

MARYLAND

Citations for Policies Evaluated

STATUTES

- CONTROLLED SUBSTANCES ACT
Criminal Law; Title 5. Controlled Dangerous Substances, Prescriptions, and Other Substances
- MEDICAL PRACTICE ACT (*No provisions found*)
Health Occupations; Title 14. Physicians
- PHARMACY PRACTICE ACT (*No provisions found*)
Health Occupations; Title 12. Pharmacists and Pharmacies
- INTRACTABLE PAIN TREATMENT ACT
No policy found

REGULATIONS

- CONTROLLED SUBSTANCES REGULATIONS
Title 10. Department of Health and Mental Hygiene;
Subtitle 13. Drugs; Chapter 01. Dispensing of Prescription Drugs by a Licensee
Subtitle 19. Dangerous Devices and Substances; Chapter 03. Controlled Dangerous Substances
- MEDICAL BOARD REGULATIONS (*No provisions found*)
Title 10. Department of Health and Mental Hygiene; Subtitle 32. Board of Physicians
- PHARMACY BOARD REGULATIONS (*No provisions found*)
Title 10. Department of Health and Mental Hygiene; Subtitle 34. Board of Pharmacy

OTHER GOVERNMENTAL POLICIES

- MEDICAL BOARD GUIDELINE
Maryland Board of Physicians. *Prescribing Controlled Substances*. Maryland BPOA Newsletter. Vol. 4, No. 1, pp. 1-3. Adopted: March, 1996.

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

- ASSISTED SUICIDE
Criminal Law; Title 3. Other Crimes Against the Person; Subtitle 1. Assisted Suicide
- RIGHTS OF INDIVIDUALS
Health-General; Title 19. Health Care Facilities; Subtitle 3. Hospitals and Related Institutions; Part IV. Rights of Individuals
- HOSPICE CARE PROGRAMS
Title 10. Department of Health and Mental Hygiene; Subtitle 07. Hospitals; Chapter 21. Hospice Care Programs



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

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

Provisions that may *IMPEDE* pain management

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

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STATUTES

Controlled Substances Act

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

Md. CRIMINAL LAW Code Ann. § 5-101

§ 5-101. Definitions

(a) In general. -- In this title the following words have the meanings indicated.

(d) Authorized provider. --

(1) "Authorized provider" means:

(i) a person licensed, registered, or otherwise allowed to administer, distribute, dispense, or conduct research on a controlled dangerous substance in the State in the course of professional practice or research;

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

(n) Drug dependent person. -- "Drug dependent person" means a person who:

(1) is using a controlled dangerous substance; and

(2) is in a state of psychological or physical dependence, or both, that:

(i) arises from administration of that controlled dangerous substance on a continuous basis; and

(ii) is characterized by behavioral and other responses that include a strong compulsion to take the substance on a continuous basis in order to experience its psychological effects or to avoid the discomfort of its absence.

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

Md. CRIMINAL LAW Code Ann. § 5-102

§ 5-102. Legislative findings and purpose of title

(a) Findings. -- The General Assembly finds that:

(1) many of the substances listed in this title have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the people of the State; but

(2) the illegal manufacture, distribution, possession, and administration of controlled dangerous substances have a substantial and detrimental effect on the health and general welfare of the people of the State.

(b) Purpose. --

(1) The purpose of this title is to establish a uniform law to control the manufacture, distribution, possession, and administration of controlled dangerous substances and related paraphernalia to:

(i) ensure their availability for legitimate medical and scientific purposes; but

(ii) prevent their abuse, which results in a serious health problem to the individual and represents a serious danger to the welfare of the people of the State.

(2) This title shall be liberally construed to accomplish this purpose.

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

CATEGORY C:
Regulatory or policy issues

COMMENT: Represents the principle of Balance, which states that the regulation of controlled substances should not interfere with legitimate medical use.

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

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

REGULATIONS

Controlled Substances Regulations

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

COMAR 10.19.03.02

.02 Definitions.

A. As used in this chapter, unless otherwise provided, those definitions appearing in *Criminal Law Article, § 5-101*, Annotated Code of Maryland, shall apply.

B. In this chapter, the following terms have the meanings indicated.

C. Terms Defined.

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(7) Individual Practitioner.

(a) "Individual practitioner" means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted by the United States or the jurisdiction in which the individual practitioner practices, to dispense a controlled dangerous substance in the course of professional practice.

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COMAR 10.19.03.07

.07 Prescriptions.

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F. Administering or Dispensing of Narcotic Drugs (*21 CFR § 1306.07*).

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(3) A physician or authorized hospital staff may administer or dispense narcotic drugs:

(a) In a hospital to maintain or detoxify an individual as an incidental adjunct to medical or surgical treatment of conditions other than addiction; or

(b) To an individual with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

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



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

CATEGORY B:
Unclear intent leading to possible misinterpretation

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



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

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

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

PRESCRIBING CONTROLLED SUBSTANCES

In a recent AMA survey of physicians, the majority of physicians responding reported that their prescribing of controlled drugs was negatively influenced by a fear of licensing board sanctions. The issue of prescribing adequate pain medication for the terminally ill, generally patients with cancer, has received extensive attention. But what about patients with chronic noncancer pain? Little has been done to alleviate physician anxiety that regularly prescribing controlled drugs to such patients will result in the physician being accused of diverting drugs illegally or supporting addictive patients in their habits. How can a physician both meet their patients' needs and avoid coming to the attention of the licensing authorities?

BPOA, by statute, has a minimum of eleven Board members who are actively practicing physicians. We see these patients in our offices, too, and we recognize that there are many painful conditions which cannot be cured and that diagnoses may be totally based on subjective symptoms. As physicians, our role is to relieve suffering; we may have no hard evidence that "proves" the patient is in pain, yet we believe our patients and we try to help them. All the members of BPOA wish to reassure Maryland physicians that they need not under-prescribe needed medications for fear of Board action. Under-prescribing results in unnecessary suffering.

But what about all those Board actions you've read about in which the doctors are sanctioned for "inappropriate" controlled dangerous substance prescribing practices? Were these physicians just trying to alleviate suffering with the end result that the Board sanctioned them? Hardly. Most of the physicians charged under this provision of the Medical Practice Act were clearly acting in other than the best interest of their patients. Usually, obvious addicts were buying prescriptions from the physicians and the transactions were disguised as office visits. Occasionally, truly naive physicians, once they have been targeted as "easy writes," attract every addict in town. All of us in practice occasionally have been duped by a patient in this way. But some physicians simply don't recognize addiction. Usually, in addition to inappropriate prescribing, we find that the physician's practice is substandard in multiple other areas. It is rare that an otherwise well-trained and competent physician is identified as a naive prescriber.

Because the Board is concerned that fear of disciplinary action may lead to inappropriately restrictive prescribing of controlled drugs, the following guidelines are offered by Dr. Charles Hobelmann Jr., who has served on the Board since 1991. Although the primary focus of his remarks is analgesic prescribing, these guidelines can be applied to every prescribing and treatment situation. It's just good medical practice spelled out, and it's how the Board evaluates the delivery of all medical care, not just controlled drug prescribing. His comments follow.

In order to help the physicians whose patients may require long-term analgesic medications, a common sense approach coupled with experience and medical knowledge is essential. It is important to realize that habituation and tolerance to drugs are not the same as addiction. These are expected consequences of long-term analgesic therapy and do not have the characteristics of sociopathy and psychological dependence associated with addiction. Whereas it is inappropriate to prescribe analgesics to maintain addiction, it is good medical care to provide relief from chronic pain even in the face of habituation and tolerance. Some general guidelines may be helpful both in the management of these patients and in protecting one's self from legal or Board action in prescribing for them. The following comments have been adapted from published material of the Medical Board of California and provide a useful guide in this area.

(CONTINUED ON NEXT PAGE)

(+) CRITERION 5:
Addresses fear of
regulatory scrutiny

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

COMMENT: However, it is preferable to substitute "physical dependence" for the archaic term "habituation."

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

OTHER GOVERNMENTAL POLICY

Medical Board Guideline

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

(CONTINUED)

History and Physical Generally speaking, it is improper to prescribe any medication for any patient without first taking the steps essential to evaluation. This is particularly true of the chronic pain patients because other treatment modalities may be beneficial and because it is important to recognize the addict who may complain of pain as a means to maintain a habit. Prescribing narcotics without a documented evaluation always represents substandard care.

Treatment Plan Just as treatment for diabetes or hypertension has a specific objective, so should treatment for chronic pain. frequently, the pain cannot be completely relieved but the use of analgesic drugs may lead to an improved sense of well-being, better sleep or even a return to work. The goal of analgesic therapy should be documented and the patient's progress measured against this goal.

Informed Consent Since long-term narcotic use will usually result in habituation and tolerance, these risks should be discussed with the patient. Alternatives should be offered if they exist and the clinical record should refer to the discussion.

Periodic Review The course of treatment and the meeting of therapeutic goals should be periodically reviewed as is the case with any patient suffering from chronic disease. Modification of treatment or its discontinuation should be considered depending upon how well goals are being met. New information about the etiology of the pain or its treatment should be evaluated.

Consultation The complexity of chronic pain frequently requires evaluation by consultants who may suggest alternatives or additions to therapy. This may be particularly true in the patient who is at risk for drug misuse. The patient with a history of substance abuse requires special care in documentation, evaluation and consultation before long-term opiate treatment can be safely prescribed. Some pain management specialists recommend a written agreement with these and other patients before such therapy.

Records Adequate documentation is the key to management of these difficult patients and is the key to protecting the physician from legal or Board action. Documentation of the steps noted above should be recorded in a fashion that would allow another practitioner to understand and follow through with treatment.

Finally, the physician who uses scheduled drugs should be familiar with federal and local laws regulating their use. The U.S. Drug Enforcement Administration publishes a physicians' manual and Maryland laws are available through the Board. The Board hopes that physicians will use these guidelines to help them manage patients with chronic pain without fear of regulatory scrutiny. At the same time, the Board maintains its commitment to prevent the diversion and abuse of controlled substances.

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

CATEGORY A:
Issues related to healthcare professionals

COMMENT: Recognizes that the goal of pain treatment should include improvements in patient functioning and quality of life.

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

STATUTES

Assisted Suicide

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

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

CATEGORY A:
Issues related to healthcare professionals

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

Md. CRIMINAL LAW Code Ann. § 3-101

§ 3-103. Exceptions

(a) Palliative care -- Pain relief. -- A licensed health care professional does not violate § 3-102 of this subtitle by administering or prescribing a procedure or administering, prescribing, or dispensing a medication to relieve pain, even if the medication or procedure may hasten death or increase the risk of death, unless the licensed health care professional knowingly administers or prescribes the procedure or administers, prescribes, or dispenses the medication to cause death.

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STATUTES

Rights of Individuals

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

Md. HEALTH-GENERAL Code Ann. § 19-342

§ 19-342. Hospitals

(a) Patient's bill of rights. -- Each administrator of a hospital is responsible for making available to each patient in the hospital a copy of the patient's bill of rights that the hospital adopts under the Joint Commission on Accreditation of Hospitals' guidelines.

(b) Same -- Statement. -- The patient's bill of rights shall include a statement that a patient has a right to expect and receive appropriate assessment, management, and treatment of pain as an integral component of the patient's care.

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

CATEGORY C:
Regulatory or policy issues

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

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

REGULATIONS

Hospice Care Programs

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

COMAR 10.07.21.13

.13 Physician Services.

A. Medical Director. The hospice care program shall have a medical director who shall be:

- (1) A physician licensed to practice medicine in this State; and
- (2) Knowledgeable about the psychosocial and medical aspects of hospice care.

B. Medical Director Duties. The medical director is responsible for:

(1) Reviewing, coordinating, and managing the clinical and medical care for all patients in the hospice care program;

(2) Consulting with attending physicians regarding pain and symptom control;

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.21 Patient's Rights.

A. The hospice care program shall provide the patient or representative with a written notice of the patient's rights in advance of furnishing care. Documentation verifying receipt of and understanding of this information shall be included as part of the patient's record.

B. The patient has the right to:

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(9) Be informed of short-term inpatient care options available for pain control, management, and respite;

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

CATEGORY C:
Regulatory or policy issues

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

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