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Controlled Substance Rx

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By Brian E. Quinn, Esquire

In recent years, in an effort to reduce fraud and abuse, law enforcement officials in Pennsylvania are investigating more and more medical professionals who are prescribing pain medications.

This seems to be the trend in other states as well. Especially when empathy is relevant, balancing patient treatment against the concern for potential drug abuse is a thorny dilemma for nurse practitioners. Different challenges face practitioners, when we are undoubtedly, in an environment of increased scrutiny over those who write controlled substance prescriptions.

I am hearing more often that pain management doctors are increasingly terminating their treatment of chronic pain patients who they find are in violation of their narcotic prescription agreement. The result is that many of these patients are showing up in emergency rooms and primary care offices.

A psychiatric nurse practitioner told me that his biggest concern is doctor shopping. Many of his patients have pain issues requiring opiate intervention. Fortunately, for this nurse practitioner, he practices in Delaware, which has an effective prescription monitoring program (PMP), which gives prescribers immediate access to a patient's controlled substance prescription history. Although this is helpful, the practitioner must also be cognizant of patients who may travel for prescriptions to neighboring states that do not have fully operational drug monitoring programs.

Another psychiatric nurse practitioner shared that 50% of her in-patients have chronic pain; of those patients, approximately 25% have been completely cut-off from opiate medication by pain management doctors due to a positive urine screen for other than the prescribed opiate, or the lack of a positive urine screen for the prescribed opiate, and are buying drugs on the street.

The general consensus among the psychiatric nurse practitioners I spoke with is that it is imperative to corroborate information given by a patient with a prescriber. HIPPA makes this more complex, requiring a signed release, and the follow-up laborious task of securing patient information.

One of my clients, a hospitalist nurse practitioner, spoke of a procedure her hospital had where a registered nurse would call the pharmacy to verify the medications a patient claimed to be on; however, this practice has recently changed so that the nurse practitioner must personally speak to the patient's primary care physician to verify what medications are being prescribed.

Disturbingly, I was also recently told by a family practice nurse practitioner of an insurance company's new procedure of not paying for the primary care physician's office visit if the patient is not satisfied with the services. This nurse practitioner and some of her colleagues complain that as a result, some doctors are putting pressure on them to prescribe the opiate medication that the patient is seeking so that the doctor will be paid for the visit.

While management of chronic pain through non-narcotic medication would be the preferred method of treatment, many patients do require a controlled substance for pain. In this day and age of escalating drug addiction, and in particular, opiate addiction, it is important that a dispensing practitioner be vigilant in the examination of patients, recording the patient's history, documenting pain levels, rely on diagnostic studies such as MRIs, and be cautious in their prescribing practices, so there is no concern of over-prescribing.

On another, often under-emphasized note is the required state board filings for nurse practitioners. Many states require a written collaborative agreement between the nurse practitioner with prescriptive

authority and a collaborating physician wherein they agree to the details of their collaboration. If your state requires a collaborative agreement, it is important that you follow all regulations related to that agreement.

For instance, in Pennsylvania, the collaborative agreement must identify a primary and secondary collaborating physician, be updated every two years, identify the categories of drugs from which the nurse practitioner may prescribe or dispense, as well as the practice setting. The collaborative agreement must also be filed with the Pennsylvania State Board. If your state requires a collaborative agreement, the nurse practitioner should have a separate collaborative agreement for each employer. Many nurse practitioners work for different organizations and/or physician offices. In some states, like Pennsylvania, the nurse practitioner is required to have a collaborative agreement for each establishment where they practice.

I presently have a case where a nurse practitioner's collaborative agreement identifies the emergency room where she was employed as the primary employer. The nurse practitioner, however, also wrote several prescriptions for an employee/patient of a home healthcare company that she owns. She is now being charged criminally with felony charges of prescribing controlled substances without the proper authority.

It is also incumbent upon the nurse practitioner to confirm that the collaborative agreement is filed with and approved by the state board. I presently represent a nurse practitioner who worked for an agency that assured the nurse practitioner that the collaborative agreement was filed with the state. The nurse practitioner later became aware that the paperwork was not approved by the state board since the agency failed to file it properly. Now, the nurse practitioner is facing disciplinary violations from the state board for writing prescriptions without a valid collaborative agreement.

In my 30 years of practicing criminal and professional licensing law I often see healthcare professionals answering questions from law enforcement or employers without the benefit of first seeking experienced counsel. Very often that can lead to damaging admissions that are ultimately used to criminally prosecute, terminate employment and/or jeopardize the practitioner's professional license.

Should the nurse practitioner ever be approached or questioned by law enforcement about their prescribing practices, that practitioner should refrain from answering any questions or providing any documentation to law enforcement prior to speaking to an attorney experienced in healthcare law and/or criminal law.

Brian E. Quinn has been a practicing attorney in Pennsylvania and New Jersey for 30 years and specializes in defending nurses and other healthcare professionals in professional licensing and criminal matters.