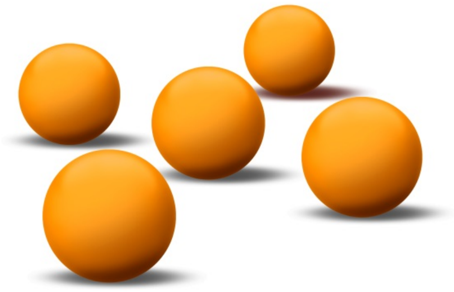

Pain Clinic Raids: Blocking and Tackling Drills for Physician Practices

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Every day, medical providers are asked to serve a population that largely expects their healthcare to be free, and that everything they want is covered by insurance or government. Providers want to serve these wants and needs, but they face scrutiny on multiple levels in seeking to satisfy the patients and professional success. Perhaps the most aggressive are today's governmental actions against physicians, sourced by their patients, staff, pharmacies, vendors, and even their own partners. Pain clinics have been the most recent targets, and it's important for the medical community to learn from these raids. Better understanding and applying the basics are the best ways to avoid mistakes that could bring unfounded scrutiny.

Once upon a time, providers were attacked for not prescribing *enough* pain medicines. Now the pendulum has clearly swung the other way, and the mass of healthcare oversight appears focused, in large part, on the epidemic abuse and diversion of prescription amphetamines and opioid pain medications. Motivated by the bipartisan focuses on patient care, cost control, or "stamping out waste fraud and abuse", physicians are on the front lines and in the cross-hairs of regulators, prosecutors, and contractors. Additional substance and context to recent news on raids of pain clinics across Alabama and the country presents opportunities to review some basic blocking and tackling.

The recent raid in Mobile followed indictments of two pain management specialists who owned a pain clinic and an attached pharmacy. The charges are (1) distributing or dispensing controlled substances by providing them "outside the usual course of professional practice and not for a legitimate medical purpose," and (2) healthcare fraud in billing a private insurer. Both present standard of care issues. The alleged billing fraud is that the providers charged private insurers for medically unnecessary testing to analyze patient urine samples, and also billed for other services provided by their physician extenders under the physicians' NPI numbers (for greater reimbursement), rather than under the physician extenders' NPI numbers.

These charges are not unique to providers in Alabama, nor are they unique to pain management. In Mobile, for example, an OBGYN and his nurse practitioner were recently sentenced for basically the same billing issue. The only apparent difference in the allegation was that the insurer denied claims when submitted under the nurse practitioner's NPI, so they were re-submitted them under the physician's NPI. Still, if proven, both scenarios are criminal fraud.

In our law practice, we certainly see honest mistakes in billing and coding, and the lively debates on medical necessity. Government and ultimately the jurors, however, may never appreciate the subtle differences between simple negligence or professional disagreement, and criminal fraud. Fair or not, this is the present reality.

For pain clinics and pain management specialists, basic blocking and tackling may be no different than any other medical specialty. Physician ownership in a pharmacy certainly raises specific Anti-Kickback, Stark, and other ethical regulatory issues that bring added oversight. Still, government and industry agree that opioids and amphetamines are medically necessary and that their prescription is the standard of care in many contexts. Any prescriber may find it beneficial to review some basics by asking himself a few questions:

1) Am I the right person to treat or continue treating this person's pain?
2) Do I have experience and training to recognize a drug-seeker?
3) Is this really an emergency situation where prescribing this medicine is appropriate?
4) Do I control my prescription pad and DEA number, and my staff's access to both?
5) May I ethically prescribe this to my family or friend?
6) Am I current on the standard of care and billing requirements within this specialty?
7) Am I confident my records in charts or my EMR system are compliant with the various billing requirements?
8) In giving an order, am I focused on the patient or something else?
9) Before referring to another specialist, do I know that physician and her credentials?
10) Do I even know how my office is billing for my work here, and do I know the answers to any of these questions?

Physicians know to stay current on the standard of care for what they do. They're the quarterbacks of the practice ultimately responsible for correctly billing and prescribing. In the current environment that is no easy task. Administrators can play a key role, especially for their physicians who “just want to take care of the patients."

The recent Mobile raid and its aftermath also exposed some misunderstandings of state and federal oversight. The two may coordinate, but not always. Physicians received the message from the Alabama Board of Medical Examiners to be not afraid: "Just take care of the patients. We're not looking over your shoulder, and neither are the feds. They're just after big fish, like drug cartels" (paraphrasing). The Board's message about a specific time of emergency for many patients left without care for legitimate needs, is no excuse to ignore the basics that apply to not only pain specialist but all prescribers or billing providers because drug distribution is not the only issue in these federal criminal prosecutions.
Oversight comes from the state and the federal government. In Alabama, physicians are licensed and regulated by the Alabama State Board of Medical Examiners. To dispense pain medications or serve most patients these days, however, physicians must accept DEA oversight, Medicare reimbursement rates, and billing and documentation rules created and dictated by government and its contractors.

In the wake of these raids, the media’s focus on asset seizures, which is standard practice for prosecutors, distracts from the substantive questions on the standard of care, billing and reimbursement, insurance provider agreements, pre-certifications, audits, contractual relationships, staffing, benefits, and overhead. This is an opportunity to review standard business practices, blocking and tackling. By evaluating their business as a whole, and asking a few basic questions, many physicians can vastly improve how the business of caring for patients is done.

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