Legal Issues in Managing Opioid Abuse in Your Practice

Gwen Dayton, JD

Legal Issues

Today’s conversation:

- What can you tell law enforcement about opioid abuse?
- What can you tell other providers?
- Do you have any reporting obligations?
- Options for the patient relationship
- Issues with the Oregon Medical Board
- Opioids and medical marijuana
Legal Issues

But First, a HIPAA Primer:

- HIPAA covers health care providers and health insurers
- It protects Protected Health Information:
  - Information that identifies an individual and is created or received by the provider and relates to the past, present, or future physical or mental health or condition of an individual or payment for the individual’s health care.

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- HIPAA is permissive, not prescriptive:
  - Allows disclosure but does not require it
Legal Issues

HIPAA provides pathways for disclosure, such as:

- Required by law
- A crime occurring on your premises
- To avert a serious and imminent threat to a person or the public
- To another provider for treatment purposes

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Scenario:
Office billing manager uses physician’s DEA number to obtain prescription for narcotic.

- Is this covered by HIPAA?
- Can you call law enforcement?
- What about calling all area pharmacies?
- Do you have an obligation to report this to anyone?
- What does your employee handbook say about this conduct?
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Scenario:
Licensed nurse in office uses the physician’s DEA number to write herself a prescription for narcotics.

- HIPAA?
- How does the fact that this involves a licensed health care practitioner change the scenario?

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Scenario:
Patient comes in complaining of back pain. You check the prescription database before prescribing narcotics and see that patient has received numerous prescriptions for the same narcotic in the past several weeks. You believe the patient is selling the drugs.

- HIPAA?
- Can you call law enforcement?
- Must you report this to anyone?
- Can you call the other health care providers/pharmacies she may go to for drugs?
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Scenario:
Same patient as last scenario, but you suspect her grandson is using her to obtain narcotics and then selling them.

- Crime does not involve your patient; does that allow more disclosure?

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Scenario:
Patient presents false ID to your office staff so when you check the prescription database you do not see the other prescriptions for narcotics. You prescribe but later find out the patient lied to you.

- Report to law enforcement?
  - Required?
- What about other providers?
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Scenario:
Now let’s make the patient a minor (15 years old). Patient comes in without parents, continuously complaining of back pain and asking for more narcotics. You believe the child is selling.

- Can you tell the parents?

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Physician/Patient Relationship
Legal Issues

Scenario:
Patient continuously asks for more narcotics than you think are clinically indicated. You nicely say that you will only prescribe an appropriate amount and the patient becomes angry and abusive.

- Can you terminate the patient relationship?
- What steps do you need to take to do that?

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Scenario:
Same patient, but they do have a legitimate need for pain medication, just not the amount they are insisting upon. If you terminate the patient relationship you are worried that they will not receive necessary medication.

- Can you terminate the patient relationship?
- If you do, what additional steps should you consider?
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Scenario:
Same angry patient, threatening to sue you and file a complaint with the Oregon Medical Board.
- Should you report this threat to anyone?

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Speaking of the Oregon Medical Board:
- Significant focus on opioid prescribing
- Physicians can be (and are) disciplined for overprescribing
Legal Issues

OMB/Opioids and Medical Marijuana:

- OMB does not currently have a rule or position on prescribing opioids to patients with a medical marijuana card.
- OMB’s consultants have included use of marijuana among the list of contraindications for long-term opioid use, but Board has not prohibited the concurrent use of these drugs.

Questions?