Disciplinary Actions from State Regulatory Boards

Educational Forum on Prescription Drug Abuse

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OBJECTIVES:

1. Describe licensing boards' required approaches to pain management

2. Discuss the reporting requirements for licensees who suspect their colleagues may be improperly prescribing

Questions

1. How do I prescribe correctly?
2. What happens if I don't?
3. Do I have a duty to report?
4. Can I communicate with other healthcare providers about prescriptions?

Disciplinary Process

Complaint

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Investigate

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Dismiss IFFC/CO CCA

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Formal Hearing

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Circuit Court

Let's start with punishments from Regulatory Boards:

- "Ordered that the license of Dr. Doe is SUSPENDED for a period of not less than 18 months."

- "Ordered that Dr. Doe's privilege to renew his license is hereby INDEFINITELY SUSPENDED."

Let's start with punishments from Regulatory Boards:

- "INDEFINITE PROBATION subject to following TERMS and CONDITIONS:
  - 15 hours of CME on proper prescribing of controlled substances
  - 15 hours of CME on the subject of recordkeeping
  - 20 hours of CME on treating patients with chronic pain"

Let's start with punishments from Regulatory Boards:

- "Permanently restricted from prescribing Schedule II, III and IV controlled substances"

- "Permanently restricted from providing chronic pain management treatment for more than 90 days"

How to Prescribe Correctly

- Board of Medicine Statutes and Regulations
  - www.dhp.state.va.us/medicine/
  - *Guidance Document 85-24
  - “Model Policy”
- Board of Dentistry Statutes and Regulations
  - www.dhp.state.va.us/dentistry/

How to Prescribe Correctly

- Prescription Monitoring Program
  - SIGN UP!
  - www.pmp.dhp.virginia.gov

Prescription Monitoring Program (PMP) - Other tools

- Sign up for PMP in neighboring states
  - West Virginia: https://65.78.228.163
  - Kentucky: http://chfs.ky.gov/os/oig/KASPER.htm
  - Tennessee: https://prescriptionmonitoring.state.tn.us
  - North Carolina: http://www.ncdhhs.gov/mhddsas/controlledsubstance/index.htm

How to Prescribe Correctly

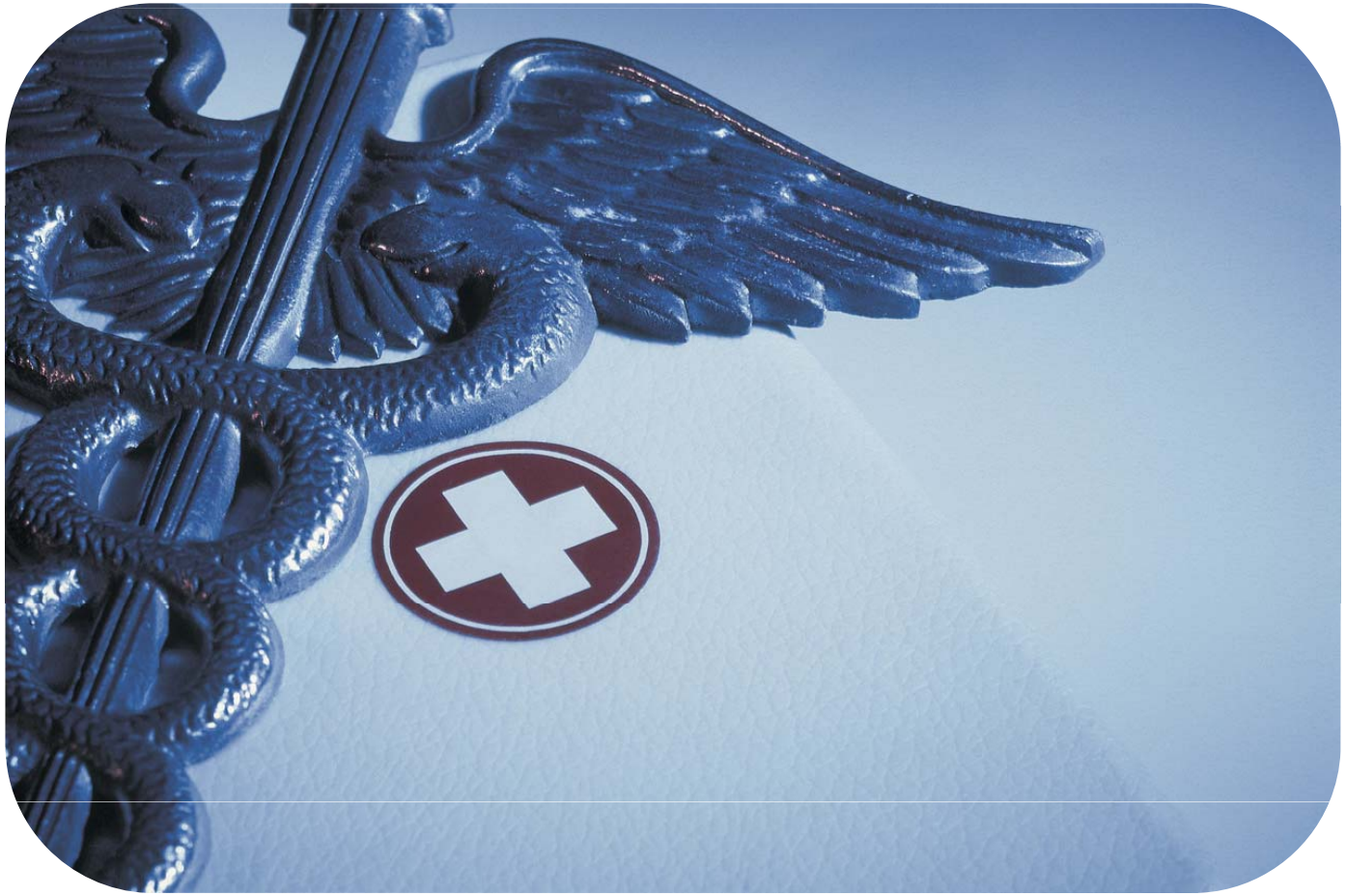
- Virginia Drug Laws for Practitioners
  - See "Laws & Regulations" on Board of Medicine or Board of Dentistry site
- Responsible Opiod Prescribing
  - Scott M. Fishman, M.D.
- PMP Pain Management Course
  - http://www.dhp.state.va.us/dhp_programs/pmp/default.asp

Initial Issues

- The patient should not dictate the standard of care
- Abandonment vs. your right to refuse to treat patients
- Investigation and due diligence are necessary

Virginia Board of Medicine Requirements for Treating Chronic Pain

This information is from the Board



Evaluation of Patient

- History and physical
- Nature, location, intensity of pain
- Rate worst and least pain in the past week, pain on average and pain at time measure is taken
- Current and past treatments

Evaluation of Patient

- Underlying or coexisting diseases or conditions
- Effect of pain on physical and psychological function, ADLs
- History of substance abuse/likelihood of addiction
- Recognize medical indication for use of controlled substances must be documented

Treatment Plan

- Objectives used to determine treatment success (i.e. pain relief, improve physical and psychosocial function)
- Further diagnostic evaluation
- Determine if opioid treatment is indicated
- Other treatment planned - - pharmacologic and non-pharmacologic modalities, rehabilitation program may be necessary

Treatment Plan

- Adjust treatment as needed - - according to intensity, duration of pain and treatment outcomes

- What is your goal for treating this patient? It must be written down so you can monitor the goal and others looking at the chart know what the goal is.

Informed Consent and Agreement for Treatment

- Discuss risks and benefits of use of controlled substances and document
- One physician
- One pharmacy
- Written agreement

Informed Consent and Agreement for Treatment

- Drug screens - - which drugs in the patient system - - licit or illicit, prescribed or not
- Frequency of refills
- Pill counts
- Reasons to discontinue to treat (i.e. violation of the agreement)

Periodic Review

- Pain treatment - - appropriate for diagnosis
- New information about pain or health
- Continue or modify based on evaluation of progress toward the treatment objective
- Satisfactory response includes decreased pain; increase function; improved quality of life

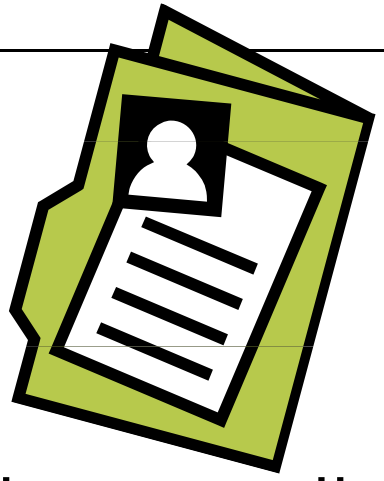
Periodic Review

- Objective evidence of improved or diminished function
- Information from family and care givers considered
- If unsatisfactory - - access appropriateness of continued use of controlled substances; revise treatment plan; consider use of other modalities
- Recognize tolerance and physical dependence is normal consequences of sustained use of opioids

Consultations

- Refer as necessary for evaluation and treatment
- Especially if risk of misuse, abuse or diversion; comorbid psychiatric disorder

Medical Records/Chart **must** include



- ✓ H & P
- ✓ Informed consent
- ✓ Diagnostic tests
- ✓ Treatments
- ✓ Therapeutic tests
- ✓ Meds (date/type/dose and quantity prescribed)
- ✓ Laboratory results
- ✓ Evaluations and consultations
- ✓ Treatment objectives
- ✓ Risks and benefits
- ✓ Instructions and pain management contract
- ✓ Periodic reviews

Important Points Always Mentioned by the Board

- Diagnosis must be based on objective evidence and old records; not as stated by the patient.
- You must review previous treatments and obtain records from previous prescribers or any other relevant physician.
- You must develop a treatment plan.
- You must have a rationale for the treatment.

Important Points Always Mentioned by the Board

- You must continually re-evaluate the treatment plan to determine if it continues to be appropriate for the diagnosis.
- You must consider alternative treatments.
- Quantity and frequency of doses adjusted according to intensity, duration of pain and treatment outcomes - - must be assessed and documented at regular intervals.

Board considers these Red Flags to be Indicative of Substance Abuse

- ✓Mood swings, depression, anger, irritability
- ✓Marital problems
- ✓Missing school or work
- ✓Poor performance at school or work
- ✓Financial problems, large recent debt
- ✓Social isolation, loss of friendships
- ✓More concerned about obtaining drug than resolving medical issues
- ✓Reporting multiple medication sensitivities

Board considers these Red Flags to be Indicative of Substance Abuse

- ✓ Stating an inability or unwillingness to take generic meds
- ✓ Refusing to participate in diagnostic workups or consultations
- ✓ Continual reinjuring self and thus requiring more/stronger pain meds
- ✓ Unusually sophisticated knowledge of drugs (i.e. requesting a specific narcotic by name)
- ✓ Appealing to physician, he or she is the only person who can help
- ✓ Lost or misplaced, stolen prescriptions
- ✓ Traveling long distances to the physician's office

Proper Pain Management is Proved by the Following Evidence

- ✓ The physician has appropriate training in pain management.
- ✓ The diagnosis is appropriately made.
- ✓ There is a relevant exam of the patient.
- ✓ The treatment plan contains the rationale.
- ✓ Use of pain ratings, measure effect of pain meds on ADLs, functioning
- ✓ Use of Pain Management Contracts
- ✓ Use of the PMP
- ✓ Use of urine drug screens
- ✓ Use of random pill counts
- ✓ Violation of the agreement as addressed and actions are taken
- ✓ Competent use of Benzodiazepines and Opioids - - increased risk, rationale for use

Mandatory Board of Medicine Reporting

- Virginia Code §54.1-2909
- Any person licensed by the BOM shall report within 30 days "any evidence that indicates to a reasonable probability" that a person licensed by the BOM has engaged in "intentional or negligent conduct, unprofessional conduct. . . ."

Mandatory Board of Medicine Reporting

- The person making the report has immunity from civil liability and criminal prosecution unless the person "acted in bad faith or with malicious intent."

Mandatory Board of Dentistry Reporting

- Virginia Code §54.1-2709.4
- Similar to BOM but only applies to Oral and Maxillofacial Surgeons

Voluntary Reporting/Complaint

- Anyone in good faith
- Can be anonymous

New Laws

- A prescriber of controlled substances who has reason to suspect that a person has obtained or attempted to obtain a controlled substance or prescription for a controlled substance by fraud or deceit <u>may</u> report the activity to local law enforcement for investigation. The prescriber who reports in good faith shall not be liable for civil damages in connection with furnished such information or records.

New Laws

- Law has been passed that clarifies the authority for a healthcare professional to share information obtained from the Virginia Prescription Monitoring Program with another healthcare professional when it is related to the care or treatment of a patient.

Are you the Subject of a Complaint?

- Call your malpractice carrier
- Call a lawyer with expertise in BOM/BOD/BON/BOP/DCA

Questions

Thank you!

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