

**Statement of Karen Orloff Kaplan
President and Chief Executive Officer
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**Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives**

“To Do No Harm: Strategies for Preventing Prescription Drug Abuse”

Field Hearing
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City Hall, Winter Park, FL

Mr. Chairman and Members of the Subcommittee, I am Karen Orloff Kaplan, president and chief executive officer of *Last Acts Partnership*, a national not-for-profit organization dedicated to improving care and caring near the end of life.

We represent more than 30,000 individual members, more than 1,000 national, state, and local organizations, and nearly 400 grass roots coalitions committed to our shared goals of educating the public, informing medical and health care professionals, and promoting policy reforms to improve the way we care for people nearing the end of life.

We appreciate the opportunity to come before the Subcommittee today to discuss strategies for preventing prescription drug abuse, particularly as they relate to the prescription pain medications known as opioid analgesics. While opioids are controlled drugs – and rightfully so for the many reasons that have already been outlined here today – they are also indispensable medications and are absolutely necessary for the relief of many types of pain, but especially pain near the end of life.

My testimony will focus on the central principle of *balance*, which we strongly believe should underscore all of our efforts with respect to addressing use, abuse and diversion of controlled substances. Specifically, we must ensure that prescription pain medications are available to the patients who need them and that we do all that we can to prevent these drugs from becoming a source of harm or abuse.

Undertreatment of Pain

Undertreatment of pain is a major public health issue in the United States. Without providing a detailed review of the history of the undertreatment of pain – especially given that we have already heard from a distinguished palliative care physician, Dr. Kollas, on the panel today – let me just briefly share with you a couple of relevant facts and statistics.

Medical experts agree that about 90 to 95 percent of all serious pain can be safely and effectively treated. Yet an overwhelming amount of evidence has documented the undertreatment of pain throughout our healthcare system.

Probably the most glaring example is in our nation's nursing homes. According to a national study completed in 1999, nearly 300,000 nursing home patients are in daily pain and more than 40 percent of elderly residents who reported being in pain were still in severe pain two to six months later. This study is especially alarming when you consider that nearly one half of all people who live into their 80s will spend some time in a nursing home. This is only one of numerous studies documenting untreated and undertreated pain in nursing homes and throughout American healthcare settings.

I'd like to quickly share one pain patient's story with you. At age 85, William Bergman was dying of lung cancer. He was admitted to Eden Medical Center in Northern California in February 1998, complaining of intolerable pain. During a five-day hospital stay where an internal medicine specialist treated him, nurses charted Mr. Bergman's pain level at 10 – the worst rating on their pain intensity scale. Despite his family's repeated requests that his pain be addressed, Mr. Bergman's internist sent him home – still in agony – with inadequate medication. Ultimately, his family contacted another physician who took a more aggressive approach, and Mr. Bergman died at home soon afterward.

But progress has been made in our recognition of pain as a critical medical problem.

The Bergman case inspired the California legislature to pass a new law requiring that physicians who fail to prescribe, administer or dispense adequate pain medications be charged with unprofessional conduct and be investigated by the California Medical Board. Physicians found guilty of undertreating pain must then complete a pain management education program.

Also in 1999, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) developed new standards for pain assessment and management in hospitals, hospices and other healthcare facilities. The new standards require that pain be added to the four vital signs providers regularly check with their patients (the others are temperature, pulse, respiration, and blood pressure). JCAHO is the nation's predominant standards-setting body in healthcare, accrediting more than 16,000 healthcare organizations and programs in the U.S.

In 2000, the U.S. Congress got involved as well, acknowledging the undertreatment of pain and approving a provision – which the President signed – declaring the next ten years the “Decade of Pain Control and Research.”

Even more recently, a U.S. General Accounting Office (GAO) report released in December of 2003 recognized that the World Health Organization and others continue to report that the “inadequate treatment of cancer and noncancer pain is a serious public health concern.”

So we must ask ourselves this question: with all the advances in pain medications and treatment, and the general recognition by not only the U.S. but the international health care communities of the crisis in pain management, why is the undertreatment of pain still so prevalent in the United States?

There are a number of factors that help answer this question, including inadequate reimbursement policies and patients' own beliefs and misperceptions about opioids. For the purpose of this hearing however, I will briefly focus on two of the obstacles most relevant to our discussion today: the lack of provider education and fear of scrutiny by law enforcement and regulatory agencies.

The first obstacle, lack of education, was documented in a 2001 Institute of Medicine (IOM) study that showed medical schools across the country provide little or no required education in palliative care. It is one of a number of recent studies that suggest that many physicians have too little training and experience with pain assessment and treatment. Another found that only one in 125 medical schools accredited by the American Medical Association offered pain management as a separate course. This situation must change if medical students are to graduate knowing state-of-the-art pain management.

A second significant obstacle to appropriate pain treatment is medical practitioners' fear of scrutiny by law enforcement and regulatory agencies for prescribing opioids to treat pain. This is commonly known as the "chilling effect." For instance, a recent survey of 1,400 New York State physicians conducted by the state's Department of Health found that 30 to 40 percent of respondents reported that fear of regulators has influenced their prescribing practices.

A 2000 study of pharmacies in New York City, which appeared in the New England Journal of Medicine, found that many pharmacies, especially those in non-white neighborhoods, had inadequate supplies of commonly prescribed opioids. Of the under stocked pharmacies surveyed in minority communities, 20% cited "fear of fraud and illicit drug use that might result in investigations by the Drug Enforcement Administration" as the reason for not carrying ample supplies. This example illustrates both the reality of the "chilling effect" and the exacerbated difficulty for some minority patients in accessing these important medications.

A Call for Balance

Nothing in my testimony today is at all intended to diminish the legitimate concerns about abuse and diversion of prescription pain medications. As I stated previously, my primary goal in testifying before the Subcommittee today is to push strongly for balanced approaches to addressing the problems associated with abuse and diversion. To do this, we must weigh any proposed actions directed at abuse and diversion against the concerns of legitimate patients who rely on these medications just to maintain a quality of life that most of us take for granted.

In October of 2001, *Last Acts* and 20 leading national pain and health organizations joined with the Drug Enforcement Administration (DEA) to release a consensus statement calling for a balanced policy governing the availability of prescription pain medications. At a national press conference in Washington, DC, then DEA Administrator Asa Hutchinson stood with groups representing physicians, nurses, pharmacists, and patient advocates, to emphasize the need to work together to prevent abuse of prescription pain medications while ensuring that they remain available for patients in need. I have included a full copy of the consensus statement with my testimony.

This unprecedented collaboration was a result of a partnership with the DEA spearheaded by *Last Acts* and the Pain & Policy Studies Group at the University of Wisconsin, Madison, the leading expert organization in the country on federal and state pain laws, regulations and guidelines.

Original signatories to the joint statement included the American Medical Association, American Cancer Society, American Academy of Family Physicians, Oncology Nursing Society, American Pain Society, American Pain Foundation, American Pharmaceutical Association, American Society of Anesthesiologists, National Academy of Elder Law Attorneys, and the National Hospice and Palliative Care Organization, among a number of others.

The consensus statement has been disseminated widely and used in a number of different settings to forcefully urge that any discussion about the abuse of prescription pain medications be focused on the central principle of balance. It reads, in part:

“Both health care professionals, and law enforcement and regulatory personnel, share a responsibility for ensuring that prescription pain medications are available to the patients who need them and for preventing these drugs from becoming a source of harm or abuse. We all must ensure that accurate information about both the legitimate use and the abuse of prescription pain medications is made available. The roles of both health professionals and law enforcement personnel in maintaining this essential balance between patient care and diversion prevention are critical.”

Subsequent to the development of the consensus statement, the Pain Forum was reconvened in Washington, D.C. to review the efforts of law enforcement, regulatory, and health organizations to promote the balance concept. The forum also provided an opportunity for information sharing and cooperation, as well as a discussion about next steps. *Last Acts*, the DEA, and the Pain & Policy Studies Group again sponsored the meeting. It included participants from more than 42 different organizations representing a broad array of health, law enforcement, and industry groups, including the DEA, NIDA, ONDCP, and FDA.

As a result of this meeting, we continue to pursue opportunities under the auspices of the Pain Forum, including a current initiative to develop a question-and-answer guide for physicians, pharmacists, and law enforcement personnel.

Conclusion

Drug abuse exacts a huge social cost and some have been tempted to address the problem of prescription pain medication abuse by greatly limiting access. But this is not a balanced solution. It only exacerbates the already severe problem of undertreatment of pain in this country.

Controlled prescription drugs, such as opioids, are essential for the care of patients, but they clearly carry a risk. They can become the object of abuse, or be the target for diversion to an illicit market. This potential justifies concern among the health care community and those in law enforcement and drug regulation, and we must make real efforts to minimize diversion and abuse of these drugs.

Focusing only on the abuse potential, however, could lead to the erroneous conclusion that these medications should be avoided, when in truth, opioids are absolutely essential to good pain management and should be prescribed *more often when medically indicated* to control certain types of pain. Physicians and other health care providers should be knowledgeable about their use and should not hesitate to prescribe them when appropriate for fear of reprisal.

We must work together to assure a balanced approach to preventing abuse and diversion while ensuring the legitimate rights of patients in pain to receive appropriate treatment.

As the joint statement concludes: “Preventing drug abuse is an important societal goal, but there is consensus, by law enforcement agencies, health care practitioners, and patient advocates alike, that it should not hinder patients’ ability to receive the care they need and deserve.”

Again, I appreciate the opportunity to testify before you today, and would be happy to answer any questions that you have.