Legal Issues in Managing Opioid Abuse

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This presenter has nothing to disclose.
Opioid Abuse

Today’s conversation:

- What can you tell law enforcement about opioid abuse?
- What can you tell other providers?
- Role of the Prescription Drug Monitoring Program
- Do you have any reporting obligations?
- Options for the patient relationship
- Issues with the Oregon Medical Board
- Opioids and medical marijuana
Opioid Abuse

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
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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 treating 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?
Scenario:
Licensed nurse at hospice uses 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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Prescription Drug Monitoring Program

- Tool to help healthcare providers and pharmacists provide patients better care in managing their prescriptions.
- Pharmacies report all Schedules II, III and IV controlled substances dispensed to Oregon residents.
- Physicians may access to see what prescriptions a patient has received.
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New Legislation permits:

- The PDMP to collect additional data (patient sex, days supplied, and refill data)
- Prescribers and pharmacists to authorize access to members of staff
- Prescribers to review prescriptions dispensed under their own DEA number
- The State Medical Examiner and designees to access PDMP information for autopsies and death investigations
- Prescribers in neighboring states (WA, ID, and CA) and who treat Oregonians to access the Oregon PDMP
- Public health authorities to use de-identified PDMP data

Effective January 1, 2014
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- Healthcare providers and pharmacists licensed in Oregon may apply to the PDMP for a user account to access information in the system.
- Under new law may apply for staff access
- Access is granted to individuals only—not to clinics, hospitals, pharmacies, or any other healthcare facility.

Scenario:

Patient is new to your hospice and is experiencing 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. Patient’s son expresses significant interest in a yet another narcotic prescription for mom. You believe the son is selling the drugs.
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- HIPAA?
- Can you call law enforcement?
- Must you report this to anyone?
- Can you call the other health care providers/pharmacies she (and son) may go to for drugs?
- Is there an issue of elder abuse?
Scenario:
Patient’s family presents false ID to your staff so when you check the prescription database you do not see the other prescriptions for narcotics. You prescribe but later find out the family lied to you.

- Report to law enforcement?  
  - Required?

- What about other providers?
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Physician/Patient Relationship
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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.
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- First, find out why the patient is demanding the opioids; family pressure?
- Can you terminate the patient relationship?
- What steps do you need to take to do that?
- Can you remove the patient from hospice?
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?
Legal Issues

Scenario:
Same angry patient, threatening to sue you and file a complaint with the Oregon Medical Board.
- Should you report this threat to anyone?
Legal Issues

Speaking of the Oregon Medical Board:

- Significant focus on opioid prescribing
- Physicians can be (and are) disciplined for overprescribing
- Prescribing for family members a big problem
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.
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Questions?