

Ask An Attorney

BY JESSIE GREGORIO, ESQ., UNDERBERG & KESSLER LLP

Q **The opioid crisis has led to an increase in malpractice and State disciplinary actions against providers. What are tips to mitigate the legal risks of prescribing opioids?**

A In 2017, the opioid crisis was declared a public health emergency. The rise in opioid-related deaths has increasingly led to liability against those prescribing the drugs. Physicians and other prescribing providers must carefully implement safeguards into their practices to minimize liability and risks. The following are some ways in which health care providers may mitigate the legal risks associated with prescribing opioids:

Develop a Plan

Develop a comprehensive plan for starting patients on opioids and for tapering patients off opioids, when necessary. In the event problems arise, having a plan in place that includes multiple resources and treatments will make a smooth transition for patients. Be sure to consider alternative methods of pain treatment such as exercise, massage therapy and the like.

Develop a Prescribing Protocol

Develop pain medication prescribing protocol and discuss with the patient ahead of time, including which medication will be prescribed and at what intervals. Discuss the established plan prior to prescribing opioids in order to prevent disappointment and set realistic expectations for what can be achieved with opioid therapy.

Identify At-Risk Patients

Regularly monitor and review patients on opioid therapy and ensure the medications prescribed address the specific needs of the patient's overall medical condition.

Be Alert

Patients require close monitoring. Watch for red flags, such as requesting specific medications, impatience for refills, refusal to give medical history or name of previous physician, and reluctance or refusal to provide urine tests. Be aware of the warning signs and have a plan in place to address concerns.

Monitor Requests for Refills

Excessive refills may be a sign of abuse or non-medical use. Monitor patient refills and require prescriber review prior to permitting refills. Consider limiting refills for patients who often run out of medications before the next appointment. Discuss with the patient the practice's

policy regarding refills to set reasonable expectations.

Document

Improve documentation for all patients, but especially those receiving opioid therapy. Documentation should include patient's receipt of the provider's policies outlining the recommended practice standards of prescribing opioids, alternatives considered, the initial plan, and any revised plan. Thorough documentation is important in protecting providers should malpractice or State disciplinary actions arise.

Always Consult Prescription Monitoring Program

Prescribers are required to consult the Prescription Monitoring Program (PMP) Registry when prescribing certain controlled substances. The registry provides direct access to a patient's controlled substance prescription history. This information will allow providers to better evaluate patients and determine whether there may be abuse or non-medical use.

Require Patient Agreements

Consider requiring patient agreements, wherein patients agree to comply with the practice's prescribing protocol, refill limits and the patient's individual plan for opioid therapy. Discuss and educate the patient on the risks and benefits associated with opioid therapy. Patient agreements set expectations in advance and promote patient accountability.

Monitor Nurse Practitioners and Physician Assistants

Develop protocols and guidelines for other providers in your practice who prescribe opioids, and closely monitor those providers. There is an upward trend of malpractice actions filed against nurse practitioners and physician assistants, and against practice groups for failing to monitor and properly supervise prescribing providers.

Follow Established Guidelines

The Centers for Disease Control and Prevention published the CDC *Guideline for Prescribing Opioids for Chronic Pain* to provide recommendations for prescribing opioids in primary care settings. Consider following the 12 recommendations for prescribing opioids under the CDC Guideline.

The rise in opioid-related deaths has increasingly led to liability against prescribing providers, but implementing safeguards into practices aims to minimize liability and risks. In this ever-changing landscape, it is vital for providers to stay educated on the current practices and guidelines related to prescribing opioids.

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