Interdisciplinary Task Force on Intractable Pain

Report to the

COLORADO

LEGISLATIVE COUNCIL

Colorado Legislative Council
Research Publication No. 417
October 1996

RECOMMENDATIONS FOR 1997

INTERDISCIPLINARY TASK FORCE ON INTRACTABLE PAIN

Report to the
Colorado General Assembly

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October 30, 1996

To Members of the Sixty-first General Assembly:

Submitted herewith is the final report for the Interdisciplinary Task Force on Intractable Pain. The committee was constituted pursuant to House Joint Resolution 96-1023. The purpose of the committee was "to study and provide recommendations on appropriate policies or legislation relating to the management of intractable pain . . ."

At its meeting on October 10, the Legislative Council reviewed the report of this committee. A motion to forward the report, the bills, and the resolution therein for consideration in the 1997 session was approved.

Respectfully submitted,

/s/ Senator Tom Norton
Chairman
Legislative Council

TN/GJ/eg

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RECOMMENDED BILLS

Interdisciplinary Task Force on Intractable Pain

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Executive Summary

Committee Charge

The Interdisciplinary Task Force on Intractable Pain was established by House Joint Resolution 96-1023. The task force was directed to study and provide recommendations on policies or legislation relating to the management of intractable pain.

Committee Activities

The task force heard testimony and discussed recommendations for legislative action during four days of meetings in August and September of 1996. Testimony was given by physicians, physical therapists, pharmacists, nurses, and representatives of their respective professional schools. Testimony also was presented by the Board of Medical Examiners, patient advocates, representatives of the health insurance industry, the Colorado Division of Insurance, the U.S. Drug Enforcement Administration, liability insurers of physicians, and representatives of the hospice community.

Committee Recommendations

As a result of these hearings the task force recommends three bills and one resolution to the Colorado General Assembly.

Bill A — Access to pain management specialists. Bill A addresses insurance coverage of treatment for chronic pain, and access of patients to such treatment.

Bill B — Prescriptions in emergency situations to hospice patients. Bill B permits pharmacists to dispense prescriptions without written authorization from the physician in emergency situations involving hospice patients as long as such dispensing is consistent with federal law on emergency prescriptions. Federal law does not currently permit prescriptions to be sent by facsimile transmission to facilitate the delivery of pain medications for terminally ill persons. Bill B allows for prescriptions to be sent by fax in the event that the federal law is changed.

Bill C — Unprofessional conduct and intractable pain. Bill C ensures that licensed physicians would not be disciplined by the Board of Medical Examiners solely for prescribing controlled substances for patients with intractable pain. Bill C also provides a definition of "intractable pain."

Resolution A — Incentives for continuing education. Resolution A encourages medical malpractice insurance carriers to provide incentives for physicians to attend pain management training classes.

STATUTORY AUTHORITY AND RESPONSIBILITIES

The Interdisciplinary Task Force on Intractable Pain was established by House Joint Resolution 96-1023. The resolution noted that many patients with chronic, long-term and terminal illnesses suffer severe pain and are seeking more effective methods of alleviating that pain. The resolution stated that the "under treatment of intractable pain often occurs for many reasons, including fear of liability and exposure to professional discipline on the part of health care providers or concerns regarding the possibility of addiction of patients to strong narcotic drugs." The resolution established an interdisciplinary task force with members representing hospice care, physicians, medical and nursing schools, the field of medical ethics, nursing, and home care nursing, physical therapy, health maintenance organizations, health insurance carriers, patients, patient advocates, and family members of patients who have suffered intractable pain.

The task force was directed to study and provide recommendations on appropriate policies or legislation relating to the management of intractable pain and to consider the following:

- strategies to improve knowledge in the health care community about effective pain management;
- the effect on health care costs of pain management in reducing hospital stays and side effects from surgery;
- health care providers' liability or exposure to professional discipline for inappropriate pain management;
- legal distinctions between pain management and euthanasia or physician-assisted suicide;
- whether medical practice laws should be clarified to facilitate pain management;
- whether concerns regarding addiction of patients to pain medications lead to unnecessary suffering by patients; and
- methods of facilitating interdisciplinary approaches to pain management.

Task Force Activities

The Interdisciplinary Task Force on Intractable Pain heard testimony and discussed recommendations for legislative action during four meeting days in August and September of 1996. As a result of this testimony the task force found the following:

- many patients in Colorado, for a variety of reasons, needlessly suffer from inappropriate pain levels;
- patients are entitled to a reasonable expectation of effective and safe pain relief;
- the "culture" of medicine encourages physicians to follow a "disease treatment" model that places insufficient emphasis on pain treatment;
- a greater emphasis on pain management in educational programs for medical professionals would be beneficial;
- improved methods of tracking health care costs related to the treatment of intractable pain would be useful in evaluating the economic costs and benefits of treatment alternatives;
- health care professionals have a moral duty to adequately manage patient pain;
- a "hospice model" whereby a patients' state of pain is communicated, assessed, documented, and appropriately managed should be encouraged as routine practice in all Colorado health care facilities; and
- interdisciplinary approaches to the management of patient pain are effective and recommended.

The task force recommends four pieces of legislation as an initial response to its findings. It is the intention of the members of the task force to reconvene (formally or informally) in one year to assess the amount of progress made in improving pain management in Colorado.

During the four days of hearings the task force heard testimony in the following areas:

Assessing the Pain Problem

The task force heard testimony from a medical ethicist that a failure to relieve patients' pain is ethically wrong. This failure results from inappropriate dosages of medications to treat pain, an excessive concern among health care professionals regarding the dangers of narcotic analgesics, physicians' fear of regulatory scrutiny by the Board of Medical Examiners and the U.S. Drug Enforcement Administration, and a lack of knowledge of appropriate pain management.

Testimony from the medical ethicist indicated that a distinction should be made between addiction to narcotics and physical dependency on drugs for pain relief. The medical ethicist supported further protection of medical professionals against disciplinary actions for providing appropriate medical treatment. Continuing education of medical professionals on the subject of pain management was encouraged.

Chronic Pain Treatment in Colorado

A representative of the University of Colorado Health Sciences Center (UCHSC) testified that Colorado, as with other states, has a problem with the under-treatment of pain generally. It was explained that it is relatively easy to make the determination to prescribe narcotics to terminal patients, but it is often more difficult to determine treatment plans for non-terminal patients with chronic pain.

Further, the task force heard that pain should be recognized as more than merely a symptom of disease and should be addressed specifically, with its own treatment regimen. Effective pain management can be used to help patients return to a functional and productive state.

State Laws Regarding Intractable Pain

The task force was given an overview by staff from the Legislative Council and the Office of Legislative Legal Services of legislative activities in other states that address the delivery of pain treatment services.

- Twelve states have enacted legislation addressing the treatment of chronic pain.

- Three states have created study committees to examine the issues associated with intractable pain.

- Six states have adopted statutory definitions of "intractable pain."

- One state requires regulatory boards of health professions with prescriptive authority to develop uniform guidelines to address opiate therapy for intractable pain conditions.

- Six states statutorily authorize physicians to prescribe controlled substances for the treatment of intractable pain.

- Five states authorize regulatory boards to discipline physicians for failing to maintain accurate records of the handling of controlled substances.

- Seven states have statutes protecting physicians from disciplinary actions by regulatory boards solely for prescribing controlled substances for the treatment of intractable pain.

- Two states provide that health care facilities may not restrict the use of controlled substances prescribed or administered by physicians for the treatment of intractable pain.

- One state statute indicates that drug dependency or the possibility thereof is not sufficient reason to prevent the prescription of controlled substances for the treatment of intractable pain. Five additional states go further to specify in statute that this provision of the law does not authorize the prescription of controlled substances to a person who is being treated for chemical dependency or who is known to use drugs for nontherapeutic reasons.

- One state requires physicians to provide written notice that must be signed by a patient concerning the risks of prescribing a controlled substance.

- Two states specify that statutory provisions concerning the treatment of intractable pain do not authorize euthanasia.

- Two states either require or encourage continuing education of physicians concerning pain management.

Board of Medical Examiners Perspectives on Pain Treatment

A representative of the Board of Medical Examiners (BME) explained that the BME recently promulgated chronic pain treatment guidelines. These guidelines are regarded as preferable to rules promulgated by the Board, since they provide flexibility in treatment plans for physicians and do not expose physicians to further liability problems. The task force was cautioned against legislating the medical treatment of

chronic, nonmalignant pain. It was again pointed out that physicians may have an inordinate fear of sanctions by the BME and the Drug Enforcement Agency.

Impacts of Chronic Pain on Consumers

A representative of patients with chronic pain noted that these patients often withdraw from life and suffer from depression as a result of their unmet pain treatment needs. The task force heard that the under-treatment of pain by physicians is widespread, and that physicians do not always make appropriate referrals of patients to chronic pain specialists. The "traumatic" nature of independent medical examinations (IMEs) was pointed out to the task force. It was suggested that, often, the purpose of IMEs is to question the legitimacy of disabilities in a non-compassionate way. This assertion was questioned by a committee member.

The representative supported the following:

- a statutory duty for physicians to effectively treat pain;
- an educational effort for patients and providers to bring about effective and compassionate pain management; and
- the right of patients to be referred to pain specialists.

The task force also heard that the proper management of pain is more critical than the issue of potential addiction of patients to narcotics. It was explained that chronic pain patients who receive appropriate health care initially, (and this often means early recognition of the need for a referral to a pain specialist), consume fewer health care dollars over the course of their illnesses. Members of the committee noted that patients do not always know what the most appropriate treatment for their pain or illness should be.

The committee also heard testimony in support of physical therapy as an excellent means for alleviating chronic pain.

Education of Health Care Providers

A representative of the UCHSC School of Pharmacy noted that pharmacists can help solve the under-treatment of chronic pain by having pain medications in stock, and by being more responsible for treatment results. He explained that it is important for pharmacists to discuss the potential side effects of pain medications with patients and that pharmacists have some responsibility to ensure that patients are not abusing these drugs.

A representative of the University of Colorado School of Medicine Curriculum Committee explained that changes in the medical school curriculum are under consideration, and that extensive clinical exposure to pain management is available in the first two years of the medical program. However, he noted that there are some "holes" in the curricula. He said that, in addition to diagnosis and treatment, physicians should strive to make patients "feel as well as possible." He offered support for the "hospice model" for pain treatment.

A representative of the University of Colorado School of Nursing explained the pain management instruction is included in the School of Nursing curricula and emphasized the importance of a multi-disciplinary approach to pain management.

A University of Colorado School of Physical Therapy representative said that physical therapists address pain as it impedes the daily functioning of patients. She noted that many health insurance plans cover physical therapy, but limit the number of patient visits.

The committee also heard testimony that some curricula and textbooks are outdated and that some mentor programs pass on outdated notions about pain management.

Health Insurance for Chronic Pain Services

Representatives of the health insurance industry commented on the coverage of services for pain management under their plans. Some companies operate pain clinics, offer mental health services, and offer coverage of physical therapy services. A representative of one company said that within his company there are no financial disincentives for physicians to refer patients to pain specialists. Another company representative explained that his company is concerned with the underutilization of the services of pain specialists by physicians. He echoed the concern about physicians following a "disease treatment" model because the model places insufficient emphasis on pain treatment.

Testimony from the Colorado Division of Insurance indicated that the under-treatment of chronic pain has not generated a large number of complaints to the division. However, with a growing public awareness of the services offered by this agency, a greater number of complaints may be referred to the division. The representative stated that the division is able to intervene on behalf of patients to monitor the compliance of insurance companies with relevant statutes and contracts.

Pharmacist Services

A community pharmacist testified in support of a statutory change to permit prescriptions to be sent by fax in order to facilitate the delivery of medications to patients with chronic pain.

Federal Drug Enforcement

A representative of the Drug Enforcement Administration (DEA) indicated that state licensing authorities have the primary responsibility for monitoring the compliance of health care providers with laws concerning narcotics. The DEA does receive complaints against physicians, investigates some of these cases, and refers some cases to state medical boards. In the past six years only two Colorado physicians have been prosecuted for violations of federal drug laws. Fewer than a dozen Colorado physicians are investigated each year for potential prescriptive abuse.

The speaker said that physicians are concerned to an excessive degree about DEA enforcement activities and that they should not under-treat patients as a result of this concern. He noted that the DEA produces a manual for physicians addressing this subject.

Medical Liability

A representative of a liability insurer of physicians said that his company has not had liability issues related to the over-treatment or the under-treatment of intractable pain. The liability insurance industry has been involved in the development of guidelines for pain treatment recently published by the Board of Medical Examiners. The representative said that physicians should "know the standard of care," and that it is debatable whether or not pain is being adequately managed in Colorado. Support was offered for ongoing, local seminars on the subject of pain management. The seminars, according to the representative, should be scheduled for the convenience of physicians.

Hospice Care

A hospice community representative said that solid tumor cancer patients have the most pain, and that female, minority, and elderly patients are the most likely to be under-medicated. The speaker noted that the incidence of addiction during pain treatment is trivial, and that patients are overly concerned with the potential for addiction. Patients often fail to seek appropriate levels of treatment for their pain due to the fear of side effects of medications and societal beliefs about pain. She presented the results of a survey demonstrating that the attitudes and knowledge of pain

management by significant numbers of physicians, nurses and pharmacists is inadequate.

Experiences of Professionals Involved with Pain Management

Medical professionals involved with pain management testified that many physicians fear treating patients with chronic pain and prescribing opiates. These professionals suggested the use of analgesic pumps as a means to manage patient pain and thereby return patients to functionality.

The speakers also supported the following:

- enhanced patient access to pain specialists;
- clear statements of services provided in health care plans;
- expedited handling of claims for patients who are in pain;
- workshops, newsletters, journal articles and medical school curricula as means of educating physicians about pain management; and
- development of methods to document and monitor the treatment of pain.

Support for Care Givers

A "care giver" for family members with illnesses involving chronic pain made the following suggestions. Patients should have an understanding of the pain that they are likely to experience as a result of their illnesses at the time of their diagnosis, during treatment, and patients should be aware that their pain can be alleviated. Physicians, nurses, care givers and patients should collaborate to diminish potential suffering. Legislation should be introduced to address physicians' concerns regarding their liability when treating chronic pain patients. According to the speaker, family members and patients should insist on "no pain."

The Addiction Issue

A task force member testified that there is a low prevalence of addiction in patients treated for chronic pain. Addiction is not defined as a physiological dependence on a pain killer, but should be defined in terms of behavioral factors.

Physicians' Pain Management Practices

A representative of the Colorado Medical Society said there is not a pressing need to alter the Medical Practice Act to address pain management, although the Board of the Colorado Medical Society has not taken a formal position on the matter. The representative said that efforts to further educate physicians would be preferable to legislation, and that a request from the legislature that the board examine these issues would be welcomed. It was explained that physicians have a duty to provide the treatment that is medically appropriate and not simply do "what a patient wants."

Prescribing Narcotics for Pain

The task force heard testimony from a physician identifying the barriers to effective pain management including (1) inadequate medical school education and continuing education; (2) fear of professional censure; (3) fear of addiction; and (4) social attitudes discouraging patients from seeking adequate pain relief. Further, he stated that physicians should also be held accountable for under-treating pain and that patients should have access to pain specialists. Legislative action was suggested to ensure proper solutions in the private sector. The speaker noted that when pain needs are not met "the fires of physician-assisted suicide are fueled." The speaker explained that the fragmentation of care has contributed to the under-treatment of chronic pain.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following bills and one resolution are recommended to the Colorado General Assembly.

Bill A — Access to Pain Management Specialists

Patient access to pain specialists was a major issue that emerged during the task force meetings. The primary concern was that the managed care process wherein the primary care physician serves as a "gatekeeper" responsible for patient referrals is a barrier to the pain management process.

Bill A requires an insurer offering a managed health care plan to disclose whether the plan includes coverage for the treatment of chronic pain. If the insurer offers treatment for chronic pain, then the plan is required to provide the following types of access to such treatment: (1) from a primary care physician who is board-certified to treat pain; (2) by permitting direct access to a board-certified pain specialist or pain clinic within the state; or (3) through a referral to a board-certified pain specialist or pain clinic within the state. Bill A authorizes the Commissioner of Insurance to promulgate rules regarding the referral of insured persons to pain specialists or clinics.

Bill B — Prescriptions in Emergency Situations to Hospice Patients

Bill B was created in response to testimony provided by a hospice pharmacist who was concerned about restrictions regarding the prescription of narcotics to hospice patients. The pharmacist proposed the following modifications to current law: (1) extending the 72-hour period for which emergency doses of narcotics can be prescribed in lieu of a written prescription for hospice patients; and (2) allowing prescriptions to be sent by facsimile transmission for terminally ill patients.

Under federal law, an emergency prescription may be dispensed in an amount sufficient to maintain the patient during the emergency period. This contrasts with Colorado law that is more restrictive and allows the dispensing only for a 72-hour period. Bill B allows a pharmacist to follow federal law on the amount of the emergency supply and the time frame for prescribing in an emergency situation. Sending prescriptions by facsimile transmission to a pharmacist for a terminally ill person is currently prohibited under federal law. Bill B allows a pharmacist to dispense emergency prescriptions as long as the pharmacist is following the federal law requirements. Thus, if federal law changes regarding transmission of prescriptions for

hospice patients, the pharmacist would be able to legally dispense emergency prescriptions for a hospice patient based on a facsimile transmission of the prescription.

In addition, Bill B authorizes a pharmacist to dispense a prescription without written authorization from the physician in emergency situations involving hospice patients as long as such dispensing is consistent with federal law on emergency prescriptions. It allows the transmission of the written order from the physician to the pharmacist by the methods authorized by and within the time frames specified in federal law.

Bill C — Unprofessional Conduct and Intractable Pain

In response to concerns about possible disciplinary actions taken against physicians if they prescribe narcotics for patients with intractable pain, Bill C ensures that licensed physicians will not be disciplined by the Board of Medical Examiners solely for prescribing controlled substances. Moreover, this bill provides the following definition of intractable pain:

> A pain state, even if temporary, that, after reasonable efforts to diagnose and treat, does not respond to treatment.

The bill is similar to legislation passed in California, Florida, Georgia, Missouri, Michigan, Nevada, North Dakota, Oregon, Texas, Virginia, and Washington.

Resolution A — Incentives for Continuing Education

Testimony from members of the task force and others identified a need for primary care physicians to have at least a general knowledge about pain management. In addition, this knowledge would be most effective if it was periodically updated via pain management training or seminars.

Resolution A encourages all medical malpractice insurance carriers (including COPIC) to provide incentives (e.g., discounts on insurance premiums) for physicians to attend pain management training.

MATERIALS AVAILABLE

The materials listed below are available upon request from the Legislative Council staff.

Meeting Summaries	Topics Discussed
August 22, 1996	Assessing the Pain Problem, Chronic Pain Treatment in Colorado, Cost of Pain in the Worker's Compensation Arena, Perspectives of the Board of Medical Examiners, and Public Testimony
September 10, 1996	Impacts of Chronic Pain, Education of Health Care Providers, Health Insurance for Chronic Pain Services, Pharmacist Services, Federal Drug Enforcement, Medical Liability, and Hospice Care
September 17, 1996	Experiences of Medical Professionals, Support for Care Givers, and Committee Member Testimony
September 24, 1995	State Laws Regarding Intractable Pain, Patient Addiction, Physicians' Pain Management Practices, and Prescribing Narcotics for Pain Patients

Memoranda and Reports

Staff memoranda titles:

Legislation Concerning Intractable Pain in Colorado and Other States, August 2, 1996.

Section 18-18-308, C.R.S., Concerning the Prescription of Narcotic Drugs for Intractable Pain, July 25, 1996.

Reports provided to the committee:

Angarola, R.T. and D.E. Joranson 1995. *Intractable Pain Treatment Laws and Regulations.* American Pain Society Bulletin, Vol. 5, No. 2:1-17.

Angarola, R.T. and D.E. Joranson 1996. *State Pain Commissions: New Vehicles for Progress?* American Pain Society Bulletin, January/February.

The Colorado Board of Medical Examiners 1996. *Guidelines for Prescribing Controlled Substances for Chronic Non-malignant Pain.* 3 pp.

Steele-Rosomoff, R. 1996. *The Painful Truth About Pain Management.* Rehabilitation Nursing, Vol. 21, No. 1.

Gates, R.A. and R.M. Fink 1995. *Controlling Your Pain.* Brochure.

Shapiro, R.S. 1994. *Liability Issues in the Management of Pain.* Journal of Pain and Symptom Management, Vol 9, No. 1:129-135.

Dahl, J.L. 1994. *An Institutional Commitment of Pain Management.* American Pain Society, April/May: 16-20.

National Institute of Nursing Research 1994. *Symptom Management: Acute Pain.* A Report of the NINR Priority Expert Panel on Symptom Management: Acute Pain. Pgs. 161-191.

U.S. Department of Health and Human Services 1994. *Management of Cancer Pain.* Clinical Practice Guidelines. 257 pp.

BILL A

A BILL FOR AN ACT

CONCERNING THE SCOPE OF INSURANCE PROVISIONS REGARDING THE TREATMENT OF PAIN.

Bill Summary

"Intractable Pain Treatment Provisions"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Interdisciplinary Task Force on Intractable Pain. Requires an insurance carrier offering a managed health care plan to disclose whether the plan provides coverage for the treatment of intractable pain. If the carrier does offer treatment for intractable pain, requires that the plan provide access to such treatment either by a primary care physician who is board-certified to treat pain or by allowing direct access or referral to a pain management specialist or pain clinic within the state. Provides that if the plan is silent on whether it covers treatment for intractable pain, then the plan shall be presumed to offer coverage for the treatment of intractable pain. Authorizes the commissioner of insurance to promulgate rules regarding the referral of insured persons to pain management specialists or clinics.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-16-107, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-16-107. Rate regulation - approval of policy forms - benefit certificates - evidences of coverage - loss ratio guarantees - disclosures on treatment of intractable pain. (6) (a) A SERVICE OR INDEMNITY CONTRACT ISSUED OR RENEWED ON OR AFTER JANUARY 1, 1998, BY ANY ENTITY SUBJECT TO PART 3 OR 4 OF THIS ARTICLE SHALL DISCLOSE IN THE CONTRACT AND IN INFORMATION ON COVERAGE PRESENTED TO CONSUMERS WHETHER THE HEALTH COVERAGE PLAN OR MANAGED CARE PLAN PROVIDES COVERAGE FOR TREATMENT OF INTRACTABLE PAIN. IF THE CONTRACT IS SILENT ON COVERAGE OF INTRACTABLE PAIN, THEN THE CONTRACT SHALL BE PRESUMED TO OFFER COVERAGE FOR THE TREATMENT OF INTRACTABLE PAIN. IF THE CONTRACT IS SILENT OR IF THE PLAN SPECIFICALLY INCLUDES COVERAGE FOR THE TREATMENT OF INTRACTABLE PAIN, THE PLAN SHALL PROVIDE ACCESS TO SUCH TREATMENT FOR ANY INDIVIDUAL COVERED BY THE PLAN EITHER:

(I) BY A PRIMARY CARE PHYSICIAN WHO IS CERTIFIED IN PAIN MANAGEMENT BY A STATE OR NATIONAL BOARD OR SOCIETY THAT HAS BEEN RECOGNIZED BY THE BOARD OF MEDICAL EXAMINERS;

(II) BY PROVIDING DIRECT ACCESS TO A PAIN MANAGEMENT SPECIALIST OR CLINIC LOCATED WITHIN THIS STATE AND PARTICIPATING IN AND AVAILABLE UNDER THE PLAN; OR

(III) BY HAVING PROCEDURES IN PLACE THAT ENSURE THAT, IF THE INDIVIDUAL REQUESTS A TIMELY REFERRAL TO A PAIN MANAGEMENT

SPECIALIST OR CLINIC LOCATED WITHIN THIS STATE AND PARTICIPATING IN AND AVAILABLE UNDER THE PLAN, THE REQUEST FOR REFERRAL SHALL NOT BE UNREASONABLY DENIED. THE COMMISSIONER SHALL PROMULGATE RULES PURSUANT TO THIS SUBPARAGRAPH (III) THAT INCLUDE, BUT NEED NOT BE LIMITED TO, THE FOLLOWING ISSUES:

(A) WHAT CONSTITUTES A TIMELY REFERRAL;

(B) CIRCUMSTANCES, PRACTICES, POLICIES, CONTRACT PROVISIONS, OR ACTIONS THAT CONSTITUTE AN UNDUE OR UNREASONABLE INTERFERENCE WITH THE ABILITY OF AN INDIVIDUAL TO SECURE A REFERRAL OR REAUTHORIZATION FOR CONTINUING CARE;

(C) THE PROCESS FOR ISSUING A DENIAL OF A REQUEST, INCLUDING THE MEANS BY WHICH AN INDIVIDUAL MAY RECEIVE NOTICE OF A DENIAL AND THE REASONS THEREFOR IN WRITING;

(D) ACTIONS THAT CONSTITUTE IMPROPER PENALTIES IMPOSED UPON PRIMARY CARE PHYSICIANS AS A RESULT OF REFERRALS MADE PURSUANT TO THIS SUBSECTION (6); AND

(E) SUCH OTHER ISSUES AS THE COMMISSIONER DEEMS NECESSARY.

(b) FOR PURPOSES OF THIS SUBSECTION (6), "PAIN MANAGEMENT SPECIALIST" MEANS A PHYSICIAN WHO IS CERTIFIED IN PAIN MANAGEMENT BY A STATE OR NATIONAL BOARD OR SOCIETY THAT HAS BEEN RECOGNIZED BY THE BOARD OF MEDICAL EXAMINERS.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL B

A BILL FOR AN ACT

CONCERNING THE AUTHORITY OF PHARMACISTS TO DISPENSE PRESCRIPTIONS IN EMERGENCY SITUATIONS TO HOSPICE PATIENTS.

Bill Summary

"Emergency Prescriptions"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Interdisciplinary Task Force on Intractable Pain. Authorizes a pharmacist to dispense a prescription without written authorization from the physician in emergency situations involving hospice patients as long as such dispensing is consistent with federal law on emergency prescriptions. Allows for the transmission of the written order from the physician to the pharmacist by the methods authorized by and within the time frames specified in federal law.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-22-122, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-22-122. Prescription required - exception. (1) Except as provided in section 18-18-414, C.R.S., and ~~subsection~~ SUBSECTIONS (2) AND (3) of this section, an order is required prior to dispensing any prescription drug. Orders shall be readily retrievable within the appropriate statute of limitations.

(2) A pharmacist may refill a prescription order for any prescription drug without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety, and welfare. Such prescription refill shall only be in an amount sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this subsection (2) continue medication beyond seventy-two hours. However, if the prescriber states on the prescription that there shall be no emergency filling of the prescription, then the pharmacist shall not issue any medication not authorized by the prescription. Neither a prescription drug outlet nor a pharmacist shall incur any liability as a result of refusing to refill a prescription pursuant to this subsection (2).

(3) IN AN EMERGENCY SITUATION INVOLVING A HOSPICE PATIENT, A PHARMACIST MAY DISPENSE A CONTROLLED SUBSTANCE UPON RECEIVING ORAL AUTHORIZATION OF A PRESCRIBER SO LONG AS THE PHARMACIST FOLLOWS THE REQUIREMENTS OF THE FEDERAL "CONTROLLED SUBSTANCES ACT", 21 U.S.C. SEC. 801 ET SEQ., AND THE RULES OF THE FEDERAL FOOD AND DRUG ADMINISTRATION PROMULGATED THERETO.

SECTION 2. 18-18-414 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-18-414. Unlawful acts - licenses - penalties. (2) (a) A pharmacist in an emergency situation, in lieu of a written prescription order, in good faith, may dispense up to a seventy-two-hour supply of any controlled substance listed in schedule II of part 2 of this article without a written prescription order. A PHARMACIST IN AN EMERGENCY SITUATION, IN LIEU OF A WRITTEN PRESCRIPTION ORDER, IN GOOD FAITH, MAY DISPENSE A LIMITED EMERGENCY SUPPLY FOR A HOSPICE PATIENT OF ANY CONTROLLED SUBSTANCE LISTED IN SCHEDULE II OF PART 2 OF THIS ARTICLE WITHOUT A WRITTEN PRESCRIPTION ORDER IN ACCORDANCE WITH THE FEDERAL "CONTROLLED SUBSTANCES ACT", 21 U.S.C. SEC. 801 ET SEQ., AND ANY FEDERAL RULES PROMULGATED THERETO. An "emergency situation", as used in this paragraph (a), means a situation in which the prescribing practitioner determines:

(I) That immediate dispensing of the controlled substance is necessary for proper treatment of the intended ultimate user;

(II) That no alternative prescription drug is available, including drugs that are not controlled substances under schedule II of part 2 of this article;

(III) That it is not reasonably possible for the prescribing practitioner to provide a written prescription order to be presented to the person dispensing the controlled substance prior to such dispensing.

(b) Upon receiving such an emergency oral prescription order from the practitioner, the pharmacist shall immediately reduce the prescription order to writing and shall write on its face "authorization for emergency dispensing" and the date and time of dispensing of the oral prescription. The prescribing practitioner shall reduce to writing and deliver the prescription order in person, by facsimile transmission if the order is delivered to a long-term care facility, or by mail to the pharmacist within seventy-two hours. If delivered by mail, the envelope must be postmarked within seventy-two hours of prescribing. IF THE PATIENT IS A HOSPICE PATIENT, THE DELIVERY OF THE PRESCRIPTION ORDER TO THE PHARMACIST SHALL BE BY THE METHOD AND WITHIN THE TIME FRAME REQUIRED UNDER THE FEDERAL "CONTROLLED SUBSTANCES ACT", 21 U.S.C. SEC. 801 ET SEQ., AND ANY FEDERAL RULES PROMULGATED THERETO. The pharmacist, upon receipt of the prescription order, shall attach

the prescription order to the oral prescription order which has been reduced to writing. The pharmacist shall notify the board if the prescribing practitioner fails to deliver the written prescription order to the pharmacist.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL C

A BILL FOR AN ACT

CONCERNING THE PROHIBITION OF DISCIPLINING A PHYSICIAN SOLELY FOR THE PRESCRIPTION OF MEDICATIONS TO TREAT INTRACTABLE PAIN.

Bill Summary

"Intractable Pain Treatment Immunity"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Interdisciplinary Task Force on Intractable Pain. Clarifies that a person licensed as a physician is not subject to discipline by the board of medical examiners solely for prescribing controlled substances for the relief of intractable pain.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-36-117, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-36-117. Unprofessional conduct. (1.5) (a) A PHYSICIAN SHALL NOT BE SUBJECT TO DISCIPLINARY ACTION BY THE BOARD SOLELY FOR PRESCRIBING CONTROLLED SUBSTANCES FOR THE RELIEF OF INTRACTABLE PAIN.

(b) FOR THE PURPOSES OF THIS SUBSECTION (1.5), "INTRACTABLE PAIN" MEANS A PAIN STATE, EVEN IF TEMPORARY, THAT, AFTER REASONABLE EFFORTS TO DIAGNOSE AND TREAT, DOES NOT RESPOND TO TREATMENT.

SECTION 2. Effective date - applicability. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor. This act shall apply to disciplinary actions originating on or after the effective date of this act.

JOINT RESOLUTION A

HOUSE JOINT RESOLUTION

WHEREAS, The Sixtieth General Assembly, during its second session, formed the Interdisciplinary Task Force on Intractable Pain, which met four times during the 1996 interim; and

WHEREAS, The task force heard many hours of testimony from persons suffering from intractable pain, health care providers, managed care and other health insurance carriers, educators, a federal drug enforcement agent, and patients; and

WHEREAS, Much of the testimony presented to the task force was that clinical practice in the area of pain assessment and treatment is woefully inadequate; and

WHEREAS, The task force was in agreement that the proper assessment, management, and treatment of patients' pain is a moral and ethical duty of physicians; and

WHEREAS, Recent research findings show that some physicians not only have difficulty in assessing pain, but also seldom ask patients about the pain the patient is experiencing or the effectiveness of treatment for pain; and

WHEREAS, Research has shown that pain medications are often underprescribed as a result of inappropriate medications, inadequate doses, inappropriate frequency of medication, an inadequate duration of medication, or a combination thereof; and

WHEREAS, The task force received testimony that some physicians lack sufficient knowledge of state-of-the-art medications and methods of prescribing such medications as well as sufficient knowledge of alternative treatment methods, other than pain medication, for long-term, nonterminal chronic pain; and

WHEREAS, The task force heard testimony that many health care providers are hesitant to prescribe adequate pain medications because of the fear of disciplinary sanctions from the federal Drug Enforcement Agency or the state Board of Medical Examiners; and

WHEREAS, The task force heard testimony that health care providers are also hesitant to treat intractable pain with medication because they fear that prescribing opioid medications for pain will cause patients to become addicted to those medications; and

WHEREAS, Research shows that there is a low prevalence of addiction in patients suffering intractable pain and that physiological dependence and tolerance are distinct from addiction, which is characterized by behavioral symptoms; and

WHEREAS, The Board of Medical Examiners has recently adopted guidelines for prescribing controlled substances for intractable pain that gives guidance to physicians about what conduct is within the boundaries of professional practice; and

WHEREAS, The task force concluded that a multidisciplinary approach to pain assessment and management, similar to that used in a hospice setting, provides a good working model for treating pain and provides lessons that should be shared with the rest of the health care community; and

WHEREAS, The task force concluded that an effort to educate physicians about the Board of Medical Examiners' new guidelines, as well as pain management in general, would help those patients suffering from intractable pain to receive treatment from their personal physicians or, if necessary, to receive a timely referral to a pain treatment specialist; and

WHEREAS, The task force concluded that medical malpractice insurers could directly influence clinical practice and education more immediately than could a legislative mandate on physicians; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-first General Assembly of the State of Colorado, the Senate concurring herein:

That the General Assembly and the Interdisciplinary Task Force on Intractable Pain strongly urge medical malpractice insurers to grant premium discounts or other incentives to physicians they insure who obtain continuing education in the assessment and treatment of pain for the benefit of their patients.

Be It Further Resolved, That a copy of this resolution be sent to each medical malpractice insurance carrier registered to do business in this state.