

*Report of the New
Jersey Legislative
Commission for the
Study of Pain
Management Policy*

March 1999

Honorable Charlotte Vandervalk, Chairperson
Honorable Jack Sinagra, Vice-Chairperson

Although the world is full of suffering, it is also full of the overcoming of it.

-- Helen Keller

*Governor
President of the Senate
Speaker of the General Assembly
Members of the Legislature*

Ladies and Gentlemen:

I am very pleased to transmit with this letter the report of the findings and recommendations of the New Jersey Legislative Commission for the Study of Pain Management Policy.

The commission, which was established pursuant to Assembly Concurrent Resolution No. 72 (1R) of 1996, sponsored by myself, Assemblywoman Barbara Wright and Senator Jack Sinagra, conducted an intensive study of acute and chronic pain management policy issues over the last 10 months and held three public hearings to gather information from a variety of persons with a wide range of expertise on this subject. The response to our request for information by individuals and organized groups was very gratifying, and the commission wishes to thank everyone who provided information to us. Their testimony was invaluable to the commission in fulfilling the responsibilities conferred upon it by the Legislature.

I would like to thank the other members of the commission who served with me, as well as the special advisors who most ably assisted our efforts. Their participation in the hearings and meetings of the commission and their careful consideration of the issues discussed were essential to the deliberations which resulted in the enclosed report. It has been a pleasure for me to work with these knowledgeable and dedicated individuals. On behalf of the commission, I would also like to express our appreciation to the staff from the Office of Legislative Services who supported our work.

I am hopeful that the findings and recommendations of this commission will assist the Governor and the Legislature in developing innovative and effective policies to help those among our fellow citizens who need compassionate and appropriate pain management and treatment.

Sincerely,

Honorable Charlotte Vandervalk

Chairperson

**NEW JERSEY LEGISLATIVE COMMISSION
FOR THE STUDY OF PAIN MANAGEMENT POLICY**

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**PERSONS AND ORGANIZATIONS SUBMITTING TESTIMONY
TO THE
NEW JERSEY LEGISLATIVE COMMISSION
FOR THE STUDY OF PAIN MANAGEMENT POLICY**

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Donald L. Pendley, President, New Jersey Hospice and Palliative Care Organization

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Bernard Robins, M.D., President, State Board of Medical Examiners

Gary Stocco, M.P.H., Vice President, National Burn Victim Foundation

Nolan Tzou, M.D., Morristown Memorial Hospital

Joseph P. Valenza, M.D., Pain Management Centers at Kessler Institute for Rehabilitation

Mary B. Wachter, M.S., R.N., Director of Legislative Affairs, New Jersey State Nurses Association

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Wen-hsien Wu, M.D., M.S., Director, Pain Management Center, New Jersey Medical School

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SUMMARY OF RECOMMENDATIONS

Public Recognition

1. The Commissioner of Health and Senior Services should issue a policy statement recognizing appropriate assessment, management and treatment of pain as a significant public health concern.

Education of Health Care Providers

2. Medical schools in New Jersey should be required to include a component on pain management in their curricula.

3. Health care professionals should be required to earn continuing education credits in pain management and interdisciplinary palliative care.

Education of Health Care Consumers

4. The Commissioner of Health and Senior Services should establish a comprehensive multi-media public education campaign on pain management.

5. The Department of Health and Senior Services should identify and publicize the availability of pain management information referral services for the general public and health care providers.

Professional Practice

6. The State Board of Medical Examiners should adopt the model guidelines of the Federation of State Medical Boards for the prescribing of controlled substances for pain control.

Reducing Organizational Barriers

7. The Commissioner of Health and Senior Services should require that hospitals and long-term care facilities establish interdisciplinary pain management policy committees.

8. The Commissioner of Health and Senior Services should require that these health care facilities provide for the monitoring of pain in their formal discharge protocols.

9. Legislation should be enacted into law to amend the "bill of rights" for acute care hospital patients and nursing home residents in State law, and the Department of Health and Senior Services should revise the "bill of rights" for rehabilitation hospital patients in its administrative regulations, in order to provide these persons with the right to expect and receive appropriate assessment, management and treatment of pain as an integral component of their care.

Pain Monitoring

10. The State Board of Medical Examiners and the New Jersey Board of Nursing, as applicable, should require physicians, physician assistants and nurses to regularly assess patient pain and record levels of pain intensity on patient charts as part of routine practice.

11. The Commissioner of Health and Senior Services should adopt regulations to provide for the monitoring of pain as a "fifth vital sign" in licensed health care facilities.

Access to Pain Medications

12. Prescribers and pharmacists should seek to jointly develop improved methods for verifying the validity of prescriptions for pain medications and improving patient access to pain medications.

13. The New Jersey Board of Pharmacy should be required to maintain a current listing of all pharmacies which are open 24 hours a day and make this list available to the public.

14. Legislation should be enacted into law to permit nurse practitioners/clinical nurse specialists and physician assistants to order and prescribe controlled substances to patients in end-of-life situations or with terminal conditions under physician supervision.

Reducing Insurance Barriers

15. The Department of Health and Senior Services should sponsor a pain management conference for health insurers, employers, business organizations and labor on reducing insurance barriers to appropriate pain management.

Research

16. Legislation should be enacted into law to require that the New Jersey State Commission on Cancer Research encourage the development of research projects on pain management and palliative care for cancer patients.

Alternative and Complementary Therapies

17. The Commissioner of Health and Senior Services should establish a mechanism to evaluate alternative and complementary pain management therapies and report its findings to the legislative health committees.

Pain Management in Terminally Ill Patients

18. Hospitals and nursing homes should adopt pain management standards to meet the special needs of patients with terminal conditions, which may include acute pain management guidelines published by the U.S. Agency for Health Care Policy and Research.

Further Study of Pain Management Policy

19. An Advisory Council on Pain Management Policy should be established as a follow-up entity to this commission, to serve for a two-year period.

INTRODUCTION

The New Jersey Legislative Commission for the Study of Pain Management Policy was established pursuant to Assembly Concurrent Resolution No. 72 (1R) of 1996, sponsored by Assemblywomen Charlotte Vandervalk and Barbara Wright and Senator Jack Sinagra (who sponsored Senate Concurrent Resolution No. 107 of 1997, which was substituted by the Assembly resolution on June 26, 1997). The resolution passed the General Assembly on December 12, 1996 and the Senate on June 26, 1997. The commission's operational authority was extended through the 1998-99 legislative session pursuant to the Legislature's 1998 Organizational Resolution, adopted on January 13, 1998.

Pursuant to Assembly Concurrent Resolution No. 72 (1R), the commission included 14 members as follows: two members each from the Senate and the General Assembly, appointed by the President of the Senate and the Speaker of the General Assembly, respectively, and 10 public members, who are residents of New Jersey, of whom five were appointed by the President of the Senate (one anesthesiologist, one oncologist, one patient advocate, one physician with experience in pain management who is a member of the faculty of the University of Medicine and Dentistry of New Jersey, and one registered professional nurse) and five by the Speaker of the General Assembly (one physician specializing in physical medicine, one pharmacist, one primary care physician with experience in pain management, one physician specializing in pain management, and one attorney with expertise in health care law). The resolution required that the public members who are medical professionals be licensed to practice in New Jersey.

In addition, at the chairperson's request, Jack Goldberg, M.D., and Ms. Donna Bocco served as special advisors to the commission. Dr. Goldberg heads the Cooper Cancer Institute and the Division of Hematology/Medical Oncology at Cooper Hospital/University Medical Center in Camden. He also chairs the New Jersey Pain Initiative which provides information and educational programs to the public and health care professionals on pain assessment and management, and recently received a grant from the Robert Wood Johnson Foundation - New

Jersey Health Initiative to enhance its efforts. Ms. Bocco is Health Advocacy Consultant for the American Cancer Society - Eastern Division, Inc.

At the organizational meeting of the commission on May 27, 1998, the members selected Assemblywoman Charlotte Vandervalk as chairperson and Senator Jack Sinagra as vice-chairperson of the commission, and the chairperson appointed David Price, Lead Research Analyst in the Office of Legislative Services, as commission secretary.

Assembly Concurrent Resolution No. 72 (1R) directed the commission to study New Jersey laws and practices relating to chronic pain management by health care providers, and more specifically to study and prepare a report on the following issues: (a) acute and chronic pain management treatment practices by health care providers in New Jersey; (b) State and federal statutes and regulations relating to pain management therapies, including, but not limited to, drug dispensing practices, use of opioids and nonsteroidal anti-inflammatory drugs ("alternative" therapies such as biofeedback, transcutaneous electrical nerve stimulation (TENS) and massage; (c) acute and chronic pain management education provided by the State's medical schools; (d) the acute and chronic pain management needs of both adults and children; and (e) such other issues relating to pain management as the commission deems appropriate.

Assembly Concurrent Resolution No. 72 (1R) further directed the commission to present a report of its findings and recommendations to the Governor and the Legislature within 10 months from the date of its organization, i.e., by March 27, 1999. This report is submitted pursuant to that mandate and reflects the substantial and insightful testimony presented to the commission from a variety of interests and perspectives, including those of health care providers and provider organizations, patients and patient advocates, and State government officials. This testimony was presented in a series of public hearings conducted by the commission on June 17, September 16, and October 28, 1998. In addition to its organizational meeting and meetings which were held after each of the three public hearings, the commission also met on December 2, 1998 and February 10, 1999 for the purpose of formulating recommendations for inclusion in this report.

In order to carry out its mission, the commission focused on issues related to acute and chronic pain management and treatment, as well as pain in patients with terminal conditions. Specifically, the commission attempted to identify issues related to:

- (1) Education of health care providers and patients with regard to the recognition and treatment of pain;
- (2) Access for patients and health care providers to effective pain management and treatment;
- (3) Regulatory obstacles and requirements, including law enforcement concerns and substance abuse issues; and
- (4) Research being conducted with regard to pain management and treatment.

These four areas of inquiry provided the framework around which this report and its recommendations are organized.

The establishment of the New Jersey Legislative Commission for the Study of Pain Management Policy was based on a demonstrated need for a bipartisan effort to examine and develop recommendations on issues, options and programs relating to acute and chronic pain management and treatment by health care providers in this State. In that spirit, the commission presents this report for consideration by the Governor, the Legislature, the relevant departments of State government, the health care provider community, health care consumers and health care consumer advocates, and health care payers.

As noted in the Resource Guide: Information about Regulatory Issues in Pain Management prepared by the Pain and Policy Studies Group at the University of Wisconsin Medical School (July 1998): "Governments' increasing interest in pain is an opportunity to make lasting improvements in pain management and to provide better patient access to pain care." The work of this commission has paralleled the efforts of similar entities which have been created in other states across the nation, and many of the findings and recommendations of this report will undoubtedly mirror those contained in reports issued by pain study commissions and task forces in other states. It is, however, the hope of the commission that this report will speak to New Jerseyans in a way that compels their attention and stimulates their efforts to create a more hospitable environment for effective pain management and treatment in our State.

In an article entitled "State Pain Commissions: New Vehicles for Progress?" (APS Bulletin, American Pain Society, January/February 1996), David E. Joranson, M.S.S.W., Director of the Pain and Policy Studies Group, observed

that a "government commission can . . . help put pain in the public spotlight, where it belongs." Simply put, that is what this report seeks to do.

FINDINGS AND RECOMMENDATIONS OF THE COMMISSION

According to Richard Payne, M.D., Professor and Chief of Pain Management at the University of Texas M.D. Anderson Cancer Center*:

Pain is a multibillion-dollar public health problem and the number-one reason for patients to see a health care provider, accounting for 42 million patient visits per year. . . . yet studies . . . show that pain is undertreated in as many as 46 percent of patients, based on comparison of reported severity with the potency of the prescribed analgesic.

Depending on which estimates from which sources one finds most credible, anywhere from 30 to 50 million Americans suffer from chronic pain, which ranges from mild to fully disabling in its degree of severity. This includes pain from arthritis, cancer, fibromyalgia, lower back pain, migraine headaches, repetitive stress injuries and a variety of other conditions (including joint pain, muscle pain, neuralgia, premenstrual pain, shingles, sickle cell disease, stomach pains and vulvar pain).

An article by David E. Joranson and Aaron M. Gilson in a recent issue of Federation Bulletin: The Journal of Medical Licensure and Discipline, which is the quarterly publication of the Federation of State Medical Boards (Volume 85, Number 2, 1998), states the pain management problem succinctly:

A number of health authorities have concluded that pain often is inadequately treated in a wide range of patient groups, including trauma and surgery

*Statement for "Symptoms in Terminal Illness: A Research Workshop," September 22-23, 1997, sponsored by the National Institutes of Health.

patients, patients with cancer, those who are dying, as well as those who are living with a variety of chronic painful conditions. In addition to the direct effects of pain on health and quality of life, unrelieved chronic pain may result in unscheduled hospital admissions; excessive use of emergency rooms; loss of employment, spouse, and family; and loss of life itself when some chronic pain patients commit suicide. Jack Kevorkian, the U.S. Supreme Court, and the State of Oregon have focused particular attention on the need for action at the state level to improve pain management.

In the course of its public hearings, this commission received testimony in regard to a number of issues which were identified as significant barriers to effective acute and chronic pain management and treatment. These include: the tendency in current medical practice to emphasize curative therapy over comfort care, a lack of information among health care providers and patients with regard to the recognition and treatment of pain, inadequate communication between providers regarding pain treatment (i.e., between physicians and pharmacists), inadequate monitoring of pain management practices and outcomes, concerns among providers relating to the regulation (or the perception of regulation) of controlled substances and professional practice, and the effect that inadequate health insurance reimbursement has on pain management and treatment.

Because of these barriers, New Jerseyans suffer unnecessary pain which reduces the quality of life for themselves and their families, increases health care costs because of prolonged treatment, and increases costs incurred by the State's businesses due to employee illness, diminished productivity and higher health insurance premiums. As noted previously, the lack of adequate pain management has generated increased interest nationwide in assisted suicide as an alternative to painful death for patients with terminal conditions; however, there has been research which suggests that requests for assisted suicide decline when adequate pain relief is provided.

The guiding principle of this report is that the residents of this State have the right to expect and receive appropriate assessment, management and treatment of pain.

Based upon this principle, this commission has formulated specific recommendations to address what it perceives as the major obstacles to appropriate assessment, management and treatment of pain. The recommendations have been categorized in terms of the specific areas which need to be addressed

under the general issue of access to pain management. Implementation of these recommendations will entail action by the legislative and executive branches of State government, the health professions, institutions of higher education, health care consumers, and health insurers.

The recommendations of this commission are as follows:

PUBLIC RECOGNITION

1. The Commissioner of Health and Senior Services should issue a policy statement which recognizes appropriate assessment, management and treatment of acute and chronic pain as a significant public health concern in New Jersey.

The testimony presented at the public hearings of the commission indicated the need to increase the salience of pain management as a public health concern. The commission feels that the Commissioner of Health and Senior Services should exert the leadership needed to address this lack of public recognition through a policy statement which:

- C recognizes the right of patients to expect and receive appropriate assessment, management and treatment of pain;
- C recognizes the moral and professional obligation of health care providers to provide appropriate assessment, management and treatment of pain;
- C supports the use of controlled substances and other therapies to treat pain in accordance with generally accepted medical standards, even when such treatment, in the case of patients near the end of life, may have the foreseen but unintended effect of hastening the patient's death; and
- C encourages health care providers, patients and third party payers to develop policies and procedures to support the use of appropriate therapies for treating: acute and chronic nonmalignant pain, pain or symptoms caused by illnesses such as cancer or AIDS, and pain experienced by persons who are dying.

EDUCATION OF HEALTH CARE PROVIDERS

2. Curricula in schools of medicine, pharmacy and nursing and educational programs for other regulated health care professions in New Jersey should be required to include courses which address pain assessment, pain management, pain treatment, interdisciplinary palliative care, and addiction medicine, which meet standards recommended by nationally recognized professional specialty academies and organizations.

3. Health care providers, as a condition of maintaining licensure or other qualification to practice in New Jersey, should be required to earn a specified number of continuing education credits in pain assessment, pain management, pain treatment, interdisciplinary palliative care, and addiction medicine, as prescribed by the appropriate professional licensing boards.

The testimony presented to the commission indicated a significant lack of information among many health care professionals about effective assessment, management and treatment of pain, and the need to require educational experiences for physicians and other health care professionals which will increase their knowledge and understanding in this area, as well as their respect for the priorities, needs and suffering of patients who are in severe pain, and who are in the advanced or end stages of their diseases.

EDUCATION OF HEALTH CARE CONSUMERS

4. The Commissioner of Health and Senior Services should establish a comprehensive multi-media public education campaign on pain management in order to inform the general public about issues of concern to patients, including, but not limited to: the right to expect and receive appropriate assessment, management and treatment of pain from health care providers; the availability of effective medical therapies and other effective complementary therapies for pain management; effective skills to communicate pain to health care providers and caretakers; and the facts about addiction, tolerance and side effects relating to the use of controlled substances. To the maximum extent practicable, the commissioner should coordinate the public education campaign with the existing public information efforts of nonprofit patient advocacy organizations in the State.

5. The Department of Health and Senior Services should identify and

publicize the availability of information referral services for members of the general public and health care providers in regard to assessment, management and treatment of acute and chronic pain.

The testimony presented to the commission also indicated that patients and their families need to assume greater responsibility for ensuring that they receive the appropriate assessment, management and treatment of pain to which they are entitled, and that they can only do this if they are informed about the availability of appropriate therapies, and are able to communicate with health care providers about their pain. According to Charles Cleeland, Ph.D., of the M.D. Anderson Cancer Center, writing in the June 17, 1998 issue of The Journal of the American Medical Association: "The best pain management requires an informed patient who is willing to report pain and to voice complaints if pain is not controlled." The commission believes that the Department of Health and Senior Services is the appropriate agency of State government to lead in this effort.

PROFESSIONAL PRACTICE

6. The State Board of Medical Examiners should adopt regulations based upon the "Model Guidelines for the Use of Controlled Substances for the Treatment of Pain" adopted as policy by the House of Delegates of the Federation of State Medical Boards of the United States, Inc., in May 1998, to be used by the board in evaluating the prescribing of controlled substances for pain control.

As stated in the preamble to these guidelines: "Physicians should not fear disciplinary action from . . . [a] 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 practice." The guidelines are premised on an assumption that "prescribing, ordering, administering or dispensing controlled substances for pain [is] . . . for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds." Adoption by the State Board of Medical Examiners of these guidelines would represent a commitment by the board to "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."

This policy would provide physicians practicing in New Jersey with the

authority to prescribe controlled substances for pain control, without fear of being disciplined for taking such action, within the parameters of professional practice. The specific guidelines to be used in evaluating the prescribing of controlled substances for pain control stipulate and govern:

- C evaluation of the patient, which includes a complete medical history and physical examination;
- C a written treatment plan, which states the objectives that will be used to determine treatment success;
- C obtaining the patient's informed consent and agreement for treatment, which requires a discussion with the patient or other designated person of the risks and benefits of using controlling substances;
- C periodic review of the patient's course of treatment, to be conducted at reasonable intervals, including patient compliance in medication usage;
- C referrals for additional evaluation and treatment as necessary to achieve treatment objectives;
- C the content of accurate and complete patient treatment records, which are to remain current and be maintained in an accessible manner and readily available for review; and
- C compliance with federal and State statutes and regulations governing controlled substances.

REDUCING ORGANIZATIONAL BARRIERS

7. The Commissioner of Health and Senior Services should adopt regulations to require that each acute care hospital and long-term care facility in this State, as a condition of licensure, establish an interdisciplinary pain management policy committee to establish and monitor the implementation of guidelines which are designed to integrate the expertise of the various disciplines among its professional staff with respect to assessment, management and treatment of pain among its patients or residents, as appropriate, in the most effective manner practicable.

8. The Commissioner of Health and Senior Services should adopt regulations to require that these health care facilities incorporate language as prescribed by the commissioner to provide for the monitoring of pain in their formal discharge protocols.

The commission recognizes that organizational barriers can impede effective pain management. Many health care facility administrators, for example, may not be sufficiently knowledgeable about pain management or understand the interrelationship of its physical, psychological, emotional, social and familial aspects. Treating these various aspects effectively may require the expertise of various disciplines, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, physical therapy and pharmacy. The establishment of interdisciplinary pain management policy committees in health care facilities throughout this State would address the need to integrate these disciplines in the assessment, management and treatment of pain in inpatient settings.

9. Legislation should be enacted into law to amend the "bill of rights" for acute care hospital patients and nursing home residents set forth in N.J.S.A.26:2H-12.8 and N.J.S.A.30:13-5, respectively, and the Commissioner of Health and Senior Services should revise the "bill of rights" for rehabilitation hospital patients set forth at N.J.A.C.8:43H-17.2, to provide that every person admitted to an acute care hospital, nursing home or rehabilitation hospital shall have 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.

The commission believes that the right of an acute care or rehabilitation hospital patient or a nursing home resident to expect and receive appropriate assessment, management and treatment of pain should be equal to any of the other rights granted to these persons under current statutes or administrative regulations. The adoption of this recommendation would go a long way towards assuring that New Jerseyans are able to receive appropriate assessment, management and treatment of pain, in particular those with terminal conditions who may require the use of aggressive pain management.

The commission has noted the pilot project undertaken by the Office of the Ombudsman for the Institutionalized Elderly in the Department of Health and Senior Services, with the assistance of a grant from the Healthcare Foundation of

New Jersey, to improve the quality of comfort care and pain management in long-term care facilities by training staff members in the use of palliative care principles and tools. According to the announcement of this pilot project, the training provided "will emphasize the clinical, psychosocial and spiritual issues and tools related to palliative care and pain management." The pilot project, which was announced on January 6, 1999, will train four-member palliative care teams in each of the 10 nursing homes selected to participate (which are in Essex, Morris, Sussex, Union and Warren counties), and is scheduled to be completed by the end of 1999. The commission believes that this kind of initiative represents a positive and welcome step in the direction of reducing organizational barriers to effective pain management in health care facility settings throughout New Jersey.

PAIN MONITORING

10. The State Board of Medical Examiners and the New Jersey Board of Nursing, as applicable, should adopt regulations to require that physicians, physician assistants and nurses regularly assess patient pain and record levels of pain intensity on patient charts as part of routine practice.

11. Health care providers and facilities should monitor pain as a "fifth vital sign" (in addition to temperature, blood pressure, pulse and respiration) and utilize a mechanism for asking patients to rate their degree of pain for a particular period of time. The Commissioner of Health and Senior Services should adopt regulations to provide for implementation of this requirement in all licensed health care facilities.

These recommendations are intended to promote greater awareness of pain as a patient concern among physicians, physician assistants and nurses and facilitate communication between them and their patients about levels of pain intensity, which will in turn help patients to learn the skills necessary to communicate with these health care professionals about their pain.

It should be noted that, according to a reported interview with Kenneth Kizer, M.D., M.P.H., Under Secretary for Health in the U.S. Department of Veterans Affairs in January 1999, the Veterans Health Administration has initiated a program to improve pain treatment at its 1,100 health care delivery sites which will require health care providers to monitor pain as a "fifth vital sign" among the 3.4 million patients in that health care delivery system.

ACCESS TO PAIN MEDICATIONS

12. Prescribers and pharmacists should seek to jointly develop improved methods for verifying the validity of prescriptions for pain medications and improving access to pain medications for patients in this State. The appropriate professional licensing boards should work cooperatively to develop recommendations for this purpose.

The testimony presented to the commission reinforced the importance of communication between prescribers and pharmacists, and the need for both to work as a team in order to ensure the timely and effective treatment of patients who are seriously in pain and to weed out any person who is abusing medications.

13. The New Jersey Board of Pharmacy should be required to maintain a current listing of all pharmacies operating in the State which are open 24 hours a day and to make this list available to the public.

The commission believes that this requirement would facilitate access to pain medication for patients who are in severe pain and have an immediate need for that medication but have been unable for whatever reason to get to their pharmacy during its hours of operation.

14. Legislation should be enacted into law to permit nurse practitioners/clinical nurse specialists and physician assistants to order and prescribe controlled substances to patients in end-of-life situations or with terminal conditions while operating under physician supervision and subject to federal and State statutes and regulations governing the issuance of such orders and prescriptions.

The commission believes that the extension of this kind of prescriptive authority for controlled substances to nurse practitioners/clinical nurse specialists and physician assistants, operating under physician supervision and subject to applicable federal and State laws, would provide greater access to appropriate pain management for terminally ill patients in New Jersey without having any negative impact on the quality of patient care. It should be noted that, according to a report on this issue to the Governor and Legislature in Florida by a multidisciplinary task force as mandated by statute, nurse practitioners/clinical nurse specialists currently have prescriptive authority for controlled substances in Schedules II-IV in 19 states (including New York) and the District of Columbia,

without any reported problems to date.

REDUCING INSURANCE BARRIERS

In an article entitled "Are Health Care Reimbursement Policies a Barrier to Acute and Cancer Pain Management?" (Journal of Pain and Symptom Management, 9 (1994)), David E. Joranson of the Pain and Policy Studies Group noted that "lack of coverage and uneven reimbursement policies for health care including prescription drugs, medical equipment and professional services inhibit access to acute and cancer pain management for millions of citizens, in particular the poor, elderly and minorities."

15. The Department of Health and Senior Services, in consultation with the Department of Banking and Insurance and other State agencies as appropriate, should sponsor a pain management conference for health insurance carriers, employers, business organizations and organized labor, to consider and assess ways to reduce barriers to coverage of, and payment for, appropriate assessment, management and treatment of pain under health care benefits plans.

The convening of such a conference should be the start of a continuing effort by the Department of Health and Senior Services to work with other State agencies, employers, employees, labor unions and health insurers to reduce barriers to coverage of, and payment for, appropriate assessment, management and treatment of pain under health care benefits plans.

The testimony presented to the commission suggests that inadequate reimbursement by health care payers is a significant barrier to patient access to adequate pain management and treatment. In too many cases, the most appropriate form of treatment may not be reimbursed by a patient's health insurance carrier and may be too costly for the patient or the patient's family to afford on an out-of-pocket basis.

As Richard V. Sinding, Executive Director of New Jersey HealthDecisions, The Citizens' Committee on Biomedical Ethics, observed in a column in The Star-Ledger (July 12, 1997) with specific reference to patients who have life-threatening illnesses:

While most health insurance plans offer comprehensive coverage for the high-

cost, high-tech treatment of disease, few provide full reimbursement for low-cost, high-touch palliative care. Thus, there is a strong financial incentive to treat the disease, even if such treatment is futile, but no incentive to relieve the agonizing symptoms.

RESEARCH

16. Legislation should be enacted into law to amend the "Cancer Research Act," N.J.S.A.52:9U-1 et seq., to require that the New Jersey State Commission on Cancer Research take steps necessary to encourage the development within the State of research projects on pain management and palliative care for cancer patients.

According to the Clinical Practice Guideline for the Management of Cancer Pain issued by the Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services (Number 9, March 1994):

Cancer is increasingly prevalent in the United States, and the pain associated with it is frequently undertreated. . . . Patients with cancer often have multiple pain problems, but in most patients, the pain can be effectively controlled. Nevertheless, undertreatment is common because of a lack of knowledge by clinicians about effective assessment and management, negative attitudes of patients and clinicians toward the use of drugs for pain relief, and a variety of problems related to drug regulations, and the cost of and reimbursement for effective pain management.

For those cases in which the present state of medical knowledge is inadequate to successfully manage patients' pain, the search for effective pain management therapies involves intensive scientific research into the relationship between human physiology and the effects of medication. Shannon Brownlee and Joannie M. Schrof, in an article entitled "The Quality of Mercy" in U.S. News & World Report (March 17, 1997), note that "pain specialists look forward to the day when there will be new and better pain-fighting drugs that allow them to rely less heavily on narcotics. To find such drugs, researchers have been delving into basic science, teasing apart the complex biology that underlies pain sensation."

The financial support of pain-related research requires a greater level of commitment than has been apparent to date. According to Wen-hsien Wu, M.D.,

M.S., Director of the Pain Management Center at the New Jersey Medical School, in his written testimony to the commission: "In general, funding in pain medicine either in scientific projects or in alternative methods for pain management are [*sic*] relatively low as compared to the other scientific disciplines."

The commission feels that efforts to extend the knowledge base upon which pain management policy is constructed will further the cause of creating a more informed public, both as to health care providers and patients, and enhance the salience of effective pain management and interdisciplinary palliative care as components of public health policy.

ALTERNATIVE AND COMPLEMENTARY THERAPIES

As a general principle, the commission endorses the use of multidisciplinary approaches to the assessment, management and treatment of pain, and believes that these should include the use of alternative and complementary therapies as appropriate to the patient's condition and needs.

17. The Commissioner of Health and Senior Services should establish a mechanism to evaluate the potential utility of various alternative and complementary forms of pain management therapy, including, but not limited to, transcutaneous electrical nerve stimulation (TENS) and biofeedback, and report to the Senate and General Assembly Health Committees on the findings and recommendations of that evaluation no later than 12 months after the issuance of the report of this study commission.

The commission received limited testimony on alternative and complementary pain management therapies but believes that they deserve more extensive evaluation and consideration by State policymakers. For example, there have been research findings which indicate that TENS therapy has been used successfully in the treatment of pain and spasticity and may have significant potential to induce beneficial changes in patients in terms of reducing pain and depression.

In this context, the commission views favorably the recent enactment of P.L.1999, c.19 (Assembly Bill No. 843 (2R) of 1998, sponsored by Assemblymen Impreveduto and Kelly and co-sponsored by Senators Sinagra and Lynch, which was signed by the Governor on February 8, 1999). Designated the "Massage, Bodywork and Somatic Therapist Certification Act," this new law

provides for the certification of massage, bodywork and somatic therapists and establishes a Massage, Bodywork and Somatic Therapy Examining Committee under the New Jersey Board of Nursing. The testimony presented to the commission argued persuasively that massage therapists should be authorized by statute to practice in this State as they are in at least 25 states and the District of Columbia.

PAIN MANAGEMENT IN TERMINALLY ILL PATIENTS

The importance of pain management for terminally ill patients has been enhanced by the emergence of euthanasia as an issue of national prominence, including the specific issue of physician-assisted suicide which was argued before the U.S. Supreme Court in 1997 (*Vacco, Attorney General of New York, et al. vs. Quill et al.*, No. 95-1858 and *Washington et al. vs. Glucksberg et al.*, No. 96-110). Dianne L. Rosen, Esq., a former secretary of the Elder Law Section of the New Jersey State Bar Association, writing in New Jersey Lawyer, the Magazine (No. 190, March/April 1998), notes that "a patient who chooses euthanasia may be sacrificing far more time than he or she thinks, and underestimating the quality of life he or she would experience if his or her pain and other symptoms were aggressively managed."

The commission believes that, in many cases, earlier referrals of patients with terminal conditions to hospice care programs licensed pursuant to N.J.S.A.26:2H-79 et seq. could serve to improve their pain management and thereby enhance their quality of life and death, by providing quality palliative care while also meeting the counseling and spiritual needs of patients and their families. In his written testimony to the commission, Donald L. Pendley, President of the New Jersey Hospice and Palliative Care Organization, noted that:

Pain management is an important issue for hospice. Relief of pain and management of symptoms comes first in the hospice plan of care, for only by alleviating pain can we begin to work with patients and families on the counseling and spiritual issues that make hospice and palliative care so valuable.

At the same time, the commission feels that standards governing end-of-life care in licensed health care facilities should reflect a priority concern for providing aggressive and effective pain management.

18. Hospitals and long-term care facilities in this State should adopt pain management standards for patients with terminal conditions which are designed to meet the special needs of those patients and reflect the state of knowledge on pain management, as recommended by nationally recognized professional specialty academies and organizations, and which may include acute pain management guidelines published by the Agency for Health Care Policy and Research of the U.S. Department of Health and Human Services.

Patients who are near the end of life have unique needs for respectful and responsive care, and concern for their comfort and dignity should guide all aspects of their care so as to alleviate both the physical and mental suffering of these patients. At a minimum, end-of-life care should encompass dignified and respectful treatment of the patient at all times and aggressive pain management as appropriate to the patient's needs.

In his best-selling book, How We Die: Reflections on Life's Final Chapter (Vintage Books, 1993), Sherwin B. Nuland writes:

Life is dappled with periods of pain, and for some of us is suffused with it. In the course of ordinary living, the pain is mitigated by periods of peace and times of joy. In dying, however, there is only the affliction. Its brief respites and ebbs are known always to be fleeting and soon succeeded by a recurrence of the travail. The peace, and sometimes the joy, that may come occurs with the release. In this sense, there is often a serenity--sometimes even a dignity--in the act of death, but rarely in the process of dying.

In recognition of the pain and distress which often characterize the dying process, the public policy of this State should support a compassionate and humane approach to caring for patients who are terminally ill which seeks to mitigate their physical pain and mental anguish and preserve as much of their peace and dignity as possible. We are all stakeholders in the public interest to be served by the advancement of a kinder and gentler approach to caring for patients as they approach the end of life because we will all take that journey.

FURTHER STUDY OF PAIN MANAGEMENT POLICY

19. There should be established an Advisory Council on Pain Management Policy as a follow-up entity to this commission.

The work of this commission is not finished, even though its legislative authorization to operate expired upon the issuance of this report. The importance of pain management as a public health policy issue and the severe limitations on time and resources faced by this commission argue for a continuing and enhanced effort to study issues relating to pain management and treatment, to monitor the implementation of the recommendations presented in this report, and to develop further policy recommendations over time.

It is recommended that this commission be reconstituted (by administrative action, or failing that by legislation) with its current membership, to serve for a two-year period. The commission could be re-established as a Governor's advisory council or as an advisory council within the Department of Health and Senior Services, in either case with a representative from the department as an additional member, in order to permit this group to utilize the staff, resources and expertise of the department as necessary to perform its duties. This advisory council could also provide advice and recommendations to the department and other State regulatory agencies with respect to pain management policy.

CONCLUSION

Pain is one of the most common reasons for patients to see a health care provider; however, it is often undertreated, which can result in unnecessary physical and emotional suffering for patients, as well as the despair which this

causes their families, loved ones, relatives and friends. The members of this commission echo the opinion expressed by Donald L. Pendley, President of the New Jersey Hospice and Palliative Care Organization, in the written testimony which he presented to the commission: "Stated briefly, we believe pain management and interdisciplinary palliative care are the right of every patient at every stage in their disease process."

The members of this commission believe that there is reason for hope as we look to the future of pain management. This spirit of optimism is reflected in the view expressed by Shannon Brownlee and Joannie M. Schrof, in their article "The Quality of Mercy" in U.S. News & World Report (March 17, 1997), that severe pain could eventually become "a thing of the past, even at the end of life" when some patients in extreme pain may be tempted to contemplate a resort to euthanasia. The advent of new drugs, changes in the practices of health care professionals and health care facilities, and increasing numbers of pain management specialists may help to change the state of pain management policy; but, according to Brownlee and Schrof, "what will finally persuade doctors and hospitals to alleviate unnecessary suffering is the realization by patients that they don't have to live with pain, and that dying is not the only solution."

It is time to forge an effective and creative strategy with the ultimate objective of ensuring that every citizen of this State who is in acute or chronic pain, including persons with terminal conditions, has access to compassionate and appropriate assessment, management and treatment of pain. To be successful, this strategy must emphasize both the rights and responsibilities of health care consumers with respect to pain management, and the need for a partnership among consumers, health care professionals, regulatory agencies and health insurers to create an environment in which appropriate pain management is made available to all who need it. The members of this commission hope that their efforts and this report will help to move New Jersey in that direction.

APPENDIX

**Text of
ASSEMBLY CONCURRENT RESOLUTION No. 72 (1R)
of 1996
(sponsored by Assemblywomen Vandervalk and Wright)**

A CONCURRENT RESOLUTION creating the New Jersey Legislative Commission for the Study of Pain Management Policy to study laws relating to acute and chronic pain management.

WHEREAS, The most common reason for seeking primary medical care is acute pain, with 80 percent of the millions of injuries suffered annually in the United States involving acute pain; and

WHEREAS, The Agency for Health Care Policy and Research within the United States Department of Health and Human Services has recognized the inadequacy of traditional pain management therapies for acute pain following surgery and trauma and for cancer pain; and

WHEREAS, An estimated 25 percent of all cancer patients are dying without relief from severe pain, and an estimated 60 to 70 percent of terminally ill patients are not adequately relieved for moderate to severe pain by traditional pain management therapies; and

WHEREAS, Unrelieved pain impairs the immune system, raises the likelihood of pneumonia and increased cardiac output and heart rates, and can cause psychological side-effects, such as depression; and

WHEREAS, Traditional attitudes about patients' pain concerns must be dispelled, because unrelieved pain contributes to patient discomfort, longer recovery periods, and greater use of scarce health care resources; and

WHEREAS, It is important to confirm and clarify the authority of physicians to prescribe extraordinary doses of pain-relieving agents in cases of intractable pain; and

WHEREAS, State law and policy can play a role in facilitating effective pain management, thereby serving the medical needs of New Jersey's citizens in the safest and most efficient manner; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey (the Senate concurring):

1. There is established the "New Jersey Legislative Commission for the Study of Pain Management Policy." The purpose of this commission is to study the laws and practices of this State relating to acute and chronic pain management by health care providers. The commission shall study and prepare a report on the following issues: (a) acute and chronic pain management treatment practices by health care providers in New Jersey; (b) State and federal statutes and regulations relating to pain management therapies, including, but not limited to, drug dispensing practices, use of opioids and nonsteroidal anti-inflammatory drugs (NSAIDs), and the sanction and use of "alternative" therapies such as biofeedback, transcutaneous electrical nerve stimulation (TENS) and massage; (c) acute and chronic pain management education provided by the State's medical schools; (d) the acute and chronic pain management needs of both adults and children; and (e) such other issues relating to pain management as the commission deems appropriate.

2. The commission shall consist of 14 members as follows: two members of the Senate to be appointed by the President of the Senate and who shall each be of different political parties; two members of the General Assembly to be appointed by the Speaker of the General Assembly and who shall each be of different political parties; and ten public members, who are residents of the State of New Jersey: one anesthesiologist, one oncologist, one patient advocate, one member of the faculty of the University of Medicine and Dentistry of New Jersey who shall be a physician with experience in pain management, and one registered professional nurse, to be appointed by the President of the Senate; and one physician specializing in physical medicine, one pharmacist, one primary care physician with experience in pain management, one physician specializing in pain management, and one attorney with expertise in health care law, to be appointed by the Speaker of the General Assembly. All public members who are medical professionals shall be duly licensed to practice in this State. At least one of the public members shall be a current member of the "American Cancer Society Pain Initiative." Vacancies in the membership of the commission shall be filled in the same manner provided for the original appointments.

3. a. The commission shall organize as soon as practicable following the appointment of its members and shall select a chairperson and vice-chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the commission.

b. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. The Office of Legislative Services shall provide staff support for the preparation of the commission's report.

4. The commission may meet and hold hearings at such places as it shall designate during the sessions or recesses of the Legislature.

5. Within 10 months from the date of the organization of the commission, the commission shall submit its findings and recommendations in the form of a report to the Governor, the Senate and the General Assembly.

6. The commission shall expire upon the issuance of its report.