FLORIDA SOCIETY OF PHYSICAL MEDICINE AND REHABILITATION
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Consensus Statement on Pain Clinic Issues

Also endorsed by the
American Academy of Physical Medicine and Rehabilitation

To: Jeff Scott, FMA Attorney
Tim Stapleton, FMA EVP

From: FSPMR Board of Directors

Date: October 12, 2010

Re: FMA Pain Clinic Video Conference Call

The FSPMR is in favor of laws and regulations that govern controlled substances and professional conduct in order to protect the public. We want to work closely with legislators and other medical societies to address the growing problem associated with "pill mills." At the same time, a balance must be reached so as not to interfere with the appropriate medical use of controlled medications for pain relief for legitimate patients and medical practices. We want to ensure that Floridians have access to affordable and effective pain management, properly trained physicians have the option to treat chronic pain with controlled medications when needed, and physicians and facilities operate in a safe and responsible manner.

In preparation for the October 14 conference call, the FSPMR Board of Directors met and reached a concensus on certain areas of the pain clinic regulations that we felt were most problematic. The areas:

1. **The Vague Definition of Pain Management Clinics**
2. **Advertising**
3. **PAs and the Work Force**
4. **Due Process**
5. **Fellowship Training**
6. **Medical Records**

Following are the reasons why we feel these areas are problematic.

1. The Vague Definition of Pain Management Facilities

Requirements that "anyone who advertises in any medium for pain management services" register as a pain clinic with the Department of Health is a rather drastic measure which will have unintentional consequences. The current requirements

jeopardize health care providers' practices by increasing the risk of criminal and administrative prosecution. While there are practices such as pill mills which require such regulation, the broad definition of a pain clinic is an undue burden on too many physicians.

The current definition places significant financial and professional constraints on many ethical physicians. Physicians have an obligation to treat patients and their complaints. Pain is one of the most common reasons people visit a doctor. To require that ALL physicians who treat pain register as a clinic is a drastic and unnecessary step.

A more appropriate definition of a "pain clinic" designed to curb the fraud and abuse from "pill mills" is required. The Florida Society of PM&R has reached a consensus that the definition of a pain management facility is too broad and vague at this time.

There will be suggestions which will attempt to alter the definition. At a minimum we would suggest that the definition be refined to target practices which treat chronic non-malignant pain solely with oral narcotics and not through other means.

2. Advertising

The board of the Florida Society of Physical Medicine and Rehabilitation (FSPMR) feels defining a pain clinic in F.S. 458.3265(1)(a) as "All privately owned pain-management clinics, facilities, or offices, hereinafter referred to as "clinics," which *advertise in any medium for any type of pain-management services…"* is overly broad, burdensome and very much limits our freedom of speech as defined in the Florida and US Constitution.

The Florida Statutes actually define in 458.305(3) the "*Practice of medicine" means the diagnosis, treatment, …* for any human disease, *pain*, injury, deformity, or other physical or mental condition." So the regulation actually limits the practice of medicine for physicians.

As physiatrists we are trained to diagnose and non-surgically treat injuries that cause pain. We use ice, heat, stretching and strengthening exercises, nutrition, non-scheduled and scheduled medications, among other modalities, to treat patients. This type of treatment does not make our practice a "pain clinic/pill mill."

If we "advertise in any medium" we will be unduly burdened, because of the defined criminal and administrative consequences for registering/not registering as a pain clinic. We will also be unfairly limited as legitimate practicing physicians. Physiatrists and other physicians routinely advertise their services for treatment of neck *pain*, back *pain*, nerve *pain* and arthritis *pain* in the yellow pages, church bulletins, community papers and the internet. The patients who seek services through these mediums will be at a significant disadvantage at a time when they can least afford it.

3. PAs and the Work Force

We support the spirit and good intentions of the law, but unfortunately, one unintended consequence would be the limitation in the appropriate use of physician extenders and the impact this would have on the ability to provide care by well qualified and supervised
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ARNPs and PAs. The new law spells out that "The MD or DO must perform a physical on the same day that he/she prescribes or dispenses a controlled substance to the patient at a pain management clinic." In theory this is a great concept, but in real world circumstances, it is not maintainable. With physician shortages and the limited number of physician providers especially in pain management, the legal utilization of physician extenders, PAs and ARNPs, is common in all types of specialty clinics, including pain clinics to accommodate for these shortages.

The FSPMR's position is that this rule results in both a discriminatory action against pain specialty physician groups and extenders, and will lead to worsening of access to care for all Floridians, especially those with no insurance or on Medicaid. Whereas most physician groups that are not specialized in Pain Medicine will probably remain and be the main source for controlled substance prescriptions. But they are not included in the definition of "Pain Clinic," and therefore, they will not need to abide by these rules. We believe that by current FL statutes extenders can, **under the supervision of the MD/DO**, perform physicals and manage patients, and that controlled substance medications **must only** be dispensed or prescribed by the physician and that the physician **must** review the examination report on **date of service**. This we believe in broad terms should apply to all medical practices, not just pain clinics.

Looking at this problem in an objective and unbiased manner, we realize the magnitude and scope of the problem with which we are faced, and realize the importance of moving forward in a judicious, well- thought-out manner. According to current data, Florida's population is estimated at 18,899,412 (FL DOH 2010) and growing by 100,000 to 200,000/year. There are 60,000 + active Florida allopathic and osteopathic Physicians (FL DOH). Only 30,000+ are currently active, based on the Physician Workforce Survey and Practitioner Profile Database from the Florida Department of Health, 2008-2009.Licensing data indicate that over 50% of active, licensed Florida physicians are over 50 and over 22% are older than 65 years of age (FL DOH). Of the 60,000+ physicians there are 204 practicing (in FL) Board Certified Pain Physicians (FL DOH 11/25/09). According to the American Academy of Pain Medicine, the number of Floridians suffering with pain is estimated at around 5,000,000. There is 1 board certified pain physician for every 24,509 Floridians currently suffering from pain. There is just 1 board certified pain physician for every 92,644 Florida residents. In addition, less than 14% of these pain specialists are willing to treat Medicaid patients and many FL Health Departments are not willing to care for pain conditions. If you look at the future aging physician population versus the new fellowship output, it is obvious there is a negative balance. There are only 7 Pain Fellowship program slots in FL medical schools (2010)

and 226 is the total number enrolled in fellowship programs for 2009 nationwide. It is obvious that most pain patients are currently untreated or covered by non-pain specialists.

If you take the physician extender out of the equation in pain clinics, this will most likely result in undue burden to those clinics that already use extenders to manage their pain population. If you have a population of patients who are stable, compliant, functional

and without aberrant behavior who are maintained on chronic narcotic regimens and are seen once a month to every three months for refills/maintenance, and they can only see the physician, this will result in decreased access to care for many pain patients, and possibly to a change/adaptation of how pain clinics work. Many may become just procedural based, and will not engage in medication management. This trend is already being seen in central FL. Many pain/anesthesia clinics perform multiple spinal procedures and then transfer the patient back to the primary care doctor who does not want to write for any prescription narcotics or manage the pain issues, who then transfer the patient to a physiatric (Physical Medicine and Rehabilitation) practice. Note that over 60% of patients who undergo interventional pain procedures return to narcotics therapy as their main treatment for pain relief.

4. **Due Process**

This portion of the law is unprecedented, discriminating, and is tantamount to guilt by association. When a physician in a group is allegedly found negligent it should not affect any other members of the group. Each practitioner usually has his or her own set of patients. There are hundreds of group practices in the state of Florida. These groups include but are not limited to Orthopedic Surgery, OB-GYN, Internal Medicine, Neurosurgery, Physical Medicine and Rehabilitation (PM&R), etcetera. These groups do not stop practicing when one member is under investigation. We therefore believe this should be deleted from the pain clinic regulations.

5. **Fellowship Training**

The current pain clinic rules and regulations restrict the employment in pain management clinics to a select group of physicians. Beginning July 1, 2012, a physician may not be employed at a pain management clinic if that physician has not successfully completed a pain medicine fellowship or a pain medicine residency that is accredited by the Accreditation Council for Graduate Medical Education (ACGME). In PM&R, to attain Board Certification the physiatrist must pass written and oral exams to demonstrate proficiency in the various core sub-specialties including pain management. We believe the restriction of practicing pain management to fellowship trained physicians is overly restrictive and would unnecessarily limit the scope of practice of well trained PM&R physicians in a core practice area of pain management.

With this understanding, FSPMR opposes this element of the rule that would limit or restrict the core practice of our board trained physicians and limit access of patients to our care.

Additionally, according to recent data there are ninety accredited ACGME pain fellowships in the United States. There are only three programs in the state of Florida and only six positions total. This restriction of physicians able to provide pain management services will result in a shortage of physicians able to practice pain management in the

state of Florida. The current rules would likely prevent many patients from receiving care for chronic pain.

6. **Medical Records**

The FSPMR Board agrees to the importance of regular reviews of pain clinic policies and procedures including patient medical records by an official accrediting body to ascertain adherence with standards of practice for Pain Clinics. This review should be held with strict adherence to patient confidentiality and privacy procedures. We are concerned about the possible allowance in SB2272 to seize and remove patients' records without notice and without appropriate warrant or subpoena. We believe the law should not allow for circumvention of proper patient record management and privacy laws set by the Federal Government (HIPPA), the Florida Department of Health or by law enforcement.

In closing:

Pain is one of the most common reasons people consult a physician. When it is improperly treated, the result is increased suffering, co-morbidities, unnecessary medical interventions and surgeries, disabilities and cost to all Floridians. Pain medicine is an emergent field that, as new advances and knowledge have grown, has become more complex, requiring increased depth of skill to deliver cost effective, competent, measurable outcomes. Our perspective and future direction in this field have to continue to evolve and adapt to socioeconomic and healthcare needs in Florida. We want to emphasize that this FSPMR consensus statement does not in any way advocate the inappropriate unfettered use of controlled substances that happens in a pill mill.

Respectfully submitted,

FSPMR Board of Directors:

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