

A Warning for Medical Practices: Monitor Your Opioid Prescriptions

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We've been asked to pass on a warning to medical practices from a United States Attorneys office in Michigan. Though it's a sensitive topic, we think it's a serious message: There is a drug enforcement crackdown coming in Michigan, aimed at medical practices that fail to exercise due care in prescribing opioids. Medical practices need to make sure they do not get inadvertently snared.

Overdose Deaths Rising

Opioids like OxyContin have a universally recognized use in pain management. But sometimes addicts rather than legitimate patients consume prescribed opioids. Addicts get their drugs when prescribed opioids are re-sold on a black market.

Overdose deaths from prescription opioids have been rising. Frustrated drug enforcement personnel believe that some Michigan physicians are making the problem worse by ignoring signs that some of their patients are re-selling prescribed narcotics. Drug enforcement personnel think there are sensible steps that doctors should take to prevent prescription drug abuse.

In response, Michigan law enforcers are laying the groundwork to bring serious criminal and civil charges against medical practices that cannot document that they are using due care in prescribing opioids, including doing reasonable due diligence concerning patients.

Physicians At Risk

Only a tiny minority of unscrupulous physicians knowingly prescribe opioids for unlawful purposes. Such physicians have long been subject to criminal prosecution. For example, not long ago a physician was sentenced to life in prison for prescribing large amounts of unneeded OxyContin, Zoloft and Valium, leading to two deaths.

This latest drug enforcement warning is *not* aimed at that tiny minority. Drug enforcement personnel intend to continue identifying and prosecuting those physicians to the fullest extent of the law.

Instead, this advance warning is intended to help a second group of physicians: Physicians who are conscientious care-givers, but who (for any number of reasons) are not using due diligence to verify their patients' good faith before prescribing repeated courses of opioids.

The intended message to this second group of physicians and medical practices is this: Be careful about the patients for whom you are prescribing opioids. Document the steps your practice is taking to make sure opioid prescriptions are being used properly. Use the MAPS (Michigan Automated Prescription System) program consistently to check up on your patients. Make sure your patient is not merely using you as one of several contemporaneous sources of opioid prescriptions.

Booklet Sent

Michigan has a medical task force on pain management and medication abuse. Last fall, at the task force's recommendation, the Michigan Department of Community Health mailed a booklet to all 33,500 physicians and medical residents who have a Michigan license, as well as mid-level providers and pharmacists. The booklet, "Responsible Opioid Prescribing: A Guide for Michigan Physicians," offers strategies for improving patient care around pain, while at the same time reducing the risk of addiction, abuse and diversion.

That mailing might be considered the government's opening salvo in the battle against irresponsible prescribing. Criminal charges against physicians will follow.

In any physician prosecution, the government intends to make use of the fact that this booklet was mailed to every physician in the state. From the government's perspective, every physician in Michigan got the booklet, and every physician is responsible for following the booklet's guidelines. Ignorance will not be a legal defense.

A Legal Nightmare

The nightmare scenario to be avoided is a prescription drug overdose death investigation in which:

- The opioid pills at issue were prescribed by your practice, but not to the person who died.
- It turns out a doctor in your office was only one of multiple physicians in the area who were all giving opioid prescriptions to the same patient.
- There is no compliance-plan procedure within your practice for checking online prescription records for opioid prescription patients; and
- There is no written evidence showing that anyone in your practice actually checked on the patient whose pills led to this overdose death.

Even if your practice is not charged criminally, the practice might face large civil liability. The recent health care reform package expanded the legal bases for bringing civil damage claims for negligent prescribing. In a federal false claims suit, for example, statutory damages can easily reach millions of dollars. Those damages are normally not covered by insurance.

What To Do Now

Here are some steps your practice can take now to protect itself:

- Start by carefully reviewing the booklet that the state mailed out last fall. If you can't find a copy, let us know and we will get one for you. If your practice is prescribing opioids for patients, all physicians in your practice need to be familiar with this booklet.
- Insist that the physicians in your practice who prescribe opioids make consistent use of the MAPS database for their opioid patients.
- Be sensitive to high-risk situations. If a new patient shows up in your practice asking for particular named opioids on the very first visit, that ought to be a warning sign. Likewise, if several members of the same family all show up for a first visit, all claiming the same clinical symptoms, that's a warning. If a patient seeking opioids has traveled a great distance from home to your practice and can't explain why, that's a warning.
- Depending on the situation, consider periodic patient blood tests or urine tests to make sure that the patient is consuming all the drugs your practice has prescribed, and no others.
- Revise your practice's compliance plan, setting forth your practice's procedures for doing due diligence for patients receiving repeated opioid prescriptions. A good compliance plan, consistently exercised, will greatly minimize your practice's risk of being caught up in a legal nightmare.

We will be glad to work with you to minimize your practice's risk. Feel free to call Richard Bouma (rbouma@wnj.com or 616.752.2159) any member of the Warner Norcross & Judd Health Care Practice Group.