

Legal Aspects of Pain Management

DEA

DEA
Attorney General

DEA
Attorney General
Department of Justice

DEA
Attorney General
Department of Justice
State Board of Medicine

DEA
Attorney General
Department of Justice
State Board of Medicine
Manslaughter

DEA

Attorney General

Department of Justice

State Board of Medicine

Manslaughter

Murder

DEA

Attorney General

Department of Justice

State Board of Medicine

Manslaughter

Murder

Jail

Pain Management

Pain Management

Medical Aspects

Pain Management

Medical Aspects

Legal Aspects

Pain Management

Medical Aspects

Legal Aspects

Case Studies

Case

New Patient

52 yr old man

CC: Chronic Pain

Otherwise Well

Medical Aspects

Medical Aspects

Credentials

Credentials

Credentials

Training

Credentials

Training
Experience

Credentials

Training

Experience

Conferences/Courses

Credentials

Training

Experience

Conferences/Courses

CME

(How will I sound)

Medical Aspects

Credentials

Patient Evaluation

“Standard” Questions

“Standard” Questions Past Physicians & Reason for Leaving

“Standard” Questions

Past Physicians & Reason for Leaving
Current Physicians & Respective Roles

“Standard” Questions

Past Physicians & Reason for Leaving
Current Physicians & Respective Roles
Recreational Drug or Alcohol Use

“Standard” Questions

Past Physicians & Reason for Leaving
Current Physicians & Respective Roles

Recreational Drug or Alcohol Use

Psychiatric Disorders

“Standard” Questions

Past Physicians & Reason for Leaving
Current Physicians & Respective Roles

Recreational Drug or Alcohol Use

Psychiatric Disorders

Social Situation

“Standard” Questions

Past Physicians & Reason for Leaving

Current Physicians & Respective Roles

Recreational Drug or Alcohol Use

Psychiatric Disorders

Social Situation

Review Old Records

“Standard” Questions

Past Physicians & Reason for Leaving

Current Physicians & Respective Roles

Recreational Drug or Alcohol Use

Psychiatric Disorders

Social Situation

Review Old Records

Appropriate Physical Exam

Additional Evaluation

Additional Evaluation

Testing

Additional Evaluation

Testing
Consultation

Additional Evaluation

Testing
Consultation
Query PDMP

Prescription Drug Monitoring Program (PDMP)

Database of Controlled Substances
Prescriptions

PDMP Limitations

PDMP Limitations

Only 41 States

PDMP Limitations

Only 41 States

State by State

PDMP Limitations

Only 41 States

State by State

7-10 Days to Enter Scripts

Query PDMP Prior to Prescribing

Query PDMP Prior to Prescribing
Chronic Pain

Query PDMP Prior to Prescribing

Chronic Pain

New/Unknown Patients with Intangible Pain

Query PDMP Prior to Prescribing

Chronic Pain

New/Unknown Patients with Intangible Pain

Suspicious/Inaccurate History

Medical Aspects

Credentials

Patient Evaluation

Treatment Plan

Treatment Plan

Treatment Plan
Tailored to Patient

Treatment Plan

Tailored to Patient

Patient Centered, Not Patient Directed

Treatment Plan

Tailored to Patient

Patient Centered, Not Patient Directed

Multimodal Approach

Treatment Plan

Tailored to Patient

Patient Centered, Not Patient Directed

Multimodal Approach

Regular Reevaluation

Medical Aspects

Credentials

Patient Evaluation

Treatment Plan

Documentation

How much documentation is enough?

Documentation

Documentation

Everything Relevant

Documentation

Everything Relevant

No Loose Ends

Documentation

Everything Relevant

No Loose Ends

Logical & Legible

Medical Aspects

Credentials

Patient Evaluation

Treatment Plan

Documentation

Opioids

Opioids

Appropriate Clinical Situation

Opioids

Appropriate Clinical Situation
Discussion with patient

Discussion with Patient

Discussion with Patient

Proper Use of Medication

Discussion with Patient

Proper Use of Medication

Medication Interactions (Sedatives, Hypnotics, Alcohol)

Discussion with Patient

Proper Use of Medication

Medication Interactions (Sedatives, Hypnotics, Alcohol)

Avoid Hazardous Activities (Driving)

Discussion with Patient

Proper Use of Medication

Medication Interactions (Sedatives, Hypnotics, Alcohol)

Avoid Hazardous Activities (Driving)

Security of Medications

Discussion with Patient

Proper Use of Medication

Medication Interactions (Sedatives, Hypnotics, Alcohol)

Avoid Hazardous Activities (Driving)

Security of Medications

Replacement Scripts & Refills

Discussion with Patient

Proper Use of Medication

Medication Interactions (Sedatives, Hypnotics, Alcohol)

Avoid Hazardous Activities (Driving)

Security of Medications

Replacement Scripts & Refills

Call if Any Questions/Problems

Discussion with Patient

Proper Use of Medication

Medication Interactions (Sedatives, Hypnotics, Alcohol)

Avoid Hazardous Activities (Driving)

Security of Medications

Replacement Scripts & Refills

Call if Any Questions/Problems

Documentation

“Proper use of medication discussed and instruction sheet given.”

“Proper use of medication discussed and instruction sheet given.”

“Proper use of medication discussed and precautions given.”

Opioids

Appropriate Clinical Situation

Discussion with Patient

Documentation

Prescribe in Accordance with Applicable Law

How does the approach differ
for acute pain?

Chronic Pain

Chronic Pain

One Physician & One Pharmacy

Chronic Pain

One Physician & One Pharmacy

Urine Drug Testing

Chronic Pain

One Physician & One Pharmacy

Urine Drug Testing

Signed Treatment Agreement

Pain Treatment Agreement

Pain Treatment Agreement

Written Document

Pain Treatment Agreement

Written Document
Goals of treatment

Pain Treatment Agreement

Written Document

Goals of treatment

Proper use of medication

Pain Treatment Agreement

Written Document

Goals of treatment

Proper use of medication

One physician & One pharmacy

Pain Treatment Agreement

Written Document

Goals of treatment

Proper use of medication

One physician & One pharmacy

Agreement to periodic drug testing

Pain Treatment Agreement

Written Document

Goals of treatment

Proper use of medication

One physician & One pharmacy

Agreement to periodic drug testing

Grounds for termination

Pain Treatment Agreement

Written Document

Goals of treatment

Proper use of medication

One physician & One pharmacy

Agreement to periodic drug testing

Grounds for termination

Patient signature

Pain Treatment Agreement

Written Document

Goals of treatment

Proper use of medication

One physician & One pharmacy

Agreement to periodic drug testing

Grounds for termination

Patient signature

Copy to patient

Should we title the Document an
“Agreement” or a “Contract”?

Pain Management

Medical Aspects

Legal Aspects

Federation of State Medical Boards (FSMB)

FSMB Pain Management Model Guidelines

Evaluation of the Patient

Treatment Plan

Pt Consent & Agreement

Periodic Review

Consultation

Medical Record

FSMB Pain Management Model Guidelines

FSMB Pain Management Model Guidelines

Evaluation of the Patient

FSMB Pain Management Model Guidelines

Evaluation of the Patient Treatment Plan

FSMB Pain Management Model Guidelines

Evaluation of the Patient

Treatment Plan

Pt Consent & Agreement

FSMB Pain Management Model Guidelines

Evaluation of the Patient

Treatment Plan

Pt Consent & Agreement

Periodic Review

FSMB Pain Management Model Guidelines

Evaluation of the Patient

Treatment Plan

Pt Consent & Agreement

Periodic Review

Consultation

FSMB Pain Management Model Guidelines

Evaluation of the Patient

Treatment Plan

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Periodic Review

Consultation

Medical Record

Pain Management

Medical Standards

Legal Standards

Case Studies

Case Studies

Over-treatment of Pain

Case #1

2000

Kristin Rossum, Toxicologist

Case #1

2000

Kristin Rossum, Toxicologist
Killed Husband with Fentanyl

Case #1

2000

Kristin Rossum, Toxicologist
Killed Husband with Fentanyl
Premeditated Murder

Case # 2

2013

Lisa Tseng, MD

Patient died from self-administered opioid overdose

Charged with 2nd Degree Murder

Joseph Rovero, 21 yrs. old
Pain in his hand, back and wrist
OxyContin & Xanax
Died of overdose 9 days later

Medical Aspects

Credentials

Patient Evaluation

Treatment Plan

Dr. Tseng
Internist

Dr. Tseng

Internist

Store Front Urgent Care Clinic

Medical Aspects

Credentials

Patient Evaluation

Treatment Plan

Mr. Rovero's Medical Record

Incomplete history

Partial physical examination

No review of prior treatment records

No contact with previous doctors

Did not query PDMP

No record that the proper use of the medications was explained

27,000 prescriptions over prior 3 years
for Xanax, OxyContin, and Vicodin

27,000 prescriptions over prior 3 years
for Xanax, OxyContin, and Vicodin

Clinic overflowing with patients
“who seemed strung out on drugs.”

Undercover DEA Agents

Undercover DEA Agents

Cursory evaluations

Prescriptions for controlled substances

Significantly Substandard Medical Care
Deceased Patient

Charged with 2nd Degree Murder
(Reckless conduct with an extreme
Indifference to human life)

Dr. Tseng

Internist

Store Front Urgent Care Clinic
Previous Prescription Problems

Opioid-related Legal Problems

Opioid-related Legal Problems

Pharmacist Complaint

Opioid-related Legal Problems

Pharmacist Complaint

Patient Death

Case # 3

2012

Stan Li, MD

Patient died from opioid overdose

Charged with Manslaughter

Credentials

Credentials

Boarded in Anesthesiology &
Pain Medicine

Credentials

Boarded in Anesthesiology &
Pain Medicine

Practiced full-time at a hospital in
New Jersey

Weekend Pain Clinic

Flushing, NY (Queens)

Patient Evaluation

Patient Evaluation

70 – 100 patients/day

Patient Evaluation

70 – 100 patients/day

Numbered tickets

Patient Evaluation

70 – 100 patients/day

Numbered tickets

Cash payment for visits

Patient Evaluation

70 – 100 patients/day

Numbered tickets

Cash payment for visits

Fees based on opioid prescriptions

Case # 4

2002

Frank Fisher, MD

Redding, California

Patient died from opioid overdose

Charged with 2nd Degree Murder

Credentials

Credentials

Harvard Trained

Credentials

Harvard Trained
General Practitioner

Credentials

Harvard Trained
General Practitioner
Redding, California

Credentials

Harvard Trained
General Practitioner
Redding, California

10% of practice was pain management

Medical Aspects

Credentials

Patient Evaluation

Treatment Plan

Criminal Liability

Criminal Liability

Civil Liability

Civil Liability

Civil Liability

Medical Malpractice

Civil Liability

Medical Malpractice

Four families sued for
“Wrongful Death”

Criminal Liability

Civil Liability

Administrative Liability

Case Studies

Case Studies

Over-treatment of Pain

Case Studies

Over-treatment of Pain

Under-treatment of Pain

Criminal Liability

Civil Liability

Administrative Liability

Case Studies

Over-treatment of Pain

Under-treatment of Pain

Liability to Third Parties

Liability to Third Parties

Someone Other Than the Patient

Liability to Third Parties

Someone Other Than the Patient

Coombes v. Florio

450 Mass. 182 (2007)

Florio – Physician

Sacca – Patient

Rx- Oxycodone for Cancer-related Pain

Florio – Physician

Sacca – Patient

Rx- Oxycodone for Cancer-related Pain

Mr. Sacca hit Coombes

Coombes sued Dr. Florio

First Party Liability



Third Party Liability

Driving Under the Influence (DUI)

Case

New Patient

52 yr old man

CC: Chronic Pain

Prescribed Opioid

Discussion with Patient

Proper Use of Medication

Medication Interactions (Sedatives, Hypnotics, Alcohol)

Avoid Hazardous Activities (Driving)

Security of Medications

Replacement Scripts & Refills

Call if any Questions/Problems

Documentation

Version 1 (Maryland)

A person may not drive any vehicle while the person is impaired by any controlled substance, if the person is not entitled to use the controlled substance under the laws of this State.

Version 2 (Virginia)

It shall be unlawful to operate a motor vehicle while under the influence of any narcotic drug or any other self-administered drug, to a degree which impairs the ability to operate the motor vehicle safely.

Version 3 (Arizona)

It shall be unlawful to drive under the influence of any drug or substance if the person is impaired to the slightest degree.

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