

Tip #10: Managing Patients with Chronic Pain

The Risk: The management of chronic pain through the prescription of controlled medication poses challenges and risks to both the patient and the healthcare provider. Common allegations against providers in pain management claims include:

- Liability for failure to adequately treat pain
- Liability for allegedly inappropriately prescribing controlled substances
- Potential for civil charges being brought against a physician or other provider for the patient's diversion of narcotics and/or drug abuse or overdose
- Liability for failing to recognize a patient's addiction and/or diversion and to refer the patient for treatment

Recommendations:

1. Perform and document a thorough initial evaluation of the patient. This should include: a history and assessment of the impact of the pain on the patient; the nature, type and causation of the pain; and a focused physical examination to determine if there are objective signs and symptoms of pain. The provider also should review pertinent diagnostic studies, previous interventions and drug history and assess the extent of co-existing medical conditions which impact the patient's pain. It is important to obtain the names of all other providers the patient is seeing or has seen, and the pharmacies the patient uses.
2. Develop a specific treatment plan based upon the evaluation.
3. Maintain accurate and complete medical records that clearly support the rationale for the proposed treatment plan.
4. Perform a thorough informed consent discussion regarding the plan of care, including the risks, benefits, and alternatives, and the risks of the alternatives, including no treatment with controlled substances.
5. Request the patient's consent to obtain copies of the records of all prior treating physicians, and review these records before prescribing controlled substances, to determine if there is a history of drug seeking behavior or abuse.

6. Use a written pain management agreement when prescribing controlled substances for patients with chronic pain. If the patient has a prior history of drug abuse, refer the patient to a pain management practice or clinic, if possible. A pain management agreement outlines the expectations of the provider and the responsibilities of the patient, including:
 - Baseline screening of urine/serum medication levels
 - Periodic unannounced urine/serum toxicology screening
 - Medications to be used, including dosage(s) and frequency of refills
 - A requirement that the patient receive medications from only one physician and use only one pharmacy
 - Frequency of office visits
 - Reasons for discontinuance of drug therapy (e.g., violation of agreement) A sample pain management agreement can be obtained by contacting Mercado May-Skinner* at (877) 426-9555
7. Document and monitor all prescriptions and prescription refills.
8. Consult the New York State Prescription Monitoring Program (I-STOP) registry prior to prescribing any controlled pain medications. Document either that you have consulted the registry, or the circumstances why consultation was not performed.
9. Protect prescription blanks if still utilized in your practice. Limit and monitor staff access to computer-generated prescriptions.
10. Take positive action if you suspect patient addiction or diversion. Public Health Law § 3372 requires a physician to report to the New York State Bureau of Controlled Substances any patient who is reasonably believed to be a habitual user or abuser of controlled substances by calling (518) 402-0707.
11. Refer the patient for treatment of addiction, if appropriate, and document this discussion with the patient in the medical record.
12. If a patient is believed to be selling/diverting narcotics, and the patient's random urine test confirms no drug use or there has been a forgery or theft of prescriptions, contact the law firm of Mercado May-Skinner to discuss how to discharge the patient and how to handle requests for medications from the patient before the discharge is final.

*The attorneys of Mercado May-Skinner are employees of MLMIC Insurance Company.