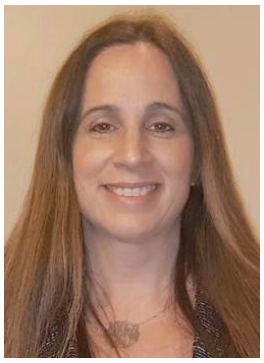
Ten Tips to Mitigate Legal Risks of Opioid Prescribing

Alicia Gallegos

Opioid-related lawsuits against physicians are on the rise. Common allegations include unnecessary prescribing, failing to heed contraindications, and missing warning signs of a likely overdose, said Ericka L. Adler, JD, a Chicago-based health law attorney. To mitigate the risk of being sued, legal and clinical experts offered the following advice.



Erika Adler

1. Identify at-risk patients

Consider the full range of patient risk factors before prescribing or continuing opioids, said Ilene R. Robeck, MD, director of virtual pain education at Richmond VA Medical Center in St. Petersburg, FL, and co-chair of the National VA PACT Pain Champions Initiative.

"When we look at the overdose data, there used to be a perception that people who overdosed were not taking their medication as prescribed, and that's not true all the time," she said. "In fact, in some [studies], half the people who overdose take their medication exactly as prescribed. The problems are related to dose, mixing the opioids with other medications, [patient] age, and underlying medical problems."

Ensure that therapy considerations related to opioids address the full patient picture, Dr. Robeck advised. For example, patients with liver disease, sleep apnea, chronic obstructive pulmonary disease, asthma, and kidney disease are more prone to overdose. In addition, whereas nonmedical use of prescription drugs is highest in patients 18 to 25 years old, opioid overdose rates are highest among patients 25–54, according to the Centers for Disease Control and Prevention.

2. Monitor nurse practitioners and physician assistants

Closely monitor and limit opioid prescribing by the providers you supervise, said pharmacologist and consultant James T. O'Donnell, PharmD. A fair share of medical malpractice lawsuits result from failing to supervise a physician assistant or nurse practitioner prescribing or treating pain patients.

"Excessive or inappropriate opiate prescribing will result in legal actions against the supervising physician," said Dr. O'Donnell, an associate professor in the department of pharmacology at Rush Medical College, Chicago . "Close monitoring of [non-physician practitioners] requires establishing guidelines for opiate prescribing."

Develop practice protocols that track and regulate nurse practitioner and physician assistant prescribing, and regularly discuss prescribing dangers with staff. Know your state law; the extent to which an NP or PA can prescribe varies widely.

3. Document

Keep detailed records of patient encounters that include specifics of what the patient tells you, said Ms. Adler.

Clear documentation about prior conditions, interactions with other health care providers, and past and current treatments help protect the doctor should liability later arise. In the case of a dishonest patient, clear record keeping could help show that a patient lied or omitted facts if the notes later become evidence in a lawsuit, she said.

"I also think [doctors] should document their policies, so there is clarity and understanding in the relationship," Ms. Adler said. "Showing a policy where national standards or recommendations are followed will help protect the practice."

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4. Restrict refills

Require prescriber review before patients can obtain refills or new prescriptions for patients who run out of medicine before their next appointment, Dr. O'Donnell said.

"Excessive or early refills for opiate prescriptions are signs of abuse," he said. "This creates risk to the patient and malpractice risk to the physician."

It's also helpful to limit the number of pharmacies used for opioid prescriptions, Ms. Adler said. This makes it easier track medications and narrows the pathway between prescription and drug obtainment.

5. Partner with pharmacists

Work closely with other health providers, such as psychiatrists, therapists, and pharmacists to ensure safe prescribing decisions. Pharmacists have a corresponding responsibility in dispensing opiates, Dr. O'Donnell said.

"Take the pharmacists' calls regarding your opiates prescriptions," he said. "The pharmacist will know what other medicines the patient is taking and may advise of dangerous dosage or interactions."

6. Require patient agreements

Opioid treatment agreements aid in patient accountability and promote education of drug risks, Dr. Robeck noted. In such contracts, patients agree to fully comply with all aspects of the treatment program and acknowledge that they will not use medication with harmful substances. Other terms can include that patients:

- Only obtain opioid prescriptions from one provider
- Agree to keep all scheduled medical appointments
- Promise to undergo urine drug screens as indicated
- Agree not to share or sell medication
- Agree not to drive or operate heavy machinery until medication-related drowsiness clears.

Contracts can help patients remain informed about the dangers and benefits of medications, while protecting the physician's right to terminate treatment if the patient violates the agreement, Ms. Adler said.

7. Involve family members

Family members and caregivers can be critical of a patient's opioid therapy plan, Dr. Robeck said. Discuss with patients ahead of time the potential for family member involvement. Family or the patient's support system should be educated about the patient's medications, the risks, and how to respond in an emergency.

"It may be lifesaving," Dr. Robeck said. "It's very important for the physician to communicate with the family. There may be times you want the family to come [to appointments]."

Such communication can ensure that family members' concerns about a patient are conveyed to physicians. Family and caregivers can also have a role in improving home conditions to assist with pain management for a community-dwelling elder or patient, she said. Family education in using a naloxone rescue kit in the event of a possible overdose is essential.

"Giving the patient naloxone to prevent an overdose is more than just handing them the nasal spray or the self-injector, it's also about educating them and the family about the true risks of these medications," Dr. Robeck said.

8. Watch for red flags

Be cognizant of warning signs that patients may be addicted, Ms. Adler advised. Patients who demand medications, act impatiently about waiting for refills, or refuse to answer questions about their history should ring alarm bells, she said. Patients who travel long distances for pain medication also should raise concerns, Dr. O'Donnell added.

"If the patient is in too much of a hurry to wait for records or to get a urine test, that's a red flag," Ms. Adler said. "When doctors are not sure, the safest bet is to refer to a pain specialist."

Ensure that therapy considerations related to opioids address the full patient picture.

Consider the criteria for opioid use disorder, Dr. Robeck noted. The condition is defined as a problematic pattern of opioid use leading to clinically significant impairment or distress. Signs of opioid use disorder include recurrent use by patients resulting in a failure to fulfill major role obligations at work or home, continued opioid use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by opioids, and spending a great deal of time in activities necessary to obtain the opioid, use the opioid, or recover from use, according to the American Psychiatric Association.

9. Develop an exit plan

Before starting a patient on opioid therapy, have a plan in place in case something goes awry, Dr. Robeck said. Create an exit strategy that includes both pharmacological and nonpharmacological resources from which to draw from should problems arise. Make sure you have a plan for tapering patients off opioids when necessary. This may include getting help from other clinicians, she said.

"Those patients need very careful follow-up," Dr. Robeck. "The rate of the taper needs to occur based on level of risk. Whenever possible, we try to taper patients slowly."

10. Do your research

Always check your state's prescription drug–monitoring program (PDMP) when prescribing an opiate to a new patient, Mr. O'Donnell advised.

Currently, 49 states and Guam have operational PDMP databases. The PDMP Training and Technical Assistance Center offers information about each PDMP, state pharmacy and practitioner data, drug schedules monitored, patient information data, and legislation dates and citations.

Perhaps most importantly, know best prescribing practices, Dr. Robeck said. Earlier this year, the Centers for Disease Control and Prevention released guidelines for prescribing opioids for chronic pain.

"Thoroughly understand the CDC guidelines," she said. "These are the keys to understanding where opioids fit into your plan of medications and nonpharmacological therapies for pain."

Alicia Gallegos is a Frontline Medical News freelance writer based in Chicago.