Of Smoke, Mirrors, and Passive-Aggressive Behaviors

“What we have here is a failure to communicate.” These are the last words spoken the moment before a Southern prison warden fatally shoots the irrepressible convict played by Paul Newman in the now classic film “Cool Hand Luke.” The first impression an objective, third party might have in reading Dr. Heit’s editorial in this issue of *Pain Medicine* is that a similar failure might explain the precipitous, bizarre, and inexplicable revocation by the Drug Enforcement Administration (DEA) in early October of 2004 of its endorsement of and support for *Prescription Pain Medications: Frequently Asked Questions and Answers for Health Care Professionals and Law Enforcement Personnel* (hereinafter FAQ), a document that had been unveiled with much fanfare merely 2 months earlier. But closer scrutiny of the chronology of events suggests that the communication breakdown theory is highly improbable.

As Dr. Heit points out, the FAQ was the product of years of collaborative effort among experts in the field of pain medicine and representatives of the DEA that worked through no fewer than 20 drafts. The DEA was sufficiently comfortable with the final version of the document that it placed it on its Website, as did another major contributor to the project, the Pain and Policy Studies Group at the University of Wisconsin (PPSG). Nevertheless, 2 months later the DEA sought to justify its renunciation of the FAQ by asserting that it “contains misstatements of law and other statements which could create confusion about the applicable law and create misleading perceptions about physician’s obligations to remain within the bounds of accepted medical practice.” For the DEA to expect reasonably intelligent persons to accept the proposition that its leadership had suddenly discovered “misstatements of law” in the FAQ that were not apparent in the drafting process is beyond insulting.

As Dr. Heit notes, the DEA’s interim policy statement (IPS) published the next month in the Federal Register identified several alleged mis-statements in the FAQ that purportedly justified its unilateral rejection of the product of this collaborative effort. While Dr. Heit focuses his remarks on the “Do Not Fill Until” (DNF) prescription issue, the IPS also sought to retrench from the proposition that physicians would not be targeted by the DEA merely because of the number of patients in their practice who received opioids, the volume of prescriptions patients received, or the duration of opioid therapy. The DEA asserted that it “can investigate merely on suspicion that the law is being violated, or even just because it wants assurances that it is not.” The IPS also sought to impose a much higher level of scrutiny and suspicion on physicians who contemplate prescribing opioids to patients who are “known or suspected addicts.”

There is much about the DEA’s conduct since August of 2004 that legitimately calls into question prior representations by its leadership that it recognizes and respects the compelling need for balance between the goal of ensuring that patients who need opioid analgesics to manage their pain receive them in a medically appropriate manner, and the goal of deterring or discovering drug diversion. The DEA’s participation in the issuance in 2001 of the Consensus Statement calling for a balanced policy on prescription pain medication, and its diligent pursuit of the FAQ consensus document through many months of collaborative effort and multiple revisions, sent a very favorable and encouraging message to the pain medicine community. What has transpired since sends exactly the opposite message, particularly the most recent pronouncement by the DEA after ostensibly considering the many comments to the IPS that it solicited in January of 2005. Among the many thoughtful commentaries received but largely ignored or discounted by the DEA was a 16-page discussion and analysis of the relevant issues and concerns submitted by the PPSG, one

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of the primary contributors to the FAQ. Among the eminently reasonable requests of the DEA set forth in this document were: 1) reaffirmation of the appropriateness of the DNF approach to opioid prescribing; 2) reassurance to practitioners that legitimate pain management practices will not be viewed as indicators of addiction; 3) clarification of what constitutes unlawful conduct under the Controlled Substances Act; 4) avoidance of propagating fear in law-abiding practitioners; and 5) appointment of an advisory committee to assist the DEA in promoting balance in the regulation of the use of controlled substances.

Serious concerns about the current attitudes and practices that appear to prevail within the DEA extend beyond the bounds of the pain medicine community. On January 19, 2005, 29 members of the National Association of Attorneys General (NAAG), the organization that represents the chief legal officers of the states, signed a letter to the administrator of the DEA expressing concerns that the revocation of the FAQ and the issuance of the IPS are “likely to have a chilling effect on physicians engaged in the legitimate practice of medicine.” In March of 2005, NAAG followed up on that letter by submitting its own detailed commentary on the IPS that made some of the same recommendations to the DEA as the PPSG comments, including the appropriateness of DNF prescriptions for opioids and the need for an advisory committee. If those at the top of the DEA hierarchy can be so manifestly indifferent, if not hostile, to the insights and perspectives of such groups, then perhaps, regrettably, we are tilting at windmills when we in the pain community continually beseech the DEA to genuinely embrace the concept and public policy of balance, and to acknowledge the critical need to wage a war on pain with the same degree of conviction and determination as it brings to the war on drugs.

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