adopts by reference the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain, May 1998, published by the Federation of State Medical Boards of the United States, Inc., and any subsequent revision of the publication that has been approved by the board for use in this state. Each revision of the publication shall be deemed approved by the board unless it disapproves of the revision within 60 days after the date of publication of the revision.

2. The most recent publication of the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain that has been approved by the board will be available for inspection at the office of the Board of Medical Examiners, 1105 Terminal Way, Suite 301, Reno, Nevada or may be obtained, free of charge, from the Federation of State Medical Boards of the United States, Inc., Federation Place, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039-3855 or from the Federation of State Medical Boards of the United States, Inc., at the Internet address <http://www.fsmb.org/pubform.htm>. The board shall:

(a) Review each revision of the publication to ensure its suitability for this state; and

(b) File a copy of each revision of the publication it approves with the secretary of state and the state library and archives administrator.

MODEL GUIDELINES FOR THE USE OF
CONTROLLED SUBSTANCES FOR THE TREATMENT OF PAIN

Section I: Preamble

The Nevada Board of Medical Examiners recognizes that principles of quality medical practice dictate that the people of the State of Nevada have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity and costs associated with untreated or inappropriately treated pain. The Board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially important for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment as well as statutory requirements for prescribing controlled substances.

Inadequate pain control may result from physicians' lack of knowledge about pain management or an inadequate understanding of addiction. Fears of investigation or sanction by federal, state, and local regulatory agencies may also result in inappropriate or inadequate treatment of chronic pain patients. Accordingly, these guidelines have been developed to clarify the Board's position on pain control, specifically as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

The Board recognizes that controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. Physicians are referred to the *U.S. Agency for Health Care and Research Clinical Practice Guidelines* for a sound approach to the management of acute¹ pain and cancer-related² pain. The medical management of pain should be based upon current knowledge and research and include the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 2:**
Pain management is part
of medical practice

(+) **CRITERION 7:**
Physical dependence or
analgesic tolerance are
not confused with
"addiction"

(+) **CRITERION 4:**
Encourages pain
management

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

The Nevada Board of Medical Examiners is obligated under the laws of the State of Nevada to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

Physicians should not fear disciplinary action from the Board or other state regulatory or enforcement agency for prescribing, dispensing, or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. The Board will consider prescribing, ordering, administering, or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds. All such prescribing must be based on clear documentation of unrelieved pain and in compliance with applicable state or federal law.

(+) **CRITERION 3:**
Opioids are part of
professional practice

Each case of prescribing for pain will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for failing to adhere strictly to the provisions of these guidelines, if good cause is shown for such deviation. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs - including any improvement in functioning - and recognizing that some types of pain cannot be completely relieved.

(+) **CRITERION 8:**
Other provisions that
may enhance pain
treatment

(+) **CRITERION 6:**
Prescription amount
alone does not
determine legitimacy

The Board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors. The following guidelines are not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.

CATEGORY A:
Issues related to
healthcare professionals

(+) **CRITERION 8:**
Other provisions that
may enhance pain
treatment

CATEGORY A:
Issues related to
healthcare professionals

Comment: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Comment:
Acknowledges need for additional flexibility for physicians as long as their prescribing maintains the standards of good medical practice.

Section II: Guidelines

The Board has adopted the following guidelines when evaluating the use of controlled substances for pain control:

1. *Evaluation of the Patient.*

A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record should also document the presence of one or more recognized medical indications for the use of a controlled substance.

2. *Treatment Plan.*

The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

3. *Informed Consent and Agreement for Treatment.*

The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician may employ the use of a written agreement between physician and patient outlining patient responsibilities including

1. urine/serum medication levels screening when requested
2. number and frequency of all prescription refills; and
3. reasons for which drug therapy may be discontinued (i.e. violation of agreement).

4. *Periodic Review.*

At reasonable intervals based upon the individual circumstance of the patient, the physician should review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the physician's evaluation of progress toward stated treatment objectives such as improvement in patient's pain intensity and improved physical and/or psychosocial function, i.e., ability to work need of health care resources, activities of daily living, and quality of social life. If treatment goals are not being achieved, despite medication adjustments, the physician should re-evaluate the appropriateness of continued treatment. The physician should monitor patient compliance in medication usage and related treatment plans.

5. *Consultation.*

The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangement pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

6. *Medical Records.*

The physician should keep accurate and complete records to include (1) the medical history and physical examination; (2) diagnostic, therapeutic and laboratory results; (3) evaluations and consultations; (4) treatment objectives; (5) discussion of risks and benefits; (6) treatments; (7) medications (including date, type, dosage, and quantity prescribed); (8) instructions and agreements; and (9) periodic reviews. Records should remain current, and be maintained in an accessible manner, and readily available for review.

7. *Compliance with Controlled Substances Laws and Regulations.*

To prescribe, dispense, or administer controlled substances, the physician must be licensed in the state, and comply with applicable federal and state regulations. Physicians are referred to *the Physicians Manual of the U.S. Drug Enforcement Administration* and applicable state regulations for rules governing controlled substances.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

Section III: Definitions

For the purposes of these guidelines, the following terms are defined as follows:

Acute pain: Acute pain is the normal, predicted physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with surgery, trauma and acute illness. It is generally time-limited and is responsive to opioid therapy, among other therapies.

Addiction: Addiction is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects and is characterized by compulsive use despite harm. Addiction may also be referred to by terms such as "drug dependence" and "psychological dependence." Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not be considered addiction.

Analgesic Tolerance: Analgesic tolerance is the need to increase the dose of opioid to achieve the same level of analgesia. Analgesic tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Chronic Pain: A pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated. Chronic pain may be associated with a long-term incurable or intractable medical condition or disease.

Pain: An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Physical Dependence: Physical dependence on a controlled substance is a physiologic state of neuro-adaptation which is characterized by the emergence of a withdrawal syndrome if drug use is stopped or decreased abruptly, or if an antagonist is administered. Physical dependence is an expected result of opioid use. Physical dependence, by itself, does not equate with addiction.

Pseudoaddiction: Pattern of drug-seeking behavior of pain patients who are receiving inadequate pain management that can be mistaken for addiction.

Substance Abuse: Substance abuse is the use of any substance(s) for non-therapeutic purposes; or use of medication for purposes other than those for which it is prescribed.

Tolerance: Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect or a reduced effect is observed with a constant dose.

References:

1. Acute Pain Management Guideline Panel. Acute Pain Management: Operative or Medical Procedures and Trauma. Clinical Practice Guideline. AHCPR Publication No. 92-0032. Rockville, Md. Agency for Health Care Policy and Research. U.S. Department of Health and Human Resources, Public Health Service. February 1992.
2. Jacox A, Carr DB, Payne R. et al. Management of Cancer Pain. Clinical Practice Guideline No. 9. AHCPR Publication No. 94-0592. Rockville, Md. Agency for Health Care Policy and Research, U.S. Department of Health and Human Resources, Public Health Service. March 1994.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

NAC 630.230

NAC 630.230 Prohibited professional conduct.

1. A person who is licensed as a physician or physician assistant shall not:

(l) Engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the guidelines set forth in the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain adopted by reference in NAC 630.187.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY C:
Conflicting or inconsistent policies or provisions

COMMENT: Contradicts the flexibility standards inherent in the Model Guidelines.

NAC 630.255

NAC 630.255 "Intractable pain" interpreted.

For the purposes of NRS 630.3066, "intractable pain" means a condition of discomfort for which the cause cannot be removed or otherwise treated and for which a method of providing relief, or of which a cure for the cause, has not been found after reasonable efforts have been taken in accordance with accepted standards for the practice of medicine, including, but not limited to, evaluation by an attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body which is believed to be the source of the discomfort.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Does this imply opioids are a treatment of last resort?

(-) **CRITERION 10:**
Implies opioids are not part of professional practice

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY B:
Mandated consultation

REGULATIONS

Osteopathic Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

NAC 633.350

633.350 Unethical conduct.

For the purposes of this chapter and chapter 633 of NRS, a licensee engages in unethical conduct if he:

6. Prescribes a controlled substance in a manner or an amount that the board determines is excessive.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY A:
Arbitrary standards for legitimate prescribing

COMMENT: "Excessive" implies a limit, but the limit is not specified.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NEW HAMPSHIRE

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title XXX. Occupations and Professions; Chapter 318-B. Controlled Drug Act
- MEDICAL PRACTICE ACT (*No provisions found*)
Title XXX. Occupations and Professions; Chapter 329. Physicians and Surgeons
- PHARMACY PRACTICE ACT (*No provisions found*)
Title XXX. Occupations and Professions; Chapter 318. Pharmacists and Pharmacies
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*No provisions found*)
Department of Health and Human Services; Commissioner; Chapter He-C 500 Public Health and Safety;
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Board of Medicine
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Pharmacy Board

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
New Hampshire Board of Medicine. Guidelines for the Use of Controlled Substances in the Management of Chronic Pain. Adopted: May 11, 2000.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

No policies found



Provisions that may *ENHANCE* pain management

	1	2	3	4	5	6	7	8
Criteria	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					•
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline		•		•	•	•		•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may *IMPEDE* pain management

	9	10	11	12	13	14	15	16
Criteria	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act				•				•
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found



STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

RSA § 318-B:1

§ 318-B:1. Definitions

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

IX. "Drug dependence" means a state of physical addiction or psychic dependence, or both, upon a drug following use of that drug upon a repeated periodic or continuous basis except:

(a) Upon a morphine-type drug as an incident to current medical treatment of a demonstrable physical disorder, other than produced by the use of the drug itself, or

X. "Drug-dependent person" means any person who has developed a state of psychic or physical dependence, or both, upon a controlled drug following administration of that drug upon a repeated periodic or continuous basis. No person shall be classified as drug dependent who is dependent:

(a) Upon a morphine-type drug as an incident to current medical treatment of a demonstrable physical disorder other than drug dependence, or

RSA § 318-B:9

§ 318-B:9. Sale by Pharmacists

IV. No prescription shall be filled for more than a 34-day supply or 100 dosage units, whichever is less, upon any single filling for controlled drugs of schedules II or III;

RSA § 318-B:10

§ 318-B:10 Professional Use of Narcotic Drugs.

I. A practitioner other than a veterinarian, in good faith, in the course of his professional practice, and for a legitimate medical purpose, may administer and prescribe controlled drugs, or the practitioner may cause the same to be administered by a nurse or intern under his direction and supervision. In a bona fide emergency situation, the practitioner may dispense a controlled drug to a patient under his care but only in a quantity not to exceed a 48-hour supply for all schedule II substances or a 7-day supply of schedule III, IV, or V substances.

IX. If, in the judgment of a physician licensed under RSA 329, appropriate pain management warrants a high dosage of controlled drugs and the benefit of the relief expected outweighs the risk of the high dosage, the licensed physician may administer or cause to be administered such a dosage, even if its use may increase the risk of death, so long as it is not furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it falls within rules of the board of medicine.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Would a "demonstrable physical disorder" include a chronic condition with an undiagnosable etiology?

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY C:
Restrictions regarding quantity prescribed or dispensed

(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

New Hampshire Board of Medicine

May 11, 2000

Dear Physician:

The New Hampshire Board of Medicine has adopted guidelines for pain management in hopes of fostering the best pain treatment for the citizens of this State. The Board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, be it acute or chronic, due to either malignant or benign disease, and particularly when associated with terminal illness. For many physicians, fear of investigation or sanction for dispensing large or prolonged narcotic prescriptions has impeded effective and appropriate treatment. Accordingly, these guidelines have been developed to clarify the Board's position of pain control specifically as related to the use of controlled substances, to alleviate physician uncertainty, and to encourage better pain management. This format was derived from many sources including N.H. Physicians specializing in pain management, the N.H. State Medical Society, and the Federation of State Medical Boards.

Physicians should not fear disciplinary action from the Board or other state regulatory or enforcement agency for prescribing or administering controlled substances for a legitimate medical purpose and in the usual course of professional practice. The Board has concern in those cases where inadequate pain control results from either lack of current knowledge of pain management or inappropriate fear of investigation for providing narcotics where indicated.

The N.H. Board remains obligated under the laws of the State of New Hampshire to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Improper prescribing or documentation will continue to be investigated.

The guidelines are not rigid rules. They serve as a model for physician practice, and to communicate what the Board considers to be within the boundaries of professional practice. While the Board will likely not take disciplinary action against a physician for failing to adhere strictly to the provisions of this protocol, "significant deviation" from the guidelines will likely result in investigation and/or sanction of a physician practice. Key features of the guidelines include accurate documentation, some form of a treatment plan, acceptance of the plan by the patient, and appropriate evaluations and/or consultations. Compliance with all controlled substances laws and regulations is mandatory.

The Board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work related factors. This Board hopes to encourage superior pain management by physicians, and clarify appropriate pain relieving practice with the institution of these guidelines.

Sincerely,

The New Hampshire Board of Medicine

(CONTINUED ON NEXT PAGE)

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to patients

COMMENT:
Acknowledges need for treatment flexibility for physicians to respond to individual clinical circumstances, as long as their prescribing maintains the standards of good medical practice.

(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(+) **CRITERION 8:**
Other provisions that may enhance pain treatment

CATEGORY A:
Issues related to healthcare professionals

Comment: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

(+) **CRITERION 4:**
Pain management is encouraged

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

GUIDELINES FOR THE USE OF CONTROLLED SUBSTANCES IN THE MANAGEMENT OF CHRONIC PAIN

1. Evaluation of the Patient

An accurate and complete medical history and physical examination must be documented in the medical record. The medical record should document the nature and intensity of the pain and relevant coexisting condition (including current or past substance abuse.) The results of relevant diagnostic studies, other evaluations and consults should be part of the record.

Treatment Plan

A treatment plan should state objectives that will be used to determine treatment success, such as pain relief, and/or improved physical or psycho social function. The record should indicate if any further diagnostic evaluations or treatments are planned. Other treatment modalities might include a rehabilitation program, physical therapy or the like, or other treatment plan deemed appropriate for the patient's treatment objectives. After treatment begins, the physician should adjust drug therapy to the individual needs of each patient.

Informed Consent and Agreement for Treatment

The physician should discuss the risks and benefits of the use of controlled substances with the patient, appropriate significant other, and/or guardian. The patient should receive prescriptions from one physician and one pharmacy when chronic narcotic use is adopted, and should authorize communication between both parties. Frequently, the physician may elect to use a written agreement with the patient, especially where risk of medication abuse is a concern. A written agreement may; (1) indicate a specific pharmacy and prescribing physician; (2) give permission for communication between care providers; (3) detail amount and frequency of medication and prescription refills; (4) define expected follow-up and participation in any other pain treatment activities; (5) provide reasons for which opioid therapy may be discontinued; (6) include an agreement to have urine/serum medication or drug levels/screens when requested; and (7) document other inclusions appropriate for management of the individual patient.

Periodic Review

At reasonable intervals, the physician should review the course of opioid treatment and any new information about the etiology and the impact of the pain. Continuation or modification of opioid therapy should depend on the physician's evaluation of progress toward stated treatment objectives. If reasonable treatment goals are not being achieved, despite medication adjustments, the physician should monitor patient compliance in medication usage and related treatment plans.

Consultation

The physician should refer the patient for additional evaluation and treatment as necessary and reasonable in order to achieve adequate control of the pain and any other treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangement pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse, or with comorbid psychiatric disorder, requires extra care in structuring, monitoring, and documentation. When indicated and available, consultation with, or referral to, an expert in the management of chronic pain is advised.

[CONTINUED ON NEXT PAGE]

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

Medical Records

The physician should keep accurate and complete records to include documentation of: (1) medical history and physical examination; (2) relevant diagnostic, therapeutic and laboratory results; (3) results of evaluation and consultation; (4) treatment objectives; (5) discussion of risks and benefits; (6) treatments and treatment responses; (7) medications (including date, type, dosage, refills, and quantity prescribed); (8) instructions and agreements; and (9) periodic reviews. Records should remain current, be maintained in an accessible manner and be readily available for review.

Compliance with Controlled Substances Law and Regulations

To prescribe controlled substances the physician must be licensed in the State of New Hampshire, have valid controlled substances registration and comply with federal and state regulation for issuing controlled substances prescriptions. Physicians should refer to the federal, state and local regulatory agencies for guidance, by writing the Board of Medicine, 2 Industrial Park Drive, Concord, New Hampshire 03301.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NEW JERSEY

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 24. Food and Drugs; Subtitle 3. Dangerous Substances and narcotic Drugs; Chapter 21. Dangerous Substances Control
- PROFESSIONAL PRACTICE ACT (*No provisions found*)
Title 45. Professions and Occupations; Subtitle 1. Professions and Occupations Subject to State Boards of Registration and Examination; Chapter 1. General Provisions
- MEDICAL PRACTICE ACT
Title 45. Professions and Occupations; Subtitle 1. Professions and Occupations Subject to State Boards of Registration and Examination; Chapter 9. Physicians and Surgeons
- PHARMACY PRACTICE ACT
Title 45. Professions and Occupations; Subtitle 1. Professions and Occupations Subject to State Boards of Registration and Examination; Chapter 14. Pharmacists
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Title 8. Department of Health and Senior Services; Chapter 65. Controlled Dangerous Substances
- MEDICAL BOARD REGULATIONS
Title 13. Law and Public Safety. Chapter 35. Board of Medical Examiners
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 13. Law and Public Safety. Chapter 39. State Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

No policy found



RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- CODE OF CRIMINAL JUSTICE
Title 2C. The New Jersey Code of Criminal Justice; Subtitle 2. Specific Offenses; Part 5. Offenses Against the Public, Public Order, Health and Decency; Chapter 5. Controlled Substances
- HEALTH CARE FACILITIES
Title 26. Health and Vital Statistics; Chapter 2H. Health Care Facilities
- NURSING HOMES
Title 30. Institutions and Agencies; Subtitle 8. Nursing Homes in General
- LICENSING STANDARDS FOR LONG-TERM CARE FACILITIES
Title 8. Department of Health and Senior Services; Chapter 39. Standards for Licensure of Long-Term Care Facilities
- LICENSING STANDARDS FOR AMBULATORY CARE FACILITIES
Title 8. Department of Health and Senior Services; Chapter 43A. Manual of Standards for Licensing of Ambulatory Care Facilities
- LICENSING STANDARDS FOR HOSPITALS
Title 8. Department of Health and Senior Services; Chapter 43G. Hospital Licensing Standards
- AIDS COMMUNITY CARE ALTERNATIVE PROGRAM SERVICES
Title 10. Department of Human Services; Chapter 60. Home Care Services; Subchapter 7. AIDS Community Care Alternative Program
- LAW AND PUBLIC SAFETY
Title 13. Law and Public Safety. Chapter 34C. Alcohol & Drug Counselor Committee



Provisions that may *ENHANCE* pain management

Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Professional Practice Act ¹								
Medical Practice Act		•						
Pharmacy Practice Act ¹			•					
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances			•					
Medical Board ¹								•
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Code of Criminal Justice			•					
Health Care Facilities								•
Nursing Homes								•
Licensing Standards/Long-term Care Facilities								•
Licensing Standards/Ambulatory Care Facilities								•
Licensing Standards/Hospitals								•
AIDS Community Care Alternative Program Services								•
Law and Public Safety								•

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

Provisions that may *IMPEDE* pain management

Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act			•					
Professional Practice Act ¹								
Medical Practice Act				•				
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances								•
Medical Board		•		•				•
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Code of Criminal Justice ¹								
Health Care Facilities ¹								
Nursing Homes ¹								
Licensing Standards/Long-term Care Facilities ¹								
Licensing Standards/Ambulatory Care Facilities ¹								
Licensing Standards/Hospitals ¹								
AIDS Community Care Alternative Program Services ¹								
Law and Public Safety ¹								

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J. Stat. § 24:21-2

§ 24:21-2. Definitions

Definitions. As used in this act:

.

"Drug dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

.

"Practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory, pharmacy, hospital or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance in the course of professional practice or research in this State.

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(-) CRITERION 11:
Physical dependence or analgesic tolerance confused with "addiction"

(+) CRITERION 3:
Opioids are part of professional practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J. Stat. § 45:9-5.1

§ 45:9-5.1. Definitions

Within the meaning of this chapter (45:9-1 et seq.), except as herein otherwise provided, and except for the purposes of the exemptions hereinafter contained in sections 45:9-14.1 to 45:9-14.10, inclusive, the phrase "the practice of medicine or surgery" and the phrase "the practice of medicine and surgery" shall include the practice of any branch of medicine and/or surgery, and any method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition, and the term "physician and surgeon" or "physician or surgeon" shall be deemed to include practitioners in any branch of medicine and/or surgery or method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition.

(+) **CRITERION 2:**
Pain management is part
of medical practice

N.J. Stat. § 45:9-14.3

§ 45:9-14.3. "Practice of osteopathy" defined; osteopathy license does not permit what

Within the meaning of the provisions of section 45:9-14.4, the practice of osteopathy shall include the diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity, mental or physical condition; provided, however, that a license to practice osteopathy shall not permit the holder thereof to prescribe, administer or dispense drugs for internal use in the treatment of any human ailment, disease, pain, injury, deformity, mental or physical condition or to perform such surgical operations as require cutting.

(+) **CRITERION 2:**
Pain management is part
of medical practice

N.J. Stat. § 45:9-22.19

§ 45:9-22.19. Schedule II controlled dangerous substance, prescription quantities.

A physician licensed pursuant to chapter 9 of Title 45 of the Revised Statutes may prescribe a Schedule II controlled dangerous substance for the use of a patient in any quantity which does not exceed a 30-day supply, as defined by regulations adopted by the State Board of Medical Examiners in consultation with the Department of Health and Senior Services. The physician shall document the diagnosis and the medical need for the prescription in the patient's medical record, in accordance with guidelines established by the State Board of Medical Examiners.

(-) **CRITERION 12:**
Medical decisions are
restricted

CATEGORY C:
Restrictions regarding
quantity prescribed or
dispensed

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pharmacy Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J. Stat. § 45:14-41

§ 45:14-41. Definitions relative to pharmacists

As used in this act:

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"Practitioner" means an individual currently licensed, registered or otherwise authorized by the jurisdiction in which the individual practices to administer or prescribe drugs in the course of professional practice.

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·

(+) **CRITERION 3:**
*Opioids are part of
professional practice*



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J.A.C. 8:65-7.2

§ 8:65-7.2 Definitions

The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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"Individual practitioner" means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the United States, the jurisdiction in which he practices, or in New Jersey, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

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N.J.A.C. 8:65-7.7

§ 8:65-7.7 Administering or dispensing of narcotic drugs

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(c) This section is not intended to impose any limitations on a physician or authorized hospital staff to administer or dispense narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or to administer or dispense narcotic drugs to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

(+) **CRITERION 3:**
Opioids are part of professional practice



(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Does this imply that opioids are a treatment of last resort?



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J.A.C. § 13:35-7.1

§ 13:35-7.1 Definitions

The following words and terms, when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

.

"Intractable pain" means pain which has been shown to be refractory or resistant to management with standard methods of treatment or for which insufficient relief has been found after reasonable efforts.

N.J.A.C. § 13:35-7.6

§ 13:35-7.6 Limitations on prescribing, administering or dispensing of controlled substances; special exceptions for management of pain

(a) When prescribing, dispensing or administering controlled substances, a practitioner shall ensure that a patient's medical history has been taken and physical examination accomplished, including an assessment of physical and psychological function, underlying or coexisting diseases or conditions, any history of substance abuse and the nature, frequency and severity of any pain. The medical record shall reflect:

1. A recognized medical indication for the use of the controlled substance;
2. The complete name of the controlled substance;
3. The dosage, strength and quantity of the controlled substance; and
4. The instructions as to frequency of use.

(b) With respect to Schedule II controlled substances, unless the requirements of (c) below are met, a practitioner shall not authorize a quantity calculated to exceed 120 dosage units or a 30-day supply, whichever is less.

(c) A practitioner may exceed the 120 dosage unit limitation for Schedule II controlled substances in (b) above, if the practitioner follows a treatment plan designed to achieve effective pain management which has been tailored to the needs of a patient who is suffering pain from cancer, intractable pain or terminal illness. The treatment plan shall state objectives by which treatment success is to be evaluated, such as pain relief and improved physical and psychological function, and shall indicate if any further diagnostic evaluations or other treatments are planned. The practitioner shall discuss the risks and benefits of the use of controlled substances with the patient, guardian or authorized representative.

(d) When controlled substances are continuously prescribed for management of pain for three months or more, the practitioner:

1. Shall review, at a minimum of every three months, the course of treatment, any new information about the etiology of the pain and the patient's progress toward treatment objectives;
2. Shall remain alert to problems associated with physical and psychological dependence; and
3. Shall periodically make reasonable efforts, unless clinically contraindicated, to either stop the use of the controlled substance, decrease the dosage, try other drugs such as nonsteroidal anti-inflammatories, or treatment modalities in an effort to reduce the potential for abuse or the development of physical or psychological dependence.

[CONTINUED ON NEXT PAGE]

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

(-) CRITERION 10:
Implies opioids are not part of professional practice

(-) CRITERION 12:
Medical decisions are restricted

CATEGORY C:
Restrictions regarding quantity prescribed or dispensed

(+) CRITERION 8:
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: The exemption of these patients from special prescription requirements nevertheless continues those requirements for all other patients

(-) CRITERION 12:
Medical decisions are restricted

CATEGORY D:
Undue prescription limitations

COMMENT: "Drug holidays" are no longer recognized as appropriate medical practice.

(-) CRITERION 16:
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Does this imply that opioids are a treatment of last resort?

(-) CRITERION 16:
Provisions that are ambiguous

CATEGORY C:
Conflicting or inconsistent policies or provisions

COMMENT: This provision differs from the language in the Medical Practice Act § 45:9-22.19, which does not specify exclusions. This regulation appears to allow prescribing greater than 120 dosage units, while the statute prohibits anything beyond a 30-day supply.

(+) CRITERION 8:
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(e) If treatment objectives are not being met, the practitioner:

1. Shall assess the appropriateness of continued treatment with controlled substances or undertake a trial of other drugs or treatment modalities; and
2. Shall consider referring the patient for independent evaluation or treatment in order to achieve treatment objectives.

(f) A practitioner shall remain alert to the possibility that controlled substances may be misused or diverted. A practitioner managing pain in a patient with a history of substance abuse shall exercise extra care by way of monitoring, documentation and possible consultation with addiction medicine specialists, and should consider the use of an agreement between the practitioner and the patient concerning controlled substance use and consequences for misuse.

(g) The practitioner shall keep accurate and complete records including that information required by (a) above as well as:

1. The medical history and physical examination of the patient;
2. Other evaluations and consultations;
3. Treatment plan objectives;
4. Evidence of informed consent;
5. Treatments and drugs prescribed or provided, as in (a) above;
6. Any agreements with the patient; and
7. Periodic reviews conducted.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Code of Criminal Justice

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J. Stat. § 2C:35-2

§ 2C:35-2. Definitions

As used in this chapter:

"Practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory, pharmacy, hospital or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance or controlled substance analog in the course of professional practice or research in this State.

(+) **CRITERION 3:**
Opioids are part of professional practice

STATUTES

Health Care Facilities

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J. Stat. § 26:2H-5b

§ 26:2H-5b. Routine monitoring of pain as fifth vital sign required

a. The Commissioner of Health and Senior Services shall prescribe, by regulation, requirements to be adopted by health care facilities licensed pursuant to P.L. 1971, c. 136 (C. 26:2H-1 et seq.) for the routine monitoring of pain as a fifth vital sign in patients, in addition to blood pressure, pulse, respiration and temperature.

For the purpose of this subsection, the commissioner shall require health care facilities to:

- (1) routinely inquire whether a patient is in pain;
- (2) maintain policies and procedures as prescribed by the commissioner for asking patients to rate their degree of pain for a specified period of time and to record their responses; and
- (3) routinely record levels of pain intensity on patient charts.

b. The requirements to be adopted pursuant to subsection a. of this section shall take effect no later than the 180th day after the effective date of this act.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (law regarding pain as fifth vital sign) for health care facilities to ensure that pain management is an essential part of patient care.

N.J. Stat. § 26:2H-12.8

§ 26:2H-12.8. Rights of persons admitted to a general hospital

Every person admitted to a general hospital as licensed by the State Department of Health and Senior Services pursuant to P.L. 1971, c. 136 (C. 26:2H-1 et al.) shall have the right:

- a. To considerate and respectful care consistent with sound nursing and medical practices, which shall include being informed of the name and licensure status of a student nurse or facility staff member who examines, observes or treats the patient and the right to expect and receive appropriate assessment, management and treatment of pain as an integral component of that person's care;

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for hospitals to ensure that pain management is an essential part of patient care.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Nursing Homes

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for hospices to ensure that pain management is an essential part of patient care.

N.J. Stat. § 30:13-5

§ 30:13-5. Rights of residents

Every resident of a nursing home shall:

j. Have the right to a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident, including the right to expect and receive appropriate assessment, management and treatment of pain as an integral component of that person's care consistent with sound nursing and medical practices.

REGULATIONS

Licensing Standards for Long-Term Care Facilities

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for hospitals to ensure that pain management is an essential part of patient care.

N.J.A.C. 8:39-27.1

§ 8:39-27.1 Mandatory policies, procedures and practices for quality of care

(a) The facility shall provide and ensure that each resident receives all care and services needed to enable the resident to attain and maintain the highest practicable level of physical (including pain management), emotional and social well-being, in accordance with individual assessments and care plans.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Licensing Standards for Ambulatory Care Facilities

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for ambulatory care facilities to ensure that pain management is an essential part of patient care.

N.J.A.C. 8:43A-16.2

§ 8:43A-16.2. Rights of each patient

(a) Each patient receiving services in an ambulatory care facility shall have the following rights:

14. To expect and receive appropriate assessment, management and treatment of pain as an integral component of that person's care in accordance with N.J.A.C. 8:43E-6.

REGULATIONS

Licensing Standards for Hospitals

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (written policies) for hospitals to ensure that pain management is an essential part of patient care

N.J.A.C. 8:43G-4.1

§ 8:43G-4.1. Patient rights

(a) Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The hospital administrator shall be responsible for developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. These rights shall include at least the following:

31 To expect and receive appropriate assessment, management and treatment of pain as an integral component of that person's care, in accordance with N.J.A.C. 8:43E-6.

N.J.A.C. 8:43G-22.2

§ 8:43G-22.2 Pediatrics and pediatric intensive care policies and procedures

(d) The pediatric services shall participate in developing anesthesia and pain management policies for infants and children.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

AIDS Community Care Alternative Program Services

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J.A.C. 10:60-7.4

§ 10:60-7.4 ACCAP services

(a) All Medicaid or NJ KidCare-Plan A services, except for nursing facility services, are available under ACCAP in accord with an individualized plan of care. Additionally, the following services are available to the eligible beneficiary:

7. Hospice care: This provides optimum comfort measures (including pain control), support and dignity to beneficiaries certified by an attending physician as terminally ill, with a life expectancy of up to six months. Family and/or other caregivers are also given support and direction while caring for the dying beneficiary. Services shall be provided by a Medicaid/NJ KidCare approved, Medicare certified hospice agency and available to a beneficiary on a daily, 24-hour basis. Hospice care shall be approved by the attending physician. Hospice services include: skilled nursing visits; hospice agency medical director services; medical social service visits; occupational therapy, physical therapy and speech-language pathology services; intravenous therapy; durable medical equipment; medication related to symptom control of terminal illness and case management. Reimbursement shall be at an established fee paid on a per diem basis.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Recognizes that pain management is an essential part of hospice care.

REGULATIONS

Law and Public Safety

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.J.A.C. 13:34C-2.2

§ 13:34C-2.2 Application procedure: licensed clinical alcohol and drug counselor

(b) An applicant shall furnish evidence that the applicant has:

x. Pharmacology and physiology, which includes topics related to physiology of alcohol/drug use, abuse, dependency and addiction; neurophysiology of chemical use; psychopharmacology; therapeutic and appropriate use of pharmaceutical drugs; physical health and the use/abuse of drugs; psychiatric medications in the treatment of mental illness and dual diagnoses; appropriate use of prescribed medications for recovering chemically dependent clients/patients; treatment of chronic pain and clinical testing of body fluids and hair;

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Requires AODA practitioners to receive information/education about pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NEW MEXICO

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT (*No provisions found*)
Chapter 30. Criminal Offenses; Article 31. Controlled Substances
- PROFESSIONAL PRACTICE ACT (*No provisions found*)
Chapter 61. Professional and Occupational Licenses; Article 1. Uniform Licensing
- MEDICAL PRACTICE ACT
Chapter 61. Professional and Occupational Licenses; Article 6. Medicine and Surgery
- OSTEOPATHIC PRACTICE ACT (*No provisions found*)
Chapter 61. Professional and Occupational Licenses; Article 10. Osteopathic Medicine and Surgery
- PHARMACY PRACTICE ACT (*No provisions found*)
Chapter 61. Professional and Occupational Licenses; Article 11. Pharmacy
- INTRACTABLE PAIN TREATMENT ACT
No policy found
- PAIN RELIEF ACT
Chapter 24. Health and Safety; Article 2D. Pain Relief

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*Part of Pharmacy Board Regulations*)
Title 16. Occupational and Professional Licensing; Chapter 19. Pharmacists; Part 20. Controlled Substances
- MEDICAL BOARD REGULATIONS
Title 16. Occupational and Professional Licensing; Chapter 10. Medicine and Surgery Practitioners
- OSTEOPATHIC BOARD REGULATIONS (*No provisions found*)
Title 16. Occupational and Professional Licensing; Chapter 17. Osteopathic Medicine and Surgery Practitioners
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 16. Occupational and Professional Licensing; Chapter 19. Pharmacists

OTHER GOVERNMENTAL POLICIES

- JOINT BOARD POLICY STATEMENT
New Mexico Boards of Medical Practice, Nursing, and Pharmacy. Joint Statement on Management of Chronic Pain. Adopted: June 5, 2005.



RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- OPIOID TREATMENT PROGRAMS
Title 7. Health; Chapter 32. Alcohol and Drug Abuse; Part 8. Opioid Treatment Programs



Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act ¹								
Professional Practice Act ¹								
Medical Practice Act		•						•
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
Pain Relief Act					•	•		•
REGULATIONS								
Controlled Substances			•					
Medical Board		•	•	•	•	•	•	•
Osteopathic Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Joint Board Policy Statement		•		•				•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Opioid Treatment Programs								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Professional Practice Act ¹								
Medical Practice Act ¹								
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
Pain Relief Act ¹								
REGULATIONS								
Controlled Substances ¹								
Medical Board								•
Osteopathic Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Joint Board Policy Statement ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Opioid Treatment Programs ¹								

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (guidelines) for the board to ensure that pain management is an essential part of patient care.

N.M. Stat. Ann. § 61-6-5

§ 61-6-5. Duties and powers. (Repealed effective July 1, 2010.)

The board shall:

O. establish and maintain rules related to the management of pain based on review of national standards for pain management.

N.M. Stat. Ann. § 61-6-6

§ 61-6-6. Definitions.

As used in Chapter 61, Article 6 NMSA 1978:

J. "the practice of medicine" consists of:

(5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person;

N.M. Stat. Ann. § 61-6-15

§ 61-6-15. License may be refused, revoked or suspended; licensee may be fined, censured or reprimanded; procedure; practice after suspension or revocation; penalty; unprofessional and dishonorable conduct defined; fees and expenses. (Repealed effective July 1, 2010.)

D. "Unprofessional or dishonorable conduct", as used in this section, means, but is not limited to because of enumeration, conduct of a licensee that includes the following:

(35) undertreatment of pain as provided by board rule;

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes inadequate treatment of pain as subject to disciplinary action just as other substandard practices might be.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pain Relief Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.M. Stat. Ann. § 24-2D-1 – § 24-2D-6

§ 24-2D-1. Short title

This act may be cited as the "Pain Relief Act".

§ 24-2D-2. Definitions

As used in the Pain Relief Act [24-2D-1 NMSA 1978]:

A. "accepted guideline" means a care or practice guideline for pain management developed by a national joint commission on accreditation of health care organizations; the American pain society; an American geriatrics society; the agency for health care research and quality; a national cancer pain initiative or any other nationally recognized clinical or professional association; or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion whose guidelines have been accepted by the New Mexico medical board and by other boards of health care providers with prescriptive authority;

B. "board" means the licensing board of a health care provider;

C. "clinical expert" means a person who by reason of specialized education or substantial relevant experience in pain management has knowledge regarding current standards, practices and guidelines;

D. "disciplinary action" means a formal action taken by a board against a health care provider, upon a finding of probable cause that the health care provider has engaged in conduct that violates the provider's respective board's practice act;

E. "health care provider" means a person licensed or otherwise authorized by law to provide health care in the ordinary course of business or practice of the person's profession and to have prescriptive authority within the limits of the person's license;

F. "pain" means a condition of bodily sensation of serious physical discomfort that requires the services of a health care provider to alleviate, including discomfort that is persistent and chronic in duration; and

G. "therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

§ 24-2D-3. Disciplinary action; evidentiary requirements

A. A health care provider who prescribes, dispenses or administers medical treatment for the purpose of relieving pain and who can demonstrate by reference to an accepted guideline that the provider's practice substantially complies with that guideline and with the standards of practice identified in *Section 24-2D-4 NMSA 1978* shall not be disciplined pursuant to board action or criminal prosecution, unless the showing of substantial compliance with an accepted guideline by the health care provider is rebutted by clinical expert testimony. If no currently accepted guidelines are available, then rules issued by the board may serve the function of such guidelines for purposes of the Pain Relief Act [24-2D-1 NMSA 1978]. The board rules shall conform to the intent of that act. Guidelines established primarily for purposes of coverage, payment or reimbursement do not qualify as an "accepted guideline" when offered to limit treatment options otherwise covered within the Pain Relief Act.

B. In the event that a disciplinary action or criminal prosecution is pursued, the board or prosecutor shall produce clinical expert testimony supporting the finding or charge of violation of disciplinary standards or other legal requirements on the part of the health care provider. A showing of substantial compliance with an accepted guideline shall only be rebutted by clinical expert testimony.

(CONTINUED ON NEXT PAGE)

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY C:
Regulatory or policy
issues

COMMENT: Identifies the possibility of reimbursement as an important barrier to the appropriate use of opioids analgesics.

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY C:
Regulatory or policy
issues

COMMENT: Establishes a mechanism (immunity) to protect physicians treating intractable pain from criminal prosecution.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pain Relief Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Recognizes that a patient's prior history or current status of drug abuse does not contraindicate appropriate pain management.

(CONTINUED)

C. The provisions of this section apply to health care providers in the treatment of pain, regardless of a patient's prior or current chemical dependency or addiction. Each board shall adopt rules establishing standards and procedures for the application of the Pain Relief Act [24-2D-1 NMSA 1978], including the care and treatment of chemically dependent individuals.

D. In an action brought by a board against a health care provider based on treatment of a patient for pain, the board shall consider the totality of the circumstances and shall not use as the sole basis of the action:

- (1) a patient's age;
- (2) a patient's diagnosis;
- (3) a patient's prognosis;
- (4) a patient's history of drug abuse;
- (5) the absence of consultation with a pain specialist; or
- (6) the quantity of medication prescribed or dispensed.

§ 24-2D-4. Disciplinary action; prohibitions

Nothing in the Pain Relief Act [24-2D-1 NMSA 1978] shall prohibit discipline or prosecution of a health care provider for:

A. failing to maintain complete, accurate and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient and the treatment plan for the patient;

B. writing false or fictitious prescriptions for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or *Sections 26-1-23 and 30-31-18 NMSA 1978*;

C. prescribing, administering or dispensing pharmaceuticals in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or *Sections 26-1-23 and 30-31-18 NMSA 1978*; or

D. diverting medications prescribed for a patient to the provider's personal use or to other persons.

§ 24-2D-5. Notification

The board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of the Pain Relief Act [24-2D-1 NMSA 1978] and inform any health care provider investigated in relation to the provider's practices in the management of pain of the existence of that act.

§ 24-2D-5.1. Pain management continuing education

A board shall encourage pain management continuing education for all health care providers who have prescriptive authority and who treat patients with pain.

(CONTINUED ON NEXT PAGE)

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (adopting rules) to establish standards and procedures for the appropriate treatment of patients with pain.

(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility to communicate to practitioners about acceptable practices governing pain management.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (encouraging continuing education) to provide practitioners information/education about pain management and palliative care.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pain Relief Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

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§ 24-2D-5.2. Pain management advisory council created; duties

A. The "pain management advisory council" is created and shall be administratively attached to the department of health. Members of the council shall be appointed by the governor to consist of one representative each from the New Mexico medical board, the board of nursing, the board of pharmacy, the board of osteopathic medical examiners, the board of acupuncture and oriental medicine, the university of New Mexico health sciences center, a statewide medical association, a statewide association of pharmacists, a statewide association of nurse practitioners, a statewide association of certified registered nurse anesthetists and a statewide association of osteopathic physicians; one person who is a consumer health care advocate; and three persons who have no direct ties or pecuniary interest in the health care fields.

B. The council shall meet at least quarterly to review current pain management practices in New Mexico and national pain management standards and educational efforts for both consumers and professionals and shall recommend pain management guidelines for each health care profession licensed in New Mexico with prescriptive authority to its respective board. Members who are not public employees shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978]. Public employee members shall receive mileage from their respective employers for attendance at council meetings.

§ 24-2D-6. Scope of act

Nothing in the Pain Relief Act [24-2D-1 NMSA 1978] shall be construed as expanding the authorized scope of practice of health care providers.

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY C:
Regulatory or policy
issues

COMMENT: Establishes a
mechanism (advisory
council) to improve pain
management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 3:**
Opioids are part of
professional practice

16.19.20.41 NMAC

§ 16.19.20.41. PRESCRIPTIONS

A. A prescription for a controlled substance may be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, and who is registered under the Controlled Substances Act. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

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REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(-) **CRITERION 16:**
Provisions that are
ambiguous

CATEGORY A:
Arbitrary standards for
legitimate prescribing

COMMENT: "Excessive"
implies there is a limit,
but the limit is not
specified

16.10.8.8 NMAC

§ 16.10.8.8. UNPROFESSIONAL OR DISHONORABLE CONDUCT

As defined in the Medical Practice Act, Section 61-6-15,D,(29), "unprofessional or dishonorable conduct" includes, but is not limited to, the following:

•
•

D. excessive prescribing or administering of drugs;

•
•

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

16.10.14.1 – 16.10.14.9 NMAC

§ 16.10.14.1. ISSUING AGENCY

New Mexico Medical Board, hereafter called the board.

§ 16.10.14.2. SCOPE

This part applies to all physicians and physician assistants licensed by the board.

§ 16.10.14.3. STATUTORY AUTHORITY

These rules are promulgated pursuant to and in accordance with the Medical Practice Act, *sections 61-6-1 through 61-6-35 NMSA 1978*.

§ 16.10.14.4. DURATION

Permanent

§ 16.10.14.5. EFFECTIVE DATE

January 20, 2003, unless a later date is cited at the end of a section.

§ 16.10.14.6. OBJECTIVE

It is the position of the board that practitioners have an obligation to treat chronic pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that purpose. When such medicines and drugs are used, they should be prescribed in adequate doses and for appropriate lengths of time after a thorough medical evaluation has been completed.

§ 16.10.14.7. DEFINITIONS

A. "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. "Chronic pain" means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

D. "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation and damage.

E. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

F. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

(CONTINUED ON NEXT PAGE)

(+) **CRITERION 4:**
Encourages pain
management

(+) **CRITERION 7:**
Physical dependence or
analgesic tolerance are
not confused with
"addiction"

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

§ 16.10.14.8. GUIDELINES

The following guidelines will be used by the board to determine whether a physician's or physician assistant's prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with various medicines and/or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence and/or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan should include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(3) The practitioner shall discuss the risks and benefits of using controlled substances with the patient and/or surrogate or guardian.

(4) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized should be recorded. Patients with a history of substance abuse or who are in an environment posing a high risk for misuse or diversion of drugs (e.g., living with a drug abuser, living or working in a place where drugs are available) may require special consideration.

(5) The management of patients needing chronic pain control requires monitoring by the attending and/or the consulting practitioner. In addition, a practitioner should consult, when indicated by the patient's condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control. Consultation should occur early in the course of long-term treatment, and at reasonable intervals during continued long-term treatment for assessment of benefit and need. It is especially important, when treating addicts for legitimate pain apart from their addiction, to obtain a contractual agreement with the patient, appropriate consultation, and to set a schedule for re-evaluation at appropriate time intervals.

(6) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

(CONTINUED ON NEXT PAGE)

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Recognizes that a patient's prior history or current status of drug abuse does not contraindicate appropriate pain management

(+) **CRITERION 3:**
Opioids are part of professional practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

(+) **CRITERION 6:**
Prescription amount
alone does not
determine legitimacy

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Recognizes
that inadequate
treatment of pain is
subject to disciplinary
action just as other
substandard practices
might be.

C. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

D. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection as a guiding principle.

E. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Medical Practice Act or board rules.

§ 16.10.14.9. PHYSICIAN, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANTS TREATED WITH OPIATES

Physicians, physician assistants or anesthesiologist assistants who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing in practice.

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Recognizes
that the goals of pain
treatment should extend
beyond pain scores, to
include improvements in
patient functioning and
quality of life.

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Joint Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Joint Statement on the Management of Chronic Pain

Pain management is a significant issue in health care today. Estimates of Americans experiencing pain range from 50-75 million persons annually. Thirty to fifty percent of patients undergoing cancer treatment experience pain. The effects of unmanaged pain are serious and wide-ranging and, yet, pain is widely under-treated. Untreated or inadequately treated pain impacts patients' quality of life and increases health care costs. Factors cited in the under-treatment of pain include concerns about causing addiction or tolerance; inadequate knowledge of controlled substances and pain management; fear of scrutiny and discipline by regulatory agencies; inadequate assessment; and patient reluctance to report pain or to take pain medications.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) guidelines on pain management state, "Patients have the right to appropriate assessment and management of pain." (Emphasis added). It is, therefore, incumbent upon New Mexico physicians, nurses and pharmacists to work cooperatively and effectively to address the dimensions of pain and to provide maximum pain relief with minimal side effects. Towards that end, and in the interest of public protection, the New Mexico Boards of Medical Practice, Nursing and Pharmacy issue the following joint statement.

To effectively assist patients in the management of chronic pain, health care professionals should, within their scope of practice:

- Consistently and thoroughly assess all patients for pain. If the patient reports untreated or inadequately treated chronic pain, the pain should be evaluated with a complete history and physical with laboratory and diagnostic testing, if indicated;
- Work collaboratively in a multi-disciplinary approach to develop and implement an individualized, written treatment plan utilizing pharmacologic and non-pharmacologic interventions with specific objectives for the patient;
- Regularly evaluate the effectiveness of the treatment plan, using a consistent, developmentally appropriate, standardized pain scale, and make adjustments as needed;
- Document all aspects of pain assessment and care in a timely, clear, consistent, complete and accurate manner;
- Anticipate and effectively manage side effects of pain medications;
- Provide adequate and culturally appropriate information to patients and family members or caregivers to support patients in making informed decisions and participate in the management of their pain;
- Be aware of the risks of diversion and abuse of controlled substances and take appropriate steps to minimize these risks;
- Recognize individuals with chemical dependency may experience pain requiring medications, including opioids, and may require specialized management;
- Consult with, and refer patients to, other providers when appropriate;
- Develop organization-appropriate and evidence-based policies and protocols for pain management;
- Become and remain knowledgeable regarding effective pain management; and
- Comply with all state and federal laws and regulations regarding prescribing, dispensing, and administering legend drugs, including controlled substances.

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes the need for a multidisciplinary approach to pain management.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes a practitioner's responsibility to provide patients information about pain management and palliative care when considering treatment plans.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Recognizes that a patient's prior history or current status of drug abuse does not contraindicate appropriate pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Opioid Treatment Programs

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

7.32.8.26 NMAC

§ 7.32.8.26. DIVERSE POPULATIONS

A. The program sponsor shall ensure that:

(9) an individual who requires administration of opioid treatment medication only for relief of chronic pain is:

(a) identified during the physical examination or assessment;

(b) not admitted for opioid medication treatment; and

(c) referred for medical services; and

(d) for a patient with a chronic pain disorder who is also physically dependent the OTP makes a good faith effort to coordinate treatment and services with the medical practitioner treating the patient for pain management.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for OTP staff to refer methadone-maintained patients who have chronic pain for treatment of their pain

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NEW YORK

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Public Health Law; Article 33. Controlled Substances
- MEDICAL PRACTICE ACT
Public Health Law; Article 2. The Department of Health; Title II-A. Professional Medical Conduct

Education Law; Title VIII. The Professions; Article 131. Medicine
- PHARMACY PRACTICE ACT (*No provisions found*)
Education Law; Title VIII. The Professions; Article 137. Pharmacy
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Title 10. Department of Health; Chapter II. Administrative Rules and Regulations; Subchapter K. Controlled Substances; Part 80. Rules and Regulations on Controlled Substances
- PROFESSIONAL BOARD REGULATIONS (*No provisions found*)
Title 8. Education Department; Chapter I. Rules of the Board of Regents; Part 17. Disciplinary Proceedings in the Professions

Title 8. Education Department; Chapter I. Rules of the Board of Regents; Part 24. Committee on the Professions

Title 8. Education Department; Chapter I. Rules of the Board of Regents; Part 28. Proceedings to Determine Good Moral Character and to Evaluate Prior Disciplinary History for Authorization to Practice the Licensed Professions

Title 8. Education Department; Chapter I. Rules of the Board of Regents; Part 29. Unprofessional Conduct

Title 8. Education Department; Chapter II. Regulations of the Commissioner; Subchapter B. Regulation of Professions; Part 59. General Provisions
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 8. Education Department; Chapter II. Regulations of the Commissioner; Subchapter B. Regulation of Professions; Part 60. Medicine, Physician's Assistant, Specialist's Assistant and Acupuncture



- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 8. Education Department; Chapter II. Regulations of the Commissioner; Subchapter B. Regulation of Professions; Part 63. Pharmacy

Title 8. Education Department; Chapter I. Rules of the Board of Regents; Part 3. Board of Regents Disciplinary Procedures

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD POLICY STATEMENT
Board of Professional Medical Conduct. *Policy Statement for the Use of Controlled Substances for the Treatment of Pain*. Approved: May, 2000.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- HOSPITALS
Public Health Law; Article 28. Hospitals
- HOSPICE OPERATION
Title 10. Department of Health; Chapter V. Medical Facilities; Subchapter C. State Hospital Code; Article 9. Hospice Operation



Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					•
Medical Practice Act		•						
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances			•					•
Professional Board ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement		•	•	•	•		•	•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Hospitals								•
Hospice Operation								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act				•		•		
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances				•		•		•
Professional Board ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Hospitals ¹								
Hospice Operation ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Represents the principle of Balance, which states that the regulation of controlled substances should not interfere with legitimate medical use.

(+) **CRITERION 3:**
Opioids are part of professional practice

NY CLS Pub Health § 3300-a

§ 3300-a. Legislative purposes

The purposes of this article are:

1. to combat illegal use of and trade in controlled substances; and
2. to allow legitimate use of controlled substances in health care, including palliative care; veterinary care; research and other uses authorized by this article or other law; under appropriate regulation and subject to this article, title eight of the education law, and other applicable law.

NY CLS Pub Health § 3302

§ 3302. Definitions of terms of general use in this article

Except where different meanings are expressly specified in subsequent provisions of this article, the following terms have the following meanings:

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29. "Practitioner" means:

A physician, dentist, podiatrist, veterinarian, scientific investigator, or other person licensed, or otherwise permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice or research licensed pursuant to this article. Such person shall be deemed a "practitioner" only as to such substances, or conduct relating to such substances, as is permitted by his license, permit or otherwise permitted by law.

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NY CLS Pub Health § 3331

§ 3331. Scheduled substances administering and dispensing by practitioners

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5. No more than a thirty day supply or, pursuant to regulations of the commissioner enumerating conditions warranting specified greater supplies, no more than a three month supply of a schedule II, III or IV substance, as determined by the directed dosage and frequency of dosage, may be dispensed by an authorized practitioner at one time.

6. A practitioner dispensing a controlled substance which may be prescribed only upon an official New York state prescription must at the time of such dispensing prepare an official New York state prescription in the manner set forth in subdivision two of section thirty-three hundred thirty-two of this article. The practitioner shall retain [fig 1] the original for a period of five years [fig 2] . The practitioner shall file a copy of such prescription with the department or, solely at his or her option, file such prescription information with the department by electronic means in such a manner and detail as the commissioner shall, by regulation, require. Such copy or prescription information shall be filed by not later than the fifteenth day of the next month following the month in which the controlled substance was delivered. This requirement shall not apply to the dispensing by a practitioner pursuant to subdivision five of section thirty-three hundred fifty-one of this article.

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(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY C:
Restrictions regarding quantity prescribed or dispensed

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

NY CLS Pub Health § 3332 - § 3333

§ 3332. Making of official New York state prescriptions for scheduled substances

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3. No such prescription shall be made for a quantity of controlled substances which would exceed a thirty day supply if the controlled substance were used in accordance with the directions for use specified on the prescription. A practitioner may, however, issue a prescription for up to a three month supply of a controlled substance provided that the controlled substance has been prescribed to treat one of the conditions that have been enumerated by the commissioner pursuant to regulations as warranting the prescribing of greater than a thirty day supply of a controlled substance and that the practitioner specifies the condition on the face of the prescription. No additional prescriptions for a controlled substance may be issued by a practitioner to an ultimate user within thirty days of the date of any prescription previously issued unless and until the ultimate user has exhausted all but a seven day supply of the controlled substance provided by any previously issued prescription.

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§ 3333. Dispensing upon official New York state prescription

1. A licensed pharmacist may, in good faith and in the course of his or her professional practice, sell and dispense to an ultimate user controlled substances for which an official New York state prescription is required only upon the delivery to such pharmacist, within thirty days of the date such prescription was signed by an authorized practitioner, of the original and one copy of such official New York state prescription; provided, however, a pharmacist may dispense a part or portion of such prescription in accordance with regulations of the commissioner. No pharmacy or pharmacist may sell or dispense greater than a thirty day supply of a controlled substance to an ultimate user unless and until the ultimate user has exhausted all but a seven day supply of the controlled substance provided pursuant to any previously issued official New York state prescription. except that a pharmacy or pharmacist may sell or dispense up to a three month supply of a controlled substance if there appears, on the face of the official New York state prescription, a statement that the controlled substance has been prescribed to treat one of the conditions that have been enumerated by the regulations of the commissioner as warranting the prescribing of greater than a thirty day supply of a controlled substance.

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NY CLS Pub Health § 3350

§ 3350. Dispensing prohibition

Controlled substances may not be prescribed for, or administered or dispensed to addicts or habitual users of controlled substances, except as provided by this title or title III.

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NY CLS Pub Health § 3351

§ 3351. Dispensing for medical use

1. Controlled substances may be prescribed for, or administered or dispensed to an addict or habitual user:

(a) during emergency medical treatment unrelated to abuse of controlled substances;

(b) who is a bona fide patient suffering from an incurable and fatal disease such as cancer or advanced tuberculosis;

(c) who is aged, infirm, or suffering from serious injury or illness and the withdrawal from controlled substances would endanger the life or impede or inhibit the recovery of such person.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Exemption of these patients from special prescription requirements nevertheless continues those requirements for all other patients.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Exemption of these patients nevertheless continues the prescribing restriction for all other patients with an addictive disease or history of addiction.

(-) **CRITERION 14:**
Undue prescription requirements

COMMENT: Strict enforcement of such a provision could be a burden to the physician and the patient. This provision could necessitate that the physician confirm the supply of the medication remaining for every patient.

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY A:
Restrictions based on patient characteristics

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

NY CLS Educ § 6521

§ 6521. Definition of practice of medicine

The practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition.

(+) **CRITERION 2:**
*Pain management is part
of medical practice*

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

10 NYCRR § 80.62

§ 80.62 Use of controlled substances in treatment.

(a) Physicians and other authorized practitioners in the course of their professional practice, may dispense, administer or prescribe controlled substances for legitimate medical purposes or treatment, other than treatment for addiction to controlled substances, when the practitioner regulates the dosage and prescribes or administers a quantity of such drugs no greater than that ordinarily recognized by members of his profession as sufficient for proper treatment in a given case.

10 NYCRR § 80.67

§ 80.67 Schedule II and certain other substances

(c) Except as provided for in subdivision (d) of this section, no such prescription shall be made for a quantity of substances which would exceed a 30-day supply if the substance were used in accordance with the directions for use, specified on the prescription. No additional prescriptions for a controlled substance may be issued by a practitioner to an ultimate user within 30 days of the date of any prescription previously issued unless and until the ultimate user has exhausted all but a seven days' supply of that controlled substance provided by any previously issued prescription.

(d) (1) A practitioner may issue a prescription for up to a three month supply of a controlled substance or up to a six month supply of an anabolic steroid or chorionic gonadotrophin if used in accordance with the direction for use, provided that the controlled substance has been prescribed for the treatment of:

- (i) attention deficit disorder;
- (ii) chronic debilitating neurological conditions characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity;
- (iii) relief of pain in patients suffering from diseases known to be chronic and incurable;
- (iv) narcolepsy;
- (v) panic disorders; or
- (vi) hormone deficiency states in males, gynecologic conditions that are responsive to treatment with anabolic steroids or chorionic gonadotrophin, metastatic breast cancer in women, anemia and angioedema.

(+) **CRITERION 3:**
Opioids are part of professional practice

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY C:
Restrictions regarding quantity prescribed or dispensed

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: The exemption of these patients from special prescription requirements nevertheless continues those requirements for all other patients. Although pain patients with chronic and incurable diseases are able to receive prescriptions for three months, this may not cover patients with chronic pain from a curable disease. However, this regulation requires that the patient be 65 years or older whereas a similar provision in § 80.79 does not specify an age.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Although professional practice in pain management is improving, it may be inappropriate to rely on such a standard given the widespread inadequate management of pain.

(-) **CRITERION 14:**
Undue prescription requirements

COMMENT: Strict enforcement of such a provision could be a burden to the physician and the patient. This provision could necessitate that the physician confirm the supply of the medication remaining for every patient.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

10 NYCRR § 80.76

§ 80.76 Dispensing; prohibition

Controlled substances shall not be prescribed for, administered or dispensed to addicts or habitual users of controlled substances except as provided by the Public Health Law or this Part.

§ 80.85 Administration of controlled substances to addicts and habitual users

(a) The administration of controlled substances to narcotic addicts or habitual users of controlled substances is prohibited except as provided for in this Part.

(b) Controlled substances may be administered to narcotic addicts or habitual users of controlled substances upon the order of a person authorized by law to practice medicine or osteopathy in this State and who possesses a Federal registration by the Drug Enforcement Administration, United States Department of Justice, authorizing him to use controlled substances in connection with his professional practice as follows:

(1) for bona fide patients suffering from disease known to be incurable, such as cancer, advanced tuberculosis, and other diseases well recognized as coming within this class;

(2) for addicts who are aged and infirm, or severely ill and it is determined that withdrawal of controlled substances would be dangerous to life, provided that:

(i) such determination has been confirmed by adequate consultation;

(ii) complete records of treatment, administration or dispensing of controlled substances including patient's name, date and type and quantity of controlled substance administered or dispensed are kept;

(iii) adequate safeguards have been taken against diversion of the controlled substances from the intended use; and

(iv) the patient is carefully supervised;

(3) to relieve acute withdrawal symptoms, except that:

(i) only the amount of controlled substances essential for relief of such acute symptoms shall be administered; and

(ii) administration shall be in an institutional or other setting reasonably certain to provide a drug-free environment;

(4) for detoxification of an addict participating in an authorized treatment program approved pursuant to article 23 of the Mental Hygiene Law; and

(5) for treatment of addicts participating in an authorized methadone or other controlled substances maintenance program approved pursuant to article 23 of the Mental Hygiene Law.

(c) In properly verified cases of severe illness, infirmity, or physical disability, a licensed physician, registered nurse, licensed practical nurse, or registered pharmacist may deliver medication to the patient.

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY A:
Restrictions based on patient characteristics

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY B:
Mandated consultation

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY C:
Conflicting or inconsistent policies or provisions

COMMENT: Patients who are addicts or habitual users, and who meet these standards, are exempt from the prescribing restriction of §80.76. However, the language in §80.85(b,2), which uses the phrase "aged and infirm, or severely ill," differs from the language in the Controlled Substances Act §3351(c), which uses the phrase "aged, infirm, or suffering," thereby appearing to establish two separate standards.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Exemption of these patients nevertheless continues the prescribing restriction for all other patients with an addictive disease or history of addiction.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

POLICY STATEMENT FOR THE USE OF CONTROLLED SUBSTANCES FOR THE TREATMENT OF PAIN

(+) **CRITERION 2:**
Pain management is part
of medical practice

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

(+) **CRITERION 3:**
Opioids are part of
professional practice

The NYS Board of Professional Medical Conduct (Board) recognizes that principles of quality medical practice dictate that the people of the State of New York have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs associated with untreated or inappropriately treated pain. The Board encourages physicians¹ to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, including pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment as well as statutory requirements for prescribing controlled substances. This policy statement has been developed to clarify the Board's position on pain control, specifically as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

The Board recognizes that controlled substances, including opioid analgesics, are often essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The medical management of pain should be guided by current knowledge and acceptable medical practice which includes the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly and appropriately with clear documentation. The Board also recognizes that tolerance and physical dependency are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

The Board considers prescribing, administering, or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted medical practice of the treatment of pain and sound clinical grounds. The physician's patient management will be evaluated by taking into account whether the diagnostic and therapeutic methodologies are appropriate for the patient's individual needs.

The Board is obligated under the laws of the State of New York to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek drugs for other than legitimate medical use. Physicians should be aware that the Board will not tolerate the use of such drugs for illegitimate purposes.

The Board's mission is to promote appropriate management of the patient's pain for its duration while addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

¹For the purposes of this document, the term physicians shall refer to physicians, medical residents, physician assistants and specialist assistants.

(+) **CRITERION 4:**
Encourages pain
management
management of pain

(+) **CRITERION 7:**
Physical dependence or
analgesic tolerance are
not confused with
"addiction"

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Recognizes
that the goals of pain
treatment should extend
beyond pain scores, to
include improvements in
patient functioning and
quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Hospitals

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

NY CLS Pub Health § 2800

§ 2800. Declaration of policy and statement of purpose

Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of the article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Recognizes that pain management is an essential part of hospital care.

REGULATIONS

Hospice Operation

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

10 NYCRR § 794.4

§ 794.4 Hospice inpatient and residence services

(a) Part 702 of this Title and Part 14 of the Sanitary Code shall apply to all hospice inpatient settings and hospice residence settings, as applicable.

(b) The hospice may provide short-term inpatient services for pain control and management of symptoms related to the terminal illness in a free-standing hospice facility, a skilled nursing facility or a general hospital.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Recognizes that pain management is an essential part of hospice care.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NORTH CAROLINA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Chapter 90. Medicine and Allied Occupations; Article 5. North Carolina Controlled Substances Act

Chapter 90. Medicine and Allied Occupations; Article 5E. North Carolina Controlled Substances Reporting System Act (*No provisions found*)

Chapter 106. Agriculture; Article 12. Food, Drugs and Cosmetics
- MEDICAL PRACTICE ACT (*No provisions found*)
Chapter 90. Medicine and Allied Occupations; Article 1. Practice of Medicine
- OSTEOPATHIC PRACTICE ACT (*No provisions found*)
Chapter 90. Medicine and Allied Occupations; Article 7. Osteopathy
- PHARMACY PRACTICE ACT (*No provisions found*)
Chapter 90. Medicine and Allied Occupations; Article 4. Pharmacy
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*No provisions found*)
Chapter 45. North Carolina Drug Commission
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 21. Occupational Licensing Boards; Chapter 32. Board of Medical Examiners
- OSTEOPATHIC BOARD REGULATIONS (*No provisions found*)
Title 21. Occupational Licensing Boards; Chapter 44. Board of Osteopathic Examination and Registration
- PHARMACY BOARD REGULATIONS
Title 21. Occupational Licensing Boards; Chapter 46. Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD POLICY STATEMENT
North Carolina Medical Board. *Policy for the Use of Controlled Substances for the Treatment of Pain*. Adopted: July 2005.



- MEDICAL BOARD POLICY STATEMENT
North Carolina Board of Medical Examiners. *End-of-Life Responsibilities and Palliative Care*. Adopted: October 21, 1999.
- JOINT BOARD POLICY STATEMENT
North Carolina Medical, Nursing, and Pharmacy Boards. *Joint Statement on Pain Management in End-of-Life Care*. Adopted: October 21, 1999.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

No policies found



Provisions that may *ENHANCE* pain management

Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					•
Medical Practice Act ¹								
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Osteopathic Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement		•	•	•	•	•	•	•
Medical Board Policy Statement				•	•			•
Joint Board Policy Statement				•	•			•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act			•			•		
Medical Practice Act ¹								
Osteopathic Practice Act ¹								
Intractable Pain Treatment Act ²								
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Osteopathic Board ¹								
Pharmacy Board							•	
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement ¹								
Medical Board Policy Statement ¹								
Pharmacy Board Policy Statement ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.C. Gen. Stat. § 90-87

§ 90-87. Definitions

As used in this Article:

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(13) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

.

(22) "Practitioner" means:

a. A physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.

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N.C. Gen. Stat. § 90-109.1

§ 90-109.1. Treatment

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(c) Every practitioner that provides treatment or rehabilitation services to a person dependent upon drugs shall periodically as required by the Secretary of the North Carolina Department of Health and Human Services commencing January 1, 1972, make a statistical report to the Secretary of the North Carolina Department of Health and Human Services in such form and manner as the Secretary shall prescribe for each such person treated or to whom rehabilitation services were provided. The form of the report prescribed shall be furnished by the Secretary of the North Carolina Department of Health and Human Services. Such report shall include the number of persons treated or to whom rehabilitation services were provided; the county of such person's legal residence; the age of such person; the number of such persons treated as inpatients and the number treated as outpatients; the number treated who had received previous treatment or rehabilitation services; and any other data required by the Secretary. If treatment or rehabilitation services are provided to a person by a hospital, public agency, or drug treatment facility, such hospital, public agency, or drug treatment facility shall coordinate with the treating medical practitioner so that statistical reports required in this section shall not duplicate one another. The Secretary shall cause all such reports to be compiled into periodical reports which shall be a public record.

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N.C. Gen. Stat. § 90-113.71

§ 90-113.71. Legislative findings and purpose

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(b) This Article is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances.

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(-) **CRITERION 11:**
Physical dependence or analgesic tolerance confused with "addiction"

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Represents the principle of Balance, which states that the regulation of controlled substances should not interfere with legitimate medical use.

(+) **CRITERION 3:**
Opioids are part of professional practice

(-) **CRITERION 14:**
Practitioners are subject to undue prescription requirements

COMMENT: Requires practitioners to submit reports of all patients considered drug dependent, which the Secretary of the North Carolina Department of Health and Human Services will compile into a public record. The state legal definition of drug dependence could include patients with pain who are physically dependent as a result of opioid treatment.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Food, Drugs and Cosmetics Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.C. Gen. Stat. § 106-121

§ 106-121. Definitions and general considerations

For the purpose of this Article:

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(14b) The term "practitioner" means a physician, dentist, veterinarian, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a drug so long as such activity is within the normal course of professional practice or research.

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(+) CRITERION 3:
*Opioids are part of
professional practice*



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Pharmacy Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(-) **CRITERION 15:**
Other provisions that may impede pain management

COMMENT: Could become a barrier if the pharmacist determined potential harm based solely on the quantity of the prescription

21 N.C.A.C. 46.1801

.1801 RIGHT TO REFUSE A PRESCRIPTION

(a) A pharmacist or device and medical equipment dispenser may refuse to fill or refill a prescription order, if, in his professional judgment, it would be harmful to the recipient is not in the recipient's best interest or if there is a question as to its validity.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Policy for the Use of Controlled Substances for the Treatment of Pain

- Appropriate treatment of chronic pain may include both pharmacologic and non-pharmacologic modalities. The Board realizes that controlled substances, including opioid analgesics, may be an essential part of the treatment regimen.
- All prescribing of controlled substances must comply with applicable state and federal law.
- Guidelines for treatment include: (a) complete patient evaluation, (b) establishment of a treatment plan (contract), (c) informed consent, (d) periodic review, and (e) consultation with specialists in various treatment modalities as appropriate.
- Deviation from these guidelines will be considered on an individual basis for appropriateness.

Section I: Preamble

The North Carolina Medical Board recognizes that principles of quality medical practice dictate that the people of the State of North Carolina have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs associated with untreated or inappropriately treated pain. For the purposes of this policy, the inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The Board encourages physicians to view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. Accordingly, this policy has been developed to clarify the Board's position on pain control, particularly as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from physicians' lack of knowledge about pain management. Fears of investigation or sanction by federal, state and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician's responsibility. As such, the Board will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The Board recognizes that controlled substances including opioid analgesics may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The Board will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and non-pharmacologic modalities according to the judgment of the physician. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain, and treatment outcomes. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that inadequate treatment of pain is subject to disciplinary action just as other substandard practice might be.

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 7:**
Physical dependence or analgesic tolerance are not confused with "addiction"

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

The North Carolina Medical Board is obligated under the laws of the State of North Carolina to protect the public health and safety. The Board recognizes that the use of opioid analgesics for other than legitimate medical purposes pose a threat to the individual and society and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the Board expects that physicians incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

Physicians should not fear disciplinary action from the Board for ordering, prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the course of professional practice. The Board will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state or federal law is required.

(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

The Board will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

(+) **CRITERION 8:**
Other provisions that may enhance pain management

Allegations of inappropriate pain management will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation. The physician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

CATEGORY A:
Issues related to healthcare professionals

CATEGORY A:
Issues related to healthcare professionals

COMMENT:
Acknowledges need for treatment flexibility for physicians to respond to individual clinical circumstances, as long as their prescribing maintains the standards of good medical practice.

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Section II: Guidelines

The Board has adopted the following criteria when evaluating the physician's treatment of pain, including the use of controlled substances:

Evaluation of the Patient —A medical history and physical examination must be obtained, evaluated, and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

Treatment Plan —The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Informed Consent and Agreement for Treatment —The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse or has a history of substance abuse, the physician should consider the use of a written agreement between physician and patient outlining patient responsibilities, including

- urine/serum medication levels screening when requested;
- number and frequency of all prescription refills;
- and reasons for which drug therapy may be discontinued (e.g., violation of agreement).

Periodic Review —The physician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

Consultation —The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

Medical Records —The physician should keep accurate and complete records to include

1. the medical history and physical examination,
2. diagnostic, therapeutic and laboratory results,
3. evaluations and consultations,
4. treatment objectives,
5. discussion of risks and benefits,

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

6. informed consent,
7. treatments,
8. medications (including date, type, dosage and quantity prescribed),
9. instructions and agreements and
10. periodic reviews.

Records should remain current and be maintained in an accessible manner and readily available for review.

Compliance With Controlled Substances Laws and Regulations —To prescribe, dispense or administer controlled substances, the physician must be licensed in the state and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration and any relevant documents issued by the state of North Carolina for specific rules governing controlled substances as well as applicable state regulations.

Section III: Definitions

For the purposes of these guidelines, the following terms are defined as follows:

Acute Pain —Acute pain is the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is generally time-limited.

Addiction —Addiction is a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

Chronic Pain —Chronic pain is a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

Pain —An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Physical Dependence —Physical dependence is a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Pseudoaddiction —The iatrogenic syndrome resulting from the misinterpretation of relief seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief seeking behaviors resolve upon institution of effective analgesic therapy.

Substance Abuse —Substance abuse is the use of any substance(s) for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

Tolerance —Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

END-OF-LIFE RESPONSIBILITIES AND PALLIATIVE CARE

Assuring Patients

Death is part of life. When appropriate processes have determined that the use of life-sustaining or invasive interventions will only prolong the dying process, it is incumbent on physicians to accept death "not as a failure, but the natural culmination of our lives."*

It is the position of the North Carolina Medical Board that patients and their families should be assured of competent, comprehensive palliative care at the end of their lives. Physicians should be knowledgeable regarding effective and compassionate pain relief, and patients and their families should be assured such relief will be provided.

Palliative Care

There is no one definition of palliative care, but the Board accepts that found in the *Oxford Textbook of Palliative Medicine*: "The study and management of patients with active, progressive, far advanced disease for whom the prognosis is limited and the focus of care is the quality of life." This is not intended to exclude remissions and requires that the management of patients be comprehensive, embracing the efforts of medical clinicians and of those who provide psychosocial services, spiritual support, and hospice care.

A physician who provides palliative care, encompassing the full range of comfort care, should assess his or her patient's physical, psychological, and spiritual conditions. Because of the overwhelming concern of patients about pain relief, special attention should be given the effective assessment of pain. It is particularly important that the physician frankly but sensitively discuss with the patient and the family their concerns and choices at the end of life. As part of this discussion, the physician should make clear that, in some cases, there are inherent risks associated with effective pain relief in such situations.

Opioid Use

The Board will assume opioid use in such patients is appropriate if the responsible physician is familiar with and abides by acceptable medical guidelines regarding such use, is knowledgeable about effective and compassionate pain relief, and maintains an appropriate medical record that details a pain management plan. (See the Board's position statement on the Management of Chronic Non-Malignant Pain for an outline of what the Board expects of physicians in the management of pain.) Because the Board is aware of the inherent risks associated with effective pain relief in such situations, it will not interpret their occurrence as subject to discipline by the Board.

Selected Guides

To assist physicians in meeting these responsibilities, the Board recommends *Cancer Pain Relief: With a Guide to Opioid Availability*, 2nd ed (1996), *Cancer Pain Relief and Palliative Care* (1990), *Cancer Pain Relief and Palliative Care in Children* (1999), and *Symptom Relief in Terminal Illness* (1998), (World Health Organization, Geneva); *Management of Cancer Pain* (1994), (Agency for Health Care Policy and Research, Rockville, MD); *Principles of Analgesic Use in the Treatment of Acute Pain and Cancer Pain*, 4th Edition (1999) (American Pain Society, Glenview, IL); *Hospice Care: A Physician's Guide* (1998) (Hospice for the Carolinas, Raleigh); and the *Oxford Textbook of Palliative Medicine* (1993) (Oxford Medical, Oxford).

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Joint Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

JOINT STATEMENT ON PAIN MANAGEMENT IN END-OF-LIFE CARE

Through dialogue with members of the healthcare community and consumers, a number of perceived regulatory barriers to adequate pain management in end-of-life care have been expressed to the Boards of Medicine, Nursing, and Pharmacy. The following statement attempts to address these misperceptions by outlining practice expectations for physicians and other health care professionals authorized to prescribe medications, as well as nurses and pharmacists involved in this aspect of end-of-life care. The statement is based on:

the legal scope of practice for each of these licensed health professionals;

professional collaboration and communication among health professionals providing palliative care; and

a standard of care that assures on-going pain assessment, a therapeutic plan for pain management interventions; and evidence of adequate symptom management for the dying patient.

It is the position of all three Boards that patients and their families should be assured of competent, comprehensive palliative care at the end of their lives.

Physicians, nurses and pharmacists should be knowledgeable regarding effective and compassionate pain relief, and patients and their families should be assured such relief will be provided.

Because of the overwhelming concern of patients about pain relief, the physician needs to give special attention to the effective assessment of pain. It is particularly important that the physician frankly but sensitively discuss with the patient and the family their concerns and choices at the end of life. As part of this discussion, the physician should make clear that, in some end of life care situations, there are inherent risks associated with effective pain relief. The Medical Board will assume opioid use in such patients is appropriate if the responsible physician is familiar with and abides by acceptable medical guidelines regarding such use, is knowledgeable about effective and compassionate pain relief, and maintains an appropriate medical record that details a pain management plan. Because the Board is aware of the inherent risks associated with effective pain relief in such situations, it will not interpret their occurrence as subject to discipline by the Board.

With regard to pharmacy practice, North Carolina has no quantity restrictions on dispensing controlled substances including those in Schedule II. This is significant when utilizing the federal rule that allows the partial filling of Schedule II prescriptions for up to 60 days. In these situations it would minimize expenses and unnecessary waste of drugs if the prescriber would note on the prescription that the patient is terminally ill and specify the largest anticipated quantity that could be needed for the next two months. The pharmacist could then dispense smaller quantities of the prescription to meet the patient's needs up to the total quantity authorized. Government-approved labeling for dosage level and frequency can be useful as guidance for patient care. Health professionals may, on occasion, determine that higher levels are justified in specific cases. However, these occasions would be exceptions to general practice and would need to be properly documented to establish informed consent of the patient and family.

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(+) **CRITERION 4:**
Encourages pain
management

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Joint Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

Federal and state rules also allow the fax transmittal of an original prescription for Schedule II drugs for hospice patients. If the prescriber notes the hospice status of the patient on the faxed document, it serves as the original. Pharmacy rules also allow the emergency refilling of prescriptions in Schedules III, IV, and V. While this does not apply to Schedule II drugs, it can be useful in situations where the patient is using drugs such as Vicodin for pain or Xanax for anxiety.

The nurse is often the health professional most involved in on-going pain assessment, implementing the prescribed pain management plan, evaluating the patient's response to such interventions and adjusting medication levels based on patient status. In order to achieve adequate pain management, the prescription must provide dosage ranges and frequency parameters within which the nurse may adjust (titrate) medication in order to achieve adequate pain control. Consistent with the licensee's scope of practice, the RN or LPN is accountable for implementing the pain management plan utilizing his/her knowledge base and documented assessment of the patient's needs. *The nurse has the authority to adjust medication levels within the dosage and frequency ranges stipulated by the prescriber and according to the agency's established protocols.* However, the nurse does not have the authority to change the medical pain management plan. When adequate pain management is not achieved under the currently prescribed treatment plan, the nurse is responsible for reporting such findings to the prescriber and documenting this communication. Only the physician or other health professional with authority to prescribe may change the medical pain management plan.

Communication and collaboration between members of the healthcare team, and the patient and family are essential in achieving adequate pain management in end-of-life care. Within this interdisciplinary framework for end of life care, effective pain management should include:

thorough documentation of all aspects of the patient's assessment and care;

a working diagnosis and therapeutic treatment plan including pharmacologic and non-pharmacologic interventions;

regular and documented evaluation of response to the interventions and, as appropriate, revisions to the treatment plan;

evidence of communication among care providers;

education of the patient and family; and

a clear understanding by the patient, the family and healthcare team of the treatment goals.

It is important to remind health professionals that licensing boards hold each licensee accountable for providing safe, effective care. Exercising this standard of care requires the application of knowledge, skills, as well as ethical principles focused on optimum patient care while taking all appropriate measures to relieve suffering. The healthcare team should give primary importance to the expressed desires of the patient tempered by the judgement and legal responsibilities of each licensed health professional as to what is in the patient's best interest.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Informs healthcare professionals about acceptable practices under Federal and state policies.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes the need for a multidisciplinary approach to pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

NORTH DAKOTA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 19. Foods, Drugs, Oils, and Compounds

Chapter 19-02.1. Food, Drugs, and Cosmetic Act

Chapter 19-03.1. Uniform Controlled Substances Act
- PAIN TREATMENT ACT (*Part of Controlled Substances Act*)
Title 19. Foods, Drugs, Oils, and Compounds; Chapter 19-03.3. Controlled Substances for Care and Treatment
- MEDICAL PRACTICE ACT (*No provisions found*)
Title 43. Occupations and Professions; Chapter 43-17. Physicians and Surgeons
- PHARMACY PRACTICE ACT
Title 43. Occupations and Professions; Chapter 43-15. Pharmacists

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
No policy found
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 50. State Board of Medical Examiners
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 61. State Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

No policies found

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

No policies found



Provisions that may *ENHANCE* pain management

	1	2	3	4	5	6	7	8
Criteria	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Pain Treatment Act		•			•			•
Medical Practice Act ¹								
Pharmacy Practice Act			•					
REGULATIONS								
Controlled Substances ²								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Pain Treatment Act ¹								
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances ²								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES²								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Food, Drug and Cosmetic Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.D. Cent. Code, § 19-02.1-01

19-02.1-01. Definitions.

For the purpose of this chapter:

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20. "Practitioner" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice which are subject to this chapter.

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.D. Cent. Code, § 19-03.1-01

19-03.1-01. Definitions.

As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

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25. "Practitioner" means:

a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.D. Cent. Code, § 19-03.3-01 – § 19-03.3-06

19-03.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of medical examiners.

2. "Pain" means acute pain and chronic pain. Acute pain is the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus and typically is associated with invasive procedures, trauma, or disease, and is generally time-limited. Chronic pain is a state that persists beyond the usual course of an acute disease or healing of an injury or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

3. "Physician" means a physician licensed by the board.

19-03.3-02. Prescription or administration of drugs by physician.

Notwithstanding any other provision of law, a physician may prescribe or administer controlled substances to a patient in the course of the physician's treatment of the patient for pain. A physician shall keep records of purchases and disposals of controlled substances prescribed or administered under this section. The records must include the date of purchase, the date of sale or administration by the physician, the name and address of the patient, and the reason for the prescribing or the administering of the substances to the patient.

19-03.3-03. Restriction by hospital or health care facility of prescribed drug use prohibited.

No hospital or health care facility may forbid or restrict the use of controlled substances when prescribed or administered by a physician having staff privileges at that hospital or health care facility for a patient diagnosed and treated by a physician for pain.

19-03.3-04. Disciplinary action for prescribing or administering drug treatment prohibited.

The board may not discipline a physician for prescribing or administering controlled substances in the course of treatment of a patient for pain under this chapter.

19-03.3-05. Application.

This chapter does not apply to a person being treated by a physician for chemical dependency because of the person's use of controlled substances not related to treatment for pain. This chapter does not authorize a physician to prescribe or administer any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes. A person to whom controlled substances are prescribed or administered for pain is not exempt from section 39-08-01 or 39-20-04.1.

19-03.3-06. Cancellation, revocation, or suspension of physician's license.

This chapter does not limit the authority of the board to cancel, revoke, or suspend the license of any physician who:

1. Prescribes or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.
2. Fails to keep complete and accurate records of purchases and disposals of controlled substances listed in chapter 19-03.1.
3. Writes false or fictitious prescriptions for controlled substances scheduled in chapter 19-03.1.

(+) **CRITERION 2:**
Pain management is part
of medical practice

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Attempts to
provide a secure
environment for
physicians prescribing in
their healthcare facility

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pharmacy Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

N.D. Cent. Code, § 43-15-01

43-15-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

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24. "Practitioner" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice.

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(+) CRITERION 3:
*Opioids are part of
professional practice*

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OHIO

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 37. Health, Safety, Morals; Chapter 3719. Controlled Substances
- MEDICAL PRACTICE ACT
Title 47. Occupations, Professions; Chapter 4731. Physicians, Limited Practitioners
- INTRACTABLE PAIN TREATMENT ACT (*Part of Medical Practice Act*)
Title 47. Occupations, Professions; Chapter 4731. Physicians, Limited Practitioners;
§4731.052
- PHARMACY PRACTICE ACT
Title 47. Occupations, Professions; Chapter 4729. Pharmacists, Dangerous Drugs

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*Part of Pharmacy Board Regulations*) (*No provisions found*)
4729. State Board of Pharmacy; 4729-9. Dangerous Drugs
- MEDICAL BOARD REGULATIONS
4731. State Medical Board
- PHARMACY BOARD REGULATIONS
4729. State Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

No policies found

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- ASSISTED SUICIDE
Title 37. Health, Safety, Morals; Chapter 3795. Assisted Suicide
- HOSPICE CARE
3701. Department of Health, Administration and Director; Chapter 3701-19. Hospice Care Programs



Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Medical Practice Act								•
Intractable Pain Treatment Act					•	•		•
Pharmacy Practice Act			•					
REGULATIONS								
Controlled Substances ¹								
Medical Board					•	•	•	•
Pharmacy Board			•					
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Assisted Suicide								•
Hospice Care								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Medical Practice Act ¹								
Intractable Pain Treatment Act				•				•
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances ¹								
Medical Board				•				•
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES²								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Assisted Suicide ¹								
Hospice Care ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found



STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORC Ann. 3719.06

§ 3719.06. Authority of licensed health professional; contents of prescription

(A) (1) A licensed health professional authorized to prescribe drugs, if acting in the course of professional practice, in accordance with the laws regulating the professional's practice, and in accordance with rules adopted by the state board of pharmacy, may, except as provided in division (A)(2) of this section, do the following:

(a) Prescribe schedule II, III, IV, and V controlled substances;

(b) Administer or personally furnish to patients schedule II, III, IV, and V controlled substances;

(c) Cause schedule II, III, IV, and V controlled substances to be administered under the prescriber's direction and supervision.

(+) **CRITERION 3:**
Opioids are part of professional practice

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORC Ann. 4731.283

§ 4731.283. Continuing education concerning intractable pain

Not later than ninety days after the effective date of this section, the state medical board shall approve one or more continuing medical education courses of study included within the programs certified by the Ohio state medical association and the Ohio osteopathic association pursuant to *section 4731.281 [4731.28.1] of the Revised Code* that assist doctors of medicine and doctors of osteopathic medicine in diagnosing and treating intractable pain, as defined in *section 4731.052 [4731.05.2] of the Revised Code*.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (continuing education) to provide practitioners information/education about pain management

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Intractable Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORC Ann. 4731.052

[§ 4731.05.2] § 4731.052 Management of intractable pain with dangerous drugs.

(A) As used in this section:

(1) "Dangerous drug" has the same meaning as in section 4729.01 of the Revised Code.

(2) "Intractable pain" means a state of pain that is determined, after reasonable medical efforts have been made to relieve the pain or cure its cause, to have a cause for which no treatment or cure is possible or for which none has been found.

(3) "Physician" means an individual authorized under this chapter to practice medicine and surgery or osteopathic medicine and surgery.

(B) The state medical board shall adopt rules in accordance with Chapter 119. of the Revised Code that establish standards and procedures to be followed by physicians in the diagnosis and treatment of intractable pain, including standards for managing intractable pain by prescribing, personally furnishing, or administering dangerous drugs in amounts or combinations that may not be appropriate when treating other medical conditions. In developing the rules, the board shall consult with and permit review by physicians who are experienced in the diagnosis and treatment of intractable pain.

(C) When a physician diagnoses an individual as having intractable pain, the physician may treat the pain by managing it with dangerous drugs in amounts or combinations that may not be appropriate when treating other medical conditions. The physician's diagnosis shall be made after having the individual evaluated by one or more other physicians who specialize in the treatment of the area, system, or organ of the body perceived as the source of the pain. The physician's diagnosis and treatment decisions shall be made according to accepted and prevailing standards for medical care. The physician shall maintain a record of all of the following:

(1) Medical history and physical examination of the individual;

(2) The diagnosis of intractable pain, including signs, symptoms, and causes;

(3) The plan of treatment proposed, the patient's response to treatment, and any modification to the plan of treatment;

(4) The dates on which dangerous drugs were prescribed, furnished, or administered, the name and address of the individual to or for whom the dangerous drugs were prescribed, dispensed, or administered, and the amounts and dosage forms for the dangerous drugs prescribed, furnished, or administered;

(5) A copy of the report made by the physician or the physician to whom referral for evaluation was made under this division.

(D) A physician who treats intractable pain by managing it with dangerous drugs is not subject to disciplinary action by the board under section 4731.22 of the Revised Code solely because the physician treated the intractable pain with dangerous drugs. The physician is subject to disciplinary action only if the dangerous drugs are not prescribed, furnished, or administered in accordance with this section and the rules adopted under it.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (rules) for the Board to ensure that pain management is an essential part of patient care.

(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Suggests that physicians would not qualify for immunity and relief from concerns about regulatory scrutiny if they prescribe opioids as a treatment of first choice for patients who present initially with severe pain, such as those with sickle-cell anemia

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY B:
Mandated consultation

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Pharmacy Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORC Ann. 4729.01

§ 4729.01. Definitions

As used in this chapter:

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(l) "Licensed health professional authorized to prescribe drugs" or "prescriber" means an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following:

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

OAC Ann. 4731-21-01 – 4731-21-06

4731-21-01 Definitions.

As used in Chapter 4731-21 of the Administrative Code:

(A) "Addiction" means a compulsive disorder in which an individual becomes preoccupied with obtaining and using a substance, despite adverse social, psychological and/or physical consequences, the continued use of which results in a decreased quality of life. Physical dependence alone is not evidence of addiction.

(B) "Believes" or "has reason to believe" does not require absolute certainty or complete unquestioning acceptance; but only an opinion based on reasonable information that a patient is suffering from addiction or drug abuse or engaging in diversion of drugs.

(C) "Board" means the state medical board of Ohio.

(D) "Diversion" means the conveyance of a prescription drug to a person other than the person for whom the drug was prescribed or dispensed by a practitioner.

(E) "Drug abuse" means a maladaptive or inappropriate use or overuse of a medication.

(F) "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action.

(G) "Intractable pain" means a state of pain that is determined, after reasonable medical efforts have been made to relieve the pain or cure its cause, to have a cause for which no treatment or cure is possible or for which none has been found. "Intractable pain" does not include pain experienced by a patient with a terminal condition. "Intractable pain" does not include the treatment of pain associated with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(H) "Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage, or described in terms of such damage.

(I) "Physical dependence" means a physiologic state of adaptation to a specific drug or medication characterized by the development of a withdrawal syndrome following abrupt cessation of a drug or on administration of an antagonist.

(J) "Practitioner" means an individual holding a certificate under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry and practicing within his or her scope of practice as defined by section 4731.51 of the Revised Code.

(K) "Prescription drug" means a drug which under state or federal law may be administered or dispensed only by or upon the order of a practitioner and includes the term "dangerous drug" as defined by section 4729.02 of the Revised Code.

(L) "Podiatrist" means an individual holding a certificate under chapter 4731. of the Revised Code to practice podiatry and practicing within his or her scope of practice as defined by section 4731.51 of the Revised Code.

(M) "Protracted basis" means for a period in excess of twelve continuous weeks.

(N) "Terminal condition" means an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a patient's attending medical doctor or doctor of osteopathic medicine and one other individual holding a certificate under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery who has examined the patient, both of the following apply:

(1) There can be no recovery;

(2) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

[CONTINUED ON NEXT PAGE]

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Suggests that physicians would not qualify for immunity and relief from concerns about regulatory scrutiny if they prescribe opioids as a treatment of first choice for patients who present initially with severe pain, such as those with sickle-cell anemia.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(O) "Tolerance" means decreasing response to the same dosage of a prescription drug over time as a result of physiologic adaptation to that drug.

(P) "Utilizing prescription drugs" means prescribing, administering, dispensing, supplying, selling or giving a prescription drug.

4731-21-02 Utilizing prescription drugs for the treatment of intractable pain.

(A) When utilizing any prescription drug for the treatment of intractable pain on a protracted basis or when managing intractable pain with prescription drugs in amounts or combinations that may not be appropriate when treating other medical conditions, a practitioner shall comply with accepted and prevailing standards of care which shall include, but not be limited to, the following:

(1) An initial evaluation of the patient shall be conducted and documented in the patient's record that includes a relevant history, including complete medical, pain, alcohol and substance abuse histories; an assessment of the impact of pain on the patient's physical and psychological functions; a review of previous diagnostic studies and previously utilized therapies; an assessment of coexisting illnesses, diseases or conditions; and an appropriate physical examination;

(2) A medical diagnosis shall be established and documented in the patient's medical record that indicates not only the presence of intractable pain but also the signs, symptoms, and causes and, if determinable, the nature of the underlying disease and pain mechanism;

(3) An individualized treatment plan shall be formulated and documented in the patient's medical record. The treatment plan shall specify the medical justification of the treatment of intractable pain by utilizing prescription drugs on a protracted basis or in amounts or combinations that may not be appropriate when treating other medical conditions, the intended role of prescription drug therapy within the overall plan, and, when applicable, documentation that other medically reasonable treatments for relief of the patient's intractable pain have been offered or attempted without adequate or reasonable success. The prescription drug therapy shall be tailored to the individual medical needs of each patient. The practitioner shall document the patient's response to treatment and, as necessary, modify the treatment plan;

(4)(a) The practitioner's diagnosis of intractable pain shall be made after having the patient evaluated by one or more other practitioners who specialize in the treatment of the anatomic area, system, or organ of the body perceived as the source of the pain. For purposes of this rule, a practitioner "specializes" if the practitioner limits the whole or part of his or her practice, and is qualified by advanced training or experience to so limit his or her practice, to the particular anatomic area, system, or organ of the body perceived as the source of the pain. The evaluation shall include review of all available medical records of prior treatment of the intractable pain or the condition underlying the intractable pain; a thorough history and physical examination; and testing as required by accepted and prevailing standards of care. The practitioner shall maintain a copy of any report made by any practitioner to whom referral for evaluation was made under this paragraph. A practitioner shall not provide an evaluation under this paragraph if that practitioner would be prohibited by *sections 4731.65 to 4731.69 of the Revised Code* or any other rule adopted by the board from providing a designated health service upon referral by the treating practitioner; and

(b) The practitioner shall not be required to obtain such an evaluation, if the practitioner obtains a copy of medical records or a detailed written summary thereof showing that the patient has been evaluated and treated within a reasonable period of time by one or more other practitioners who specialize in the treatment of the anatomic area, system, or organ of the body perceived as the source of the pain and the treating practitioner is satisfied that he or she can rely on that evaluation for purposes of meeting the further requirements of this chapter of the Administrative Code. The practitioner shall obtain and review all available medical records or detailed written summaries thereof of prior treatment of the intractable pain or the condition underlying the intractable pain. The practitioner shall maintain a copy of any record or report of any practitioner on which the practitioner relied for purposes of meeting the requirements under this paragraph; and

[CONTINUED ON NEXT PAGE]

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Practitioners are not required to obtain a consultation when a patient has been evaluated previously. However, the policy continues to mandate consultation for all other patients with intractable pain.

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY B:
Mandated consultation



REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(5) The practitioner shall ensure and document in the patient's record that the patient or other individual who has the authority to provide consent to treatment on behalf of that patient gives consent to treatment after being informed of the benefits and risks of receiving prescription drug therapy on a protracted basis or in amounts or combinations that may not be appropriate when treating other medical conditions, and after being informed of available treatment alternatives.

(B) Upon completion and satisfaction of the conditions prescribed in paragraph (A) of this rule, and upon a practitioner's judgment that the continued utilization of prescription drugs is medically warranted for the treatment of intractable pain, a practitioner may utilize prescription drugs on a protracted basis or in amounts or combinations that may not be appropriate when treating other medical conditions, provided that the practitioner continues to adhere to accepted and prevailing standards of care which shall include, but not be limited to, the following:

(1) Patients shall be seen by the practitioner at appropriate periodic intervals to assess the efficacy of treatment, assure that prescription drug therapy remains indicated, evaluate the patient's progress toward treatment objectives and note any adverse drug effects. During each visit, attention shall be given to changes in the patient's ability to function or to the patient's quality of life as a result of prescription drug usage, as well as indications of possible addiction, drug abuse or diversion. Compliance with this paragraph of the rule shall be documented in the patient's medical record;

(2) Some patients with intractable pain may be at risk of developing increasing prescription drug consumption without improvement in functional status. Subjective reports by the patient should be supported by objective data. Objective measures in the patient's condition are determined by an ongoing assessment of the patient's functional status, including the ability to engage in work or other gainful activities, the pain intensity and its interference with activities of daily living, quality of family life and social activities, and physical activity of the patient. Compliance with this paragraph of the rule shall be documented in the patient's medical record;

(3) Based on evidence or behavioral indications of addiction or drug abuse, the practitioner may obtain a drug screen on the patient. It is within the practitioner's discretion to decide the nature of the screen and which type of drug(s) to be screened. If the practitioner obtains a drug screen for the reasons described in this paragraph, the practitioner shall document the results of the drug screen in the patient's medical record. If the patient refuses to consent to a drug screen ordered by the practitioner, the practitioner shall make a referral as provided in paragraph (C) of this rule;

(4) The practitioner shall document in the patient's medical record the medical necessity for utilizing more than one controlled substance in the management of a patient's intractable pain; and

(5) The practitioner shall document in the patient's medical record the name and address of the patient to or for whom the prescription drugs were prescribed, dispensed, or administered, the dates on which prescription drugs were prescribed, dispensed, or administered, and the amounts and dosage forms of the prescription drugs prescribed, dispensed, or administered, including refills.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(C) If the practitioner believes or has reason to believe that the patient is suffering from addiction or drug abuse, the practitioner shall immediately consult with an addiction medicine or other substance abuse specialist. For purposes of this rule, "addiction medicine or substance abuse specialist" means a physician who is qualified by advanced formal training in addiction medicine or other substance abuse specialty, and includes a medical doctor or doctor of osteopathic medicine who is certified by a specialty examining board to so limit the whole or part of his or her practice. Prescription drug therapy may be continued consistent with the recommendations of the consultation, including, if the consulting addiction medicine or other substance abuse specialist recommends that it is necessary, prompt referral to an addiction medicine or other substance abuse specialist for physical examination and evaluation of the patient and a review of the referring practitioner's medical records of the patient. The practitioner shall document the recommendations of the consultation in the patient's record. The practitioner shall continue to actively monitor the patient for signs and symptoms of addiction, drug abuse or diversion. The practitioner shall maintain a copy of any written report made by any practitioner to whom referral for evaluation was made under this paragraph.

4731-21-03 Continuing Medical Education.

The board encourages those practitioners who encounter patients with intractable pain in the usual course of their practices to complete continuing medical education related to the treatment of intractable pain, including coursework related to pharmacology, alternative methods of pain management and treatment, and addiction medicine.

4731-21-04 Tolerance, Physical Dependence and Addiction.

(A) Physical dependence and tolerance by themselves do not indicate addiction.

(B) Physical dependence and tolerance are normal physiological consequences of extended opioid therapy, and do not, in the absence of other indicators of drug abuse or addiction, require reduction or cessation of opioid therapy.

4731-21-05 Violations.

A violation of any provision of any rule in this chapter of the Administrative Code, as determined by the board, shall constitute "failure to use reasonable care discrimination in the administration of drugs," as that clause is used in division (B)(2) of *section 4731.22 of the Revised Code*; "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of *section 4731.22 of the Revised Code*, if done knowingly or recklessly, as those words are defined in *section 2901.22 of the Revised Code*; and "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of *section 4731.22 of the Revised Code*.

4731-21-06 Exceptions.

(A) A practitioner who treats pain by utilizing prescription drugs is not subject to disciplinary action pursuant to this chapter of the Administrative Code under the following circumstances:

(1) The treatment of pain for a patient with a terminal condition:

(2) The treatment of pain associated with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition;

(3) Treatment utilizing only drugs that do not exert their effects at the central nervous system level; and

(4) Treatment utilizing only drugs that are not controlled substances and are classified as antidepressants.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (encouraging continuing education) to provide practitioners information/education about pain management.

(+) **CRITERION 7:**
Physical dependence or analgesic tolerance are not confused with "addiction"

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Exempts practitioners who treat pain in patients who do not meet the definition of "intractable pain" from these statutory requirements.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Recognizes that a patient's prior history or current status of drug abuse does not contraindicate appropriate pain management.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(+) **CRITERION 5:**
*Addresses fear of
regulatory scrutiny*

(B) A practitioner who treats intractable pain by utilizing prescription drugs is not subject to disciplinary action by the board under section 4731.22 of the Revised Code solely because the practitioner treated the intractable pain with prescription drugs. The practitioner is subject to disciplinary action only if the prescription drugs are not utilized in accordance with *section 4731.052 of the Revised Code* and the rules adopted under this chapter of the Administrative Code.

(C) A Medical doctor or doctor of osteopathic medicine who provides comfort care as described in division (E)(1) of *section 2133.12 of the Revised Code* to a patient with a terminal condition is not subject to disciplinary action by the board under *section 4731.22 of the Revised Code* if the treatment of pain for a patient with a terminal condition is provided pursuant to the requirements of *section 2133.11 of the Revised Code*.

REGULATIONS

Pharmacy Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

OAC Ann. 4729-5-01

4729-5-01 Definitions.

As used in Chapter 4729. of the Revised Code:

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. .
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(+) **CRITERION 3:**
*Opioids are part of
professional practice*

(M) "Prescriber" means any person authorized by the Revised Code to prescribe dangerous drugs as part of their professional practice.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Assisted Suicide

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

ORC Ann. 3795.03

§ 3795.03 Exceptions to provisions

Nothing in section 3795.01 or 3795.02 of the Revised Code shall do any of the following:

(A) Prohibit or preclude a physician, certified nurse practitioner, certified nurse-midwife, or clinical nurse specialist who carries out the responsibility to provide comfort care to a patient in good faith and while acting within the scope of the physician's or nurse's authority from prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the patient, including, but not limited to, prescribing, personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the patients' pain or discomfort and not for the purpose of postponing or causing the patient's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death:

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



REGULATIONS

Hospice Care

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
*Other provisions that
may enhance pain
management*

CATEGORY C:
*Regulatory or policy
issues*

COMMENT: Establishes
mechanisms for hospices
to ensure that pain
management is an
essential part of patient
care.

OAC Ann. 3701-19-10

3701-19-10 Medical director.

The medical director of a hospice care program shall have overall responsibility for the medical component of the program.

Interpretive guideline: The medical director may be either a physician who is a paid or contractual staff member or volunteer whose duties shall include:

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(C) Consulting with attending physicians, as requested, regarding pain and symptom management;

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. .

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OKLAHOMA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 63. Public Health and Safety; Chapter 2. Uniform Controlled Dangerous Substances Act
- MEDICAL PRACTICE ACT
Title 59. Professions and Occupations; Chapter 11. Medicine
- OSTEOPATHIC PRACTICE ACT (*No provisions found*)
Title 59. Professions and Occupations; Chapter 14. Osteopathic Medicine Act
- PHARMACY PRACTICE ACT (*No provisions found*)
Title 59. Professions and Occupations; Chapter 8. Pharmacy
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*No provisions found*)
Title 63. Public Health and Safety; Chapter 2. Uniform Controlled Dangerous Substances Act
- MEDICAL BOARD REGULATIONS
Title 435. State Board of Medical Licensure and Supervision
- OSTEOPATHIC BOARD REGULATIONS
Title 510. State Board of Osteopathic Examiners
- PHARMACY BOARD REGULATIONS
Title 535. Oklahoma State Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD POLICY STATEMENT
Oklahoma State Board of Medical Licensure and Supervision. *Use of Controlled Substances for the Treatment of Pain*. Adopted: March 10, 2005.



RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- ASSISTED SUICIDE PREVENTION ACT
Title 63. Public Health and Safety; Chapter 61B. Assisted Suicide Prevention Act
- HOSPITAL STANDARDS
Title 310. Oklahoma State Department of Health; Chapter 667. Hospital Standards;
Subchapter 3. Patient Rights



Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act	•	•	•	•	•			•
Medical Practice Act		•						
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board		•						•
Osteopathic Board		•	•			•		•
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement		•	•	•	•	•	•	•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Assisted Suicide Prevention Act								•
Hospital Standards								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act			•					
Medical Practice Act								•
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board				•				•
Osteopathic Board				•				•
Pharmacy Board								•
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Assisted Suicide Prevention Act ¹								
Hospital Standards ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

63 Okl. St. § 2-101

§ 2-101. Definitions

As used in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title:

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15. "Drug-dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence:

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63 Okl. St. § 2-551

§ 2-551. Appropriate pain management--high dosages of controlled dangerous drugs

A. Schedule II, III, IV and V controlled dangerous drugs have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state.

B. The State of Oklahoma recognizes that principles of quality medical practice dictate that the people of the State of Oklahoma have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity, and costs associated with untreated or inappropriately treated pain. The State of Oklahoma encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic. It is especially important for patients who experience pain as a result of terminal illness.

C. If, in the judgment of the medical doctor or the doctor of osteopathic medicine, appropriate pain management warrants a high dosage of controlled dangerous drugs and the benefit of the relief expected outweighs the risk of the high dosage, the medical doctor or doctor of osteopathic medicine may administer such a dosage, even if its use may increase the risk of death, so long as it is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it falls within policies, guidelines and rules of the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma State Board of Osteopathic Examiners.

D. The Oklahoma State Board of Medical Licensure and Supervision and the Oklahoma State Board of Osteopathic Examiners shall issue policies, guidelines or rules that ensure that physicians who are engaged in the appropriate treatment of pain are not subject to disciplinary action, and the Boards shall consider policies and guidelines developed by national organizations with expertise in pain medicine or in a medical discipline for this purpose.

(-) **CRITERION 11:**
Physical dependence or analgesic tolerance confused with "addiction"

(+) **CRITERION 1:**
Controlled substances are necessary for public health

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (issuing policies) for the Board to ensure that pain management is an essential part of patient care.

(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

59 Okl. St. § 492

§ 492. Designation of physicians—Employment by hospitals—Practice of medicine defined—Services rendered by trained assistants—Persons practicing nonallopathic healing

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C. The definition of the practice of medicine and surgery shall include, but is not limited to:

1. Advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine and surgery in this state;

2. Any offer or attempt to prescribe, order, give, or administer any drug or medicine and surgery for the use of any other person, except as otherwise authorized by law;

3. a. Any offer or attempt, except as otherwise authorized by law, to prevent, diagnose, correct, or treat in any manner or by any means, methods, devices, or instrumentalities except for manual manipulation any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition, except as otherwise authorized by law.

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59 Okl. St. § 509

509. Unprofessional Conduct - Definition

"The words 'Unprofessional Conduct' as used in Sections 481 through 514 of this title are hereby declared to include, but shall not be limited to, the following:

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17. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards;

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(+) **CRITERION 2:**
Pain management is part of medical practice

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY A:
Arbitrary standards for legitimate prescribing

COMMENT: "Excess" implies there is a limit, but the limit is not specified.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

OAC 435:10-7-4

435:10-7-4 Unprofessional Conduct

"The Board has the authority to revoke or take other disciplinary action against a licensee or certificate holder for unprofessional conduct. Pursuant to 59 O.S., 1991, Section 509, "Unprofessional Conduct" shall be considered to include :

(1) Indiscriminate or excessive prescribing, dispensing, or administering of Controlled or Narcotic Drugs.

(2) Prescribing, dispensing or administering of Controlled substances or Narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standard.

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(25) Except as otherwise permitted by law, prescribing, selling, administering, distributing, ordering, or giving to a habitue or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

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(47) Causing, or assisting in causing, the suicide, euthanasia or mercy killing of any individual; provided that it is not causing, or assisting in causing, the suicide, euthanasia or mercy killing of any individual to prescribe, dispense or administer medical treatment for the purpose of alleviating pain or discomfort in accordance with Oklahoma Administrative Code 435:10-7-11, even if such use may increase the risk of death, so long as it is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY A:
Arbitrary standards for legitimate prescribing

COMMENT: "Excess" implies there is a limit, but the limit is not specified.

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY A:
Restrictions based on patient characteristics

COMMENT: Oklahoma law does not seem to create an exemption for patients with pain and a history of addiction.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

O.A.C. § 435:10-7-11

435:10-7-11 Use of controlled substances for the management of chronic pain

(+) **CRITERION 2:**
Pain management is part of medical practice

The Board has recognized that principles of quality medical practice dictate that the people of the State of Oklahoma have access to appropriate and effective pain relief and has adopted the following criteria when evaluating the physician's treatment of pain, including the use of controlled substances:(1) A medical history and physical examination must be obtained, evaluated and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

(2) The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(3) The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse or has a history of substance abuse, the physician should consider the use of a written agreement between physician and patient outlining patient responsibilities, including:

(A) urine/serum medication levels screening when requested;

(B) number and frequency of all prescription refills; and

(C) reasons for which drug therapy may be discontinued (e.g. violation of agreement)

(4) The physician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

(5) The physician should be willing to refer the patient, as necessary, for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(6) Records should remain current and be maintained in an accessible manner, readily available for review. The physician should keep accurate and complete records to include:

- (A) the medical history and physical examination (including vital signs),
- (B) diagnostic, therapeutic and laboratory results,
- (C) evaluations, consultations and follow-up evaluations,
- (D) treatment objectives,
- (E) discussion of risks and benefits,
- (F) informed consent,
- (G) treatments,
- (H) medications (including date, type, dosage and quantity prescribed),
- (I) instructions and agreements and
- (J) periodic reviews.

(7) To prescribe, dispense or administer controlled substances, the physician must be licensed in Oklahoma and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration for specific rules governing controlled substances as well as applicable state regulations.

REGULATIONS

Osteopathic Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

O.A.C. § 510:5-7-1.

510:5-7-1. Unprofessional conduct relating to prescribing or dispensing dangerous drugs

The Board has the right to refuse to issue, renew or reinstate a license and may revoke a license or impose other appropriate sanctions for unprofessional conduct. In addition to those acts of unprofessional conduct listed in Title 59 O.S., Section 637 the following acts shall be included without limiting, in any way the Board's ability to interpret other acts as unprofessional conduct:

- (1) Indiscriminate or excessive prescribing, dispensing or administering controlled dangerous drugs.

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(-) **CRITERION 16:**
Provisions that are
ambiguous

CATEGORY A:
Arbitrary standards for
legitimate prescribing

COMMENT: "Excessive"
implies there is a limit,
but the limit is not
specified.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Osteopathic Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY B:
Mandated consultation

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that it is appropriate medical practice for physicians to prescribe for indications not listed in product package inserts, and is consistent with federal law.

O.A.C. § 510:5-9-2.

510:5-9-2. Guidelines and requirements

This rule requires that diagnosis be documented, it requires that certain records be maintained, and it requires that the physician must discuss the risks and benefits with the patient or the patient's guardian. (1) To treat a patient's intractable pain, as long as the benefit of the expected relief outweighs the risk, even if the use of the drug increases the risk of death, so long as it is not furnished for the purpose of causing, or the purpose of assisting in causing death, the physician may prescribe or administer Schedule II, III, IV or V controlled dangerous substances or other pain relieving drugs in higher than normal dosages when, in that physician's judgment, the higher dosages are necessary to produce the desired therapeutic effect.

(2) The determination of intractable pain must include a complete medical history and physical examination which includes an assessment of the patient's pain, physical and psychological function, substance abuse history, underlying or co-existing diseases or conditions and the presence of a recognized medical indication for the use of an analgesic.

(3) The treatment plan must state objectives by which treatment success can be evaluated, such as pain relief and or improved physical and psychological function, and must indicate what further diagnostic evaluations or other treatments are planned. The drug therapy must be tailored to the individual needs of each patient.

(4) The course of treatment and any new information about the etiology of the intractable pain must be reviewed periodically, at least annually, with consideration given to referral for a current second opinion. The continuation or modification of treatment will depend on the results of this review and the evaluation of the patient's progress toward the treatment objectives. If the patient has not improved, the physician must assess the appropriateness of continuing the current therapy and the trial of other modalities.

(5) The management of intractable pain in patients with a history of substance abuse requires extra care, monitoring, documentation and consultation with addiction medicine specialists, and may include the use of agreements between the physician and patient specifying rules for medication use and consequences for its misuse.

(6) The physician must discuss the risks and benefits of the use of controlled substances with the patient or the patient's guardian and obtain informed consent prior to proceeding if it substantially increases the risk of death.

(7) Accurate and complete records documenting these requirements must be kept.

(8) To prescribe controlled substances, the physician must be licensed in Oklahoma, have a valid controlled substances registration and comply with federal and state regulations for issuing controlled substances prescriptions.

(9) Expert clinical testimony may be used to prove a violation of this rule. As used herein, a "clinical expert" is a physician who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

(10) Nothing in this rule shall limit a physician's authority to prescribe or administer prescription drug products beyond the customary indications as noted in the manufacturer's package insert for use in treating intractable pain, provided the drug is recognized for treatment of intractable pain in standard reference compendia or medical literature.

(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Pharmacy Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

O.A.C. § 535:10-3-1.2.

535:10-3-1.2. Violations of professional conduct

Violations of the rules of professional conduct, which may also be called unprofessional conduct, include, but are not limited to, the following:

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(10) Not attempting to address the possible addiction or dependency of a patient to a drug dispensed by the pharmacist, if there is reason to believe that the patient may be dependent or addicted.

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(-) CRITERION 16:
Provisions that are ambiguous

CATEGORY C:
Conflicting or inconsistent policies or provisions

COMMENT:
Implementing this policy could be complicated by Oklahoma's definition of dependence (addiction) in statute, which confuse physical dependence with addiction, and can lead to patients with pain being misidentified as "addicts."

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Number 138

SUBJECT: Use of Controlled Substances for the Treatment of Pain

POLICY:

The Oklahoma State Board of Medical Licensure and Supervision (Board) recognizes that principles of quality medical practice dictate that the people of the State of Oklahoma have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity and costs associated with untreated or inappropriately treated pain. For the purposes of this policy, the inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The Board encourages physicians to view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. Accordingly, this policy has been developed to clarify the Board's position on pain control, particularly as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from physicians' lack of knowledge about pain management. Fears of investigation or sanction by federal, state and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician's responsibility. As such, the Board will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The Board recognizes controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The Board will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and non-pharmacologic modalities according to the judgment of the physician. Pain should be assessed and treated promptly and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain and treatment outcomes. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.

The Board is obligated under the laws of the State of Oklahoma to protect the public health and safety. The Board recognizes that the use of opioid analgesics for other than legitimate medical purposes pose a threat to the individual and society and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the Board expects that physicians incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 2:**
Pain management is part
of medical practice

(+) **CRITERION 4:**
Encourages pain
management

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Recognizes
that inadequate
treatment of pain is
subject to disciplinary
action just as other
substandard practices
might be.

(+) **CRITERION 7:**
Physical dependence or
analgesic tolerance are
not confused with
"addiction"

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(CONTINUED)

(+) **CRITERION 5:**
*Addresses fear of
regulatory scrutiny*

Physicians should not fear disciplinary action from the Board for ordering, prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the course of professional practice. The Board will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state and/or federal law is required.

(+) **CRITERION 3:**
*Opioids are part of
professional practice*

(+) **CRITERION 6:**
*Prescription amount
alone does not
determine legitimacy*

The Board will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.

(+) **CRITERION 8:**
*Other provisions that
may enhance pain
management*

(+) **CRITERION 8:**
*Other provisions that
may enhance pain
management*

Allegations of inappropriate pain management will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation. The physician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

CATEGORY A:
*Issues related to
healthcare professionals*

CATEGORY A:
*Issues related to
healthcare professionals*

COMMENT:
Acknowledges need for treatment flexibility for physicians to respond to individual clinical circumstances, as long as their prescribing maintains the standards of good medical practice.

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Assisted Suicide Prevention Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

63 Okl. St. § 3141.4

§ 3141.4. Acts not constituting violations

A. A licensed health care professional who administers, prescribes, or dispenses medications or procedures for the purpose of alleviating pain or discomfort, even if their use may increase the risk of death, shall not be deemed to have violated Section 3 of this act or Section 813 or 814 of Title 21 of the Oklahoma Statutes so long as such medications or procedures are not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason.

B. A licensed health care professional who withholds or withdraws a medically administered, life-sustaining procedure does not violate Section 3 of this act or Sections 813 or 814 of Title 21 of the Oklahoma Statutes.

C. This section shall not be construed to affect the duty of care or the legal requirements concerning acts or omissions under subsections A or B of this section.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Hospital Standards

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
*Other provisions that
may enhance pain
management*

CATEGORY C:
*Regulatory or policy
issues*

COMMENT: Establishes a
mechanism (policies and
procedures) for hospitals
to ensure that pain
management is an
essential part of patient
care.



O.A.C. § 310:667-3-3

310:667-3-3 Medical therapies

The policies and procedures concerning medical therapies shall include:

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(4) Policies for patients who are diagnosed as terminal and the therapies which
are aimed at optimizing comfort and alleviating pain.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OREGON

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 37. Alcoholic Liquors, Controlled Substances, Drugs. Chapter 475. Controlled Substances, Illegal Drug Cleanup, Paraphernalia, Precursors. Uniform Controlled Substances Act
- PROFESSIONAL PRACTICE ACT
Title 52. Occupations and Professions. Chapter 676. Health Professions Generally
- MEDICAL PRACTICE ACT
Title 52. Occupations and Professions. Chapter 677. Regulation of Medicine, Podiatry and Acupuncture; Physicians and Surgeons; Podiatric Physicians and Surgeons Licensing
- INTRACTABLE PAIN TREATMENT ACT (*Part of Medical Practice Act*)
Title 52. Occupations and Professions. Chapter 677. Regulation of Medicine, Podiatry and Acupuncture; Physicians and Surgeons; Podiatric Physicians and Surgeons; Administration of Controlled Substances for Intractable Pain
- PHARMACY PRACTICE ACT
Title 52. Occupations and Professions. Chapter 689. Pharmacists, Drug Outlets, Drug Sales

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS (*Part of Pharmacy Board Regulations*) (*No provisions found*)
Chapter 855. Board of Pharmacy; Division 80. Schedule of Controlled Substances
- MEDICAL BOARD REGULATIONS
Chapter 847. Board of Medical Examiners
- PHARMACY BOARD REGULATIONS
Chapter 855. Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD POLICY STATEMENT
Oregon Board of Medical Examiners. *Intractable Pain and Pain Management: BME Statement of Philosophy on Pain Management*. Adopted: ND.



RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- PAIN MANAGEMENT COMMISSION
Title 34. Human Services, Juvenile Code, Corrections; Chapter 409. Department of Human Services; Pain Management Commission
- HOSPITAL LICENSING PROCEDURES
Chapter 333. Department of Human Services, Public Health; Division 500. Licensing Procedures and Definitions



OR

Provisions that may <i>ENHANCE</i> pain management								
Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Professional Practice Act				•				•
Medical Practice Act		•						
Intractable Pain Treatment Act		•	•		•			
Pharmacy Practice Act			•					
REGULATIONS								
Controlled Substances ¹								
Medical Board								•
Pharmacy Board			•					
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement		•		•				•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Pain Management Commission								•
Hospital Licensing Procedures								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Professional Practice Act ¹								
Medical Practice Act ¹								
Intractable Pain Treatment Act		•						•
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Pain Management Commission ¹								
Hospital Licensing Procedures ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found



STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORS § 475.005

475.005. Definitions for ORS 475.005 to 475.285 and 475.940 to 475.999.

As used in *ORS 475.005 to 475.285 and 475.940 to 475.999*, unless the context requires otherwise:

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(18) "Practitioner" means physician, dentist, veterinarian, scientific investigator, certified nurse practitioner, physician assistant or other person licensed, registered or otherwise permitted by law to dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state but does not include a pharmacist or a pharmacy.

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(+) **CRITERION 3:**
Opioids are part of professional practice

STATUTES

Professional Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORS § 676.440

676.440. Duty of health professional regulatory boards to encourage multidisciplinary pain management services.

(1) Health professional regulatory boards shall encourage the development of state-of-the-art multidisciplinary pain management services and the availability of these services to the public.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes the need for a multidisciplinary approach to pain management

(+) **CRITERION 4:**
Encourages pain management

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORS § 677.085

677.085. What constitutes practice of medicine.

A person is practicing medicine if the person does one or more of the following:

(1) Advertise, hold out to the public or represent in any manner that the person is authorized to practice medicine in this state.

(2) For compensation directly or indirectly received or to be received, offer or undertake to prescribe, give or administer any drug or medicine for the use of any other person.

(3) Offer or undertake to perform any surgical operation upon any person.

(4) Offer or undertake to diagnose, cure or treat in any manner, or by any means, methods, devices or instrumentalities, any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person.

(5) Except as provided in ORS 677.060, append the letters "M.D." or "D.O." to the name of the person, or use the words "Doctor," "Physician," "Surgeon," or any abbreviation or combination thereof, or any letters or words of similar import in connection with the name of the person, or any trade name in which the person is interested, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions mentioned in this section.

(+) CRITERION 2:
*Pain management is part
of medical practice*

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Intractable Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORS § 677.470-677.485

677.470. Definitions.

As used in ORS 677.470 to 677.485:

(1) "Controlled substance" has the meaning given that term under ORS 475.005.

(2) "Intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated and for which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain has been found after reasonable efforts, including, but not limited to, evaluation by the attending physician.

677.474. Administration of controlled substances for intractable pain allowed; exceptions.

(1) Notwithstanding any other provision of this chapter, a physician licensed under this chapter may prescribe or administer controlled substances to a person in the course of the physician's treatment of that person for a diagnosed condition causing intractable pain.

(2) A physician shall not be subject to disciplinary action by the Board of Medical Examiners for prescribing or administering controlled substances in the course of treatment of a person for intractable pain.

(3) Upon diagnosis or recognition of a pain state as being intractable as defined in ORS 677.470, and prior to or at the time of the initiation of therapy with controlled substances on a chronic basis, the attending physician shall obtain an evaluation by one or more physicians specializing in the treatment of the body area, system or organ perceived as the source of the intractable pain.

(4) If the attending physician prescribing or administering controlled substances to a patient with intractable pain is an acknowledged specialist in the treatment of the body area, system or organ perceived as the source of the intractable pain, the evaluation requirement of subsection (3) of this section is deemed to have been met.

(5) If the attending physician determines that the evaluation required under subsection (3) of this section is impossible for the patient because of cost or access, the board of medical examiners may grant an exception to the statutory requirement.

(6) Subsections (1) and (5) of this section shall not apply to:

(a) A physician's treatment of a person for chemical dependency resulting from the use of controlled substances;

(b) The prescription or administration of controlled substances to a person the physician knows to be using the controlled substances for nontherapeutic purposes;

(c) The prescription or administration of controlled substances for the purpose of terminating the life of a person having intractable pain, except as allowed under ORS 127.800 to 127.897; or

(d) The prescription or administration of a substance that is not a controlled substance approved by the United States Food and Drug Administration for pain relief.

[CONTINUED ON NEXT PAGE]

(-) **CRITERION 10:**
Implies opioids are not part of professional practice

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY B:
Unclear intent leading to possible misinterpretation

COMMENT: Suggests that physicians would not qualify for immunity and relief from concerns about regulatory scrutiny if they prescribe opioids as a treatment of first choice for patients who present initially with severe pain, such as those with sickle-cell

(+) **CRITERION 3:**
Opioids are part of professional practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Intractable Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(7) Subsection (2) of this section shall not exempt the governing body of any hospital or other medical facility from the requirements of ORS 441.055.

677.480. Discipline.

ORS 677.475 shall not prohibit the Board of Medical Examiners from placing on probation or denying, revoking, limiting or suspending the license of any physician who does any of the following:

(1) Prescribes or administers a controlled substance or treatment that is nontherapeutic in nature or nontherapeutic as administered or prescribed or that is administered or prescribed for a nontherapeutic purpose.

(2) Fails to keep a complete and accurate record of controlled substance purchases, dispensing and disposal as required by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), other federal law or ORS 475.005 to 475.285 and 475.940 to 475.995.

(3) Prescribes controlled substances without a legitimate medical purpose.

(4) Prescribes, administers or dispenses controlled substances in a manner detrimental to the best interest of the public.

(5) Prescribes, administers or dispenses a controlled substance in a manner prohibited under ORS 475.005 to 475.285 or 475.940 to 475.995.

(6) Falsifies prescription information, including, but not limited to, the identity of the recipient.

677.485. Written notice required.

Prior to commencing the treatment of intractable pain as allowed under ORS 677.475, the physician shall provide to the person and the person shall sign a written notice disclosing the material risks associated with the prescribed or administered controlled substances to be used in the course of the physician's treatment of that person.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Pharmacy Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ORS § 689.005

689.005. Definitions.

As used in this chapter:

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(28) "Practitioner" means a person licensed and operating within the scope of such license to prescribe, dispense, conduct research with respect to or administer drugs in the course of professional practice or research:

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(+) **CRITERION 3:**
*Opioids are part of
professional practice*



Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (mandatory continuing education) to provide practitioners information/education about pain management.

Or. Admin. R. 847-010-0100

847-010-0100 Mandatory Pain Management Education

(1) All licensees of the Board of Medical Examiners, except the licensees listed in section (2) of this rule, will complete mandatory continuing medical education (CME) in the subjects of pain management and/or the treatment of terminally ill and dying patients as follows:

(a) A one-hour pain management course specific to Oregon provided by the Pain Management Commission of the Department of Human Services; and

(b) A minimum of 6 (six) continuing medical education credit hours in the subjects of pain management and/or the treatment of terminally ill and dying patients. Any combination of CME coursework focusing on pain management and/or treatment of terminally ill and dying patients may be used to fulfill this requirement.

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REGULATIONS

Pharmacy Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 3:**
Opioids are part of professional practice

Or. Admin. R. 855-041-0173

855-041-0173 Definitions

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(9) "Practitioner" means a person licensed and operating within the scope of such license to prescribe and dispense, conduct research with respect to or administer drugs in the course of professional practice or research;

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

INTRACTABLE PAIN AND PAIN MANAGEMENT

BME STATEMENT OF PHILOSOPHY ON PAIN MANAGEMENT

(+) **CRITERION 4:**
Encourages pain management

The BME urges the use of effective pain control for all patients, irrespective of the etiology of their pain. This includes, but is not limited to, pain derived from malignancies, acute pain resulting from injuries, acute illnesses or invasive procedures and chronic pain of diverse etiology. Management of pain is considered to be within the scope of practice of most physicians. It is the expectation of the Board that physicians will be knowledgeable or become knowledgeable in treatment of pain for problems that are within their scope of practice.

(+) **CRITERION 2:**
Pain management is part of medical practice

Physicians choose not to provide pain care to patients for the following reasons: 1) concern about causing addiction; 2) lack of knowledge about pain management techniques and pain medication pharmacology; 3) fear of scrutiny and discipline by regulatory agencies; 4) challenges in determining the appropriate treatment; 5) inadequate compensation. The Board does not consider any of the reasons above to be legitimate excuses for a physician to exclude treatment of pain from their clinical practice. The Board expects that physicians will treat pain within the scope of their practice or refer when appropriate.

The treatment of acute pain caused by injuries, acute illnesses or interventional procedures requires aggressive management and frequent feedback from the patient regarding the adequacy of the pain control prescribed. The potential for addiction is very low when short courses of opioids are used to treat acute, self-limited pain. Skillful pain management techniques, including oral, parenteral and, when available, regional pain management techniques can achieve maximum patient comfort and may reduce the total amount of opioids required. The BME encourages physicians to become well informed in acute pain management and to hone their skills in the latest techniques for control of these acute, self-limited episodes of pain.

Management of the patient with a chronic pain syndrome requires different techniques but a similar degree of skill. In 1995, the Oregon Legislative Assembly passed ORS 677.470-485, commonly referred to as the Intractable Pain Act. This act allows a physician to prescribe or administer controlled substances to a patient diagnosed with a condition causing intractable pain without fear of sanction from the Board of Medical Examiners, so long as that physician complies with the provisions of this statute. Both this statute and its facilitating Oregon Administrative Rule (847-030-0015), as revised in 2004, assure that patients with chronic pain syndromes: (1) receive careful assessment, documentation, and management of the pain; (2) are informed of the risk of taking the controlled substances used in the course of their treatment; and (3) acknowledge receipt of this information by signing the approved material risk form*. Although the 2003 Legislature amended the Act to remove a stipulation that all chronic pain patients receive an "evaluation by one or more physicians specializing in the treatment of the body area, system or organ perceived as the source of the pain", the BME notes that the accepted standard of care includes such consultations (evaluations) when the diagnosis or appropriate treatment is uncertain or when the current treatment is not producing expected results.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

Physicians should make every effort to relieve the pain and suffering of their terminally ill and dying patients. The BME believes this effort is the physician's primary obligation to these patients. Pain control in terminally ill/dying patients may require doses of opioids well above the usual amounts administered intermittently or continually. The natural dying process may involve declining blood pressures, decreasing respirations and altered levels of consciousness. When these patients continue to experience pain, opioids should not be withheld on the basis of physiologic parameters or from fear of hastening death.

Appropriate management of all of these types of pain is the treating physician's responsibility. Although there is often a significant amount of latitude regarding the amount of medication required for control of the pain, the Board considers undertreatment as well as overtreatment to be below the standard of care.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that inadequate treatment of pain is subject to disciplinary action just as other substandard practices might be.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



STATUTES

Pain Management Commission

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (Pain Management Commission) to improve pain management

ORS § 409.500

409.500. Pain Management Commission established; duties; staffing.

(1) The Pain Management Commission is established within the Department of Human Services. The commission shall:

- (a) Develop a pain management practice program for providers;
- (b) Develop pain management recommendations;
- (c) Develop ways to improve pain management services through research, policy analysis and model projects; and
- (d) Represent the concerns of patients in Oregon on issues of pain management to the Governor and the Legislative Assembly.

(2) The pain management coordinator of the Department of Human Services shall serve as staff to the commission.

ORS § 409.560

409.560. Pain management education required of certain licensed health care professionals; duties of Board of Medical Examiners; rules.

(1) A physician assistant licensed under ORS chapter 677, a nurse licensed under ORS chapter 678, a psychologist licensed under *ORS 675.010 to 675.150*, a chiropractic physician licensed under ORS chapter 684 or a naturopath licensed under ORS chapter 685 must complete one pain management education program established under *ORS 409.510*.

(2) The Board of Medical Examiners, in consultation with the Pain Management Commission, shall identify by rule physicians licensed under ORS chapter 677 who, on an ongoing basis, treat patients in chronic or terminal pain and who must complete one pain management education program established under *ORS 409.510*. The board may identify by rule circumstances under which the requirement under this section may be waived.

ORS § 409.570

409.570. Rules.

In accordance with applicable provisions of ORS chapter 183, the Pain Management Commission may adopt rules necessary to implement *ORS 409.500 to 409.570*.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (rules) for the Pain Management Commission to ensure that pain management is an essential part of patient care

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (mandatory continuing education) to provide practitioners information/education about pain management

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.



REGULATIONS

Hospital Licensing Procedures

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

Or. Admin. R. 333-500-0056

333-500-0056 Annual Random Audits

The department shall conduct an annual random audit of not less than seven percent of all hospitals in the state to verify compliance with the requirements of *ORS 441.162, 441.166 and 441.192*, and *OAR 333-510-0045*. Surveys made by private accrediting organizations may not be used in lieu of the audit required by this rule.

(1) The audit shall include, at a minimum, confidential interviews of administrative and clinical staff, a review of the written staffing plan, the actual nursing staff scheduled and working as compared with the plan, all applicable committee meeting minutes, any reports filed by clinical staff regarding staffing inadequacy, and any patient outcome data including, but not limited to, nurse sensitive patient outcome data (e.g. nosocomial infections, pressure ulcers, patients' falls, patient satisfaction with pain management, medication errors).

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (random audits) for hospitals to ensure that pain management is an essential part of patient care.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

PENNSYLVANIA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 35. Health and Safety; Chapter 6. The Controlled Substance, Drug, Device, and Cosmetic Act
- MEDICAL PRACTICE ACT (*No provisions found*)
Title 63. Professions and Occupations (State Licensed); Chapter 12. Physicians and Surgeons
- OSTEOPATHIC PRACTICE ACT (*No provisions found*)
Title 63. Professions and Occupations (State Licensed); Chapter 9. Osteopaths
- PHARMACY PRACTICE ACT (*No provisions found*)
Title 63. Professions and Occupations (State Licensed); Chapter 11. Pharmacists
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Title 28. Health and Safety; Part III. Prevention of Disease; Chapter 25. Controlled Substances, Drugs, Devices, and Cosmetics
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 49. Professional and Vocational Standards; Part 1. Department of State; Subpart A. Professional and Occupational Affairs; Chapter 16. State Board of Medicine
- OSTEOPATHIC BOARD REGULATIONS (*No provisions found*)
Title 49. Professional and Vocational Standards; Part 1. Department of State; Subpart A. Professional and Occupational Affairs; Chapter 25. State Board of Osteopathic Medicine
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 49. Professional and Vocational Standards; Part 1. Department of State; Subpart A. Professional and Occupational Affairs; Chapter 27. State Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
Pennsylvania State Board of Medicine. *Guidelines for the Use of Controlled Substances in the Treatment of Pain. Pennsylvania State Board of Medicine Bulletin.* Winter, pp. 4-5, 1998-1999. Adopted: October 20, 1998.



RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- HEALTH FACILITIES

Title 28. Health and Safety; Part IV. Health Facilities; Subpart F. Ambulatory Surgical Facilities; Chapter 553. Ownership, Governance and Management; Admission, Transfer and Discharge



Provisions that may *ENHANCE* pain management

	1	2	3	4	5	6	7	8
Criteria	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Medical Practice Act ¹								
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Osteopathic Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline		•	•	•	•	•	•	•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Health Facilities								•

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act			•					
Medical Practice Act ¹								
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances						•		
Medical Board ¹								
Osteopathic Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Health Facilities ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

35 P.S. § 780-102

[P.S.] § 780-102. Definitions

(a) The definitions contained and used in the "Pennsylvania Drug and Alcohol Abuse Control Act" shall also apply for purposes of this act.

(b) As used in this act:

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"DRUG DEPENDENT PERSON" means a person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical dependence, or both, arising from administration of that drug, controlled substance or alcohol on a continuing basis. Such dependence is characterized by behavioral and other responses which include a strong compulsion to take the drug, controlled substance or alcohol on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence. This definition shall include those persons commonly known as "drug addicts."

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"PRACTITIONER" means: (i) a physician, osteopath, dentist, veterinarian, pharmacist, podiatrist, nurse, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania; (ii) a pharmacy, hospital, clinic or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania.

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(+) **CRITERION 3:**
Opioids are part of professional practice

(-) **CRITERION 11:**
Physical dependence or analgesic tolerance confused with "addiction"

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

28 Pa. Code § 25.131

§ 25.131. Every dispensing practitioner

Every pharmacy shall, at the end of each month, on forms issued for this purpose by the Office of the Attorney General of the Commonwealth, provide the Office of the Attorney General of the Commonwealth with the name of each person to whom a drug or preparation, which is classified by the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. § 3801 and the act as a controlled substance in Schedule II, was sold, dispensed, distributed or given away, except when used in anesthetic procedures, together with such other information as may be required, under the act.

(-) **CRITERION 14:**
Undue prescription requirements

COMMENT: This provision requires reporting. Submission to the Attorney General of the names of all pain patients who receive Schedule II pain medications suggests that there is something about these drugs or these patients that requires scrutiny by law enforcement, which may reinforce concerns about regulatory scrutiny.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

GUIDELINES FOR THE USE OF CONTROLLED SUBSTANCES IN THE TREATMENT OF PAIN

Section I: Preamble

The Pennsylvania State Board of Medicine recognizes that principles of quality medical practice dictate that the citizens of the Commonwealth have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity and costs associated with untreated or inappropriately treated pain. The board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially important for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment as well as legal requirements for prescribing controlled substances.

Inadequate pain control may result from physicians' lack of knowledge about pain management or an inadequate understanding of addiction. Fears of investigation or sanction by federal, state and local regulatory agencies may also result in an inappropriate or inadequate treatment of chronic pain patients. Accordingly, these guidelines have been developed to clarify the board's position on pain control, specifically as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management. The board has found that these guidelines are consistent with the board's regulations pertaining to prescribing, administering and dispensing controlled substances located at 49 Pa. Code §16.92.

The board recognizes that controlled substances, including opioid analgesics, are essential in the treatment of acute pain due to trauma, surgery and chronic pain due to cancer and other progressive diseases. Physicians are referred to the U.S. Agency for Health Care Policy and Research Clinical Practice Guidelines for a sound approach to the management of acute and cancer-related pain.

The medical management of pain should be based upon current knowledge and research and includes the use of both pharmaceutical and non-pharmaceutical modalities. Pain should be assessed and treated promptly and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

The State Board of Medicine is obligated under the law to protect the public health and safety. The board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Physicians should be diligent in preventing the diversion of drugs for illegitimate and non-medical uses.

Physicians should not fear disciplinary action from the board or other state regulatory or enforcement agency for prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. The board will consider prescribing, ordering, administering or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain and in compliance of applicable state or federal law.

The board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to treat the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, physiological, social and work-related factors. The following guidelines are not intended to define complete or best practice, but rather to communicate what the board considers to be within the boundaries of professional practice.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 7:**
Physical dependence or analgesic tolerance are not confused with "addiction"

(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

(+) **CRITERION 4:**
Encourages pain management

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

Section II: Guidelines

The board has found that the following guidelines indicate acceptable standards of practice when evaluating the use of controlled substances for pain control:

1. Evaluation of the Patient

A complete medical history and physical examination must be conducted and documented in the medical report. The medical record should document the nature and intensity of the pain, evaluate underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record should also document the presence of one or more recognized medical indications for the use of a controlled substance.

2. Treatment Plan

The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

3. Informed Consent and Agreement for Treatment

The physician should discuss the risks and benefits of the use of controlled substances with the patient, significant other(s) or guardian. The patient should receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician may employ the use of a written agreement between physician and patient outlining patient responsibilities including (1) urine/serum medication levels screening when requested (2) number and frequency of all prescription refills and (3) reasons for which drug therapy may be discontinued (i.e., violation of agreement).

4. Periodic Review

At reasonable intervals based upon the individual circumstance of the patient, the physician should review the course of opioid treatment and any new information about the etiology of the pain. Continuation or modification of opioid therapy should depend on the physician's evaluation of progress toward stated treatment objectives such as improvement in patient's pain intensity and improved physical and/or psychosocial function, such as ability to work, need of health care resources, activities of daily living and quality of social life. If reasonable treatment goals are not being achieved despite medication adjustments, the physician should monitor patient compliance in medication usage and related treatment plans.

5. Consultation

The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangement poses a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder require extra care, monitoring, documentation and consultation with a referral to an expert in the management of such patients.

[CONTINUED ON NEXT PAGE]

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

6. Medical Records

The physician should keep accurate and complete records to include (1) the medical history and physical examination; (2) diagnostic, therapeutic and laboratory results; (3) evaluations and consultations; (4) treatment objectives; (5) discussion of risks and benefits; (6) treatments; (7) medications (including date, type, dosage and quantity prescribed); (8) instructions and agreements; and (9) periodic reviews. Records should remain current and be maintained in an accessible manner and readily available for review.

7. Compliance with Controlled Substances Laws and Regulations

To prescribe controlled substances, the physician must be licensed in the state, have a valid controlled substances registration and comply with federal and state regulations for issuing controlled substances prescriptions. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration and the regulations of the board for specific rules governing issuance of controlled substances prescriptions as well as applicable state regulations.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Health Facilities

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

28 Pa. Code § 553.25

§ 553.25. Discharge criteria

A patient may only be discharged from an ASF if the following physical status criteria are met:

(1) *Vital signs.* Blood pressure, heart rate, temperature and respiratory rate are within the normal range for the patient's age or at preoperative levels for that patient.

(2) *Activity.* The patient has regained preoperative mobility without assistance or syncope, or function at the patient's usual level considering limitations imposed by the surgical procedure.

(3) *Mental status.* The patient is awake, alert or functions at the patient's preoperative mental status.

(4) *Pain.* The patient's pain can be effectively controlled with medication.

(5) *Bleeding.* Bleeding is controlled and consistent with that expected from the surgical procedure.

(6) *Nausea/vomiting.* Minimal nausea or vomiting is controlled and consistent with that expected from the surgical procedure.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for Ambulatory Surgical Facilities to ensure that pain management is an essential part of discharge criteria

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

RHODE ISLAND

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 21. Food and Drugs; Chapter 28. Uniform Controlled Substances Act
- MEDICAL PRACTICE ACT
Title 5. Businesses and Professions; Chapter 37. Board of Medical Licensure and Discipline
- INTRACTABLE PAIN TREATMENT ACT (*Part of Medical Practice Act*)
Title 5. Businesses and Professions; Chapter 37.4. Intractable Pain Treatment
- PAIN ASSESSMENT ACT (*Part of Medical Practice Act*)
Title 5. Businesses and Professions; Chapter 37.6. Pain Assessment Act
- OSTEOPATHIC PRACTICE ACT (*No provisions found*)
Title 5. Businesses and Professions; Chapter 36. Osteopaths
- PHARMACY PRACTICE ACT (*No provisions found*)
Title 5. Businesses and Professions; Chapter 19. Pharmacy

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Agency 14. Department of Health; Sub-Agency 060. Food and Drug Control Division
- PROFESSIONAL PRACTICE REGULATIONS
Agency 14. Department of Health; Sub-Agency 000. General
- MEDICAL BOARD REGULATIONS
Agency 14. Department of Health; Sub-Agency 140. Office of Health Professionals Regulation; Chapter 031. Licensure and Discipline of Physicians
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Agency 14. Department of Health; Sub-Agency 130. Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
Rhode Island Board of Medical Licensure and Discipline. *Guidelines for Long-Term Pain Management. Newsletter of the Rhode Island Board of Medical Licensure and Discipline.* Summer, p. 2, 1995. Adopted: May 10, 1995.



RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- ASSISTED SUICIDE
Title 11. Criminal Offenses; Chapter 60. Assisted Suicide
- DRUG ABUSE CONTROL
Title 21. Food and Drugs; Chapter 28.2. Drug Abuse Control
- LICENSING OF HEALTH CARE FACILITIES
Title 23. Health and Safety; Chapter 17. Licensing of Health Care Facilities
- RIGHTS OF NURSING HOME PATIENTS
Title 23. Health and Safety; Chapter 17.5. Rights of Nursing Home Patients

Note: Rhode Island's Uniform Controlled Substances Act continues to reference the duplicate prescription program that was repealed in 1997; although not considered a barrier to practice, efforts should be made to remove from state law all references to this vestigial policy.



Provisions that may *ENHANCE* pain management

Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Medical Practice Act		•						
Intractable Pain Treatment Act			•		•			•
Pain Assessment Act								•
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances								•
Professional Practice								•
Medical Board		•						•
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline								•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Assisted Suicide								•
Drug Abuse Control								•
Licensing of Health care Facilities								•
Rights of Nursing Home Patients								•

Note: A dot indicates that one or more provisions were identified

¹ No provisions were found in this policy, ² No policy found

Provisions that may *IMPEDE* pain management

	9	10	11	12	13	14	15	16
Criteria	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act				•				
Medical Practice Act ¹								
Intractable Pain Treatment Act								•
Pain Assessment Act ¹								
Osteopathic Practice Act ¹								
Pharmacy Practice Act ¹								
REGULATIONS								
Controlled Substances ¹								
Professional Practice ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline				•				
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Assisted Suicide ¹								
Drug Abuse Control ¹								
Licensing of Health care Facilities ¹								
Rights of Nursing Home Patients ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.I. Gen. Laws § 21-28-1.02

§ 21-28-1.02. Definitions

Unless the context otherwise requires, the words and phrases as defined in this section are used in this chapter in the sense given them in the following definitions:

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(37) "Practitioner" means:

(i) A physician, osteopath, dentist, chiropodist, veterinarian, scientific investigator, or other person licensed, registered or permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

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R.I. Gen. Laws § 21-28-3.18

§ 21-28-3.18. Prescriptions

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(m) Prescriptions for controlled substances as found in schedule II may be written for up to a 30-day supply, with a maximum of two hundred and fifty (250) dosage units, as determined by the prescriber's directions for use of the medication. In no event shall more than a 30-days' supply, up to a maximum of two hundred and fifty (250) dosage units, be dispensed at one time.

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(+) **CRITERION 3:**
Opioids are part of professional practice

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY C:
Restrictions regarding quantity prescribed or dispensed

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.I. Gen. Laws § 5-37-1

§ 5-37-1. Definitions

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(13) "Practice of medicine" shall include the practice of allopathic and osteopathic medicine. Any person shall be regarded as practicing medicine within the meaning of this chapter who holds himself or herself out as being able to diagnose, treat, operate, or prescribe for any person ill or alleged to be ill with disease, pain, injury, deformity or abnormal physical or mental condition, or who shall either profess to heal, offer or undertake, by any means or method to diagnose, treat, operate, or prescribe for any person for disease, pain, injury, deformity or physical or mental condition. In addition, one who attaches the title, M.D., physician, surgeon, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to his or her name indicating that he or she is engaged in the treatment or diagnosis of the diseases, injuries or conditions of persons shall be held to be engaged in the practice of medicine.

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(+) **CRITERION 2:**
Pain management is part of medical practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Intractable Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.I. Gen. Laws § 5-37.4-1 – § 5-37.4-3

§ 5-37.4-1. Title

This chapter shall be known and may be cited as the "Intractable Pain Treatment Act".

§ 5-37.4-2. Definitions

For purposes of this chapter:

(1) "Director" means the director of the department of health of the state of Rhode Island.

(2) "Intractable pain" means a pain state that persists beyond the usual course of an acute disease or healing of an injury or results from a chronic disease or condition that causes continuous or intermittent pain over a period of months or years.

(3) "Practitioner" means health care professionals licensed to distribute, dispense, or administer controlled substances in the course of professional practice as defined in § 21-28-1.02(36).

(4) "Therapeutic purpose" means the use of controlled substances for the treatment of pain in appropriate doses as indicated by the patient's medical record. Any other use is nontherapeutic.

§ 5-37.4-3. Controlled substances

(a) A practitioner may prescribe, administer, or dispense controlled substances not prohibited by law for a therapeutic purpose to a person diagnosed and treated by a practitioner for a condition resulting in intractable pain, if this diagnosis and treatment has been documented in the practitioner's medical records. No practitioner shall be subject to disciplinary action by the board solely for prescribing, administering, or dispensing controlled substances when prescribed, administered, or dispensed for a therapeutic purpose for a person diagnosed and treated by a practitioner for a condition resulting in intractable pain, if this diagnosis and treatment has been documented in the practitioner's medical records.

(b) The provisions of subsection (a) of this section do not apply to those persons being treated by a practitioner for chemical dependency because of their use of controlled substances not related to the therapeutic purposes of treatment of intractable pain.

(c) The provisions of subsection (a) of this section provide no authority to a practitioner to prescribe, administer, or dispense controlled substances to a person the practitioner knows or should know to be using controlled substances which use is not related to the therapeutic purpose.

(d) Drug dependency or the possibility of drug dependency in and of itself is not a reason to withhold or prohibit prescribing, administering, or dispensing controlled substances for the therapeutic purpose of treatment of a person for intractable pain, nor shall dependency relating solely to this prescribing, administering, or dispensing subject a practitioner to disciplinary action by the director.

(e) Nothing in this section shall deny the right of the director to deny, revoke, or suspend the license of any practitioner or discipline any practitioner who:

(1) Prescribes, administers, or dispenses a controlled substance that is nontherapeutic in nature or nontherapeutic in the manner in which it is prescribed, administered, or dispensed, or fails to keep complete and accurate on-going records of the diagnosis and treatment plan;

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(+) **CRITERION 3:**
Opioids are part of professional practice

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Recognizes that a patient's prior history or current status of drug abuse does not contraindicate appropriate pain management.

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY C:
Conflicting or inconsistent policies or provisions

COMMENT: Appears to be inconsistency between these provisions relating to the use of opioids for a person with pain who is drug dependent.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Intractable Pain Treatment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

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(2) Fails to keep complete and accurate records of controlled substances received, prescribed, dispensed and administered, and disposal of drugs as required by law or of controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, *21 U.S.C. § 801*, et seq. A practitioner shall keep records of controlled substances received, prescribed, dispensed and administered, and disposal of these drugs shall include the date of receipt of the drugs, the sale or disposal of the drugs by the practitioner, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person;

(3) Writes false or fictitious prescriptions for controlled substances as prohibited by law, or for controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, *21 U.S.C. § 801*, et seq.; or

(4) Prescribes, administers, or dispenses in a manner which is inconsistent with provisions of the law, or the Comprehensive Drug Abuse Prevention and Control Act of 1970, *21 U.S.C. § 801*, et seq., any controlled substance.

(f) A practitioner may administer a controlled substance prescribed by a practitioner and not prohibited by law for a therapeutic purpose to a person diagnosed and treated by a practitioner for a condition resulting in intractable pain, if this diagnosis and treatment has been documented in the practitioner's medical records. No practitioner shall be subject to disciplinary action by the director solely for administering controlled substances when prescribed or dispensed for a therapeutic purpose for a person diagnosed and treated by a practitioner for a condition resulting in intractable pain, if this diagnosis and treatment has been documented in the practitioner's medical records of the patient.

STATUTES

Pain Assessment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

R.I. Gen. Laws § 5-37.6-1 – § 5-37.6-8

§ 5-37.6-1. Short title

This chapter shall be known and may be cited as the "Pain Assessment Act."

§ 5-37.6-2. Findings

The general assembly finds and declares that:

- (1) Pain affects quality of life, job performance and security;
- (2) Nearly thirty percent (30%) of nursing home residents with daily pain were receiving no pain medication of any form;
- (3) Pain untreated or under-treated adversely impacts the quality of life for patients;
- (4) Up to ninety-five percent (95%) of terminally ill patients' pain can be relieved with adequate pain management; and
- (5) Too many Rhode Islanders are suffering and dying in needless pain.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Pain Assessment Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

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§ 5-37.6-3. Definitions

As used in this chapter, the following terms have the following meanings:

- (1) "Assessment of pain" means the act of assessing an unpleasant sensation occurring in varying degrees of severity as a consequence of injury, disease, or emotional disorder;
- (2) "Director" means the director of the department of health;
- (3) "Health care facilities" is defined in the same manner as in § 23-17-2(6);
- (4) "Health care provider" means any person licensed by this state to provide or lawfully providing health care services, including, but not limited to, a physician, dentist, optometrist, nurse, podiatrist, physical therapist, nurse practitioner or physician's assistant;
- (5) "Person" means any individual, trust or estate, partnership, limited liability corporation, corporation (including associations, joint stock companies, and insurance companies), state, or political subdivision or instrumentality of a state;
- (6) "Regular basis" means a procedure done on a customary, usual, normal, orderly, even, or symmetrical schedule.

§ 5-37.6-4. Pain assessment

(a) Health care facilities and health care providers shall conduct an assessment of pain experienced by a patient on a regular basis.

(b) The assessment of pain shall be noted in the patient's chart in a manner consistent with vital signs.

§ 5-37.6-5. Regulations

(a) Promulgation by department. The director of the department shall promulgate regulations relating to the assessment of pain requirements of this chapter.

(b) Educational materials. The director shall make available educational and informational materials concerning the assessment of pain to health care facilities and health care providers.

§ 5-37.6-6. Enforcement

The director of the department of health shall have the power to enforce the provisions of this chapter.

§ 5-37.6-7. Penalty

(a) Every person who shall willfully and continually violate the provisions of this chapter is subject to a fine up to one hundred dollars (\$ 100) for a first violation and any other remedy provided for in the Rhode Island law.

(b) Every person who shall continuously violate this chapter is subject to a fine up to five hundred dollars (\$ 500) for each subsequent violation in addition to any other remedy provided for in the Rhode Island law.

§ 5-37.6-8. Severability

If any provision of this chapter or any rule or regulation made under this chapter or the application of any provision of this chapter to any person or circumstance shall be held invalid by any court of competent jurisdiction, the remainder of the chapter, rule or regulation and the application of the provision to other persons or circumstances shall not be affected by that invalidity. The invalidity of any section or sections or parts of any section of this chapter shall not affect the validity of the remainder of this chapter and to this end the provisions of the chapter are declared to be severable.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for health care facilities to ensure that pain management is an essential part of patient care. (Although not required by this provision, pain assessment should be followed up with appropriate treatment.)

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (regulations) for the Department of Health to improve pain management.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (educational materials) to provide practitioners information/education about pain management.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

CRIR 14-060-020

14 060 020 Rules and Regulations Governing Electronic Data Transfer of Controlled Substances in Schedules II and III

INTRODUCTION

These Rules and Regulations Governing Electronic Data Transfer of Controlled Substances in Schedules II and III (R21-28-EDT) are promulgated pursuant to the authority set forth in sections 42-35 and 21-28-3.18 of the General Laws of Rhode Island, as amended. These regulations are established for the purpose of defining minimum standards for the establishment of an electronic data transfer system between the Department of Health and pharmacies in this state for schedules II and III controlled substances.

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Section 3.0 Data Collection

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3.3 The Department shall:

3.3.1 be authorized to provide data in the electronic prescription system to other regulatory, investigative or law enforcement agencies for disciplinary, civil, or criminal purposes, and for the purposes of educating practitioners in lieu of disciplinary, civil or criminal action.

3.3.2 be authorized to provide data to appropriate public or private entities for statistical, research, or educational purposes provided that the privacy and confidentiality of patients and patient information is not compromised.

3.3.3 in using the information for investigative or prosecutorial purposes, consider the nature of the prescriber's or dispenser's practice and the condition(s) for which the patient is being treated.

3.3.4 ensure the privacy and confidentiality of patients and shall ensure that patient information collected, recorded, transmitted, and stored in the prescription system is maintained in accordance with applicable state and federal laws, rules and regulations.

3.3.5 ensure that the EDT program does not infringe on the legal use of any schedule II or III controlled substance.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for the Department of Health to consider case-specific details, such as the patient's diagnosis, when reviewing prescription monitoring program information used for investigations.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for the Department of Health to ensure that a prescription monitoring program does not interfere with the legitimate medical use of controlled substances, which represents the principle of Balance.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Professional Practice Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for health care facilities and health care providers to ensure that pain management is an essential part of patient care. (Although not required by this provision, pain assessment should be followed up with appropriate treatment.)



CRIR 14-000-029

14 000 029 Pain Assessment

INTRODUCTION

These rules and regulations are promulgated under the authority contained in Chapters 5-37.6 and 42-35 of the General Laws of Rhode Island, as amended, and are established for the purpose of adopting requirements relating to the assessment of pain by health care facilities and health care providers in Rhode Island.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Medical Board Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

CRIR 14-140-031

14 140 031 Licensure and Discipline of Physicians

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1.11 "Practice of Medicine", pursuant to section 5-37-1 (1) of the Act, shall include the practice of allopathic and osteopathic medicine. Any person shall be regarded as practicing medicine within the meaning of the act who holds himself or herself out as being able to diagnose, treat, operate, or prescribe for any person ill or alleged to be ill with disease, pain, injury, deformity or abnormal physical or mental condition, or who shall either profess to heal, offer or undertake, by any means or method, to diagnose, treat, operate, or prescribe for any person for disease, pain, injury, deformity or physical or mental condition. In addition, one who attaches the title M.D., physician, surgeon, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to his or her name indicating that he or she is engaged in the treatment or diagnosis of the diseases, injuries or conditions of persons shall be held to be engaged in the practice of medicine.

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Section 6.0 Continuing Education

6.1 Every physician licensed to practice allopathic or osteopathic medicine in Rhode Island under the provisions of the Act and the regulations herein, shall on or before the first day of June of every even-numbered year after 2004, on a biennial basis, earn a minimum of forty (40) hours of AMA category 1/AOA category 1a continuing medical education credits and shall document this to the Board.

6.2 The application shall include evidence satisfactory to the Board of completion of a prescribed program of continuing medical education established by the Board approved medical or osteopathic society. Participation by duly appointed members of the Board in regular Board meetings and investigating committee meetings shall be considered acceptable on an hours served basis in lieu of AMA category 1/AOA category 1a continuing medical education hours.

6.2.1 Said continuing medical education shall include a minimum of two (2) hours related to current information on any one or more of the following topics: universal precautions, infection control, modes of transmission, bioterrorism, OSHA, ethics, end-of-life education, palliative care, pain management, and other regulatory requirements.

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(+) **CRITERION 2:**
Pain management is part of medical practice

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a mechanism (mandatory continuing education) to provide practitioners information/education about pain management and palliative care.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

GUIDELINES FOR LONG TERM PAIN MANAGEMENT

The Rhode Island Board of Medical Licensure and Discipline continues to see cases in which serious problems in the management of long-term intractable pain are encountered by patients and physicians. The board is aware of the perception that many physicians "under-treat" such patients based on a fear of "causing addiction"; on the other hand, we receive many allegations of the improper, sometimes illegal, "over-use" of controlled substances. The prescribing of controlled substances in every state is regulated by state and federal law. The Board is aware that there is a national problem relating to pain management. Accordingly, the Board has undertaken a review of guidelines adopted by various state medical boards (Colorado, Texas, New Jersey, Massachusetts and California) concerning the appropriate management of patients with long-term intractable pain. The Board of Medical Licensure and Discipline was most impressed with the guidelines that the State of California has released.

The California guidelines resulted from a state sponsored summit in which 120 health care practitioners, professional and public educators, representatives from professional schools and associations and health care consumers met to recommend solutions to legal, professional, and educational barriers to effective pain management. A report, Summit on Effective Pain Management: Removing Impediments to Appropriate Prescribing, was issued by the Governor of California. This comprehensive report was reviewed by the Board of Medical Licensure and Discipline as part of its decision to adopt the following guidelines to help the practicing physician dealing with this difficult problem.

GUIDELINES FOR LONG TERM PAIN MANAGEMENT

1. HISTORY/PHYSICAL EXAMINATION

A medical history and physical examination must be accomplished. This includes an assessment of the pain, physical and psychological function, substance abuse history, assessment of underlying or coexisting diseases or conditions, and should also include the presence of a recognized medical indication for the use of a controlled substance.

2. TREATMENT PLAN, OBJECTIVES

The treatment plan should state objectives by which treatment success can be evaluated, such as pain relief and/or improved physical and psychosocial function, and indicate if any further diagnostic evaluations or other treatments are planned. The physician should tailor drug therapy to the individual medical needs of each patient. Several treatment modalities or a rehabilitation program may be necessary if the pain has differing etiologies or is associated with physical and psychosocial impairment.

3. INFORMED CONSENT

The physician should discuss the risks and benefits of the use of controlled substances with the patient, guardian or authorized representative. This discussion should be documented and signed by the patient, guardian or authorized representative.

4. PERIODIC REVIEW

The physician should periodically review the course of opioid treatment of the patient and any new information about the etiology of the pain. Continuation or modification of opioid therapy depends on the physician's evaluation of progress toward treatment objectives. If the patient has not improved, the physician should assess the appropriateness of continued opioid treatment or trial of other modalities.

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(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

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5. CONSULTATION

The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. In addition, physicians should give special attention to those pain patients who are at risk for misusing their medications including those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse requires extra care, monitoring, documentation and consultation with addiction medicine specialists, and may entail the use of agreements between the provider and the patient that specify the rules for medication use and consequences for misuse.

6. RECORDS

The physician should keep accurate and complete records according to items 1-5 above, including the medical history and physical examination, other evaluations and consultations, treatment plan objectives, informed consent, treatments, medications, agreements with the patient, and periodic reviews.

7. COMPLIANCE WITH CONTROLLED SUBSTANCES LAWS AND REGULATIONS

To prescribe controlled substances, the physician must be licensed appropriately in Rhode Island, have a valid controlled substances registration and comply with federal and state regulations for issuing controlled substances prescriptions. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration and the General Laws of the State of Rhode Island relating to the Board of Medical Licensure and Discipline and the Division of Drug Control of the Rhode Island Department of Health.

(-) **CRITERION 12:**
Medical decisions are
restricted

CATEGORY B:
Mandated consultation

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Assisted Suicide

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

R.I. Gen. Laws § 11-60-4

(a) A licensed health care professional who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, does not violate the provision of this chapter unless the medications or procedures are knowingly administered, prescribed, or dispensed to cause death.

A licensed health care professional who withholds or withdraws a life-sustaining procedure in compliance with chapter 4.10 or title 23 does not violate the provisions of this chapter.

STATUTES

Drug Abuse Control

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY B:
Issues related to patients

COMMENT: Ensures that pain patients would not be labeled as a narcotic addict.

R.I. Gen. Laws § 21-28.2-1

§ 21-28.2-1. Definitions

Unless the context otherwise requires, the following terms shall be construed in this chapter to have the following meanings:

(3) "Narcotic addict" means a person who is at the time of examination dependent upon opium, heroin, morphine, or any derivative or synthetic drug of that group or any other narcotic drug as defined in § 21-28-1.02, or a depressant or stimulant substance, or who by reason of the repeated use of any such drug is in imminent danger of becoming dependent upon opium, heroin, morphine, or any derivative or synthetic drug of that group, or any other narcotic drug as defined in § 21-28-1.02; or any person who is or has been so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his or her addiction; provided, that no person shall be deemed a narcotic addict solely by virtue of his or her taking of any of the drugs pursuant to a lawful prescription issued by a physician in the course of professional treatment for legitimate medical purposes.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Licensing of Health Care Facilities

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for health care facilities to ensure that pain management is an essential part of patient care. (Although not required by this provision, pain assessment should be followed up with appropriate treatment.)

R.I. Gen. Laws § 23-17-19.1

§ 23-17-19.1. Rights of patients

Every health care facility licensed under this chapter shall observe the following standards and any other standards that may be prescribed in rules and regulations promulgated by the licensing agency with respect to each patient who utilizes the facility:

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(17) The patient shall have the right to have his or her pain assessed on a regular basis.

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STATUTES

Rights of Nursing Home Patients

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY C:
Regulatory or policy issues

COMMENT: Establishes a responsibility for nursing homes to ensure that pain management is an essential part of patient care. (Although not required by this provision, pain assessment should be followed up with appropriate treatment.)

R.I. Gen. Laws § 23-17.5-28

§ 23-17.5-28. Pain assessment

A patient shall have the right to have his or her pain assessed on a regular basis.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

SOUTH CAROLINA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Title 44. Health; Chapter 53. Poisons, Drugs and Other Controlled Substances; Article 3. Narcotics and Controlled Substances
- PROFESSIONAL PRACTICE ACT (*No provisions found*)
Title 40. Professions and Occupations; Chapter 1. Professions and Occupations
- MEDICAL PRACTICE ACT (*No provisions found*)
Title 40. Professions and Occupations; Chapter 47. Physicians, Surgeons and Osteopaths
- PHARMACY PRACTICE ACT (*No provisions found*)
Title 40. Professions and Occupations; Chapter 43. Pharmacists
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Chapter 61. Department of Health and Environmental Control; 61-4. Controlled Substances
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Chapter 81. Department of Labor, Licensing and Regulation – State Board of Medical Examiners
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Chapter 99. Department of Labor, Licensing and Regulation – State Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
State Board of Medical Examiners of South Carolina. *Guidelines for the Use of Controlled Substances for the Treatment of Pain*. Adopted: February, 1999.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- CRIMES AND OFFENSES
Title 16. Crimes and Offenses; Chapter 3. Offenses Against the Person; Article 11. Miscellaneous Offenses



Provisions that may *ENHANCE* pain management

Criteria	1	2	3	4	5	6	7	8
	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act			•					
Professional Practice Act ¹								
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances			•					
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline		•	•	•	•	•	•	•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Crimes and Offenses								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act				•				•
Professional Practice Act ¹								
Medical Practice Act ¹								
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances				•				
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Guideline ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Crimes and Offenses ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Controlled Substances Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

S.C. Code Ann. § 44-53-110

§ 44-53-110. Definitions.

As used in this article and *Sections 44-49-10, 44-49-40, and 44-49-50*:

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"Practitioner" means:

(1) A physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State.

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S.C. Code Ann. § 44-53-360

§ 44-53-360. Prescriptions.

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(e) Prescriptions for controlled substances in Schedules II through V, inclusive, with the exception of transdermal patches, must not exceed a thirty-one day supply. Prescriptions for Schedule II substances must be dispensed within sixty days of the date of issue, after which time they are void.

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(h) A prescription, in order to be effective in legalizing the possession of a controlled substance and eliminating the need for registration of the recipient, must be issued for legitimate medical purposes. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding liability rests with the pharmacist who fills and ultimately dispenses the prescription. An order purporting to be a prescription issued to a drug dependent person, not in the course of generally accepted medical treatment, but for the purpose of providing the user with controlled substances sufficient to maintain his dependence upon the substance, or to provide him with quantities of controlled substances in great excess of normal dosage ranges as recommended by the manufacturer of the substance, is not a prescription within the meaning and intent of this article; and the person filling or dispensing such an order, as well as the person issuing it, shall be deemed in violation of this section.

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(+) **CRITERION 3:**
Opioids are part of professional practice

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY C:
Restrictions regarding quantity prescribed or dispensed

(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY A:
Arbitrary standards for legitimate prescribing

COMMENT: "Great excess" implies there is a limit, but the limit is not specified. Also, what if a drug dependent person has pain requiring large amounts of opioid analgesics?

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

S.C. Code Regs. 61-4, Pt. 1

PART 1 Definitions, Information, Payment of Fees, Certain Exemptions, Separate Registrations, Out-of-State Dispensing of Prescriptions

101. Definitions.

As used in this regulation, the following terms shall have the meaning specified:

(k) Individual practitioner. A physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted by the United States or the State of South Carolina, or by other jurisdiction, or otherwise permitted by the United States or the State of South Carolina, or by any other jurisdiction in which he practices to dispense a controlled substance in the regular course of professional practice, but does not include a pharmacist, a pharmacy, or any institutional practitioner;

(+) **CRITERION 3:**
Opioids are part of professional practice

S.C. Code Regs. 61-4, Pt. 5

PART 5 Prescriptions

508.1. Limitations on prescriptions for schedule II substances.

Prescriptions for schedule II controlled substances shall not be issued for more than a thirty-one day supply of the substance. No prescription for schedule II controlled substances shall be dispensed later than sixty days from the date of issue.

(-) **CRITERION 12:**
Medical decisions are restricted

CATEGORY C:
Restrictions regarding quantity prescribed or dispensed

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

GUIDELINES FOR THE USE OF CONTROLLED SUBSTANCES FOR THE TREATMENT OF PAIN

Section I: Preamble

The State Board of Medical Examiners of S.C. recognizes that principles of quality medical practice dictate that the people of the State of South Carolina have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity and costs associated with untreated or inappropriately treated pain. The Board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially important for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment as well as statutory requirements for prescribing controlled substances.

(+) **CRITERION 2:**
Pain management is part of medical practice

Inadequate pain control may result from physicians' lack of knowledge about pain management or an inadequate understanding of addiction. Fears of investigation or sanction by federal, state, and local regulatory agencies may also result in inappropriate or inadequate treatment of chronic pain patients. Accordingly, these guidelines have been developed to clarify the Board's position on pain control, specifically as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

(+) **CRITERION 4:**
Encourages pain management

The Board recognizes that controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. Physicians are referred to the U.S. Agency for Health Care and Research Clinical Practice Guidelines for a sound approach to the management of acute and cancer-related pain. The medical management of pain should be based upon current knowledge and research and includes the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

(+) **CRITERION 7:**
Physical dependence or analgesic tolerance are not confused with "addiction"

The Board of Medical Examiners is obligated under the laws of the State of South Carolina to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT:
Acknowledges need for treatment flexibility for physicians to respond to individual clinical circumstances, as long as their prescribing maintains the standards of good medical practice.

Physicians should not fear disciplinary action from the Board or other state regulatory or enforcement agency for prescribing, dispensing, or administering controlled substances, including opioid analgesics, for a legitimate medical purpose. The Board will consider prescribing, ordering, administering, or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds. All such prescribing must be based on clear documentation of unrelieved pain and in compliance with applicable state or federal law.

(+) **CRITERION 5:**
Addresses fear of regulatory scrutiny

(+) **CRITERION 3:**
Opioids are part of professional practice

Each case of prescribing for pain will be evaluated on an individual basis. The board will not take disciplinary action against a physician for failing to adhere strictly to the provisions of these guidelines, if good cause is shown for such deviation. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning - and recognizing that some types of pain cannot be completely relieved.

[CONTINUED ON NEXT PAGE]

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

(+) **CRITERION 6:**
Prescription amount
alone does not
determine legitimacy

The Board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors. The following guidelines are not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.

Section II: Guidelines. These are guidelines, not absolutes.

The Board has adopted the following guidelines when evaluating the use of controlled substances for pain control: Nothing in this statement should be construed as advocating the imprudent use of controlled substances.

1. Evaluation of the Patient

A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record should also document the presence of one or more recognized medical indications for the use of a controlled substance.

2. Treatment Plan

The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

3. Informed Consent and Agreement for Treatment

The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician may employ the use of a written agreement between physician and patient outlining patient responsibilities including (1) urine/serum medication levels screening when requested (2) number and frequency of all prescription refills and (3) reasons for which drug therapy may be discontinued (i.e. violation of agreement).

4. Periodic Review

At reasonable intervals based upon the individual circumstance of the patient, the physician should review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the physician's evaluation of progress toward stated treatment objectives, such as improvement in patient's pain intensity and improved physical and/or psychosocial function, such as ability to work, need of health care resources, activities of daily living, and quality of social life. If treatment goals are not being achieved, despite medication adjustments, the physician should re-evaluate the appropriateness of continued treatment. The physician should monitor patient compliance in medication usage and related treatment plans.

[CONTINUED ON NEXT PAGE]

(+) **CRITERION 8:**
Other provisions that
may enhance pain
management

CATEGORY A:
Issues related to
healthcare professionals

COMMENT: Recognizes
that the goals of pain
treatment should extend
beyond pain scores, to
include improvements in
patient functioning and
quality of life.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

[CONTINUED]

6. Medical Records

The physician should keep accurate and complete records to include (1) the medical history and physical examination (2) diagnostic, therapeutic and laboratory results (3) evaluations and consultations (4) treatment objectives (5) discussion of risks and benefits (6) treatments (7) medications [including date, type, dosage, and quantity prescribed] (8) instructions and agreements and (9) periodic reviews. Records should remain current and be maintained in an accessible manner and readily available for review.

7. Compliance with Controlled Substances Laws and Regulations

To prescribe, dispense, or administer controlled substances, the physician must be licensed in the state, and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration and (any relevant documents issued by the state medical board) for specific rules governing controlled substances as well as applicable state regulations.

Section III: Definitions

For the purposes of these guidelines, the following terms are defined as follows:

Acute pain: Acute pain is the normal, predicted physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with surgery, trauma and acute illness. It is generally time limited and is responsive to opioid therapy, among other therapies.

Addiction: Addiction is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects and is characterized by compulsive use despite harm. Addiction may also be referred to by terms such as "drug dependence" and "psychological dependence." Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not be considered addiction.

Analgesic Tolerance: Analgesic tolerance is the need to increase the dose of opioid to achieve the same level of analgesia. Analgesic tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Chronic Pain: A pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated. Chronic pain may be associated with a long-term incurable or intractable medical condition or disease.

Pain: an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Physical Dependence: Physical dependence on a controlled substance is a physiologic state of neuroadaptation which is characterized by the emergence of a withdrawal syndrome if drug use is stopped or decreased abruptly, or if an antagonist is administered. Physical dependence is an expected result of opioid use. Physical dependence, by itself, does not equate with addiction.

Pseudoadddiction: Pattern of drug-seeking behavior of pain patients who are receiving inadequate pain management that can be mistaken for addiction.

Substance Abuse: Substance abuse is the use of any substance(s) for non-therapeutic purposes; or use of medication for purposes other than those for which it is prescribed.

Tolerance: Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect or a reduced effect is observed with a constant dose.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Crimes and Offenses

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

S.C. Code Ann. § 16-3-1090

§ 16-3-1090. Assisted suicide; penalties; injunctive relief.

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(2) the administering, prescribing, or dispensing of medications or procedures, by or at the direction of a licensed health care professional, for the purpose of alleviating another person's pain or discomfort, even if the medication or procedure may increase the risk of death, as long as the medication or procedure is not also intentionally administered, prescribed, or dispensed for the purpose of causing death, or the purpose of assisting in causing death, for any reason;

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

SOUTH DAKOTA

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT (*No provisions found*)
Title 34. Public Health and Safety; Chapter 34-20 & Chapter 34-20B. Drugs and Substances Control
- MEDICAL PRACTICE ACT
Title 36. Professions and Occupations; Chapter 36-4. Physicians and Surgeons
- PHARMACY PRACTICE ACT
Title 36. Professions and Occupations; Chapter 36-11. Pharmacies and Pharmacists
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Title 44. Department of Health; Article 58. Drug Control
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 20. Department of Commerce and Regulation; Division of Professional and Occupational Licensing; Article 47. Physicians and Surgeons
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 20. Department of Commerce and Regulation; Division of Professional and Occupational Licensing; Article 51. Pharmacists

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD POLICY STATEMENT
South Dakota State Board of Medical and Osteopathic Examiners. *Model Guidelines for the Use of Controlled Substances for the Treatment of Pain*. Adopted: January, 1999.

RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES

- HOMICIDE AND SUICIDE
Title 22. Crimes; Chapter 22-16. Homicide and Suicide



Provisions that may *ENHANCE* pain management

	1	2	3	4	5	6	7	8
Criteria	Controlled substances are necessary for public health	Pain management is part of medical practice	Opioids are part of professional practice	Encourages pain management	Addresses fear of regulatory scrutiny	Prescription amount alone does not determine legitimacy	Physical dependence or analgesic tolerance are not confused with "addiction"	Other provisions that may enhance pain management
STATUTES								
Controlled Substances Act ¹								
Medical Practice Act ¹								
Pharmacy Practice Act			•					
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances			•					
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement		•	•	•	•	•	•	•
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Homicide and Suicide								•

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

Provisions that may <i>IMPEDE</i> pain management								
Criteria	9	10	11	12	13	14	15	16
	Opioids are a last resort	Implies opioids are not part of professional practice	Physical dependence or analgesic tolerance confused with "addiction"	Medical decisions are restricted	Length of prescription validity is restricted	Undue prescription requirements	Other provisions that may impede pain management	Provisions that are ambiguous
STATUTES								
Controlled Substances Act ¹								
Medical Practice Act								•
Pharmacy Practice Act ¹								
Intractable Pain Treatment Act ²								
REGULATIONS								
Controlled Substances ¹								
Medical Board ¹								
Pharmacy Board ¹								
OTHER GOVERNMENTAL POLICIES								
Medical Board Policy Statement ¹								
RELEVANT POLICIES OR PROVISIONS IDENTIFIED BY BOOLEAN (KEY WORD) SEARCHES								
Homicide and Suicide ¹								

Note: A dot indicates that one or more provisions were identified
¹ No provisions were found in this policy, ² No policy found

STATUTES

Medical Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

S.D. Codified Laws § 36-4-30

§ 36-4-30. Acts considered unprofessional conduct — Criminal prosecution

The term, unprofessional or dishonorable conduct, as used in this chapter includes:

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- (9) Prescribing intoxicants, narcotics, barbiturates, or other habit-forming drugs to any person in quantities and under circumstances making it apparent to the board that the prescription was not made for legitimate medicinal purposes or prescribing in a manner or in amounts calculated in the opinion of the board to endanger the well-being of an individual patient or the public in general;
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(-) **CRITERION 16:**
Provisions that are ambiguous

CATEGORY A:
Arbitrary standards for legitimate prescribing

COMMENT: How are the amounts calculated and how is "well-being" defined? What are the criteria for endangerment?

STATUTES

Pharmacy Practice Act

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

S.D. Codified Laws § 36-11-2

§ 36-11-2.

Terms used in this chapter mean:

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- (21) "Practitioner," an individual licensed, registered or otherwise authorized by the jurisdiction in which he is practicing to prescribe drugs in the course of professional practice;
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-
-

(+) **CRITERION 3:**
Opioids are part of professional practice

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

REGULATIONS

Controlled Substances Regulations

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

ARSD 44:58:08:11.01

44:58:08:11.01. Direct administering or dispensing of controlled substances

(+) **CRITERION 3:**
*Opioids are part of
professional practice*

An individual practitioner, in the course of professional practice only, may directly administer or dispense a controlled substance without a prescription to other persons. An individual practitioner or institutional practitioner may not order a controlled substance for direct administration or dispense a controlled substance, including any controlled substance sample, for the practitioner's use.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

The Federation of State Medical Boards of the United States, Inc.
MODEL GUIDELINES FOR THE USE OF CONTROLLED SUBSTANCES FOR THE TREATMENT OF PAIN

Section I: Preamble

The South Dakota State Board of Medical and Osteopathic Examiners recognizes that principles of quality medical practice dictate that the people of the State of South Dakota have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity and costs associated with untreated or inappropriately treated pain. The Board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially important for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment as well as statutory requirements for prescribing controlled substances.

(+) **CRITERION 2:**
Pain management is part
of medical practice

Inadequate pain control may result from physicians' lack of knowledge about pain management or an inadequate understanding of addiction. Fears of investigation or sanction by federal, state, and local regulatory agencies may also result in inappropriate or inadequate treatment of chronic pain patients. Accordingly, these guidelines have been developed to clarify the Board's position on pain control, specifically as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

(+) **CRITERION 4:**
Encourages pain
management

The Board recognizes that controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma and surgery and chronic pain, whether due to cancer or non-cancer origins. Physicians are referred to the U.S. Agency for Health Care and Research Clinical Practice Guidelines for a sound approach to the management of acute¹ and cancer-related pain.²

The medical management of pain should be based upon current knowledge and research and includes the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

(+) **CRITERION 7:**
Physical dependence or
analgesic tolerance are
not confused with
"addiction"

The South Dakota State Board of Medical and Osteopathic Examiners is obligated under the laws of the State of South Dakota to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.

(+) **CRITERION 5:**
Addresses fear of
regulatory scrutiny

Physicians should not fear disciplinary action from the Board or other state regulatory or enforcement agency for prescribing, dispensing, or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. The Board will consider prescribing, ordering, administering, or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds. All such prescribing must be based on clear documentation of unrelieved pain and in compliance with applicable state or federal law.

(+) **CRITERION 3:**
Opioids are part of
professional practice

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

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Each case of prescribing for pain will be evaluated on an individual basis. The board will not take disciplinary action against a physician for failing to adhere strictly to the provisions of these guidelines, if good cause is shown for such deviation. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning, and recognizing that some types of pain cannot be completely relieved.

The Board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors. The following guidelines are not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.

Section II: Guidelines

The Board has adopted the following guidelines when evaluating the use of controlled substances for pain control:

1. Evaluation of the Patient

A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record should also document the presence of one or more recognized medical indications for the use of a controlled substance.

2. Treatment Plan

The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

3. Informed Consent and Agreement for Treatment

The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician may employ the use of a written agreement between physician and patient outlining patient responsibilities including (1) urine/serum medication levels screening when requested (2) number and frequency of all prescription refills and (3) reasons for which drug therapy may be discontinued (i.e. violation of agreement).

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(+) **CRITERION 6:**
Prescription amount alone does not determine legitimacy

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goals of pain treatment should extend beyond pain scores, to include improvements in patient functioning and quality of life.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT:
Acknowledges need for treatment flexibility for physicians to respond to individual clinical circumstances, as long as their prescribing maintains the standards of good medical practice.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

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4. Periodic Review

At reasonable intervals based upon the individual circumstance of the patient, the physician should review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the physician's evaluation of progress toward stated treatment objectives such as improvement in patient's pain intensity and improved physical and/or psychosocial function, such as ability to work, need of health care resources, activities of daily living, and quality of social life. If treatment goals are not being achieved, despite medication adjustments, the physician should re-evaluate the appropriateness of continued treatment. The physician should monitor patient compliance in medication usage and related treatment plans.

5. Consultation

The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangement pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

6. Medical Records

The physician should keep accurate and complete records to include (1) the medical history and physical examination (2) diagnostic, therapeutic and laboratory results (3) evaluations and consultations (4) treatment objectives (5) discussion of risks and benefits (6) treatments (7) medications [including date, type, dosage, and quantity prescribed] (8) instructions and agreements and (9) periodic reviews. Records should remain current and be maintained in an accessible manner and readily available for review.

7. Compliance with Controlled Substances Laws and Regulations

To prescribe, dispense, or administer controlled substances, the physician must be licensed in the state, and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration and (*any relevant documents issued by the state medical board*) for specific rules governing controlled substances as well as applicable state regulations.

Section III: Definitions

For the purposes of these guidelines, the following terms are defined as follows:

Acute pain: Acute pain is the normal, predicted physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with surgery, trauma and acute illness. It is generally time limited and is responsive to opioid therapy, among other therapies. patient responsibilities including (1) urine/serum medication levels screening when requested (2) number and frequency of all prescription refills and (3) reasons for which drug therapy may be discontinued (i.e. violation of agreement).

Addiction: Addiction is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects and is characterized by compulsive use despite harm. Addiction may also be referred to by terms such as "drug dependence" and "psychological dependence." Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not be considered addiction.

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Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

OTHER GOVERNMENTAL POLICY

Medical Board Policy Statement

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Analgesic Tolerance: Analgesic tolerance is the need to increase the dose of opioid to achieve the same level of analgesia. Analgesic tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Chronic Pain: A pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated. Chronic pain may be associated with a long-term incurable or intractable medical condition or disease.

Pain: an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Physical Dependence: Physical dependence on a controlled substance is a physiologic state of neuroadaptation which is characterized by the emergence of a withdrawal syndrome if drug use is stopped or decreased abruptly, or if an antagonist is administered. Physical dependence is an expected result of opioid use. Physical dependence, by itself, does not equate with addiction.

Pseudoaddiction: Pattern of drug-seeking behavior of pain patients who are receiving inadequate pain management that can be mistaken for addiction.

Substance Abuse: Substance abuse is the use of any substance(s) for non-therapeutic purposes; or use of medication for purposes other than those for which it is prescribed.

Tolerance: Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect or a reduced effect is observed with a constant dose.

¹Acute Pain Management Guideline Panel. Acute Pain Management: Operative or Medical Procedures and Trauma. Clinical Practice Guideline. AHCPR Publication No. 92-0032. Rockville, Md. Agency for Health Care Policy and Research. U.S. Department of Health and Human Resources, Public Health Service. February 1992.

²Jacox A, Carr DB, Payne R, et al. Management of Cancer Pain. Clinical Practice Guideline No. 9. AHCPR Publication No. 94-0592. Rockville, Md. Agency for Health Care Policy and Research, U.S. Department of Health and Human Resources, Public Health Service. March 1994.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.

STATUTES

Homicide and Suicide

- For complete reference to this policy, see "Citations for Policies Evaluated" at the beginning of this State Profile -

S.D. Codified Laws § 22-16-37.1

§ 22-16-37.1. Knowledge and purpose required for conviction of aiding and abetting suicide

Any licensed health care professional who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, does not violate § 22-16-37 unless the medications or procedures are knowingly administered, prescribed, or dispensed with a purpose to cause death. Any licensed health care professional who withholds or withdraws a life-sustaining procedure, in compliance with chapter 34-12D or in accordance with reasonable medical practice, does not violate § 22-16-37.

(+) **CRITERION 8:**
Other provisions that may enhance pain management

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Clarifies for physicians that there is an important distinction between physician-assisted suicide and prescribing controlled substances for pain relief; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment.

Note: Underlining and/or shading was added to identify policy language meeting the corresponding criterion.