Ask An Attorney

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I have seen an increase of patients with chronic pain disorders and more and more of them are requesting narcotics for their pain. I am concerned about the cases I see in the newspaper regarding physicians being disciplined for prescribing narcotics. My patients have pain that should be treated. What should I be doing to minimize my risk?

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A physician has responsibility for properly prescribing and dispensing narcotics to their patients. Physicians should base their prescribing of controlled substances for pain on legitimate medical purposes. The prescribing of narcotics should be based on accepted scientific knowledge of the treatment of pain and sound clinical grounds.
There are six risk areas that a physician should focus on when prescribing narcotics for pain. These include: initial patient evaluation, the treatment plan, informed consent, periodic review, additional consultations, and medical records.

Prior to prescribing narcotics for pain, the physician should take a complete medical history and perform an appropriate physical exam. The evaluation should include the nature and level of the pain, past and present treatments for the pain, underlying conditions and causes, and the effect of the pain on the person. A history of substance abuse should be included. The physician should take additional steps to verify the cause of pain (including appropriate testing and obtaining information from past or current physicians) and not prescribe for vague complaints.

A treatment plan should be developed and reviewed routinely to verify treatment efficacy. Diagnostic evaluations and treatment options such as physical therapy, use of over the counter pain medications, massage, etc. should be explored prior to prescribing narcotics, if possible. The drug therapy should be monitored and adjusted to the individual needs of the patient.

The physician should discuss the risks and benefits of the use of the narcotic with the patient and obtain informed consent. This includes the risk of drug dependence. The new ISTOP Program will help reduce the risk of physician shopping. However, the physician should still communicate and document the expectations of the patient. This includes not sharing drugs, keeping them safe, no early refills, no use of narcotics in conjunction with alcohol or other illegal substances, etc.

Next, the physician should periodically review the course of the patient's treatment. It is not enough to merely document that "condition remains; continue with medication." The physician should consider the progress of the patient's treatment plan. It should be documented that, if the pain is not controlled or improved, other therapeutic modifications are considered. The prescribing of higher and higher doses of narcotics over long periods of time, without documented consideration of other options, is a red flag to OPMC investigators.

The physician should consider consulting with pain treatment experts for patients with significant pain that is not resolved with routine treatments. The primary care physician should be in regular communication with the patient's other physicians to coordinate the treatment of pain. Consider referring patients to a rehabilitation center or patient treatment pain center for consultation when patients have a history of substance abuse.

Finally, medical records must be accurate and include all of the previous topics discussed above: medical history and exam, treatment plan, diagnostic and therapeutic results, evaluations and consultations. Professional investigators from the OPMC and the Narcotics Bureau will assume that if it is not documented, "it wasn't done." In order to defeat an allegation of inappropriate narcotic prescribing, the documentation of all six areas will be key.