

Managing the Risks Associated with Prescribing Controlled Substances
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The non-medical use or abuse of controlled substances continues to be a growing public health concern.¹ In a 2004 study, approximately six million people reported that they had used prescription drugs for non-medical purposes during the previous month, with an estimated 14.6 million people reporting such non-medical use of prescription drugs in the previous year.² Physicians often treat patients who have chronic pain and various other medical conditions with prescription narcotics. Some patients, known as “drug seekers,” may actively seek out prescriptions for controlled substances for non-medical purposes. On the other hand, some patients may present signs associated with controlled substance abuse when, in actuality, the patient has simply been under-treated for pain management.³ Physicians can face a difficult situation when prescribing controlled substances and should, therefore, take measures to ensure compliance with applicable state and federal regulatory laws.

Federal and state laws regulate the proper prescription and distribution of controlled substances and impose serious consequences for the unlawful distribution of controlled substances.⁴ By unlawfully distributing controlled substances to a patient, a physician risks investigation by the state board of healing arts as well as federal authorities, revocation of his or

¹ See U.S. Department of Health & Human Services, National Institutes of Health, Prescription Drugs: Abuse and Addiction (2005), *available at* <http://www.drugabuse.gov/PDF/RRPrescription.pdf>.

² James D. Colliver, Larry A. Kroutil, Lanting Dai, and Joseph C. Gfroerer, Department of Health & Human Services, Misuse of Prescription Drugs: Data from the 2002, 2003, and 2004 National Surveys on Drug Use and Health (2006), *available at* <http://www.oas.samhsa.gov/prescription/toc.htm>. The prescription drugs referenced included any psychotherapeutic drug, pain relievers, tranquilizers, stimulants, methamphetamine, and sedatives. *See id.*

³ See U.S. Department of Health & Human Services, Substance Abuse in Brief Fact Sheet, Pain Management Without Psychological Dependence: A Guide for Healthcare Providers (2006), *available at* <http://kap.samhsa.gov/products/brochures/pdfs/SAIB%20PAIN.pdf>.

⁴ See *e.g.*, 21 U.S.C. §§ 801 *et seq.*; 21 C.F.R. §§ 1306 *et seq.*; K.S.A. § 65-2836; K.A.R. §§ 100-21-1 *et seq.*

her medical license, and losing eligibility for Medicaid funding. Physicians may also face criminal charges, civil liability, and loss of their DEA numbers for unlawfully prescribing narcotics to patients.⁵

At the same time however, it is recognized that controlled substances are necessary for patients' proper medical treatment. The Kansas State Board of Healing Arts ("KSBHA") recognizes that "controlled substances, including opioid analgesics, may be essential in the treatment of acute pain . . ." and that physicians "should not fear disciplinary action from the Board for prescribing, dispensing or administering controlled substances . . . for a legitimate medical purpose and in the usual course of professional practice."⁶ As such, physicians can face situations in which the proper course of treatment includes prescribing controlled substances that patients could potentially use for non-medical purposes. For these reasons, physicians should take steps to ensure compliance with state and federal regulatory laws as well as to protect against becoming the target of "drug seekers."

Because nearly seventy percent of Americans visit their primary care physician at least once every two years, primary care physicians are in a position to identify and provide treatment for controlled substance abuse.⁷ In this regard, physicians should inquire about any substance abuse history, any current prescriptions, the patient's use of over-the-counter drugs, and the reasons for the patient's use thereof.⁸ If dealing with a new patient, the physician should inquire

⁵ See Ann Bittinger, *The Pain Management Catch-22: Avoiding Criminal Charges for Prescribing Controlled Substances*, HEALTH LAWYERS NEWS, Nov. 2005, at 5.

⁶ *Guidelines for the Use of Controlled Substances for the Treatment of Pain*, Kansas State Board of Healing Arts, at <http://www/ksbha.org/misc/painmgmt.html>.

⁷ See U.S. Department of Health & Human Services, National Institutes of Health, *Prescription Drugs: Abuse and Addiction* (2005), available at <http://www.drugabuse.gov/PDF/RRPrescription.pdf>.

⁸ *Id.*

about the patient’s prior physicians, where the patient’s previous prescriptions have been filled, and the patient’s need for the narcotics. Physicians should also note any “rapid increases in the amount of medication needed, or frequent, unscheduled refill requests.”⁹ Physicians should also be alert that patients may engage in “physician shopping” in order to obtain multiple prescriptions.¹⁰

The KSBHA has adopted Guidelines for evaluating the use of controlled substances for pain control.¹¹ A physician should fully evaluate the patient, documenting the nature, intensity, and past treatment of the pain reported, as well as any “recognized medical indications for the use of a controlled substance.”¹² A physician should use a written treatment plan containing objectives that will determine the success of treatment.¹³ A physician should also discuss with the patient the risks and benefits of using controlled substances.¹⁴ When dealing with a patient who is believed to be “at high risk for medication abuse or have a history of substance abuse,” the physician may use a written agreement between the physician and the patient that outlines the patient’s responsibilities, including the number and frequency of prescription refills and reasons why drug therapy may be discontinued.¹⁵

⁹ *Id.*

¹⁰ *See id.*

¹¹ *See Guidelines for the Use of Controlled Substances for the Treatment of Pain*, Kansas State Board of Healing Arts, at <http://www/ksbha.org/misc/painmgmt.html>.

¹² *See id.*

¹³ *See id.*

¹⁴ *Id.*

¹⁵ *Id.*

Further, a physician should periodically review the patient's course of treatment and refer the patient for "additional evaluation and treatment in order to achieve treatment objectives."¹⁶ The physician should also comply with record-keeping requirements of state and federal laws regulating the prescription, dispensation, and administration of controlled substances.¹⁷ Finally, the KSBHA recommends that a patient receive "prescriptions from one physician and one pharmacy where possible."¹⁸

Physicians should take other steps to help manage risks associated with prescribing controlled substances. For example, physicians should secure their prescription pad, fill out prescriptions in a manner to prevent alteration by patients, and protect their DEA numbers.¹⁹ Further, in the event a physician learns a patient has altered a prescription or otherwise misused a prescription, the physician should not be afraid to confront the patient.

Controlled substances are necessary and proper for treatment of acute pain. However, physicians should be alert to the risks associated with prescribing controlled substances and take steps to ensure compliance with state and federal regulatory laws.

* Naturally, this article is not legal advice and is not a substitute for consulting with an attorney about these complex issues.

¹⁶ *Id.*

¹⁷ *See id.* Physicians who qualify as "dispensing physicians" should be aware of and comply with state regulations regarding the manner in which they may distribute and dispense prescription drugs. *See* K.A.R. §§ 100-21-1 *et seq.*

¹⁸ *Guidelines for the Use of Controlled Substances for the Treatment of Pain*, Kansas State Board of Healing Arts, at <http://www/ksbha.org/misc/painmgmt.html>.

¹⁹ *See* Lance P. Longo, M.D. et al., *Addiction: Part II. Identification and Management of the Drug-Seeking Patient*, AMERICAN FAMILY PHYSICIAN, Apr. 15, 2000, at 2401, available at <http://www.aafp.org/afp/20000415/2401.html>.