

Governmental Affairs & Public Policy

Statement on the Pain Relief Promotion Act of 1999, H.R. 2260

June 24, 1999

The American College of Physicians-American Society of Internal Medicine (ACP-ASIM), representing 115,000 physician specialists in internal medicine and medical students, appreciates the efforts of the authors of The Pain Relief Promotion Act of 1999 (H.R. 2260) to address the concerns expressed by our organization about last year's Lethal Drug Abuse Prevention Act (H.R. 4006/S. 2151). ACP-ASIM opposed the Lethal Drug Abuse Prevention Act because we were concerned that it would inhibit physicians from providing drugs to relieve pain. We were also concerned that the bill would have put the Drug Enforcement Administration (DEA) in the position of intruding on the privacy of patients, and their families, to determine the physician's intent in prescribing a controlled narcotic. Fortunately, Congress did not enact the Lethal Drug Abuse Prevention Act into law.

The Pain Relief Promotion Act of 1999 eliminates several troubling elements that were in last year's bill, including a Medical Review Board on Pain Relief. It affirms the ability of physicians to use controlled substances to aggressively manage pain, especially among the dying--which we wholeheartedly support. Provisions in last year's bill that would have required that a physician's DEA registration be revoked for a three year period, if there was reason to believe the physician's intention was to assist suicide, are also not included in the new bill. Further, the sponsors of the legislation have stated that their intent is not to create any new regulatory authority for the DEA, but only to "re-instate" a uniform national standard based on the laws that already exist in every state except Oregon. Each of these changes represent a good faith effort to address concerns that ACP-ASIM and others expressed about last year's proposal.

The hearing today should mark the beginning of a thoughtful discussion of this bill and what it means for patient care, both for patients at the end of life and those who are dealing with chronic conditions. ACP-ASIM believes that there are several key questions that Congress must still ask as it reviews proposed legislation on pain relief, and specifically, as it considers the Pain Relief Promotion Act of 1999 (listed in **bold** type below).

- **Will the legislation result in the DEA intruding on the privacy of patients and their families to determine physician intent in prescribing a controlled narcotic?** H.R. 2260 has two key statements that potentially could result in confused and inconsistent enforcement by the DEA. The bill clearly states that the use of controlled substances to alleviate pain is consistent with public health and safety, "even if the use of such a substance may increase the risk of death." But then the bill states that nothing in it authorizes the *intentional* use of a controlled substance for the purpose of causing death (italics added). **Will the DEA respond to these two statements by investigating the**

physician's intent-and the patient's wishes-in prescribing a controlled narcotic? And if so, on what basis will an investigation be initiated? Will the DEA investigate if there is *any* reason to believe—possibly on the basis of an unsupported allegation—to suggest that the intent *might* have been to hasten the patient's death? Or will the DEA investigate only if there is clear, specific, and compelling evidence of advance intent to help a patient commit suicide, rather than to relieve pain?

ACP-ASIM believes that Congress must make it *absolutely* certain that the legislation will not result in "big government" investigations into decisions between a patient and his or her physician that must remain confidential. It may prove to be difficult if not impossible for Congress to specify in legislation when a threshold is crossed between using controlled narcotics to control pain, even if it hastens death, and the use of such drugs to help a patient end his or her life. It may similarly prove to be difficult if not impossible for the DEA to make such determinations without violating confidentiality or launching inappropriate investigations that could discourage physicians from prescribing controlled narcotics to treat pain.

ACP-ASIM commends the authors for including an expanded role for the Agency for Health Policy and Research in advancing the scientific understanding of palliative care and making information on pain management available to health care professionals and the public. However, we question the advisability of the explicit elimination of hastening or postponing death in pain management from the definition of palliative care. Appropriate pain management may involve the use of substances that could increase the risk of death. **Would this limited definition of palliative care cut off potentially useful areas of research that could even reduce the occurrence of hastened deaths?**

ACP-ASIM does not support physician-assisted suicide. We are pleased that the Pain Relief Promotion Act of 1999 authorizes a grant program to health professional schools, hospices, and other entities for the development and implementation of programs to provide education and training in palliative care. More can be done by the federal government toward improving pain management, however. ACP-ASIM supports the comprehensive approach taken in the Conquering Pain Act of 1999 sponsored by Senator Ron Wyden and co-sponsored by Senators Connie Mack, Jay Rockefeller and Gordon Smith in the Senate, and sponsored by Representative Darlene Hooley, and co-sponsored by Representatives Jim Greenwood, Sander Levin, Nancy Johnson, and Carolyn Maloney, in the House. We urge the Committee to incorporate the provisions in the Conquering Pain Act of 1999, S. 941/H.R. 2188, in any pain relief legislation that is reported out of committee.

ACP-ASIM believes that as Congress considers the federal government's role in promoting pain relief, it must first "do no harm." The questions posed in this statement should be carefully considered by the Committee as it works to assure that no harm is done to the fragile progress that is being made in improving care of dying patients. Until satisfactory answers are given to the questions posed about how the Pain Relief Promotion Act of 1999 will be enforced by the DEA, ACP-ASIM must withhold final judgment on the appropriateness of this bill. We hope that today's hearing will begin the process of answering such questions to the satisfaction of internists and their patients.