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Preventive Action

Quarterly Risk Management Newsletter for Policyholders of FPIC

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Prescription Pad Theft and Abuse

A major problem facing healthcare professionals today is the abuse of prescription drugs and diversion of medications. A prescription drug abuser may prey on the sincere efforts of healthcare professionals to eliminate pain and suffering, and provide comfort for a patient. Frequently, prescription drugs become a very valuable product for the drug trafficker. The theft of prescription pads and medications occurs in a variety of ways. Every physician and healthcare professional should safeguard against becoming an easy target for drug diversion.

Editor's note:

A Declaration of Public Health Emergency was issued in Florida effective July 1, 2011 in response to the epidemic of prescription drug overdoses. Chiefly aimed at pain management practices, certain dispensing practitioners of Schedule 11 and Schedule 111 controlled substances must be available to DOH inspection and substance inventories are subject to certain disposal requirements. According to the Florida Department of Law Enforcement, the drugs that caused the most deaths are Oxycodone, Hydrocodone, all Benzodiazepines – most notably Alprazolam, and Methadone. Effective 8/29/11, Florida law requires that health care providers use an approved counterfeit proof prescription pad when prescribing drugs such as oxycodone.

> "...prescription drugs become a very valuable product for the drug trafficker."

The most effective method of combating prescription drug abuse is through education and communications.

When Confronted by a Suspected Drug Abuser, Do Not:

- "Take their word for it" when you are suspicious
- Dispense drugs just to get rid of drug-seeking patients
- Prescribe, dispense, or administer controlled substances outside the scope of your professional practice or in the absence of a formed physician-patient relationship
- Accuse the patient or advise third parties

If you discover a loss of controlled substances or theft of prescription forms, you are required to notify the Drug Enforcement Agency (DEA) and your local law enforcement.

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First Professionals Insurance Company publishes Preventive Action on a quarterly basis as a service to policyholders. Information in this publication does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained in this newsletter are generalized and may not apply to all practice situations. First Professionals Insurance Company recommends you obtain legal advice from a qualified attorney for a specific application to your practice. The information should be used as a reference guide only.

For comments, questions or to obtain additional copies contact the First Professionals Insurance Company Risk Management department at 800-741-3742, ext. 3016.

Cliff Rapp
Vice President of Risk Management
Editor-in-Chief

Ruth Lopes
Risk Management Consultant

Joseph Putz
Risk Management Consultant

Sandra C. Strickland
Director, Risk Management Services

First Professionals Insurance Company
1000 Riverside Avenue, Suite 800
Jacksonville, FL 32204
800-741-3742
Local 904-354-5910
Fax 904-354-6132
www.firstprofessionals.com

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If You Suspect Misuse of Prescriptions:

- Perform a thorough examination appropriate to the condition.
- Document examination results and questions you asked the patients.
- Request picture ID or other ID and social security number. Photocopy these documents and include in the patient's records.
- Obtain authorization from the patient to contact their previous practitioners, pharmacist, or hospital (in order to confirm the patient's story).
- Confirm the current address and phone number at each visit.
- Write prescriptions for limited quantities.
- Refer the patient for treatment of substance abuse. Document refusal of treatment.

To avoid prescription pad theft and abuse, it is a good idea to practice the following risk management principles:

- Secure inventory of prescription pads in locked area.
- Number your prescription pads.
  Keep count of all prescription pads by having staff document a weekly inventory count.
- Keep one prescription pad in your pocket for use in your office.
- Do not leave prescription pads in patient rooms or at workstations.
- Do not have your DEA number pre-printed on prescription pads.
- Do not give your DEA number to anyone in your office.
- Do not allow anyone else to sign your prescription pads.
- Do not pre-sign any prescriptions.
- Maintain a current list of medications prescribed for each patient, along with dates and numbers of refills (including samples) to monitor the patient's medication use.
- Know your employees. Conduct a pre-employment criminal background investigation and pre-employment drug screening for potential employees and include a policy for random drug testing in your personnel manual. ■

Caveats for Risk Reduction – Documenting Telecommunication

It is not uncommon for those who meticulously document their charts to discount the importance of telecommunication and messages. Patients have been lost to follow-up, diagnoses gone unmade or delayed and indefensible care rendered because of the absence of a phone message. This is a spiraling concern since the advent and widespread use of voicemail.

What's the most important phone call you'll receive? From a risk management standpoint it's the phone call you or your staff forgets to document. All phone conversations and voicemail messages need to be documented in the patient's chart. Such documentation is not only in the patient's best interest, but will support what you were told (or not told) by the patient (or others) and could prove to be the pivotal piece of evidence in a defense. Countless claims have been attributed to inadequate documentation and non-meritorious cases forced to settlement because of a lack of evidence as simple as a phone or voicemail message.

Documenting phone calls is a basic – but important – risk management practice. This is no less true for all forms of communication. As such, FPIC has phone message pads available which are designed to enhance your documentation practices. Keep one in your lab coat pocket, near the phone in your office, at home, in your car, and even your bedside table.

MESSAGE PAD

For:
Date: Time: AM PM
Caller:
Patient:
Phone Number:
Nature of Call:
Instructions/Orders:
Physician Signature:
Date: Time: AM PM

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To obtain a complimentary supply of phone message pads, contact FPIC's Risk Management Department at (800) 741-3742, ext. 3016, or fax your request to (904) 358-6728. ■

Medical Justice Program

As a reminder, FPIC has a strategic partnership with Medical Justice Services, Inc. Medical Justice offers patented services to protect physicians' most valuable assets—their practice and reputation—against frivolous lawsuits, Internet defamation and other medico-legal threats.

The services offered by Medical Justice deliver proven results such as decreasing malpractice suit rates, holding proponents of meritless lawsuits accountable and address Internet defamation. Medical Justice reports its plan members experience a significant reduction in medical malpractice suits.

- 99.5% of Medical Justice members enjoy zero lawsuit claims year after year (with full implementation of its programs)
- 96% of Medical Justice members' Request for Records never mature into actual results
- 92% of Intent to Sue/Notice of Intent letters are stopped cold

As an added benefit, the agreement with Medical Justice provides preferred pricing with a significant discount for FPIC policyholders.

While the Medical Justice program is currently offered exclusively for Florida policyholders, we encourage all interested policyholders to contact Medical Justice. For more information, please contact Medical Justice at 877.MED.JUST (877.633.5878) or send an e-mail to fpic@medicaljustice.com. ■

News Briefs

Crossing Boundaries: When Doctors and Patients Become Online Friends

The social networking tool Facebook blurs the line between professional and a social relationship. While Facebook can be used positively for communicating information, according to an article on Health Care News Feed, there are a number of problems healthcare providers and their staff need to avoid when using it. Some of these problems include unprofessional photos that may be viewed by patients; comments by friends and family that a patient should not read; and stories shared by the healthcare provider that was not meant for patients to read. Healthcare providers can avoid these problems by discussing patient and doctor boundary issues with staff and emphasizing the importance of upholding HIPAA, even in social media. (*Health Care News Feed*, 6/8/11) ■

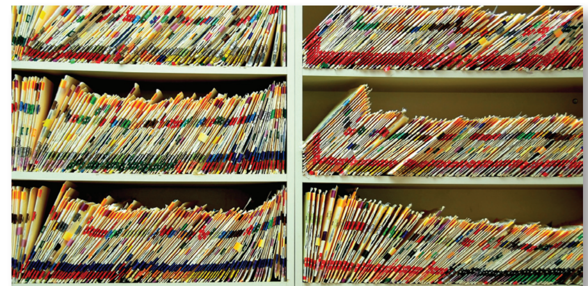
Mobile Health Technology Raises Questions of Liability

The same smartphone technology that allows consumers to find the nearest gas station is finding its way into the world of medicine and health. In August 2010, Apple iTunes reported that there were 10,000 medical, healthcare, and fitness related applications available for download. That is just the consumer market. There are already many examples of wireless technology being used by doctors, hospitals, and other healthcare providers. There are many cited benefits, however; one draw back is that technology is moving faster than any regulatory body can keep up. "So many different health apps pop up," said Joseph Kim, a doctor of internal medicine whose bachelor's degree is in mechanical engineering. "How do you as a consumer, or as a physician, know which ones are reliable or which are accurate?" He added, "Releasing an app is very easy", but if it is developed abroad, the standards may be different than they are in the United States. For example, a recommended drug may be approved elsewhere, but not in this country. "There are a lot of questions of liability that have yet to be answered," said Kim, a vice president at Medical Communications Media Inc. "If a patient uses an app on the iPhone, who, at the end of day, is liable? If someone buys a WebMD Symptom Checker and there's a problem, is the Apple Store liable? Is WebMd liable?" Kim agrees that the wireless future is bright, but warned that users have to be very cautious. (*Telegraph-Herald (IA)*, 5/1/11) ■

Risk Management Reminder

Medical Records – Benefit or Detriment?

In light of the frequency and severity of liability claims, the need for accurate recordkeeping cannot be overstated. One of the first steps taken by a plaintiff's attorney in evaluating a potential liability claim is a thorough review of your medical records. Complete medical records, written contemporaneously, are your best defense against a malpractice action. For those less diligent, the results of poor recordkeeping can be disastrous. ■



CASE STUDY:

Failure to Diagnose and Treat Epidural Abscess

Editor's Note: This case study analysis reflects an actual FPIC case.

Case Analysis

A 59-year-old female underwent redo coronary artery bypass graft x4, with left internal mammary artery graft with a prior history of coronary artery bypass graft 12 years earlier and well-controlled type II diabetes. Surgery was uneventful. The patient's white blood count was 11.8 pre-operatively and 13.9 four days later prior to discharge. When next seen, the patient complained of lightheadedness. The sternal wound was healing well. The patient's spouse testified that his wife complained of neck and shoulder pain during the visit; that he called the office two days later, spoke with a physician assistant (PA) and advised to increase pain medications; and called the office three days later due to continuing pain and was again directed to the PA. The PA denied the telephone calls and there was no documentation of either phone call. (However, the plaintiff produced a prescription for pain medication that had in fact been called in by the PA.) The patient subsequently called the office, again spoke with the PA, and described increasing chest pain with movement and deep breathing. The PA directed the patient to the ER for evaluation. The ER physician noted the patient was taking Darvocet "for chest pain". An EKG was unremarkable. White blood count was 14.8. The ER diagnosed "chest wall pain" and prescribed Ultram. The ER physician testified that he spoke with PA. However, no documentation was made of that call in either the hospital record or the patient's office chart.

The following day, the patient again phoned the office and spoke with another physician assistant (PA2) due to complaint of pain – including neck pain. PA2 provided instruction to continue taking the pain medication as prescribed by the ER.

The patient then saw a chiropractor due to continuing "severe" neck pain. The chiropractor noted a reddened, swollen area at the incision site and directed the patient to the surgeon. That evening, the patient called the office, was directed to another physician assistant (PA3), and described her symptoms. PA3 acknowledged the telephone call, but did not document it.

The patient's spouse testified that the following day he called the office five times demanding that the patient be seen before being granted an appointment. Upon arrival, the patient was evaluated by PA3 who summoned a physician in the group to examine the incision. The patient was immediately admitted, underwent surgery for a ventral epidural abscess, and subsequently rendered an incomplete C6 quadriplegic.

Suit was filed against the physician, the three physician assistants, and the group practice for delay in diagnosis and treatment of the sternal wound infection resulting in progression to an epidural abscess resulting in quadriplegia. Medical experts could not defend the case due to the lack of documentation, delay in diagnosis of the infection, and repeated physician assistant failure to refer the patient to a physician for evaluation.

Risk Management Discussion:

Liability exposure can be increased and defenses undermined when telephone communication is not documented and physician consultation is delayed. Consider the following recommendations to minimize these exposures:

- Prepare written protocols that specify physician extender responsibilities relative to examinations, assessments, diagnoses, treatment, and administrative functions
- Periodically test competency and document performance evaluations
- Provide disclosure language in patient authorizations and/or consent forms indicating that treatment will be rendered by physician extenders, under your supervision
- Ensure that patients are seen by the physician at defined intervals
- Provide written notice to patients that physician extenders work collaboratively with the physician, who is ultimately responsible for treatment decisions
- Assure patients that they will be seen by a physician when they or the doctor feel it necessary
- Develop and maintain written protocols for telephone calls, capturing caller identity, nature of call, and information provided
- Telephone procedures should include appropriate steps for triaging phone calls and directing/escalating them to the appropriate individual for handling
- Review and chart diagnostic studies and reports
- Document telephone communication

This information does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained here are generalized and may not apply to all practice situations. FPIC recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only. ■

First Professionals Insurance Company
P.O. Box 44033
Jacksonville, Florida 32231-4033
800-741-3742
www.firstprofessionals.com

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Legal FAQs

For information specific to your state of practice, contact FPIC's Risk Management Department

What is the definition of an 'e-consultation'?

Definitions vary. However, in the context of risk management concerns, an e-consultation may be defined as a consultation sought by an electronic means of some sort, by another physician, healthcare professional, or patient entailing a specific question about a particular symptom, diagnostic test, or therapeutic intervention. An e-consultation may entail communication transmitted via telephone, fax, e-mail or internet.

What is meant by a 'Root Cause Analysis'?

A widely adopted method of identifying underlying causes of medical error. An effective RCA looks beyond the immediate result and identifies the chain of events or contributing factors which led to the error.

What is an 'active failure'?

An error which is precipitated by the commission of errors and violations. These are difficult to anticipate and have an immediate adverse impact on safety by breaching, bypassing, or disabling existing defenses.

What if the patient cannot participate in the marking process?

In cases of non-speaking, comatose, or incompetent patients, or children, the "patient involvement" in the site marking process should be handled in the same way that you handle the informed consent process. Whoever has authority to provide informed consent for the patient to undergo the procedure would, as appropriate, participate in the site marking process.

Does the surgical site have to be marked if there is an obvious wound or lesion?

In general, site marking is not required if there is an obvious wound or lesion that is the site of the intended procedure. However, if there are multiple wounds or lesions and only some of them are to be treated, and the decision and direction for which ones are to be treated is determined at some time prior to the procedure itself, then the sites to be treated should be marked as soon as possible after the decision is made.

FAQ Correction:

In the second quarter issue of *Preventive Action*, there is an error regarding the FAQ "Which drugs can a prescribing Physician Assistant write prescriptions for"? The answer should have contained clarifying language stating that "Under current Florida law, unless by schedule under supervising physician, a PA cannot write prescriptions for controlled substances… ". If you have questions regarding this topic, please contact our Risk Management Department. ■