Best Practice for Safe and Effective Prescribing

Legal and Liability Considerations

ND Opioid Symposium

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Recent CDC Guidelines

- Voluntary
- Primary Care focus
- Chronic Pain (pain lasting past 3 months, or past the time of normal tissue healing.)
Recommendations:

1) Non-pharmacologic/non-opioid treatment preferred
2) Goals
3) Risks/Benefits/Alternatives (R/B/A)
4) Immediate-release form first
5) For acute pain, 3 days Rx usually sufficient, 7 days rare
6) Lowest effective dosage. IF ongoing need, carefully assess when going up to \( \geq 50 \text{ MME/day} \); avoid \( \geq 90 \text{ MME/day} \)

\*MME = morphine milligram equivalents

<table>
<thead>
<tr>
<th>Drug</th>
<th>Oral Equianalgesic Dose (mg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morphine</td>
<td>30</td>
</tr>
<tr>
<td>Buprenorphine</td>
<td>0.4 (SL)</td>
</tr>
<tr>
<td>Codeine</td>
<td>200</td>
</tr>
<tr>
<td>Fentanyl</td>
<td>15mcg/hr (TD)**</td>
</tr>
<tr>
<td>Hydrocodone</td>
<td>30</td>
</tr>
<tr>
<td>Hydromorphone</td>
<td>7.5</td>
</tr>
<tr>
<td>Meperidine</td>
<td>300</td>
</tr>
<tr>
<td>Methadone</td>
<td>10**</td>
</tr>
<tr>
<td>Oxycodone</td>
<td>20</td>
</tr>
<tr>
<td>Oxymorphone</td>
<td>10</td>
</tr>
<tr>
<td>Tramadol</td>
<td>120</td>
</tr>
</tbody>
</table>

7) If using for chronic pain, evaluate R/B/A within 1-4 wks (dose start or adjustment)

8) Mitigate risks (concomitant)

9) PDMP (prescription drug monitoring program)

10) U/A prior, and periodic

11) Avoid concurrent benzodiazepines if possible

12) MAT (medication-assisted treatment) for those with opioid use disorder.
Issues

**Individual**

- Level of Comfort
- Training, Licensing, Certification, and Competence

**System**

- Time constraints (panel, EHR, etc…)
- Mission
- Pay for Performance
- Isolation
- Review
Legal and Liability Considerations

- Disclaimer:

I am not an attorney, nor do I play one on TV.

I do teach “Law and Medicine.”
Prescribing of methadone and buprenorphine

- Physicians, APRNs, PAs can prescribe these medications for treatment of pain.

- Physicians who have a Drug Addiction Treatment Act of 2000 waiver (DATA 2000 waiver) can prescribe buprenorphine for opioid addiction.
Elements of Informed Consent

• Informed consent should include:
  • Nature of the treatment (procedure/meds/other)
  • Purpose of the treatment
  • Benefits
  • Risks
  • Alternative treatments (including no treatment at all)

• Implies discussion, not just “sign here…”
Legal/Liability-Medical Malpractice

- Civil claim for negligent care or failure to obtain informed consent
- Parties to the suit – plaintiff (patient) and defendant (prescriber/staff/medical institution)
- Standard is preponderance of evidence
4 Elements re: negligent care

- **Duty:**
  Provider has a duty to provide competent care to the patient

- **Breach:**
  Did the conduct, whether by act or omission, fall below the applicable standard of care

- **Cause:**
  “but for….”
  “foreseeable”

- **Damages:**
Elements

- Omission of Fact
  (Did you not review the record, the PDMP, access NDHIN, etc...)

- Omission of Judgment
  Where did you land?
Confidentiality/Health Information Exchange

HIPAA (45 CFR)

- Releases of information re: PHI are not required for treatment issues pertaining to coordination of care between covered entities...

Federal Statute behind 42 CFR part 2

- Patient Consent required for all releases of identifiable patient information for treatment except in a medical emergency
- Prohibits use of patient information for criminal charges or investigation unless there is a substantial risk of death or bodily harm

“Controlled Substance Agreements” (i.e, “Pain Contracts...”)

- Need to be reasonable
- If a provider decides to “dismiss” a patient:
  - How is this communicated with the patient?
  - Are there dangers of withdrawal, and what has been the recommendation/instruction for dealing with this?
  - Further recommendations for other treatment? Assistance re: continuity of care?
  - Cannot abandon
Internal and External Reviews

**Internal**
- Hospital/Clinic Boards
- Peer Review

**External**
- Joint Commission
- State Licensing Boards
- DEA
- CMS
- OIG
- Other
4 Cs of Risk Management

- Compassion
- Communication (both patients/colleagues)
  WHEN YOU ARE STUCK, EXPAND THE FIELD!
- Competence
- Charting

Questions?  Comments?