



June 7, 2011

Medical Quality Assurance Commission Members
Leslie M. Burger, MD, Chair, Medical Quality Assurance Commission (MQAC)
243 Israel Road S.W.
Tumwater, WA 98501

Re: WSMA/WAFP Formal Request for Amendment of MQAC Rules on Chronic Non-cancer Pain

Dear Dr. Burger & MQAC Members:

The purpose of this letter is to clarify the formal petition filed with MQAC June 1, 2011 (attached) from the Washington State Medical Association (WSMA) and the Washington Academy of Family Physicians (WAFP) to the Medical Quality Assurance Commission (Commission) regarding the recently adopted pain management rules. After the Friday MQAC meeting, it was evident that some confusion exists on the part of many Commissioners regarding our position on the pain management rules and what changes we feel are necessary to make them better for physicians and patients.

We also understand from last Friday's MQAC meeting that the Commission is crafting an interpretive statement regarding the newly adopted rules. In our view, any interpretative statement will not result in the level of necessary substantive clarifications that are reflected in Dr. Pattison's April 19 letter (attached). We appreciate the preamble language included in the final CR-103 rules, which we believe are substantive in their effect; therefore, we believe a revised/new CR-102 should have been issued under that rulemaking. That being said and the CR-103 having been issued, we are formally requesting the MQAC (under RCW 34.05.330) amend the recently adopted pain management rules as follows.

First, we urge the MQAC add the following definition to WAC 246-919-852. "Shall means a directive or an obligation to perform a specific action unless a contemporaneous medical record documents reasonable cause for deviating from the directive or obligation based on sound clinical judgment, concurrent clinical knowledge, and best available scientific evidence.".

Second, we would also urge the MQAC to take another look at the definition of "chronic non-cancer pain". We request that the MQAC clarify the definition of "chronic non-cancer pain" by adding the following language to the end of the adopted definition (WAC 246-919-852(3)). "This definition does not apply to care provided by a physician to a patient with chronic non-cancer pain, where the treatment being provided (i) is specific in its scope and duration, not intended to manage the patient's chronic non-cancer pain other than on a short-term basis as may be medically necessary for the specific treatment being provided, and satisfies best practices with regards to documentation and care within that physician's

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specialty or subspecialty; or (ii) consists of prescribing of non-long acting opioids at a stable, non-escalating, low dose which satisfies best practices with regard to documentation and care within that physician's specialty or subspecialty.”.

The changes included in Dr. Pattison’s April 19, 2011 letter are critical to clarifying the intent and scope of the pain management rules. This, in turn, will make their integration into practices around the State by our members less burdensome and costly; thus decreasing the adverse impacts on patient care and access to physicians who will see these types of patients.

Since the recent CR-103 action by the Commission has foreclosed the option of having us informally petition the Commission, we hope that the Commission will respond favorably to our petition to amend the rules under the Administrative Procedures Act (APA). If the Commission denies our petition, we will have to explore other courses of action, including bringing this issue to the Joint Administrative Rules Review Committee (JARRC), asking other agencies for assistance or counsel, and/or pursuing legislative action.

As our two organizations have communicated to the Commission on several occasions, left unaltered the rules are overly prescriptive, and will therefore very likely decrease access to care for a very demanding and challenging patient population.

We look forward to an early and favorable response to this petition.

Sincerely,



Dean Martz, MD
President, WSMA



Carl R. Olden, MD, FAAFP
President, WAFP

Attachments (June 1, 2011 letter to MQAC from WSMA and WAFP; April 19, 2011 letter from Dr. Pattison to WSMA)

cc: Medical Quality Assurance Commission Members
Maryella Jansen, Executive Director, MQAC
Melissa Burke-Cain, Assistant Attorney General, Legal Counsel, MQAC
Mike Ferrell, Assistant Attorney General, Legal Manager, MQAC
WSMA and WAFP Executive Committee Members
Tom Curry, WSMA Executive Director/CEO
Karla Graue Pratt, Executive Vice President, WAFP
Tim Layton, WSMA Senior Director of Legislative, Regulatory and Legal Affairs
Michael Transue, WAFP State Legislative Liaison