

PAIN info



NEWS FROM THE FLORIDA ACADEMY OF PAIN MEDICINE ♦ VOL III, NO. 1 ♦ FALL, 2009

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President's Message ***By Raul A. Monzon, M.D.***

PRESIDENT'S MESSAGE

By Raul A. Monzon, M.D.

The FAPM Board of Directors wants you to know that FAPM is actively advocating for the best interests of its members.

As 2009 is coming to a close, and we look toward 2010, we see that the profession of pain medicine is at risk. We face continued cuts in reimbursement and excessive rules and regulations with which we are forced to comply. If our profession is at risk, so is patient access to legitimate pain care.

One of the most important issues we face today is implementation of Florida's Prescription Drug Monitoring Legislation, signed by the Governor this past summer, also referred to as Senate Bill 462. A Joint Committee of the Florida Board of Medicine (BOM) and the Florida Board of Osteopathic Medicine (BOOM) has been set up and is tasked with developing the rules and regulations to carry out this new law. The law was passed to decrease drug diversion and deaths. Toward this end, in an effort to shut down the "pill mills," the legislation also calls for definition and regulation of pain clinics. The FAPM totally supports the PDMP aspect of this legislation, cognizant of the fact that 11 Floridians die daily from prescription drug abuse, but FAPM also has concerns about rules and regulations being developed to define pain clinics and implement their regulation.

The Joint BOM/BOOM Committee meets for the third time on November 21, 2009. FAPM Board Members Drs Edward Dieguez Jr, Albert Ray, Felix Linetsky, and I attended the Committee's first meeting where Dr Ray and I gave testimony. Here we learned that the Office Surgery Rules would be proposed as the template for the regulation of pain clinics.

The FAPM Board of Directors has been working diligently to understand the issues at hand within the bill and measures that can be taken to prevent the punishment and even closure of legitimate pain management practices. Unofficial legal opinions were sought to assist the Board in its understanding of the bill and the process within which we are working. All interested parties' written submissions are to be placed on a CD and distributed to all members of the Joint Committee for their meeting on November 21, 2009. A statement of concerns was submitted by the FAPM Board to the Joint Committee for inclusion in the materials for the meeting taking place November 21, 2009 in Orlando. Following is what the FAPM Board learned in preparation for the November meeting:

There are three parts to the law, each giving us questions and concerns:

The actual PDMP part which is the first part of this law:

1. Will this be required for all your patients, or will you be able to access the system on a patient by patient basis? What is the implementation date?
2. Who doesn't have to comply?

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3. If you are a dispensing physician, you need a reporting format that works for you.
4. How is the data going to be made available? Who is going to get it?
5. There is some good language in the bill: information into the PDMP is not discoverable or admissible in any civil or administration action, except in investigation (i.e., law enforcement).....
6. Some bad language: failure to access the database could be used in a malpractice case against you. Better language would be: failure to access the database is not discoverable or admissible in any civil or administration action, except in investigation (i.e., law enforcement).....
7. The Office of Drug Control is going to be a direct supporting organization for implementing this legislation. (<http://www.flgov.com/drugcontrol/index.html> for Governor's Office of Drug Control and http://www.flgov.com/drugcontrol/odc_director.html for introduction to the Director of the Office of Drug Control) What is it going to do? Can FAPM try to get a representation on the Board of this supporting organization?
8. There will be a Program Implementation and Oversight Task Force. The Governor is to appoint 12 people, 2 of whom are Florida-licensed, fellowship-trained pain physicians. Can FAPM try to get representation on this Task Force?
9. Scope of exceptions are of concern.

The second part of the law deals with the inspection of pain clinics:

1. The Department of Health is to inspect pain clinics annually unless the clinic is accredited by a national agency approved by the Board of Medicine. Will the inspections be announced or unannounced? Specifically, what national organizations does the BOM approve? At the previous meeting, the American Academy of Pain Management was "pushed away." It may be the American Academy of Pain Medicine has an avenue that they might like to pursue, to compete with existing bodies, such as CARF which charge \$5,000 – 6,000 to credential pain clinics.
2. "if the majority of patients are dispensed controlled substance." That means more than 50%. This is an example where a legitimate practitioner being unduly burdened by the State. Will pain physicians have to develop strategies to keep themselves out of the State's annual inspection routine? For example, control your patient population so that less than half get narcotic analgesics.
3. The financial requirements of compliance with this law.

The third part of the law, standards of pain medicine practice:

There are 9 criteria listed that must be checked annually. However, the law reads "but need not be limited to"....these 9 subjects. This is problematic because of the potential for the State telling physicians how to practice medicine. This could potentially have a malpractice case for noncompliance. It was suggested to keep this list limited to the 9 criteria. It was suggested that the FAPM advocate for the rules and regulations to be written in a way in which it is easy to comply. FAPM should request that these criteria not be strictly written, with onerous quality assurance requirements and excessive patient records requirements, which result in administrative overload and expense for physicians.

[For more details including Page/Line citings, and highlighting concerns and comments noted above, Click Here](#)

Here is the FAPM written submission to the Joint Committee:

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To: Florida Board of Medicine
Florida Board of Osteopathic Medicine

Regarding: Implementation of SB 462

Date: October 23, 2009

The following comments on implementation of SB 462 by the Florida Board of Medicine and the Florida Board of Osteopathic Medicine (collectively, "the Boards") are respectfully submitted by the Florida Academy of Pain Medicine ("FAPM"), a non-profit association of physicians who practice the specialty of pain medicine. Members of the Academy are committed to providing quality care to Florida residents suffering from chronic pain – and doing so in a cost-conscious manner. We share the goal of the legislature in enacting SB 462 to avoid inappropriate diversion of controlled substances and to close down the so-called "pill mills." Our comments are designed to ensure that the rules implementing SB 462 will not limit access to pain care for patients who need such care and will not unduly interfere with the ability of legitimate pain physicians to provide such care to patients.

We offer four principal comments:

1. Inspections of registered pain clinics should be on a scheduled basis so that they will not disrupt patient care. If inspections are unannounced, they will interfere with the care of patients who are being treated during the inspection. Moreover, there is no real advantage to the State in having unannounced inspections.
2. Fees for registration and inspection should be kept as low as possible. If such fees are significant, they will have to be passed on to patients – thereby increasing the cost of pain care in this State. To the extent that they cannot be passed on, they may well result in the closure of offices that currently are barely surviving economically. Closure will of course reduce the access of patients to care by qualified specialists in pain medicine.
3. Alternatives to state inspection should be encouraged. The Academy would like to know what nationally-recognized accrediting agencies have been approved by the Board of Medicine and the Board of Osteopathic Medicine. We would also ask that clear rules for being approved be established. Moreover, we would also like to suggest that certification of the medical director of a clinic by the American Board of Pain Medicine be accepted in lieu of state inspection or accreditation by a nationally-recognized accrediting agency. Such certification indicates that the physician has met the educational, training, and ethical standards of a certifying Board recognized by the Department of Health and is committed to maintenance of certification.
4. The rules to be adopted by the Boards setting forth standards of practice should be limited to the nine specific areas enumerated in the legislation. They should not extend to matters involving the exercise of medical judgment. Moreover, they should not be unduly onerous. For if they are, they will add significant costs to the delivery of pain care to Floridians and could well result in reduced access to such care as a result of the closure of offices. The standards of practice for pain clinics should reflect the specific issues associated with such clinics and should not be based on rules for other clinics such as surgery centers. The FAPM would very much like to work with the Boards in the development of standards of practice required by the legislation to help assure that they protect patients without imposing undue costs or unduly burdensome requirements.

In conclusion, the FAPM would like to work with the Boards and any other state agencies, task forces, or committees to develop rules for the implementation of SB 462 in the best interests of patients. Our members are committed to providing quality pain care to patients, and we have the expertise needed to help ensure that the rules ensure prudent practice in the area of pain medicine. By working together, we can help thwart abuse and

interests of patients. Our members are committed to providing quality pain care to patients, and we have the expertise needed to help ensure that the rules ensure prudent practice in the area of pain medicine. By working together, we can help thwart abuse and diversion, inappropriate opioid prescribing, and other improper practices – without reducing the access of patients to quality pain care.

We very much appreciate this opportunity to provide input. A representative of FAPM will be present at the hearing on November 21 to answer any questions that the Boards might have and to offer any additional input that might be sought. In the meantime, please feel free to contact Marla Golden, D.O. at 904-349-8779 or marlagolden@integrativepain.com, if there are any questions about these comments. Thanks again.

Respectfully submitted,

Florida Academy of Pain Medicine Board of Directors

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Drs Monzon, Linetsky, Dieguez, and Golden, as well as Past President Sanford Pollok, plan to attend the November 21 meeting of the Joint Committee. Some testimony will be allowed. A point not made in our written submission to the State, which may be made at the November 21 meeting is the fact that board certification is not a guarantee of ethics.

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FAPM NEWSLETTER

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